

**Central Administrative Tribunal
Principal Bench**

OA No.3018/2012

Order reserved on : 14.10.2015
Order pronounced on : 06.11.2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

Ms. Veena Jetly,
D/o Late Shri M.R. Jetly,
R/o Flat No.12,
Meera Bai Polytechnic Camps,
Maharani Bagh,
New Delhi-110065.

...applicant

(By Advocate : Shri Piyush Gaur)

Versus

1. Lt. Governor,
NCT of Delhi,
Raj Niwas,
Delhi.
2. Secretary,
Union Public Services Commission,
Shahajhan Road,
New Delhi.
3. Principal Secretary,
Department of Training & Technical Education,
Govt. of NCT of Delhi,
Maya Muni Ram Marg,
Pitam Pura, New Delhi.
4. Principal Secretary (Services),
Govt. of NCT of Delhi,
Administration Building.
5. Principal,
Meera Bai Institute of Technology,
(Formerly Meera Bai Polytechnic),
Maharani Bagh,

New Delhi-110065.

...respondents.

(By Advocate : Shri Rajinder Nischal and Ms. Alka Sharma)

ORDER

Hon'ble Mr. V.N. Gaur, Member (A) :-

The applicant in the present case was working as a Demonstrator in Electronics Department in Meera Bai Polytechnic (now Meera Bai Institute of Technology – respondent No.5). On the basis of the recommendations of the Madan Committee a revised staffing structure was introduced in Polytechnics of the Union Territory of Delhi vide order dated 25.09.1987. While introducing the new scheme, a provision was made to give an opportunity to the existing incumbents to upgrade/improve their qualifications within a period of eight years and that they be sent for this purpose to the appropriate institutions under the available schemes. The respondent No.3 issued a letter on 13.07.1988 adopting the pattern recommended by Madan Committee as accepted by Government of India and as a result of which the post of Lecturer was made the lowest rank of the teaching cadre. The Ministry of Human Resource Development, Government of India on 07.03.1989 conveyed a one time relaxation in the prescribed qualifications for the post of Lecturer permitting absorption of those teachers in Polytechnics who possessed the alternative qualification recommended by All India Council of Technical Education (AICTE) i.e. diploma in appropriate branch of engineering plus Diploma in

Technical Teaching from Technical Teachers Training Institute (TTTI) and five years teaching/professional experience. However, this relaxation was meant only for absorption to the post of Lecturer and the incumbents were not entitled for further promotion until he/she acquired requisite qualification of the notified recruitment rules. The respondent No.3 notified the amendment to the rules regarding method of recruitment and qualifications for the post of Lecturer on 11.10.1993 but there was no mention of the alternative qualification permitted by the Ministry of HRD. By order dated 01.01.1993 the applicant was appointed to the upgraded post of Lecturer with a proviso that such ad hoc appointment will not entitle the officer to claim regular appointment or seniority etc. on the said post or any other equivalent post. Later, the respondent No.3 submitted a proposal to the USPC – respondent No.2, for absorption of ad hoc appointees including the applicant. Respondent No.2, however, did not agree to the proposal stating that in the notified Recruitment Rules there was no provision for relaxation of the qualifications. The respondent No.3 again approached respondent No.2 for consideration of absorption of the staff members who had acquired alternative qualification vide letter dated 20.01.1995, and again on 21.07.2010 and 13.01.2011. However, all these proposals have been rejected by the respondent No.2, reiterating their decision dated 28.11.1994.

2. The applicant and two others had earlier approached this Tribunal in OA No.1856/2002 which was disposed of on 18.07.2002,

with a direction to the respondent Nos.1&2 to consider the representations of the applicants and pass speaking order. The respondent No.3 passed an order dated 18.09.2002, rejecting the representation of the applicant. The applicant again approached the Tribunal in OA No.2653/2002 which was dismissed by this Tribunal on 29.07.2003.

3. In the present OA, the applicant has claimed the following reliefs:

- “(i) To comply with the accepted recommendations of the Madan’s Committee and to upgrade the appointment of applicant as a Lecturer as she had possessed a diploma in Technical Teaching from TTTI on the directions of the MHRD, Government of India and as accepted by Govt. of NCT of Delhi.
- (ii) All consequential benefits of fixation of pay, arrears of pay may be re-fixed and released to her with interest.
- (iii) That the applicant pay may be re-fixed granting Academic Grade Pay of Rs.7000/- p.m. with effect from 01/01/2006.
- (iv) All consequential benefits may be granted to the Applicant.
- (v) Any other relief, which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the Applicants.
- (vi) Cost of the proceedings be awarded in favour of the Applicants and against the Respondents.”

4. The learned counsel for applicant argued that following the acceptance of the report of the Madan Committee and restructuring of the teaching cadre the Department sponsored the existing incumbents,

including the applicant, for acquiring diploma from TTTI to fulfil the condition of alternative qualification for absorption. After the applicant successfully completed TTTI diploma by taking that course from January, 1991 to June, the respondent No.3 upgraded her to the post of Lecturer on ad hoc basis vide order dated 01.01.1993 with effect from 30.06.1992, with endorsement to the UPSC that the proposal for regularisation of the above officer was being sent separately for Commission's approval. According to the learned counsel that upgradation was not on adhoc basis and the same should have been treated as regular and final. However, in the meantime, on 11.10.1993, the respondent No.3 notified amendment to the RRs to bring it in line with the Madan Committee's recommendations, as accepted by the Govt. of India but failed to incorporate the relaxation clause in respect of existing incumbents. The UPSC, therefore, on the proposal sent for regularisation of the applicant and another person, took a view on 28.11.1994 that the qualification could not be relaxed in the absence of any provision for the same in the RRs and advised the respondent no. 3 to suitably amend the recruitment rules. According to the learned counsel, UPSC, was fully in picture about the relaxation given by the Government of India but took a mechanical view and rejected the proposal not only in 1994 but subsequently, also in 1995, 2010 and 2011. The respondents also failed to act on the advice of the UPSC to amend the RRs to include the relaxation clause. He pointed out that the applicant as an ad hoc Lecturer has been working since 1992 to

the satisfaction of the Organisation, bringing good results, but her absorption got entangled in the technical glitches. The respondent No.3 on one occasion moved a proposal for such an amendment, but the same was rejected by the respondent No.4. The applicant thus, has been a victim of omission and inaction on the part of the respondents despite sincerely discharging her duties for nearly 20 years as a Lecturer.

5. The learned counsel for respondent No.2 Shri Rajinder Nischal on the other hand, raised the preliminary objection of *res judicata*, arguing that the applicant had earlier filed OA No.1856/2002 seeking the same relief and following the Tribunal's direction dated 18.07.2002, the respondents passed a speaking order on 18.09.2002. The applicant again filed OA No.2653/2002 which was dismissed by order dated 29.07.2003. The applicant does not have the qualification as required under the RRs and has not acquired the same also after the dismissal of her earlier OA. The applicant was, therefore, barred by *res judicata*. In this regard, he relied on the judgment of **Gulam Sarvar Vs. Union of India & Ors.**, AIR 1967 1335. He further submitted that the respondent No.2 could not accept the proposal for absorption of the applicant as sent by the respondent No.3 because the notified recruitment rules did not have any provision with regard to the relaxation of the educational qualification.

6. Ms. Alka Sharma, learned counsel appearing for respondent No.3 to 5 submitted that the prayer of the applicant for similar relief had been dismissed by this Tribunal in OA No.2653/2002. After the implementation of the recommendation of the 6th Pay Commission, inadvertently the applicant who is a Lecturer on ad hoc basis was granted the grade pay of Rs.7000/- with effect from 01.01.1996 but later on that mistake was noticed and a Corrigendum was issued on 07.01.2011 re-fixing her grade pay as Rs.5400/- as applicable to ad hoc Lecturer. The learned counsel denied that there was any error in the RRs notified by the respondents in 1993 for the post of Lecturer. It was further denied that there was any advice from the UPSC to amend the RRs for inclusion of one time relaxation. On request of the applicant, the respondent No.3 had moved a proposal for amendment of the RRs once again but the Services Department (respondent No.4) vide note dated 27.03.2012 had disagreed with the same. The respondent No.3 has again moved the proposal to respondent No.4 and the same is under consideration. Para 4.23 filed by the respondents is reproduced below:

4.23 This para is denied to the extent that the UPSC did not consider the case of the applicant for regularization as she did not possess the qualification as per RRs. As regards referring the case to services department, it is stated that though the services department vide its note dated 27.03.2012 has already disagreed even though taking sympathetic view the department again sent the proposal to the services department which is under consideration.”

7. We have considered the submissions made by the learned counsels for the parties and perused the record. The first issue to be addressed is the objection of *res judicata* raised by the respondents. The learned counsel for applicant has stated that at the time of filing the OA No.2653/2002, the applicant did not have a copy of the UPSC letter dated 28.11.1994 in which UPSC had pointed out the error in the umbrella notification i.e. the RRs. The learned counsel has relied on the judgment of Hon'ble Apex Court in the case of **State of Punjab Vs. Ram Lubhaya Bagga**, AIR 1998 SC 1703 wherein it was held that ***"The points raised here before us were neither raised nor decided in that SLP by this Court. As this question is likely to come in future, we feel it is necessary to decide and settle it. Hence this preliminary objection raised by the respondent has no force."*** It was further argued that after getting a copy of the UPSC letter dated 28.11.1994 in 2008 under the RTI Act, the applicant made a detailed representation pointing out the carelessness and lapse on the part of the respondents. The respondents being satisfied with the pleas of the applicant and accepting the contents of the representation, made yet another representation to the UPSC on 21.07.2010 for reconsidering her case for upgradation as Lecturer. The UPSC on 03.06.2011, however, repeated its earlier stand pointing out the non compliance of their advice of 28.11.1994. The respondent No.3 sought advice of their Services department which was agreeable with the applicant and directed that corrective steps should be taken by the respondent department in accordance with the advice of the UPSC. On

28.05.2012, the respondents conveyed to the applicant that proposal was forwarded to the services department for inclusion of alternative qualification but the services department had not agreed to incorporate the same. Hence, the applicant had a fresh cause of action and the present application would not be barred by *res judicata*. The learned counsel for applicant also relied on the judgment of **Ram Raj Sethi Vs. NDMC** in OA No.3665/2012. We have perused the judgment cited by the learned counsel for applicant, however, we do not find it relevant in the facts and circumstances of the present case

8. The learned counsel for the respondent No.2 on the other hand has argued that having once approached the Tribunal for the same relief in 2002 and the application having dismissed, the applicant is debarred from approaching the Tribunal once again.

9. We have considered the submissions. On perusal of the order dated 29.07.2003 in OA No.2653/2002, it is found that the applicants therein, three in number including the applicant in the present OA, were seeking a direction to consider their cases for absorption/regularisation on the posts of Lecturer from the dates the vacancies arose and further to extend the benefit of Career Advancement Scheme in placing them in the senior scale from the due date which was rejected by the UPSC in 1994. This Tribunal dismissed the OA concurring with the view taken by the UPSC. The Tribunal

noted that the respondents had given the benefit of one time relaxation while upgrading the applicant to the post of Lecturer but admittedly the applicants did not possess the requisite qualification as per the RRs and, therefore, their claims had rightly been rejected. The prayer in the present OA is focussing on the compliance of the accepted recommendations of the Madan Committee and to upgrade the applicant as a Lecturer giving allowance to the alternative qualification acquired by her with other consequential benefits. Further the respondents on their own have moved proposals for amendment of RRs and absorption of the applicant subsequent to the order passed by this Tribunal in 2003 giving a fresh cause of action to the applicant. We, therefore, do not find *res judicata* coming in the way of examining the issue whether the respondent No.3 was required to provide for one time relaxation in RRs as accepted by Ministry of HRD and the Govt. of Delhi while implementing the Madan Committee report.

11. From the perusal of the record, it is undisputed that the existing Demonstrators including the applicant were given a time slot of eight years to acquire qualification prescribed for the post of Lecturer under the new RRs in accordance with the recommendations of Madan Committee. The AICTE which is the nodal organisation in the matter of prescribing educational qualification for the posts in technical education institutions, had recommended an alternative qualification of second class diploma in engineering with two years teaching

experience together with TTTI diploma for appointment to the post of Lecturer in the Polytechnics. This recommendation was accepted by the Union Government and communicated to Delhi Administration on 07.03.1989 with the modification that the experience required would be five years and not two years. It was made clear that *“such relaxation will only be for absorption to the post of Lecturer and the incumbents will not be entitled for any further promotion unless he/she acquired requisite qualification of the notified recruitment rules.”* It is to be noted that this relaxation was specifically for the purpose of absorption. Subsequently, the applicant was sponsored for the TTTI diploma course which she completed from January, 1991 to June, 1992. The applicant was appointed to the post of Lecturer on ad hoc basis with effect from 30.06.1992, vide order dated 01.01.1993. The applicant was, therefore, considered as fulfilling the eligibility conditions for the post of Lecturer following her successful completion of TTTI diploma. The UPSC in its letter dated 28.11.1994 declined to consider regularisation of the cases covered by the relaxation provision stating, *inter alia*, that the relaxation in educational qualification given by Govt. of India as approved by the AICTE was a onetime relaxation and could not be applied in subsequent cases. Moreover, while amending RRs or issuing umbrella notification, the Administration did not make any provision to incorporate the alternative qualification and, therefore, one time relaxation approved by the Govt. of India in 1989 could not be

applied at that stage. The relevant portion of the letter of UPSC dated 28.11.1994 is reproduced below:-

“2. Relaxation in educational qualifications given by the Govt. of India vide their letter No.F.1-32/ 88.I.10 dated 7.3.89 to consider those teachers who possess alternative qualifications are approved by the All India Council for Technical Education i.e. diploma in appropriate branch of engineering plus Technical Teachers Training Institute and 5 years teaching/ professional experience was a one time relaxation and cannot be applied in subsequent cases. Moreover, while amending the RRs/ issuing umbrella notification, the Administration has not made any provision to incorporate the alternate qualification mentioned above. Under the circumstances, the one time relaxation approved by the Govt. of India in 1989 cannot be made applicable at this stage.”

12. From the aforesaid letter of the UPSC, it can be seen that the main hurdle as perceived by the UPSC was that (i) there was no provision in the notified RRs to relax educational qualification and (ii) UPSC was not clear whether the cases forwarded by respondent No.3 in 1993 were covered by the onetime relaxation granted in 1989 or arose subsequent to that relaxation. From the records it is further seen that though the respondent No.3 furnished to respondent No.2 clarification in respect of the second issue, there was no attempt to resolve the first issue i.e. the amendment of RRs. Rest of the subsequent developments, till date, are nothing but a history of repeated representations by the applicants and movement of proposals again and again to UPSC to reconsider its decision and the latter sticking to its earlier observation dated 28.11.1994 of inadequacy of the RRs so far as the alternative qualification was concerned.

13. In our view, there was a slip up on the part of the respondent No.3 right from the beginning when it did not include the relaxed qualification in the amendment to the RRs notified in 1993. That such omission could not have been a conscious decision of the Competent Authority is substantiated by the fact that the onetime relaxation in qualification was a well-considered decision of the Government of India taking into account the situation prevailing at that time. There is no pleading from the side of the respondents that there was any rethink on the part of the Government and the alternative qualification was deliberately excluded from the RRs notified in 1993. On the contrary, respondent No.3 has moved proposals to UPSC from time to time to reconsider its earlier decision, and later it moved a proposal to respondent No.4 for amendment of the RRs. Therefore, at this stage, it cannot be said that the respondents are not convinced of the fact that the RRs as notified in 1993 ought to have included the alternative qualification as a onetime relaxation for the purpose of absorption. Having come to such finding, we do not find any reason as to why the respondents should not take its decision to amend RRs to its logical conclusion.

14. It is also relevant to mention that the objective behind upgrading the teaching posts along with qualifications was to achieve the overall improvement in the quality of education being imparted in the

Polytechnics. The Madan Committee had provided a window of eight years for the existing incumbents who did not possess the required qualification, to acquire that qualification. If the alternative qualification approved by the Ministry of HRD/AICTE was not considered sufficient for absorption, in that case the applicant could not have been retained in the post of Lecturer beyond the window of eight years. Since the report of the Committee was implemented in 1988-89, the eight years period would have ended in 1996-97. The respondents, however, did not do any such thing and, instead, upgraded the applicant after her acquiring the TTTI diploma in 1992, recognising that the applicant possessed the alternative qualification for the post of Lecturer. She was allowed to teach as Lecturer from 1992 till her superannuation. Now it cannot be the case of the respondents that the quality of education would get affected if a person with alternative qualification was allowed to teach as a regular Lecturer but there was no adverse impact when she taught as an ad hoc Lecturer for more than two decades. Obviously, a qualification that is considered good and sufficient for the purposes of teaching as ad hoc Lecturer, cannot be treated as insufficient and undesirable for the purpose of absorption especially when the same had been approved by the competent authority in the past. The lacuna is, therefore, not in the qualification but in the RRs which for some inexplicable reason did not include the alternative qualification approved by the Government in 1989 as a one time relaxation. We further note the averment in the

counter filed by the respondent no. 3 that taking a sympathetic view the respondent no. 3, who moved a number of proposals for the absorption of the applicant or to amend the RRs in the past, has again submitted a proposal for the amendment of RRs to the respondent no. 4.

15. Considering the entire conspectus of the case and for the reasons stated above, we direct the respondent No.3, 4 and 2 to complete the process already on hand for amendment of RRs dated 11.10.1993 to include the alternative qualification for the post of Lecturer within a period of two months from the date of receipt of this order. Thereafter, the respondent no.3 and respondent no. 2 shall complete the process of consideration of the applicant for absorption within a period of another two months. The respondent no 3 shall implement the recommendations of the UPSC and grant all consequential benefits including revision of pay following the recommendations of the Pay Commissions as entitled under the rules, within a period of two months thereafter. The OA stands disposed of with these directions. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

‘rk’