

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

OA-2846/2016

Reserved on : 27.09.2017.

Pronounced on : 06.10.2017.

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

Hon'ble Ms. Praveen Mahajan, Member (A)

Ms. Girisha Choudhary, 31 years
D/o Sh. Bishan Swaroop,
R/o B-55, Preet Vihar, Delhi-98.

.... Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

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 Deputy Director of Education,
Directorate of Education, GNCT of Delhi,
District East: D Block, Anand Vihar,
Delhi-92.

..... Respondents

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

O R D E R

Ms. Praveen Mahajan, Member (A)

The applicant has come before the Tribunal against the respondents not issuing appointment order to her to the post of TGT (Social Science) as contract teacher, on the ground that she has

filled in her B.Ed marks percentage as 83% whereas, as per her marks statement, she has secured 81.4% marks. The same has been intimated to her vide impugned information dated 25.07.2015 (Annexure A/1). Aggrieved by the same, the applicant has filed the current OA seeking the following reliefs:-

- “(i) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the action of respondents not issuing her posting order on her selection to the post of TGT (S.Sc.) on contract basis is illegal, arbitrary and discriminatory and consequently pass an order directing the respondents to appoint the applicant immediately to the post of TGT (S.Sc.) with all the consequential benefits including pay and allowances.
- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned communication dt. 25.7.15 (Annex.A/1).”

3. Brief facts of the case are that the respondents invited applications for appointment of teachers on contract basis including the post of TGT (Social Science) in the year 2014. The applicant applied for the same as per norms and rules under reserved category being SC candidate. The respondents declared the result. The applicant was selected and was placed at Serial No. 3 of the final panel with 27.6 marks. She was called, and appeared before the competent authority, to get her documents verified. All the selected candidates, including the one who was junior to the applicant in the merit list, were given their posting except her. She represented on 22.07.2014 (Annexure- A/4) and requested for allotment of school and issue of posting orders. When her request

was not acceded to, she approached Public Grievances Commission, Government of Delhi. On 25.07.2015, respondent No. 3 intimated her that the information filled in online by her for the post of TGT (S.St.) as contract teacher (2014-15) was erroneous as she had filled in her B.Ed marks as 83%, whereas as per her marks statements, she had secured 81.4% marks. Because of this and as per the direction of DDEs towards acceptance of no deviation, the applicant was not engaged as a contract teacher. It is mentioned in the OA that in the main subject the applicant secured 750 marks out of 900 marks. It is clarified that there are three additional subjects i.e. Computer Literacy and Education Applications. The prospectus and University Rules state that each candidate is required to qualify these papers for obtaining the degree. However, the marks obtained in this paper will not be included to determine the overall division. The applicant states that while filling the form, she only mentioned the percentage of marks in the subject other than these subjects, which comes to 83% whereas the respondents, while calculating the marks, included these subjects also. Hence they came to the calculation of 81.4% marks, which is not as per the University norms. The applicant has not committed any fraud or concealed any facts, and is eligible to be considered for appointment on the basis of her own merit. The applicant filed an appeal to Secretary (Education, Govt. of NCT of Delhi on 29.08.2015

along with all the documents but to no avail. It is further averred that the applicant was selected and appointed with the same qualification and marks in the year 2013-14 and served the department with the entire satisfaction of her seniors. Not appointing her for the year 2014-15 is totally illegal and arbitrary on the part of the respondents. The persons junior to her in the panel have been given appointment and are still working. Therefore, she has a legitimate right to be considered and appointed to the post of TGT (S.Sc.).

4. In the counter, the respondents have refuted the contention of the applicant and stated that after adding all the marks shown on the marks statement submitted by her, the percentage came out to be 81.4% and not 83% as filled by the applicant in her online application form. This was the percentage of the marks obtained by the applicant only in theory and practical papers and not of all the papers. It is stated that contrary to the submission of the applicant, the marks obtained in B.Ed have a bearing on the merit position of the applicant. In fact, the merit of TGTs (contract teachers from SSA) was prepared by the computer on the basis of marks percentage obtained by the applicant in the 10th, 12th, graduation and B.Ed. examination. And as any deviation in the marks would lead to change in merit points, it was decided and directed by the department (UEEM) in their circular of even dated 26.06.2014 that no

deviation/correction in marks be allowed at the level of the Dy. Director of Education in the percentages filled online by the applicants (Annexure R-1).

4.1 The respondents submit that the applicant has not been denied appointment for obtaining 81.4% marks but for filling in wrong/dubious information, which has a binding on the merit list. Finally, it is stated that the applicant has no cause of action to seek any relief from the Tribunal.

5. In the rejoinder, the applicant states that she correctly and rightfully mentioned her marks as per the instructions given by the University. She submits that even on the basis of 81.4% marks she is within the merit of the selected candidates and, therefore, not appointing her is illegal and discriminatory in the eyes of law.

6. During the course of hearing, learned counsel for the applicant drew the attention of the Bench to the Regulations relating to the B.Ed. examination. He pointed out that Regulation-42(VII)(a) provides as under:-

"Each candidate is required to qualify this paper for obtaining the degree. However, the marks obtained in this paper will not be included to determine the overall division."

He emphasized that Regulation-42(VIII)(2) provides as under:-

"That marks obtained in this paper will not be included to determine the overall division but if successful, a mention will be made to the effect in the degree conferred."

In view of these Regulations, there was no error committed by the applicant in filling up her application form and she did not conceal any facts or wrong percentage of marks.

6.1 Learned counsel for the respondents reiterated the stand taken by the department in their counter and stated that the merit of contract teachers was prepared by the computers on the basis of percentage obtained by the applicants in their 10th, 12th, graduation and B.Ed. examination. Since any deviation in the marks would have led to change in merit point, it was directed vide Circular dated 26.06.2014 that:-

"No change will be allowed by the District Deputy Director of Education if the entries are filled wrongly and sybmitted through online."

7. On going through the facts of the case, we find that the applicant had correctly mentioned her marks as per the instructions stipulated under Regulations for the Scheme of B.Ed. examination. It is not the case of the respondents that the applicant is not within the merit of the selected candidates. Even on the basis of 81.4% marks, the applicant comes under the panel of selected candidates and this fact has not been disputed by the respondents. Hence, we feel that not appointing the applicant to the post of TGT (S.Sc.) as

contract teacher would be unfair to her. The respondents seem to have been taken a narrow view of the entire situation and the Circular dated 26.06.2014, which does not permit the wrong entries filled in online to be rectified. Once an apparent error had been brought to the notice of the senior authorities, the same ought to have been dealt with more judiciously. The representation of the applicant in the shape of an appeal to Secretary (Education) also does not appear to have been examined by the respondents.

8. In view of these circumstances and the discussion made above, we allow the OA and quash the impugned order dated 25.07.2015. The respondents are directed to issue the posting order to the applicant to the post of TGT(Social Science) on contract basis with all consequential benefits. This exercise should be completed within a period of two weeks from the date of receipt of a certified copy of this order. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

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