

**Central Administrative Tribunal
Principal Bench**

OA No. 2520/2014

Order reserved on: 08.02.2016
Order pronounced on: 03.03.2016

**Hon'ble Dr. B.K. Sinha, Member (A)
Hon'ble Dr. Brahm Avtar Agarwal, Member (J)**

Parveen Sharma, Aged 58 years,
Group 'B' Lecturer,
Q.No. 13, Type 3,
ITI Campus, Vivek Vihar,
Delhi-95

-Applicant

(By Advocate: Ms. Kiran Singh)

VERSUS

Govt. of NCT of Delhi & Ors.
Through

1. The Secretary,
Department of Training & Technical Institute,
Muni Maya Ram Marg, Pitampura,
Delhi-110088

 2. The Director,
Department of Training & Technical Institute,
Muni Maya Ram Marg, Pitampura,
Delhi-110088

 3. The Director,
National Institute of Entrepreneurship &
Small Business Development,
Ministry of Micro, Small & Medium Enterprises,
Govt. of India, A-23, Institutional Area,
Sector-62, Noida-201301, UP
- Respondents

(By Advocate: Ms. Avnish Ahlawat)

ORDER

Dr. B.K. Sinha, Member (A):

The central issue in the instant Original Application filed under Section 19 of the Administrative Tribunals, 1985 is that whether the applicant has missed the bus of appointment by being late in procurement and submission of degree to the respondent – authorities.

2. The case of the applicant, in brief, is that she had been appointed as Part Time Lecturer in Social Studies on 16.01.1995 by Govt. of NCT of Delhi, Department of Training & Technical Education till 31.03.1995. Thereafter, she was again made to join the services of the respondents on various dates for the subject of Social Studies as per the vacancies in the department as Part Time Lecturer and remuneration of Rs. 25/- for 1st hour and Rs. 20/- for subsequent hours. The remuneration was accordingly increased from time to time as decided by the department. She was also made to join and was also appointed as Part Time Lecturer for the subject of English. In the meantime, it appears that there was a change in syllabi and in place of Social Studies, “employability skills” became a new subject. The respondents continued services of other Instructors serving on full time contractual basis,

while it was stipulated that in respect of instructors of “Social Study” and “IT Primer” decision regarding their re-engagement would be conveyed separately. The contractual instructors of “Social Study” and “IT Premier” instead of waiting for the decision of the answering respondent, some of them approached the Tribunal vide OA No. 2523/2012 which was decided vide order dated 24.08.2012 directing the respondents to continue the services of the applicants therein during the academic session 2012-13 for the period considered necessary subject to imparting of training at the cost of the applicants themselves. A challenge to this order before the Hon’ble High Court of Delhi vide WP(C) No. 6071/2012 yielded little result in the following terms vide order dated 28.01.2013:-

“10. It is but obvious that till posts are sanctioned and regular appointments of instructors having minimum qualification of a Bachelor in Business Administration are filled up, the respondents would be obliged not to replace the existing guest/contract faculties of instructors in Social Studies but subject to the condition that they are duly trained.

11. ?Duly trained? would mean those who have obtained training from the Institutes mentioned in sub para (iii) of the Office Memorandum.

12. We dispose of the writ petition declaring the law as above and granting declaratory relief to the writ petitioners. We do not enter into the disputed facts for which we note that whereas petitioners asserted having obtained documents certifying that they have obtained the training instructor from either of the Institutes specified in the Office Memorandum, the respondents would assert to the contrary.”

The further case of the applicant is that her husband had worked as Math Instructor in the respondent – organization. However, his services had been terminated and he was reduced to being a Paranoid Schizophrenial leaving the burden of the maintenance of the family upon her. Under these circumstances, the applicant had been appointed. Now, that she had obtained a due degree, she should be given an appointment against the post. Her similarly situated colleagues have given benefit and she alone has been singled out for omission.

3. The applicant has, therefore, prayed for the following reliefs:-

I. To consider the case of the applicant for reinstatement of applicant in service based on the order dated 29.11.2013 vide O.A. No. 1302/2013
Or

Benefit of the judgment dated 29.11.2013 vide OA No. 1302/2013 may be granted to the applicant.

II. To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.”

4. The respondents have filed their counter affidavit denying the averments in the OA. It has been principally submitted by the respondents that there was only one post of Lecturer (English) in the respondent – organization. The applicant had voluntarily left the job of Lecturer (English) and had requested that she be engaged as Social Study

Instructor, instead first on hourly basis. However, due to shortage of staff, her services were thereafter continued on full time contractual basis till 31.07.2012 along with all other Social Study Instructors. The respondents further submit that they issued a memorandum dated 18.02.2013 to all contractual instructors to submit their certificates obtained from the Institutes mentioned in order dated 28.01.2013 of Hon'ble High Court of Delhi. Subsequently, a Committee was constituted to ascertain whether the petitioners and others were 'Duly Trained' or not?" this Committee submitted a report that all the candidates are not "Duly Trained", which fact was afterwards communicated to all the petitioners and others vide memorandum dated 20.03.2013. The applicant did not submit her training certificate by the due date. The respondents, in reply to the applicant's averments with respect of MA No. 995/2013 in OA No. 1302/2013, have further submitted that on receipt of the judgment dated 29.11.2013 from the Hon'ble High Court, the department thereafter in pursuance of the Law & Justice Deptt. and clarifications from DGE&T, move a proposal for appointment of 16 other applicants and 02 other social study instructors (who were not part of the said OA) to the Finance Department, GNCTD. The Finance Department,

while conveying its final decision for the appointment of Social Study Instructors on contract basis against the vacant post of other craft instructors, proposed for the appointment of 18 social study instructors including 02 social study instructors who were not part of OA subject to the creation of posts within four months. The respondents not only appointed all 18 social study instructors on 06.05.2014, also submitted a proposal to the AR Department for creating 16 posts of Instructors in respect of the subject "Employability skills". It is the contention of the respondents that the applicant never informed the department either regarding her training from NIESBUD nor did she ever submit any certificate to the department in this respect. The respondents further submit that at the belated stage, there is no post of "Employability Skills" in the department and the Finance Deptt. as of now had conveyed that the contractual staff cannot be engaged on non-sanctioned post. Learned counsel for the respondents has vehemently submitted that the certificate of the applicant was dated 14.12.2012, which is after cut-off date of submission of the certificate. It was, thus, hopelessly out of date. There is no way that the vacancies can be filed up in view of the stated position of the Finance Department.

5. The applicant has filed rejoinder affidavit wherein she had denied leaving her job as English Lecturer voluntarily and submitted that she was engaged as Social Study Instructor due to the shortage of staff. In reply to para 4.7, the applicant submits that she submitted her application to the Director on 09.12.2013 and her training certificate was earlier submitted on 18.12.2012. The respondents deliberately avoided her by not informing her about vacancies/requirements. She further submits that benefit of the judgment should be extended to her as similarly placed colleagues have got the benefit. She also denies the averments made in para 4.8, 4.9 and 4.10 of the reply and submitted that she had approached the respondent – authorities immediately after the order in OA had been passed.

6. We have given careful consideration to the pleadings as also the documents submitted along with and have also listened to the arguments of the respective counsels.

7. The issue already having been stated in the opening para of the order, we find the claim of the applicant is based upon two facts; in the first place, she denies that she had approached the respondents after the due date, as alleged; and in the second place, she seeks parity with the

Lecturers, who had been appointed in pursuance of the orders of this Tribunal dated 29.11.2013 in OA No.1302/2013 and orders of the Hon'ble High Court dated 28.01.2013 in WP(C) No. 6071/2012.

8. We have taken note of the submissions that the subject “ Employability Skills” has been introduced in place of earlier subject “Social Study” with five components as under:-

- “(i) *Communication Skills*
- “(ii) *English Proficiency*
- “(iii) *Quality Management Tools*
- “(iv) *Entrepreneurship Development Skills*
- “(v) *Occupational Safety and health”*

Earlier the qualification decided by the State for the contractual instructors of the subject Social Studies on which earlier appointment were made was as under:-

“(i) *Social Studies:- B.A. with Sociology/political science/psychology/social work as one of the subjet with B.Ed or one year teaching experience.”*

In this regard, OM dated 12.04.2012 provides the following institutes/organizations for purposes of training of instructors in different subjects:-

<i>S.No.</i>	<i>Topics in the Syllabus</i>	<i>Institutes/Organizations</i>
1.	<i>Communication Skills</i>	<i>States to make their own arrangement by locating suitable institutes.</i>

2.	<i>English Proficiency</i>	
3.	<i>Quality Management Tools</i>	<i>Quality Council of India or any other suitable institute.</i>
4.	<i>Entrepreneurship</i>	<i>National Institute for Entrepreneurship and Small Businesses Development, Noida A-23, Sector-62, Institutional Area, Noida-201301, UP, India or any other suitable institute.</i>
5.	<i>Occupational safety and health</i>	<i>Regional Labour Institute, Sector-47, Faridabad (Haryana) or any other suitable institute.</i>

The afore OM further provides that the subject “Employability Skills” be substituted in place of “Social Studies” under CTS from session starting from August, 2012. The respondents have referred to the report of the Committee constituted in the wake of the decision of the Hon’ble High Court dated 28.1.20113 in WP(C) No. 6071/2012 which reported that the certificates submitted by 21 members, mentioned at SI. No. 1 to 21, were considered by the department and it was found that they were not “Duly Trained”. We have further taken note of the submissions of the respondents that the department had now moved a proposal to the AR Deptt. for creating 16 posts of Instructors for the subject “Employability skills” and after getting the approval for the same from the AR

Dept. (Full Form of AR (Administrative Reforms Deptt..), the matter as to the creation of the said post will be referred to the Planning Deptt. and the Finance Deptt., GNCTD. Only after getting the approval of Hon'ble Lt. Governor, the GNCTD on this aspect, a notification will be issued and sanctioned posts will be created. Once same gets done, the Deptt. will obviously be in the need of more instructors for teaching the subject "Employability skills"; and at that scenario, the applicant will also be considered for engagement along with fresh applicants. For the sake of greater clarity, we extract from the counter affidavit of the respondents, which reads thus:-

"In view of the fact that the Deptt had now moved a proposal to the AR Deptt for creating 16 posts of Instructor's for the subject Employability skills; and after getting the approval for the same from the AR Deptt (Full Form of AR (Administrative Reforms Deptt.) mention) the matter as to the creation of the said post will be referred to the Planning Deptt and the Finance Deptt, GNCTD. Only after getting the approval of Hon'ble Lt. Governor, GNCTD on this aspect a notification will be issued and sanctioned posts will be created. Once same gets done, the Deptt will obviously be in the need of more Instructors for teaching the subject "Employability Skills"; and at that scenario the applicant will also be considered for engagement along with fresh applicants."

9. Here, our consideration is swayed by the fact that no time limit has been prescribed in the order of the Tribunal dated 24.08.2012 (supra) or in the order of the Hon'ble High Court of Delhi in WP(C) No.6071/2012 decided on

28.01.2013 (supra). We have also taken note of the averments of the applicant that she had received one communication from the respondents on 20.09.2012 asking her to get trained in employability skills at notified Institute of DGE&T at her own expense, and she immediately communicated her consent to the respondents on the very day, a copy of which has been attached at page 107 of the paper book (Annexure A-3). For the sake of clarity, the letter is extracted in full as under:-

“To

*The Principal
I.T.I. Shahdara,
Vivek Vihar,
Delhi-95 (20.9.2012)*

Sub:-Regarding Training of Employability Skills.

Resp. Madam,

*With reference to your letter no.F.2(8)SH/ITI/
Admn./2012-13/1171 at Vivek Vihar, Delhi-95, I
hereby submit the request letter for training in this
subject of Employability Skills at Notified Field Institute
of D.G.E.& T at my own expenses if possible.*

Thanking you,

*Yours faithfully,
Sd/-
Praveen Sharma
W/o Mr. V.V. Kumar
Q.No.13, Type 3, ITI Campus,
Vivek Vihar,
Delhi- 9 5 (20.9.2012)”*

10. We also take note of the fact that the communication dated 20.09.2012 merely provides as under:-

“In case you do not submit the request for training to the undersigned within seven days to issue of this letter, it will be presumed that you are not interested for the same and your candidatures for the continuation of service shall not be considered.”

It would be clear from the above that this response had been given by the applicant. We have also taken note of the fact that the applicant had been working as Lecture in English and that, she contends, she was made to change over to Social Employability at the behest of the respondents.

11. The applicant has relied on a decision of this Tribunal in *Rajesh & Ors. V/s. Govt. of NCT of Delhi* [OA No. 1302/2013 decided on 29.11.2013] wherein the dispute related to appointment of Instructors of Social Studies. The respondents in that case, who initiated process to terminate the services of all the Instructors serving on contract basis in 2010, had been directed to continue the applicants therein on contract basis with permission to simultaneously initiate the process of selection in which the applicants in that case were also eligible to apply in relaxation of age. The respondents in the case under citation passed an order engaging all others on full time contractual basis but discontinuing the applicants as

Instructors of Social Studies. This Tribunal was, therefore, pleased to pass the following order:-

“14. In conclusion, we hold that the orders dated 9.04.2013 and 20.03.2013 are wholly unjustified and are, therefore, quashed. The respondents are directed to reinstate the applicants in service and allow them to continue in service till regular appointment is made to teach the subject employability skills. Moreover, as has already been held by this Tribunal in OA Nos. 2452/2010, 2473/2010 and 21574/2010, the applicants shall have a right to apply for direct recruitment and on age relaxation, their cases would be considered for regular appointment. The OA stands disposed of with the above directions. No costs.”

12. Here, we are guided by the fact, as stated above, that the case of the applicant was excluded altogether on ground of her late submission of certificates. It has already been noted that the applicant was only required to give her consent vide communication dated 20.09.2012 to do training and she provided the same on the very day. Thereafter, she though produced the certificates within a period of three months, yet her name had not been considered though it could have been considered provisionally in view of the earlier decision of the court.

13. We further take note of the peculiar circumstances under which her appointment had been made initially and which continued to prevail her family. Therefore, we find that the respondents should have considered the case of the applicant. We have already referred to the submission

of the respondents made in their counter affidavit that they have sought for approval for 16 posts and, hence, the applicant stands to be considered against these posts. In the meantime in exercise of our equity jurisdiction, we pass the following directives:-

(i) The applicant shall be continued on contract basis as had been working earlier and she will be considered for regular appointment as and when a post falls vacant or 16 posts in respect of which approval has been sought from the Government are made available in full or in part.

14. With the above direction, the OA stands disposed of with no order as to costs.

(Dr. B.A. Agarwal)
Member (J)

(Dr. B.K. Sinha)
Member (A)

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