

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.2907/16

New Delhi, this the 3rd day of April, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Ms. Rachna,

Aged 33 years,

D/o Sh.Lekhranj,

R/o 1914/43, Nai Wala, Karol Bagh,

New Delhi-05

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Applicant

(By Advocate: Mr.Yogesh Sharma)

Vs.

1. Govt. of NCT of Delhi,
Through the Chief Secretary,
New Secretariat, New Delhi.

2. The Director of Education,
Govt. of NCT of Delhi,
Old Secretariat, Delhi.

3. The Secretary,
Delhi Subordinate Services Selection Board,
Govt. of NCT of Delhi, F-18, Institutional Area,
Karkardoma, Delhi-92

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Respondents

(By Advocate: Mr.Prashant Srivastava for Shri Ankur Chhibber)

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ORDER

Per Raj Vir Sharma, Member(J):

The O.A. has been filed seeking the following reliefs:

- õ(i) That the Honøble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 05.05.2016 (Annex.A/1) by which the candidature of the applicant for the post of TGT (Eng.) has been cancelled declaring to the effect that the same is illegal and arbitrary and consequently pass an order directing the respondent to declare the result of the applicant and consequently to pass an appropriate order for appointment of the applicant to the post of TGT (English) from the date of appointment of junior and similarly situated persons with all consequential benefits including seniority, arrears of difference of pay and allowances.

- (ii) Any other relief which the Honøble Tribunal deem fit and proper may also be granted to the applicant.ö

2. Mr.Yogesh Sharma, the learned counsel for the applicant submitted that the applicant passed her graduation examination from the University of Delhi, i.e., B.Com (Pass), in which she studied English Subject in two years, i.e., IInd and IIIrd years. She also passed B.Ed. with the subject of Teaching of English in the year 2011. She also passed CTET in January 2012 with English Subject. She also passed M.A.(English) in 2014. Accordingly, she responded to the Advertisement No.02/2012 of the respondent-DSSSB and offered her candidature as an SC (WTGT) category candidate for selection and recruitment to the post of TGT (English) (Post Code 107/12). She successfully participated in the selection process. However, her candidature was rejected by the impugned order dated 5.5.2016 (Annexure A/1) on the ground that she had not studied English as an elective subject in Graduation.

3. Shri Prashant Srivastava for Shri Ankur Chhibber, the learned counsel appearing for the respondents appeared for the respondents who have filed their counter reply. In paragraph 7 of their counter reply, the respondents have stated that since the applicant had not studied English in all the three years of graduation as an elective subject, her candidature has been rejected by the DSSSB as per Recruitment Rules of the user Department. In support of his contention, Shri Prashant Srivastava invited our attention to paragraphs 14 to 18 of the decision of the Honøble Supreme

Court in **Madras Institute of Development Studies and another, etc. Vs. K.Sivasubramaniyan and others, etc.**, (2016) 1 SCC 545, wherein, their Lordships have reiterated the view that a person who consciously takes part in the process of selection cannot turn around and question the method of selection.

4. Shri Yogesh Sharma, the learned counsel appearing for the applicant argued that this issue has been considered by the Honøble High Court of Delhi in W.P. (C) No. 1520/2012, titled **Govt. of NCT of Delhi & Ors., etc., Vs. Sachin Gupta, etc.**, decided on 7.8.2013, along with other connected Writ Petitions [including W.P. (C) No.575 of 2013, **Director of Education & another Vs. Neelam Rana**]. The relevant paragraphs 40, 41,42,43,47 & 52 of the judgment passed by the Honøble High Court are reproduced below:

ø40. To repeat, corrigendum dated March 30, 2010 prescribes that the expression *elective subject* occurring in the Recruitment Rules means that *The candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation. The elective word may also include main subject as practiced in different universities*". It is clear that the ethos of the prescription contained in the corrigendum dated March 30, 2010 that *the candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation*" is that the candidate should have a deep understanding of the subject in which he is desirous of imparting education to the children.

41. All universities in India do not offer a particular elective subject in all three yearsø of graduation course as in the case of Nainika, Vikram Singh and Sachin Gupta, where Delhi University did not teach English/Hindi/Economics in all three years of B.A. program/B.Com (H) course (s) conducted by it. If the corrigendum dated March 30, 2010 is given a literal interpretation, all such candidates who have studied concerned subject i.e. the subject for which they have applied from the Universities which are not teaching said subject in all three yearsø of Graduation course offered by them would be rendered ineligible for appointment to the post of T.G.T. despite the fact they have studied the concerned subject in *all parts/years in which the subject is taught by the university* and have a good understanding thereof. This is absurd. It is a settled legal position that where literal meaning of a statute or rule leads to an absurdity, the principle of literal interpretation need not be followed and recourse should be taken to the purposive and meaningful interpretation to avoid injustice, absurdity and

contradiction so that the intent of the purpose of Legislature is given effect to. Therefore, a meaningful and practical interpretation has to be given to the corrigendum dated March 30, 2010 and same should be interpreted as follows: *the candidate should have studied the subject concerned as mentioned in the RRs in all parts/years in which the subject was taught during the Graduation course"*

42. It has also to be kept in mind that whereas the University of Delhi was teaching the concerned subject and was testing the knowledge of the students each year by assigning 100 marks to the paper i.e. three papers were being taught in the three years, as a result of restructuring, the number of papers continued to be three with marks assigned to each paper, being 100, except that now the three papers are taught in only two years. In other words the previous and the current position continues to be practically the same. It hardly matters whether three papers of 100 marks each are taught over three years or three papers of 100 marks each are taught in two years. A ready illustration could be a rational decision taken that unless a student studies History up to a particular level he may not understand the nuances of Political Science and hence a University may decide that the subject of Political Science should be taught after a foundation course in History is taught and this would mean that the subject of Political Science is introduced in the second year of study and continued in the third. The previous position of teaching Political Science in each year with one paper each year having 100 marks is replaced by teaching Political Science only in the second and the third year but retaining the three papers each having 100 marks.

43. In view of the aforesaid, respondents Nainika, Vikram Singh and Sachin Gupta who have studied the concerned subject, English/Hindi/Economics (one of the main subjects prescribed for T.G.T.(Social Science), in all the years in which the subject was taught during the graduation courses undertaken by them are eligible to be appointed to the post of T.G.T. (English)/(Hindi)/Social Science.

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47. The controversy pertaining to Neelam Rana is not in the context of what would be an elective subject studied during Graduation. Admittedly Neelam Rana seeks appointment as T.G.T. English, a subject which she never studied in her Graduation course which we find was B.Sc. (Botany) but she fights the battle on the strength of having obtained a Post Graduate Degree in English i.e. M.A.(English).

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52. Accordingly W.P.(C) No.1520/2012, W.P.(C) No.4483/2012, W.P.(C) No.4301/2012 and W.P.(C) No.575/2013 are disposed of upholding the claim of the respondents in said writ petitions before the Tribunal as per Original Application with the exception that they shall not be entitled to back wages but would be entitled to all consequential benefits such as seniority as per their merit position in the select panel and notional pay fixation with reference to the date of their joining being treated as the one on which the person immediately junior to them joined duty.ö

4.1 Shri Yogesh Sharma also produced before us a copy of the order dated 28.2.2017 passed by us in O.A.No.3447 of 2016 (**Akhil Tanwar Vs. The Govt. of NCT of Delhi and others**) wherein, after following the judgment of the Honøble High Court of Delhi in **Govt. of NCT of Delhi & Ors., etc., Vs. Sachin Gupta, etc.** (supra), we have quashed similar order issued by the

respondent-DSSSB rejecting the candidature of the applicant for selection and recruitment to the post of TGT (English) on the ground of his not having studied English subject as an elective subject in all three years of graduation.

5. After having given our thoughtful consideration to the facts and circumstances of the case, and the rival submissions, we are of the view that this case is squarely covered by the judgment of the Honøble High Court of Delhi in **Govt. of NCT of Delhi & Ors., etc., Vs. Sachin Gupta, etc.**(supra). Accordingly, we allow this OA and quash the impugned order dated 5.5.2016 qua the applicant. We also direct the respondents to consider the candidature of the applicant in accordance with law and offer appointment along with consequential benefit of seniority and pay fixation to the applicant if she is not ineligible for any other reason. The aforesaid benefit may be granted to him within six weeks from the date of receipt of certified copy of this order. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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