

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-682/2013

Reserved on : 28.09.2015.

Pronounced on : 29.09.2015.

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Ms. Anupam Gupta,
W/o Mr. Sanjiv Gupta,
D/o late Sh. B.R. Gupta,
R/o House No. 206, Sector-22,
Gurgaon, Haryana.

..... Applicant

(through Ms. Jyoti Singh, Sr. Advocate with Sh. Rajiv Aneja and Ms. Tinu Bajwa)
Versus

1. Directorate of Education through
Its Director,
Govt. of NCT of Delhi,
Old Secretariat,
New Delhi-54.
2. Govt. of NCT of Delhi through
Its Chief Secretary,
Secretariat, I.P. Estate,
New Delhi.
3. Chairman,
Delhi Subordinate Services Selection Board,
Fc-18, Institutional Area,
Karkardooma,
Delhi.
4. Secretary,
Delhi Subordinate Services Selection Board,
FC-18, Institutional Area,
Karkardooma, Delhi.

..... Respondents

(through Sh. Anmol Pandia for Sh. Vijay Pandita, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant applied for the post of TGT (Social Science) Post Code No. 148/2007 advertised by respondent No. 3-DSSSB vide their advertisement No.

07/2007. The opening date for application was 16.10.2007 and closing date was 29.10.2007. According to the applicant the educational qualifications advertised for the said post were as follows:-

“1. A bachelor's degree (Honors/Pass) or equivalent from a recognized university having secured 45% marks in aggregate, in Two School Subjects of which at-least one out of the following should have been at the elective level.

1. English
2. Mathematics
3. Natural science/Physical science
4. Social Science

Note : Main subjects for TGT (Social Science) shall be History/Political Science/Economics/Business Studies/Sociology/Geography/Psychology.”

The applicant was possessing the following qualifications:-

“B.Com(Hons)	-	Sri Venkateswara College, DU.
M.Com	-	CCS University, Meerut
B.Ed	-	CCS University, Meerut
MBA (PGDBM F/T)	-	IMSPR, Delhi Productivity Council”

2. Since the applicant was eligible according to the qualifications mentioned in the advertisement, she applied for the same and appeared in the examination. On 27.05.2009, the respondent No.4 issued a letter asking the applicant to furnish all documents of educational qualifications including mark sheet of all the three years of graduation indicating therein subject specification. The applicant submitted the same on time. Subsequently, by a Public Notice published on 24.11.2009 by the respondents, the applicant came to know that she had been declared ineligible without assigning any reason. She filed RTI application on 07.12.2009 to ascertain reasons for rejection of her candidature. She came to know from order dated 13.11.2009 that the respondents while considering Recruitment Rules for TGT (Social Science) in relation to the applicant took Economics as the base qualification instead of

Business Studies, which was also an eligible qualification as per the Recruitment Rules. The applicant thereafter visited the office of the respondents. She was advised to get clarification from the concerned University to the effect that the subjects studied by her in B.Com (Hons) could be treated as part of Business Studies. According to the applicant, the respondents should have done the same at their own end as they had done in the case of Gayatri Barwal (Roll No. 14815049). Nevertheless, as advised by the respondents, the applicant filed RTI application with the University of Delhi on 10.05.2010. She received response from the University on 12.08.2010, which has been enclosed as Annexure A-8 to the OA. According to this, the University has advised that she be treated as having done Business Studies for all the three years of her graduation during the period 1991-1994. The applicant once again approached the respondents to reconsider her case. When no satisfactory response was forthcoming, she approached this Tribunal by filing OA-4406/2010. This was disposed of by the Tribunal on 03.01.2011 by the following order:-

"4. We have heard counsel for the applicant. It has been stated by the applicant that she had been given clarification as sought by her by the University of Delhi, but there is no representation given by the applicant to the Board, we, therefore, are of the opinion that applicant should give a detailed representation to the DSSSB (Board) within 15 days explaining her case. In case such a representation is given, the Board shall consider the same and pass a final speaking order under intimation to the applicant within three weeks thereafter.

5. With the above direction, the O.A. stands disposed of. No order as to costs."

In compliance thereof the applicant preferred a representation and on the same the respondents passed the impugned order dated 28.05.2012. The applicant has now filed this O.A. impugning the aforesaid order and seeking the following relief:-

"a. Set aside impugned orders namely:

No.F.1 (154)/CC-II/DSSSB/08/Part/3122 dated 28/05/2012 Passed by Delhi Subordinate Services Selection Board.

No.F.DE.3(221)/E-III/DR/07/Pt. File/3819 dated 28/03/11 passed by Directorate of Education.

b. That the respondents be directed to consider the candidature of the applicant for the post of TGT (Social Science).

c. The respondents be directed to consider the subject Business Studies as main subject qua the qualification of the applicant for the said post of TGT (Social Studies) instead of Economics.

d. Pass such other orders or directions which this Hon'ble Court may deem fit in the light of above-mentioned facts and circumstances of the case."

3. According to the applicant, the impugned order was against the Recruitment Rules for the post and violative of Articles 14,16 & 19 of the Constitution. The respondents have considered the candidature of Gayatri Berwal but have discriminated against the applicant, who was on a better footing. The Recruitment Rules for the post of TGT (Social Science) required the candidates to have studied as main subject any of the subjects, such as, History/Political Science/Economics/Business Studies/Sociology/Geography/Psychology. Business Studies was clearly included as one of the main subject. However, in her case, the respondents on their own decided to consider her subject to be Economics ignoring Business Studies, which was clearly against the terms mentioned in the advertisement. Hon'ble Supreme Court in the case of **M.A. Haque Vs. UOI**, (1993) 2 SCC 213 has held that the Recruitment Rules have to be strictly followed. In the case of **Jahar Singh Vs. UOI**, 1997 SCC (L&S) 84, Apex Court held that cancellation of candidature of a candidate after giving him permission to appear in the examination was unsustainable.

4. The reply received from Delhi University clearly establishes that the applicant was having Business Studies as her main subject in all the three years of graduation and it was respondents, who erred by considering Economics as

the main subject. This they did without considering the documents submitted by the applicant and without seeking any clarification from her. Thereafter, when under orders of the Tribunal, the respondents were asked to pass a speaking order, they rejected her case saying that Business Studies was not taught in any of the schools and Commerce was also not a subject. They also stated that a Committee had been formed to study all these aspects and suitable amendments in the Recruitment Rules shall be made as required. This stand taken by the respondents was clearly against their own advertisement and the Recruitment Rules that were prevalent at the time of the said examination. This shows that the respondents have acted in mala fide and biased manner against her. Apex Court in the case of **District Collector and Chairman Vizianagaram Vs. M. Tripura Sundri Devi**, 1990(3) SCC 655 has laid down as follows:-

It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice."

Further in the case of **Hemani Malhotra Vs. High Court of Delhi**, 2008(7) SCC 11 following has been laid down:-

"What we have found to be illegal is changing the criteria after completion of selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview."

Again in the case of **N.T. Bevin Kaath etc. Vs. Karnataka State Public Commission**, 1990(3) SCC 157 the Apex Court has ruled as follows:-

"Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice."

In the case of **National Buildings Construction Corporation Vs. S. Raghunathan**, AIR 1998 SC 145 Hon'ble Supreme Court held that the legitimate substantive expectation merely permits the Court to find out if the change of policy resulting in defeating legitimate expectation, is irrational or unreasonable. On these grounds, the applicant has pleaded that her O.A. be allowed.

5. In their reply, the respondents have stated that this Tribunal cannot direct the Government to frame Statutory Rules or amend the same as held by Apex Court in the case of **Mallik Vajana Rao Vs. State of A.P.**, 1990(2) SCC 707. Further, Constitution Bench of Hon'ble Supreme Court in the case of **Bishan Swaroop Vs. UOI**, 1974 SC 1618 held that Court is not concerned with the Government policy in recruiting officer in any service.

5.1 As per Recruitment Rules for the post of TGT (Social Science), the applicant had not studied Economics as Elective subject in all the three years of her graduation. She was, therefore, not found eligible for the post. Moreover, Commerce, which is the subject of her study, is presently not taught in schools at Middle and Secondary level.

5.2 Further, the respondents have stated that this O.A. is not maintainable under Rule-10 of Central Administrative (Procedure) Rules, 1987, according to which application shall be based upon a single cause of action and can only be filed to seek reliefs, which are consequential to one and another. The O.A. is also barred by Sections-19, 20 & 21 of the Administrative Tribunals Act, 1985 and is liable to be dismissed with costs.

6. We have heard both sides and have perused the material on record. We first deal with the preliminary objections taken by the respondents. Their contention is that this O.A. is not maintainable as plural reliefs have been sought in the same.

6.1 We have gone through the relief clause of the OA, which has been reproduced in the earlier part of this order. In our opinion, the main relief sought by the applicant is consideration of her candidature for the post of TGT (Social Science). All other reliefs are connected/consequential to the same. Hence, the contention of the respondents that plural remedies have been sought by the applicant is baseless.

6.2 Further, the respondents have alleged that this O.A. is barred by Sections-20 & 21 of the Administrative Tribunals, Act, 1985. Section-20 reads as follows:-

“20. Application not to be admitted unless other remedies exhausted –

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purpose of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

From the facts of the case it is clear that the applicant has approached the Tribunal only after administrative remedies had been exhausted and her representation had been rejected by the impugned order dated 28.05.2012. Hence, this O.A. is not barred by Section-20 of the Administrative Tribunals Act, 1985.

6.3 Section-21 of the Administrative Tribunals Act, 1985 reads as follows:-

"Limitation-(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) In a case where an appeal or representation such as is mentioned in clause(b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or , as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

6.4 The respondents passed the speaking order rejecting her candidature on 28.05.2012. This O.A. had been filed on 15.02.2013. Hence, the question of O.A.

being barred by limitation does not arise. This objection of the respondents is also rejected.

7. A perusal of the documents produced before us reveals that the advertisement issued by the respondents stated that besides others Business Studies as an elective subject in all three years of graduation was one of the required subject for this post. This is evident from the relevant extracts of the advertisement, which are reproduced below:-

“Educational and other Qualifications:

Essential (for Post Code 143/07 to 150/07) : (i) A Bachelor's degree (Honours/Pass) or equivalent from a recognized University having secured 45% marks in aggregate, in two school subjects of which at least one out of the following should have been at the elective level:-

1. English
2. Mathematics
3. Natural/Physical Science
4. Social Science.

Note: Main subjects for TGT (Natural Science/Phy. Science) shall be Physics, Chemistry, Biology, Botany and Zoology.

Social Science:- History/Political Science/ Economics/Business Studies/Sociology/Geography/Psychology.

Provided further that the requirement as to minimum of 45% marks in the aggregate at graduation level shall be relaxable in case of:

- (a) candidates who possess a Post Graduate qualification in any of the teaching subjects listed above,
- (b) belonging to SC/ST
- (c) Physically Handicapped candidates:

(II) Degree/Diploma in Training Education or SAV Certificate."

8. Information received from Delhi University through RTI, which has not been disputed by the respondents is reproduced below:-

"The present application is filed under Right To Information Act and the details whereof are as under:

- | | |
|--------------------------------|--------------------------------------|
| (1) Name of the Applicant | : Ms. Anupam Gupta |
| (2) Address | : House No. 206, Sector 22B, Gurgaon |
| (3) Address for Correspondence | : Same as above |

The Following Papers were the subjects for B.Com (Hons.) Examination for the batch year (1991-1994), for the University of Delhi.

Part-I

- I. Business Organisation
- II. Financial Accounting I
- III. Business Mathematics
- IV. Business Law &

Part-II

- V. Economics
- VI. Business Statistics
- VII. Principles of Management
- VIII. Financial Accounting-II (Company Accounts)
- IX. Company Law

Part-III

- X. Indian Economy Resources, Trade and Development
- XI. Money Income and Financial Institutions
- XII. Cost Accounting
- XIII. Auditing and Income Tax

(3) Information Required: Amongst the Papers mentioned in Part-I, Part-II and Part-III, which are the papers in each Part that can be deemed/treated as a part of the study of "**Business Studies**" for the said batch of 1991-1994 as well as for the current year batch of B.Com (Hons) for the University of Delhi.

(4) Requisite Fee for the said information is paid through Postal Order."

9. Thus, it is obvious that Delhi University has clarified that the applicant had studied the above mentioned subject which form part of Business Studies in all the three years of her graduation. Hence, the applicant has to be regarded as possessing the requisite educational qualification in terms of the advertisement issued by the respondents. The plea taken by the respondents that neither Commerce nor Business Studies is taught at the school level is hardly relevant for deciding the aforesaid OA. If Commerce and Business Studies were not taught in schools and were not required qualification for the post of TGT (Social Science), the respondents should have taken care to amend their Recruitment Rules accordingly and not to have advertised the post in the manner in which they have done. Their contention that they have constituted an Expert

Committee and propose to make suitable amendments in the Recruitment Rules is also not relevant to the present controversy since any amendments made in the Recruitment Rules would only apply prospectively. From the documents produced by the applicant, it is clear that she had studied Business Studies in all three years of her graduation and, therefore, has to be treated as possessing the necessary educational qualifications in terms of the advertisement issued by the respondents.

9.1 While coming to a finding as above, we are neither changing the recruitment policy of the Government nor are giving directions for amending Statutory Rules in any manner. Thus, none of the judgments relied upon by the respondents are relevant to this case.

10. We, therefore, allow this O.A. and direct the respondents to process the candidature of the applicant after treating her as eligible candidate as far as the educational qualifications are concerned. If found, otherwise suitable, she shall be appointed against any of the existing vacancies. She shall also be entitled to consequential benefits of pay fixation and seniority commensurate with her position in the merit list of successful candidates. The above directions shall be carried out within a period of eight weeks from the date of receipt of a certified copy of this order. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/