

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

OA-701/2016

Reserved on : 27.07.2017.

Pronounced on : 01.08.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Ms. Julie Devi, 37 years
D/o Sh. Om Parkash,
R/o H.No. 39, V.P.O.-Singhu,
Delhi-42.

.... Applicant

(through Sh. Ajesh Luthra, Advocate)
Versus

1. Govt. of NCT of Delhi through
Chief Secretary,
5th Floor, Delhi Sachivalaya,
New Delhi.
2. Delhi Subordinate Services Selection Board
Through its Chairman,
Government of NCT of Delhi,
FC-18, Institutional Area, Karkardooma,
Delhi-110302.
3. South Delhi Municipal Corporation
Through its Commissioner,
4th Floor, Civic Centre, Minto Road,
New Delhi-110 002.

.... Respondents

(through Ms. Alka Sharma, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was a candidate for the post of Teacher
(Primary) in Municipal Corporation of Delhi (MCD) (Post Code-70/09)

in the O.B.C. category. These posts were advertised by Delhi Subordinate Services Selection Board (DSSSB) vide Employment Notification No. 4/09. Subsequently, a Corrigendum was issued in the year 2011 by which not only the modified Recruitment Rules were notified but there was also an increase in the number of vacancies. The relevant essential qualifications notified were as follows:-

S.No.	Description	Previous	Now Amended
iii	Essential and Desirable Qualification	EQ(for post code 70/09 & 71/09): 1-Senior Secondary (10+2) or Intermediate or its equivalent with 50% marks from a recognized Board. 2-Two years diploma/certificate course in ETE/JBT or B.El.Ed. from the recognized institutions or its equivalent.3-Must have passed Hindi as a subject at Secondary Level. Desirable Qualification (for post code 70/09 & 71/09): Computer Knowledge.	(a)EQ(for post code 70/09): 1-Senior Secondary (10+2) or Intermediate or its equivalent from a recognized Board/institution. 2-Two year's diploma/certificate course in ETE/JBT or equivalent or B.El.Ed. from a recognized institution. 3-Must have passed Hindi as a subject at Secondary Level. 4-Must have passed English as a subject at Secondary or Sr. Secondary Level. (b) EQ (for post code 71/09): Point 1, 2 & 3 as above. Desirable Qualification (for post code 70/09 & 71/09): NIL

The applicant appeared in the examination and obtained 81.25 marks against the cut off 69.25 marks for O.B.C. candidates. Her candidature was, however, rejected vide rejection notice dated 22.01.2016 on the ground that she had not studied English in 10th or 12th class. According to the applicant, she possesses the following qualifications:-

Qualification	Year	Board/University
Secondary School Examination	1994	CBSE
Sr. Secondary School Examination	1996	CBSE
Bachelors of Arts (Graduation)	2006	Delhi University
Diploma in Education (2 year course)	2006-2008	SCERT, Delhi
Hindi Secondary School	2010	National Institute of Open Schooling

She has further submitted that she has passed English at graduation level and, therefore, possesses higher qualification than the minimum prescribed. Yet, her candidature has been rejected by the respondents. She has, therefore, approached this Tribunal seeking the following relief:-

- “(i) quash and set aside the impugned order/reject list dated 22.01.2016 to the extent the applicant has been placed therein declaring her ineligible; and declare the applicant as ‘eligible’.
- (ii) direct the respondents to further consider and appoint the applicant to the post of Teacher (Primary) Post Code (70/09) with all consequential benefits.

- (iii) award costs of the proceedings and
- (iv) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

2. Arguing for the applicant, learned counsel Sh. Ajesh Luthra submitted that in a catena of judgments, it has been laid down that the essential qualifications prescribed in the Recruitment Rules is the minimum required. Those, who have higher qualifications, cannot be declared ineligible until and unless in the Recruitment Rules it is specifically prescribed that those having higher qualifications will be ineligible. In this regard, he has relied on the judgment of Hon'ble Supreme Court in the case of **Jyoti K.K. and Ors. Vs. Kerala Public Service Commission and Ors.**, (2010) 15SCC 596 in which the following has been held:-

"9.....When that position is not clear but on the other hand rules do not disqualify per se the holders of higher qualifications in the same faculty, it becomes clear that the rule could be understood in an appropriate manner as stated above. In that view of the matter the order of the High Court cannot be sustained....."

He has also relied on the judgment of Hon'ble High Court of Delhi in the case of **Mrs. Manju Pal Vs. Govt. of National Capital**, 2002(61)DRJ 58, in para-8 of which the following has been held:-

"The learned counsel appearing for the appellant argued that the appellant was wrongly rejected on the spurious ground of her not having a qualification prescribed by the advertisement read with the corrigendum. Learned counsel appearing for the Board and the MCD submit that as per the qualification

prescribed in the advertisement and the corrigendum for appointment to the post of Primary Assistant Teacher, the requirement of Hindi at the Secondary level or Senior Secondary level is the essential qualification which a candidate must possess. According to them, in case a candidate having a Bachelor of Arts degree with Hindi, he/she would not be eligible for the post of Primary Assistant Teacher. We fail to see the logic and the rationale of the argument of the learned counsel for the MCD and the Board. Undoubtedly, Bachelor of Arts degree with Hindi, is a higher qualification than the higher secondary with Hindi.”

The applicant has further relied on the judgment of Hon'ble High Court of Delhi in the case of **Sh. Yogesh Dutt Vs. Director of Education and Ors.** [WP(C) No.11470/2009] dated 15.07.2013, in para-5 of which the following has been held:-

“5. Therefore, following the ratio in the case of **Manju Pal (supra)** since the petitioner has a higher qualification of M.A, and for the sake of arguments if three years of English in the graduation course is the requirement for English subject, then, two years can be taken of English in the post graduation course of M.A in English by the petitioner and one year can be taken of graduation course and which admittedly the petitioner has. Also, the requirement specified has to be taken as a minimum requirement and thus a higher qualification is surely a fulfilment of the requisite criteria. Accordingly, respondents are unjustified in denying appointment for the post of TGT (English) to the petitioner. In fact, I may express my distress and anguish as to a very shortsighted stand taken by the respondents because surely post graduation is a higher qualification than graduation, and if there are persons who are better qualified, I fail to understand as to how better qualification becomes a disqualification. My distress at the stand of respondent Nos.1 and 2 is more confirmed because the Government of India, Ministry of Education and Social Welfare, New Delhi has in fact written to the Secretary (Education) of the then Delhi Administration (now known as Government of NCT of Delhi) its letter dated 31.5.1973 clarifying that if a person has M.A. qualification, then, where the requirement is only of graduation

then M.A. can be considered for employment of teachers i.e where B.A. is prescribed as the minimum academic qualification. This letter of the Government of India reads as under:-

"GOVERNMENT OF INDIA, MINISTRY OF EDUCATION & SOCIAL WELFARE, NEW DELHI

F/50/70 UT.1

Dated the 31st May-1973

To

The Secretary (Education),
Delhi Administration, Delhi.

Sub: Clarification regarding treating of M.A. Degree after passing Bharti degree from Mahila Gram Vidhyapeeth, Allahabad for purpose of employment of Teacher.

Sir,

I am directed to refer to your letter No.F.32/1/35/Gen. 71/73/8383 dated the 26th March, 1973 on the above sited subject and to clarify that since M.A. degree is higher than B.A., a person who has M.A. examination from an Established University after passing the Bharti degree may be considered for employment as a teachers, where B.A. is prescribed as the minimum academic qualification.

Yours faithfully

Sd/-

(Girdhari Lal)
Under/Secretary"

The applicant has also made available copies of her mark sheets issued by University of Delhi, which show that she has studied English in all three years of her graduation and acquired the degree before the relevant closing date.

3. In their reply, the respondents have submitted that the Recruitment Rules required that a candidate appearing for the post in question should have passed English in 10th or 12th class. Since the

applicant did not have English as a subject in 10th or 12th class, she was declared ineligible.

4. We have considered the submissions of both sides and the various pronouncements cited by the applicant. We are of the opinion that the respondents were not justified in rejecting the candidature of the applicant. The applicant had higher qualification than the one prescribed in the Recruitment Rules. The qualifications prescribed in the Recruitment Rules should be taken as the minimum requirement and those having higher qualification cannot be treated as ineligible until and unless there is a specific provision in the Recruitment Rules to this effect.

5. We, therefore, have no hesitation in allowing the O.A. and quashing the impugned rejection notice dated 22.01.2016 qua the applicant. The respondents are directed to process the candidature of the applicant further and appoint her in case she is otherwise not ineligible. If she is so appointed, she would also be entitled to consequential benefits of pay fixation and seniority commensurate with her position in the merit list. The above benefits may be extended to her within a period of 08 weeks from the date of receipt of a certified copy of this order. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/

