

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No-1045/2015

With

OA No.248/2015

Order Reserved on: 21.01.2016

Order Pronounced on:03.05.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

OA No.1045/2015

Geetanjali, W/o Vikas
Aged about 29 years
R/o A-23. Adarsh Nagar
Sarai Extension, Delhi-33
Designation: Unemployed

-Applicant

Versus

1. Govt. of NCT Delhi
Through the Principal Secretary
(Education Department)
At Old Secretariat, Delhi-54.
2. Delhi Subordinate Service Selection
Board (DSSSB) through its Secretary
At: FC-18, Industrial Area,
Karkardooma, Delhi.
3. South Delhi Municipal Corporation,
Through the Commissioner
At SP Mukherjee Civic Centre,
J.L.N. Marg, New Delhi-2
4. North Delhi Municipal Corporation,
Through the Commissioner
At SP Mukherjee Civic Centre,
J.L.N. Marg, New Delhi-2
5. East Delhi Municipal Corporation,
Through the Commissioner
DSIDC Building, Patpat Ganj,
Industrial Area, New Delhi.

-Respondents

OA No.248/2015

Bharat Lal, Aged about 37 years
 S/o Asha Ram, R/o 1-2nd 66 FF,
 Madangir, New Delhi-62 Unemployed

-Applicant

Versus

1. Govt. of NCT Delhi
 Through the Principal Secretary
 (Education Department)
 At Old Secretariat, Delhi-54.
2. Delhi Subordinate Service Selection
 Board (DSSSB) through its Secretary
 At: FC-18, Industrial Area,
 Karkardooma, Delhi.
3. South Delhi Municipal Corporation,
 Through the Commissioner
 At SP Mukherjee Civic Centre,
 J.L.N. Marg, New Delhi-2
4. North Delhi Municipal Corporation,
 Through the Commissioner
 At SP Mukherjee Civic Centre,
 J.L.N. Marg, New Delhi-2
5. East Delhi Municipal Corporation,
 Through the Commissioner
 DSIDC Building, Patpar Ganj,
 Industrial Area, New Delhi.

-Respondents

(By Advocate: Shri Ranjit Sharma, for applicant in both OAs
 Shri Gyanendra Singh, Shri Amit Anand &
 Ms. Ritika Chawla, for respondents)

O R D E R

Per Sudhir Kumar, Member (A):

These two cases came to be heard together, and are, therefore, being disposed of through a common order. For the purpose of discussion, we would take the facts of the first case in OA

No.1045/2015, and only point out the distinguishing features in the second OA.

OA No.1045/2015

2. The applicant of this OA had applied for and participated in the selection process for appointment as Assistant Teacher in MCD against Post Code No.70/09 in pursuance of an Advertisement issued in the year 2009, and is aggrieved by her name having been placed in the notice of rejection, for not having passed English at the Secondary or Senior Secondary level.

3. The applicant has assailed such rejection of her candidature since she had obtained 99.25% marks in the selection test, and has termed her candidature to have been unfairly rejected. On the point of limitation, it was submitted that the OA has been filed within the period of limitation, as the cause of action to file the present OA had arisen only on 05.12.2014, when the respondents had placed her name in the rejection list.

4. The facts of this case are that an Advertisement for the Post Code 70/09 had been issued by the respondents, for filling up the posts of Assistant Teachers (Primary) in MCD, along with three other Post Code Nos. 69/09, 71/09 and 72/09. The applicant applied against the said Advertisement as an OBC candidate, with the following conditions having been prescribed in that Advertisement:-

“ Name of the Post: Teacher(Primary) in MCD

Post Code: 70/09

Number of Vacancies : 4500(UR-1900,OBC-1044, SC-766, ST-790, including PH(OH- OA/OL/OAL/BL) -52, PH(VH-B/LV)-96, EXSM-982)

Essential Qualifications: 1. Sr. 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 recognized institutions or its equivalent.

3.Must have passed Hindi as a subject at Secondary level.

Desirable Qualification: Computer knowledge. Pay Scale: 9300-34800/- plus Grade Pay Rs.4200/- Group -‘C’ Non-Gazetted, Probation Period; Two years

Age Limit: 20-27 years. Relaxable for SC/ST-05 years, OBC-03 years, PH-10 years, PH&SC/ST-15 years, PH&OBC-13 years, Departmental employees upto 42 years of age (general), upto 47 years from SC/ST, having 03 years of continuous service in the same line or allied cadres. Relaxable upto 37 years for (general) and upto 42 years for SC/ST- for widows, divorced women and women judicially separated from their husband and who are not re-married.

(R.No.F.D/DEO/TRC/09/531 dated 30/10/09)”.

5. The applicant applied against the said post on the basis of her CBSE and degree certificates, out of which the CBSE certificates have been produced by her at Annexure A-3/Colly from pages 12 to 16, her OBC Certificate at Annexure A-3/Colly at Page-17, and her marks sheet in respect of her degree examination at Annexure A-3/Colly at page 18 of the paper book of the OA.

6. Thereafter, the respondents issued a Gazette Notification dated 30.11.2010 (Annexure A-4/Colly) by which amended Recruitment Rules (RRs, in short), called the Directorate of Education, Assistant Teacher (Primary) Recruitment Rules, 2010, were notified, in which the posts concerned were upgraded from being Group C posts to being Group B posts, and the educational and other qualifications, and the age limit criteria was also changed from the earlier prescribed age limit of 20 to 27 years in Columns 1 to 8 as follows:-

Name of the Post	Number of Posts	Classification	Scale of Pay	Whether Selection Post or Non-selection post	Whether benefit of added years of service admissible
1	2	3	4	5	6
Assistant Teacher (Primary)	4016*(2010) *Subject to variation dependent on workload	GCS Group 'B' Non-Gazetted, Non-Ministerial	(PB-2) Rs.9300 -34,800 (Grade Pay Rs.4200)	Not reproduced here.	Not reproduced here.
Age-limit for direct recruits	Educational and other qualifications required for				
7	8				
Not exceeding 30 years Note 1 (Relaxable for Government Servants upto 5 years in accordance with the instructions/orders/ issued by the Central Government Note 2: The crucial date for determining the age-limit shall be the closing date for receipt of applications from candidates in India. (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh, Division of J&K State, Lahaul and Spiti Districts and Pangi Sub-division of Chamba District of Himachal Pradesh & Andaman and Nicobar Islands and Lakshdweep).	Essential: 1. Senior Secondary (10+2) of Intermediate or its equivalent from a Recognized Board. 2. Two years diploma or certificate course in elementary Teachers Education Course/Junior Basic Training Bachelor of Elementary Education or equivalent from a recognized Institution. 3. Must have passed as a subject at Secondary Level. Note: Qualifications are relaxable at the discretion of the Competent Authority for reasons to be recorded in writing, in the case of candidates otherwise well qualified.				

7. The applicant has assailed that bringing out these new Recruitment Rules, after the last date of submission of applications, i.e., 15.01.2010, and introduction of higher qualifications, and new eligibility criteria, almost two years after the cut-off last date for submission of applications, is as such impermissible, as introduction of any such new eligibility criteria is expressly contrary to the Rules.

8. In assailing the actions of the respondents, the applicant has taken the ground that since even otherwise the applicant is a graduate from University of Delhi, with English as a subject, and degree of graduation being a higher qualification, the respondents could not have rejected her candidature only on the ground that she did not have English as a subject in her Class XII CBSE Board Examination. Hence she has prayed for the following reliefs:-

“8. i) quash annexure A1 colly and issue direction to the respondents to forthwith issue her appointment letter for the post of Assistant Teacher in M.C.D. with all consequential benefits like arrears of salary and seniority.

AND/OR

ii) pass such other order/s as may be deemed fit & proper”.

9. Counter reply on behalf of Respondents No. 1 & 2 was filed on 13.08.2015. In this it was admitted that the original Advertisement for the post of Teachers in MCD, under the Post Code 70/09, was

published on 07.11.2009. It was pointed out that subsequently, in pursuance of the directions of this Tribunal in OA Nos. 121/2010 and 151/2010 dated 20.07.2010, the RRs for the posts concerned had been modified by the user department, i.e., the MCD, before the recruitment process could be started. Therefore, the amendments made in the said Advertisement No. 004/2009 on the specific directions of this Tribunal were notified as per Addendum, but maintaining the same cut off date of 15.01.2010.

10. Later on, the marks list of 20014 candidates in respect of those advertised posts was uploaded on the website of the Respondent No.2 on 08.07.2014, and supplementary marks list of 15 more candidates was also uploaded on that website vide notice dated 20.08.2014. From those marks lists, a combined Merit List, an OBC Merit List, a SC merit list, a ST merit list, an OH Merit List & a PH Merit List were drawn, and the dossiers of candidates were examined with respect to the check list required by the user department-MCD, which checking of the dossiers was conducted based upon the approved check list as per the RRs.

11. It was further pointed out that the amendment of the RRs was found to be necessary not only due to the specific orders of this Tribunal in OA No.121/2010 and 151/2010, dated 20.07.2010, but also because, in the meanwhile, the posts of Assistant Teachers had

been upgraded from Group 'C' posts to Group 'B" posts under the recommendations of the VIth Central Pay Commission (VIth CPC, in short), and after upgradation of the said posts, accepting the recommendations of the VIth CPC, prescribing the revised RRs for the higher posts was essential. The number of vacancies was also revised at the time of issuing the Addendum dated 13.09.2011. It was pointed out that under these modified RRs for the new upgraded posts, the condition of having passed the English subject at Secondary or Sr. Secondary level was included, and, therefore, any wrong doing on the part of Respondent No.2-DSSSB was denied.

12. Respondents No. 3 & 5 did not file any counter reply, but a short counter reply was filed on 18.08.2015 by Respondent No.4, North Delhi Municipal Corporation, stating therein that after the trifurcation of the erstwhile MCD, it was the South Delhi Municipal Corporation which had been entrusted with the work of recruitment of Teachers for all the three Municipal Corporations, in consultation with Respondent No.2-DSSSB.

13. Soon thereafter, MA No.3666/2015 was filed by the applicant, praying for directions and declaration of her result, and issuance of appointment letter to her in accordance with her merit list position in the select list, with all consequential benefits, including seniority and back salary. It was pointed out that the legal issue in the present case

had already been decided by another Coordinate Bench of this Tribunal, through its order dated 01.06.2012 in OA No.4234/2011, in respect of same advertisement, and through this order this Tribunal had directed the respondents to fill up the vacancies of Primary Teachers, which were advertised prior to 06.09.2011, i.e., the date when the amended RRs were notified, in accordance with the previously existing RRs dated 13.07.2007. It was submitted that since the above mentioned orders were passed *in rem*, the respondents have wrongly applied the amended RRs to the case of the applicant, which has resulted in filing of a large number of cases, and contempt cases also.

OA No.248/2015

14. This case was similar in which also the applicant had applied against the same Post Code 70/09 in pursuance of the same Advertisement No.004/2009. The applicant of this OA had also assailed the actions of the respondents in holding the selection test after five years on 14.02.2014, while, in the meanwhile, having prescribed English as a subject at the secondary or Sr. Secondary level, in pursuance of the directions of this Tribunal dated 20.07.2010 in OA Nos. 121/10 & 151/2010.

15. The applicant of this OA had also been similarly declared ineligible on the ground that he had not passed English at 10th class or 12th class level, although in the meantime the applicant of this OA had taken a supplementary examination at the National Institute of Open Learning for its Secondary School Level Examination, and had passed that only in the subject of English, with 38 marks out of 100. In this OA, it was stated and alleged that the order of this Tribunal dated 20.07.2010 (supra) had related to the issue of age relaxation, and not re-fixation of qualification, and, therefore, re-fixation of additional qualifications through revised RRs was termed to be arbitrary, wrong and unjustified.

16. The applicant of this OA had thereafter completed his graduation also, from Delhi University, with English as a subject in all three years, and had, therefore, sought the applicability of Delhi High Court's judgment in **Manju Pal vs. Govt. of NCT of Delhi (2002) 61 DRJ 58**, and the judgment dated 07.08.2013 in WP (C) No.575/2013.

17. The applicant of this OA had also sought quashing of the Addendum dated 13.09.2011, and also of the notice dated 05.12.2014 relating to rejection of his candidature as being contrary to the RRs, and, therefore, liable to be quashed. It was submitted that the issuance of Addendum after the new RRs were notified was without

any powers to do so. It was further submitted that any change in such eligibility criteria after two years of the original Advertisement was not permissible in law, as the norms of selection and eligibility criteria cannot be in an ever fluid state. In the result, the applicant had sought for the same reliefs as in the earlier OA.

18. Heard. During the course of arguments, learned counsel for the applicant relied upon the judgment in OA No.4234/2011 dated 01.06.2012 **Ashok Pal & Ors. vs. Govt. of NCT of Delhi & Ors**, a copy of which was filed, in which the Coordinate Bench had that day held as follows:-

“3. In the counter reply filed on behalf of DSSSB, it is stated that certain prospective candidate who were not covered by the age limit prescribed in the advertisement approached this Tribunal by filing OA NO.121/2010 and 151/2010 taking the plea that in accordance with the recommendations of 6th CPC, the post of Teacher (Primary) in MCD should have been classified as Group ‘B’ with the maximum age limit as 30 years as per the DOP&T guidelines instead of group ‘C’ with the maximum age limit as 27 years mentioned in the advertisement. Keeping in view the order passed by this Tribunal in said OAs, the DSSSB returned the requisition made to it by user department for taking necessary action on their part. Thus, the MCD amended the RRs for the post in question prescribing the condition of passing English as a subject at Secondary or Senior Secondary level to become eligible to participate in selection process by way of direct recruitment. In the rejoinder affidavit filed by applicant in response to the aforementioned counter filed DSSSB operative portion of the aforementioned order passed by this Tribunal in OA No.121/201 and 151/2010 was extracted as under:-

“Resultantly, we have no hesitation to hold that non-amendment of the recruitment rules by the respondents, despite change in the pay scale and classification of the post, to which the applicants have applied, they have been deprived of an opportunity and valid consideration for appointment. We also find from

the record that after the advertisement, the selection is yet to begin as no examination, etc. has taken place.

As there is no question of right of any selectee being adversely affected by any direction issued by us, we dispose of these OAs by directing the respondents to finalize the amendment in the recruitment rules by applying the classification of the post and enhancement of the age as per Office Memoranda ibid within a period 45 days from the date of receipt of a copy of this order by issuing a corrigendum to the advertisement to this effect. It goes without saying that the applicants, if are covered by the enhancement of age, would be deemed as eligible and their candidature be considered in the selection process, which would be put on hold for the aforesaid period. In such an event, law shall take its own course. No costs".

As can be seen from the aforementioned this Tribunal has only directed the respondents to the extent of reclassification of the post and enhancement of maximum age limit prescribed for the same by issuing a corrigendum to the advertisement. There was no direction issued by this Tribunal to respondents to amend the RRs by altering the essential qualification prescribed for the post. It is not so that the respondent had taken any conscious decision to not fill up the post of Assistant Teacher (Primary) before amendment of the RRs. Thus in terms of law declared by Hon'ble Supreme Court in **Secretary, A.P. Public Service Commission Vs. B. Swapna and Others** (2005(4) SCC 154), once a process of selection starts, the prescribed criteria cannot be changed. The logic behind the same is based on fair play. Relevant excerpts of the said judgment read as under:

The view was recently reiterated in **State of Jammu and Kashmir and Ors. v. Sanjeev Kumar and Ors. (2005) 4 SCC 148.**

“14. The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he

possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. (See **P. Mahendran v. State of Karnataka and Gopal Krushna Rath v. M.A.A. Baig. (dead) by Lrs. And Ors.: AIR 1999 SC 2093.**

15. Another aspect which this Court has highlighted is scope for relaxation of norms. Although the Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In **P.K. Ramachandra Iyer v. Union of India** this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised.

16. In **State of UP. v. Rafiquddin and Others (1988) 1 SCR 794**, it was inter alia, held as follows:

"30. Before we close we would like to refer certain aspects which came to our notice during the hearing of the case relating to the functioning of the Public Service Commission, selection of candidates and their appointment to the judicial service. We were distressed to find that the Public Service Commission has been changing the norms fixed by it for considering the suitability of candidates at the behest of the State Government after the declaration of results. We have noticed that while making selection for appointment to the U.P. Judicial Service the Commission had initially fixed 40 per cent aggregate marks and

minimum 35 per cent marks for viva voce test and on that basis it had recommended list of 46 candidates only. Later on at the instance of the State Government it reduced the standard of 40 per cent marks in aggregate to 35 per cent and on that basis it forwarded a list of 33 candidates to the Government for appointment to the service. Again at the behest of the State Government and with a view to implement the decision of the high-level committee consisting of Chief Justice, Chief Minister and the Chairman of the Commission forwarded names of 37 candidates in 1974 ignoring the norms fixed by it for judging the suitability of candidates. The Commission is an independent expert body. It has to act in an independent manner in making the selection on the prescribed norms. It may consult the State Government and the High Court in prescribing the norms for judging the suitability of candidates if no norms are prescribed in the Rules. Once the Commission determines the norms and makes selection on the conclusion of the competitive examination and submits list of the suitable candidates to the Government it should not reopen the selection by lowering down the norms at the instance of the Government. If the practice of revising the result of competitive examination by changing norms is followed there will be confusion and the people will lose faith in the institution of Public Service Commission and the authenticity of selection."

17. In **Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve & Ors.** it was held as under:

"It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. Therefore, the decision of the High Court, to the extent it pronounced upon the invalidity of the circular orders dated 24-6-1996, does not merit acceptance in our hand and the same are set aside."

18. In **Krushna Chandra Sahu (Dr.) v. State of Orissa.** it was held as under:

"34. The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In **P.K. Ramachandra Iyer v. Union of India** it was observed:

'By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.'

35. Similarly, in **Umesh Chandra Shukla v. Union of India** it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in **Durgacharan Misra v. State of Orissa** and the limitations of the Selection Committee were pointed out that it had no jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva voce.

36. It may be pointed out that rule-making function under Article 309 is legislative and not executive as was laid down by this Court in **B.S. Yadav v. State of Haryana**. For this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection."

Also in the case of **State of Bihar and Others Vs. Mithilesh Kumar** (JT 2010(9) SC 11), following earlier judgment in the case of **Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others** (1983) 3 SCC 284, Hon'ble Supreme Court ruled that when service rule are amended vacancies which had occurred prior to the amended rules would be governed by the old rules and not by the amended rules. Para 11 of the said judgment reads as under:

"11. Learned counsel submitted that the conditions of the advertisement inviting applications for filling up the posts of Assistant Instructor (Electronics) in the Kamla Nehru Social Service Institute and Handicapped and Rehabilitation Training Centre, Patna, could not

have been altered to the prejudice of the Respondent on account of a decision taken subsequently to have persons with disabilities trained by professionally established NGOs/institutions. Reliance was placed on the decision of this Court in **Y.V. Rangaiah & Ors. vs. J. Sreenivasa Rao & Ors.** [(1983) 3 SCC 284], where this Court in similar circumstances had held that when Service Rules are amended, vacancies which had occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules. Reference was also made by learned counsel to the decision of this Court in **N.T. Devin Katti vs. Karnataka Public Service Commission & Ors.** [(1990) 3 SCC 157], wherein it was reiterated that where selection process was initiated by issuing advertisement inviting applications, selection normally should be regulated by the Rules and orders then prevailing. It was also emphasized that service jurisprudence provides that normally amendments effected during the pendency of a selection process operate prospectively, unless indicated to the contrary by express language or by necessary implication".

In OA 121/2010 and OA 150/2010 (supra) also this Tribunal viewed that it is trite law that till RRs are amended, the same would apply. Para 9 of said order reads as under:

"9. It is trite in law that till the recruitment rules are amended, the same would apply. However, the administrative authority when is directed to act in a particular manner, fairness demands that power vested cannot be abused, as held by the Apex Court in **Meerut Development Authority v. Association of Management Studies & another**, 2009 (6) SCALE 49. Administrative authority is not beyond the purview of law. The power must be exercised in non-discriminatory manner, as ruled by the Apex Court in **Food Corporation of India & others v. Ashis Kumar Ganguli & others**, (2009) 7 SCC 734. Administrative instruction should be interpreted in a manner to avoid its contents to be redundant as ruled by the Apex Court in **Director, Central Bureau of Investigation & another v. D. P Singh**, (2010) 1 SCC 647. It is trite that earlier in the matter of recruitment what has been promulgated by the DOPT and followed by Delhi Administration in their office memorandum dated 30.11.1998 for Group "C" post is the age limit for direct recruitment, which was restricted to 27 years and having followed the same, of which the vires has been upheld in Sachin Gupta's case (supra). Now the recommendations of 6th CPC have been accepted where on

account of revision of pay and introduction of pay band, grade pay, etc. the post advertised, i.e., Assistant Teacher (Primary) has been upgraded to the status of Group 'B' on classification, which is no more res integra".

Thus the plea raised by the respondent that in view of order passed by this Tribunal in OA No.121/2010 and OA No.151/2010, they are justified in applying the amended RRs to the vacancies occurred prior to notification of such rules cannot be countenanced.

4. In view of aforementioned we dispose of present OA with a direction to respondent to fill up the vacancies of Teacher (Primary) in MCD occurred prior to 6.9.2011 by following the RRs dated 13.7.2007. Such vacancies which occurred after said dated i.e. 6.9.2011 may be filed up in accordance with provisions of amended rules. No cost".

19. In regard to the question that whether studying the same subject in a higher course of degree would cover up the defect of not having studied the concerned subject at the secondary level, the learned counsel for the applicant had relied upon the case of **Govt. of NCT of Delhi & Ors. vs. Sachin Gupta** in Writ Petition (C) 1520/2012 and other related Writ Petitions decided on 07.08.2013. In this Paragraphs 48 to 50 stated as follows:-

"48. This issue is no longer res integra and stands decided by a *decision* of a Division Bench of this Court reported as 2002 (61) DRJ 58 Manju Pal v Government of National Capital Territory of Delhi. In said case, the appellant who had studied Hindi at Graduate level applied for being appointed to the post of Primary Assistant Teacher in the MCD. Despite being successful in the selection process conducted for said purpose, the appellant was not appointed to the post of Assistant Primary Teacher on the ground that she had not studied Hindi at the Higher Secondary Level and is thus not eligible for being appointed to said post. Aggrieved by the aforesaid, the appellant had

filed a writ petition before a Single Judge of this Court which got dismissed. Aggrieved thereof, the appellant filed a Letters Patent Appeal before a Division Bench of this Court. The Division Bench allowed the appeal filed by the appellant and held that the appellant is eligible for being appointed to the post of Primary Assistant Teacher in MCD as she possessed a higher qualification than the qualification required for appointment to the post of Primary Assistant Teacher. It would be relevant to note following portion of the said judgment:-

“8. 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.

9. In the counter affidavit filed by the MCD it has not been stated as to how the study of Hindi as a language at higher secondary or intermediate level by the candidates is more relevant than the study of Hindi as a language in BA pass course for the job requirement. Nothing has been brought to our notice by the learned counsel appearing for the Board and the MCD which could justify the stand of the respondents that the study of Hindi as a language at higher secondary level by a candidate has a nexus with the object sought to be achieved, which object by

the study of Hindi at B.A. level by a candidate cannot be achieved. No study or evaluation or analysis has been placed before us to show that the candidates having Hindi as a subject at the secondary level are better qualified and equipped to teach primary students than the candidates having Hindi at the graduate level. In case the argument of the learned counsel appearing for the MCD and the Board is taken to its logical conclusion it will lead to absurd results. There may be a case where a person did not take up Hindi as a language at higher secondary level and took it up at higher levels, namely, B.A., M.A. and Ph.D. Surely, it can not be said that the person who had taken Hindi as a subject at the Graduate level, Masters level or Doctorate level is less qualified for the job than the person who had taken up Hindi as a subject at the higher secondary level. The counter affidavit of the MCD is not at all helpful for the purpose of coming to the conclusion that there is any valid justification for the stand of the Board and the M.C.D. in considering higher secondary with Hindi as an essential requirement for the post of Primary Assistant Teachers. The invidious distinction made by the Board and the MCD for ignoring candidates with higher qualification is unwarranted and without any valid basis.

10. It is significant to note that nothing is stated in the counter affidavit as to how Hindi at the Higher Secondary level is helpful for teaching primary level students. What is so special about Hindi at the secondary level, which attribute Hindi at higher level is lacking has not been explained in the counter affidavit or the arguments of the learned counsel for the respondents. Hindi as a language has not been mentioned in the advertisement as a special qualification for imparting education to the students at the primary level. It cannot be assumed by any stretch of imagination that a candidate possessing higher qualification like B.A. with Hindi or M.A. with Hindi will be less efficient in teaching primary classes than a

person possessing lesser qualification such as higher secondary with Hindi.

11. We are supported in our view by a decision of the Allahabad High Court in Laxmi Narayan Yadav Vs. District Inspector of Schools and Ors., 1988 (3) SLR Allahabad 42, in which it was held as follows:-

As regards the eligibility of respondent No. 3 for the post of Lecturer in Hindi, the learned counsel for the respondents drew out attention to N.B. (Note)(2) below the rule prescribing minimum qualifications for 'Hindi Teachers for Intermediate' contained in Appendix A which provides as follows:

"The Hindi Teachers may not be required to have a Degree in Sanskrit in those institutions where qualified Sanskrit teacher is available to teach the Sanskrit portion of the Hindi Court".

The above note clarifies the intention why B.A. with Sanskrit was kept as an essential qualification for a Hindi Teacher for Intermediate Classes. The person should be such who can also teach Sanskrit portion of the Hindi Course. The qualification prescribed for Sanskrit Teacher for Intermediate' is 'M.A. with Sanskrit preferably trained'. As respondent no. 3 is M.A. in Sanskrit, he is fully qualified to teach Sanskrit also. Consequently, respondent no. 3 cannot be said to be disqualified for being appointed teacher in Hindi simply because he is not 'B.A. with Sanskrit', especially when he is M.A. in Sanskrit and is qualified to teach Sanskrit portion of Hindi Court, so that requirement of 'B.A. with Sanskrit' is not applicable in his case. Moreover, respondent no. 3 may not be having Sanskrit as a subject for his Bachelors' degree. He is, however, having Master's Degree in Sanskrit, which is certainly a higher qualification than B.A. with Sanskrit. Consequently, the claim of respondent no. 3 could not be rejected merely on the ground that

he is not 'B.A. with Sanskrit', when he is admittedly M.A. Sanskrit'."

(Emphasis Supplied)

49. A similar view was taken by a Single Judge of this Court in the decision reported as 186 (2012) DLT 132 Kalpana Pandey v Director of Education & Ors. The aforesaid decision was affirmed by a Division Bench of Court in LPA No.640/2010 'Director of Education v Kalpana Pandey' decided on September 18, 2012.

50. In view of aforesaid authoritative pronouncements, we hold that respondent Neelam Rana is eligible for being appointed to the post of T.G.T. (English), particularly when the Directorate of Education has placed no material before us to show that the person who has studied English at graduate level would be better equipped to teach English to students vis-à-vis a person who has obtained a Post Graduate degree in English language".

20. We have considered the facts of the case, and the law concerned. In view of the definitive pronouncement of the Hon'ble Delhi High Court through **Govt. of NCT of Delhi & Ors. vs. Sachin Gupta** (supra), in which the previous judgment in the case of **Manju Pal vs. Govt. of NCT of Delhi** (supra) had been followed, one portion of the issues concerned in these two OAs is settled. When a person has obtained a higher educational qualification of graduation in the same subject of English, he or she cannot be disqualified, only on the ground that he or she did not study the subject at Class-10th or Class 12th level. Though that part of the issues concerned is settled, however, we are in respectful disagreement with the judgment of the Coordinate Bench dated 01.06.2012 in OA No.4234/2011 **Ashok Pal & Ors. vs. Govt. of NCT of Delhi & Ors** (supra).

21. As is clear from the detailed reproduction of portions of the said judgment, it is clear that the Coordinate Bench had no where taken into account in that judgment the implications of the aspect that soon after the initial Notification for selection for the Post Code 70/09 had been issued through Advertisement No.004/2009, there was a major change in the circumstances attendant to the process of selection, which attracted the concept of "***novus actus interveniens***". Only in the common order dated 20.07.2010 in OA No. 121/2010 with OA No.150/2010, at the end of para 9 of that order, it was merely noted that after the initial vacancy Notification, it was notified that the post of Assistant Teacher would no longer be a Group-C post, and would henceforth be a Group-B post, as per the implementation of the recommendations of the VI CPC, which had been accepted by the then unified MCD, which has since been trifurcated. None of the case-law cited by the Coordinate Bench in its judgment dated 01.06.2012 in **Ashok Pal & Ors.** (supra) has laid down the law that when the post concerned itself has been upgraded both in rank, and the associated emoluments, the RRs concerning the posts cannot be revised, and additional qualifications cannot be prescribed in such revised RRs.

22. All the cited judgments of the Hon'ble Supreme Court and other Courts including:- (1) **Y.V. Rangaiah and Ors. vs. J. Sreenivasa Rao & Ors.** (supra); (2) **Secretary, A.P. Public Service Commission**

vs. B. Swapna & Ors. (supra); (3) **State of Jammu & Kashmir & Ors. v. Sanjeev Kumar & Ors.** (supra); (4) **State of Bihar & Ors. v. Mithilesh Kumar** (supra); (5) **State of U.P. v. Rafiuddin & Ors.** (supra); (6) **Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve & Ors.** (supra); and (7) **N.T. Devin Katti v. Karnataka Public Service Commission & Ors.** (supra); have all dealt with the situations in which the pay scale and the status of the posts had remained unchanged, and the same, and it was held that the Rules of the game of selection cannot be changed after the selection process for the particular posts had been set in motion. But, here, the present case is not covered squarely by any of the above seven cited Apex Court judgments, as the facts are not on all fours!! It has been held by the Hon'ble Apex Court in **Rafiq v. State of U.P., (1980) 4 SCC 262** that the ratio of one case cannot be mechanically applied to another case without having regard to the factual situation and circumstances of the two cases.

23. In this case, the applications were called for and the last date of 15.01.2010 had been prescribed for receipt of applications. No further process had been undertaken towards furtherance of the process of selection. When it was realized that the new RRs which were then in the process of being framed, in view of the upgradation of the posts from Group C to Group B, which were later on notified through the

Gazette Notification dated 30.11.2010, would have to be made applicable to the advertised posts, the Corrigendum dated 13.09.2011 was issued by the respondents. In the meanwhile, the number of vacant posts had also increased, so the total vacancy position was also increased in the Corrigendum. However, in order to protect the interests of those who had applied in response to the original Corrigendum Notification No.004/2009, it was further stipulated in the Corrigendum Notification itself that the cut off date for acquiring the relevant educational qualifications would remain the same, i.e., 15.01.2010, and, therefore only, it was ordered and notified that those who had already applied earlier, in response to the original Advertisement No.004/2009, need not submit their applications once again in response to the Corrigendum published on 13.09.2011.

24. The judgment in **Ashok Pal & Ors. vs. Govt. of NCT of Delhi & Ors.** (*supra*) has to be, therefore, considered to have been rendered *per incuriam*, or at least *sub-silentio*, as it had failed to recognize the law on the subject that when the posts concerned are themselves upgraded, there cannot be any equality between the qualifications prescribed in respect of posts which are in different grades in Government service, and the qualifications for Group 'B' posts cannot certainly be the same as for the earlier Group 'C' posts.

25. In the case of **Kishori Mohan Lal Bakshi vs. Union of India AIR 1962 SC 1139**, it was laid down by the Hon'ble Apex Court that as between citizens holding posts in different grades in Government service, there can be no question of equality of opportunity. The Apex Court had further held that it is fantastic to suppose that Article-16 of the Constitution forbids the creation of different grades in the Government service, which is what the petitioner's arguments therein amounted to. Hon'ble Apex Court had also noted the contention therein that there can be discrimination between Class I and Class II Officers of Income-tax Department, inasmuch as though they do the same kind of work, their pay scales are different, which was claimed to have been violative of Article 14 of the Constitution. The Hon'ble Apex Court had held that if this contention had any validity, there could be no incremental scales of pay fixed, dependent on the duration of an officer's service, and everybody would always serve on the same pay, without even annual increments. It was further held that the abstract doctrine of 'equal pay for equal work' has nothing to do with Article 14.

26. In the instant case, earlier the posts of Assistant Teachers were Group-C, till the introduction of the VI CPC pay-scales for them brought them to Group 'B' level. Therefore, when the posts were upgraded, and brought into Group-B posts, the applicants before us

cannot be allowed to plead that the respondents could not have introduced an extra and additional qualification in respect of the applicants for such Group-B posts through the Corrigendum, that the applicants for the posts should have studied English as a subject both in Class-10th and Class 12th level for becoming eligible to occupy the higher Group-B posts, and to become eligible to enjoy the higher Group 'B' pay scale.

27. When the respondents undertook the exercise of upgradation of the posts concerned, from Group 'C' to Group 'B', with the accompanying upgradation of pay scale as well, the previous prescriptions as regards to the required qualifications for RRs for Group 'C' posts become redundant, and a person who possessed the qualifications and could qualify to have been appointed against a Group-C level posts could not now have been allowed to claim, just because he was earlier qualified to be appointed against a Group-C level post of Assistant Teachers under the old RRs, the Rules of the game are now being changed, when the posts are being upgraded to Group-B level, and a higher requirement of educational qualifications is being prescribed in respect of the upgraded higher pay scale Group 'B' posts.

28. However, bowing down before the law as laid down by the Hon'ble Apex Court in **SI Roop Lal and others vs. Lt. Governor**

through Chief Secretary of Govt. of NCT of Delhi: JT 1999 (9) SC 597, since we are disagreeing with the findings arrived at by a Coordinate Bench on 01.06.2012 in OA No. 4234/2011 **Ashok Pal & Ors. vs. Govt. of NCT of Delhi & Ors.** (supra), and we have considered that that order was perhaps *per incuriam*, and at least sub-silentio, for having not noticed the legal implications of the upgradation of the posts from Group-C to Group-B, because of which the case law cited in **Y.V. Rangaiah and Ors. vs. J. Sreenivasa Rao & Ors** (supra) and other cases as listed above no longer remained applicable, yet we cannot return a final finding different than that arrived at by the Coordinate Bench.

29. Therefore, we are proceeding to frame the issues of our disagreement with the judgment in **Ashok Pal & Ors. vs. Govt. of NCT of Delhi & Ors.** (supra), and order for the matter to be placed before the Hon'ble Chairman, CAT, for constitution of a Bench with higher number of members, as may be deemed fit and proper by him, to consider the following issues:-

- “i) When the posts of Assistant Teachers were upgraded from Group-C to Group-B, whether the respondents were entitled to also at the same time revise the qualifications prescribed for such posts in view of the upgradation of the level of such posts, and to revise the RRs (as they were

directed also by this Tribunal's orders dated 20.07.2010 in OA Nos.121/2010 and 15/2010)?

- ii) Since the upgradation of the level of the posts took place in between the advertisement of the first Notification and the advertisement through the Corrigendum of the second RR Notification issued thereafter, and thereby the introduction of the higher qualification for the higher grade (Grade 'B') posts, carrying higher pay scale, was introduced, would this be hit by the prescription of law that Rules of the game cannot be changed once the process of recruitment has been started as has been held by the Coordinate Bench's Order in **Ashok Pal & Ors. vs. Govt. of NCT of Delhi & Ors.** (supra)?
- iii) Whether in the light of the law as laid down by the Hon'ble Supreme Court in **Kishori Mohan Lal Bakshi vs. Union of India** (supra), and many other cases also, even though the work done by the Group-C Assistant Teachers earlier, and Group-B Assistant Teachers now, is the same kind of work, though the pay scales are different, since the pay scales of Group-B Teachers are higher, will it be violative of the Article-14 of the Constitution, if more stringent academic and educational qualifications are prescribed in respect of the higher category of posts in a higher pay scale;
- iv) Does it not flow from the Hon'ble Apex Court judgment in **Kishori Mohan Lal Bakshi vs. Union of India** (supra) that even though the kind of work of the erstwhile Group-C Assistant Teachers earlier, and the kind

of work of Group-B Teachers now, may be similar, rather the same, but the respondents were still entitled to give higher pay scales to Group-B Teachers now only after upgrading the posts and prescribing the higher qualifications for recruitments to the same?

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.