

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****OA No. 060/00825/2016****Pronounced on : 11.05.2018****Reserved on : 01.05.2018****CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

Deneshwar Datt son of Sh. Giani Ram, resident of House No. 1159/18,
Shiv Volony, Distt. Jind, Haryana.

.....Applicant

BY ADVOCATE: **Sh. Mufaid Khan proxy counsel for Sh. Gobind
Sharma**

VERSUS

1. U.T. Administration, Chandigarh through its Administrator, U.T. Secretariat, Sector 9, Chandigarh.
2. Education Department, through its Secretary, U.T. Secretariat, Sector 9, Chandigarh.
3. Director Public Instructions (School), 1st Floor, Additional Deluxe Building, Sector 9, Chandigarh.

.....Respondents

BY ADVOCATE: **Sh. Aseem Rai**

ORDER**BY MRS. P. GOPINATH, MEMBER(A):-**

1. Applicant is an Ex-Indian Navy employee who possesses Matric, 10+2, BA, B.Ed. and Certificate Course in Physical Education. He has 15 years service and experience with Indian Navy as the Physical Training Instructor. The respondent department issued a Notice for recruitment to the post of Masters/Mistresses including the

post of TGT (Physical Education) and five other posts reserved for Ex-Serviceman category.

2. The essential qualification for the post as mentioned in the advertisement was as follows:-

“(A)(i) Graduate of a recognized University with at least 50% marks in aggregate; and

(ii) D.P.Ed/B.P.Ed or its equivalent with at least 50% marks in aggregate”.

The applicant argues that being eligible, he submitted an online application for the five posts reserved for Ex-servicemen. Applicant appeared in the preliminary written examination held on 14.02.2015 and main examination held on 28.02.2015. Applicant secured 130 marks and was ranked first in the merit list of his category. In the revised merit list issued also, he secured the same position and was invited for document verification. During document verification, it was observed that applicant did not have the qualification of D.P.Ed/B.P.Ed or an equivalent. Applicant requested the respondents to consider his Trade Certificate as Diploma in Physical Education (D.P.Ed). The DG (Resettlement) issued a clarification along with a copy of letter issued by Ministry of Labour & Employment stating that a Physical Trainer of Indian Navy Rank PO(PT) I, with minimum nine years of service was equivalent to Civilian Trade of Instructor (Physical Training). Not receiving any response to his representation, applicant filed OA No. 060/00823/2015 before this Tribunal and the same was disposed of with a direction to the

applicant to submit document to prove equivalence of the certificate obtained by him to the advertised qualification of D.P.Ed/B.P.Ed.

3. Applicant places on record Annexure A-12 judgement of this Bench in which a Diploma in Teaching granted by AEC Training College and Centre, Pachmarhi (MP) was treated as equivalent to Diploma/Certificate in Basic Teacher Training or JBT and the OA was allowed. The applicant also places on record a judgement of the Delhi High Court wherein the Ground Training Instructor was held as eligible to be appointed as Physical Education teacher in KVS.

4. Applicant also brings to notice Annexure A-14 judgement of Punjab and Haryana High Court titled Hawa Singh & Ors. Vs. State of Haryana & Ors., 2010(2) SCT 824 wherein 22 writ petitions of Ex-Servicemen in which Instructor Training Certificate was held as equivalent to Diploma/Certificate in Basic Teacher Training.

5. Applicant also brings to notice Annexure A-15 judgement of Punjab and Haryana High Court titled Narendra Singh Yadav Vs. State of Haryana in CWP No. 5203/2010 wherein equivalency of holding a Diploma with more than ten years of technical experience has been made to a Degree in Engineering. On a similar analogy, the applicant submits that he also has a qualification equivalent to D.P.Ed and is eligible for selection to the post.

6. Applicant argues that Defence personnel have a very short service span and while in service, they are imparted technical training which is considered as equivalent to Diploma/Degree issued by Universities. Further, Defence establishments like Navy being

highly fitness conscious, the practical experience of the Instructors in the establishment would be much more than what is required of teaching Physical Education in a school. The nomenclature of the courses conducted by the Navy are similar to those conducted by the Universities/Technical Institutions and this should not be the criteria to disqualify applicant. The respondent is required to compare the trade certificate of Ex-Serviceman with that of Degree/Diploma awarded by the University and establish the fitness of persons for the applied posts.

7. The prayer of the applicant is to consider the claim of the applicant for selection to the post of TGT (DPE) on the basis of his qualification and experience against the post reserved for Ex-Serviceman. The second prayer of the applicant is for considering the Trade Certificate Course of the Indian Navy School of Physical Training as equivalent to Diploma in Physical Education.

8. The respondents confirm that the applicant had applied for the post and also confirmed the educational qualifications in the advertisement cited by the applicant. Respondents draw attention to Point 9 of the advertisement wherein it was the responsibility of the applicant to ensure that he fulfills the eligibility conditions mentioned in the advertisement. The advertisement also cites that merely appearing in the written test does not give any right to the applicant for appointment to the post. That fulfilling the eligibility conditions was a very important condition for being selected to the post as per terms and conditions of the advertisement issued.

9. Applicant filed OA No. 060/00823/2015 where the Tribunal held as follows:-

“4. Accordingly, the applicant is directed to submit all the documents to prove equivalence of the certificate obtained by him to the required qualification of D.P.Ed/B.P.Ed and also the judicial pronouncement in support thereof. The respondents are directed to consider the representation of the applicant in the light of the supportive documents, to be submitted by the applicant and decide it in accordance with rules, regulations and law on the subject. Till then, the respondents are directed not to finalize the selection for the post in question under the ESM category.

5. Needless to mention that we have not made comments upon the merits of the case. No costs.”

10. The applicant submitted a representation and after going through the same along with the detailed documents, the case of the applicant was forwarded to Director General Resettlement, Ministry of Defence and the clarification received from Director General Resettlement, Ministry of Defence vide letter dated 23.01.2015 was as under:-

“Refer to your DO NO. DPI-UT- 52-11(136) 2015 dated 03 Dec 2015. The same proposal in the past, received in this office was forwarded to Ministry of Defence, Deptt. Ex-servicemen Welfare/D (Res-I) and University Grant Commission for their examination/comments and favorable consideration.

The replies have since been received from both the Departments. Hence, copies of MoD ID No. File No. 7(10)2012/D (Res-I) dated 20 Oct 2015 and UGC letter No. 5-1/2010(CPP- II) dated 14 Aug 2015 are forwarded herewith for your information and further necessary action.

Clarification sent by University Grant Commission, New Delhi vide letter dated 14.08.2015 to DGR New Delhi:-

With reference to your letter dated 25.06.2015 on the above subject. I am directed to say that UGC regulations do not provide any scope for equating training certificate with degree programmes. It is for the employing agency to take cognizance of the Defence Ministry's order

Clarification by Ministry of Defence, Department of Ex-Servicemen Welfare:-

Reference DGR's Note No. 0515/Gen/DGR/Emp-3 dated the 19th October, 2012 on the subject mentioned above.

The proposal of DGR for making amendments in para 2(a) of DOP&T's notification No. 15012/8/82-Estt. (D) dated 12.02.1986 has been examined in this Ministry in consultation with University Grants Commission. UGC was requested to clarify as to whether Graduation Certificates issued to the retired Service Personnel by the Armed Forces including Navy and Air Force, conforms to the UGC norms and whether such Graduation Certificates have universal acceptability for all types of jobs pan India. It has been intimated by UGC that their regulations do not provide any scope for equating training certificate with degree programmes. It is for the employing agency to take cognizance of the Defence Ministry's Order (copy enclosed).

The Proposal of DGR for making amendment in DOPT's notification dated 12.02.1986 will make eligible ESM for appointment to any reserve vacancy or for any other job in Group 'A' & 'B' posts also for which graduation is a minimum requirement though DOPT's notification dated 12.02.1986 makes eligible a matriculate Ex-Servicemen who has put in not less than 15 years of service in the Armed Forces for appointment of any reserve vacancy in Group 'C' post only. Therefore, the proposal of DGR for making amendment in para 2 (a) of DOP&T's notification dated 12.02.1986 has not acceded to keeping in view the observations of UGC and due to the fact that DOPT's Notification dated 12/2/1986 is applicable for making ESM eligible for appointment to Group 'C' post only. However, the proposal of DGR for having the revised format of the Armed Forces Graduate Certificate indicating the percentage of marks obtained by ESM, which has the approval of 3 Services Headquarter has been agreed to since the revised format is not against the provisions of DOPT's Notification dated 12/2/1986.

NCTE vide letter dated 05.04.2016 has also conveyed that there is no provision in the NCTE Act, Rules and Regulations to determine the equivalence of a degree/diploma awarded by any other authority with a teacher education programme."

11. A Committee comprising of departmental officers and experts from Government College, Sector 11 and Government College of Education, Sector 20 was constituted and the matter was discussed in detail regarding eligibility of the applicant for the post of TGT (DPE). The Committee held that the applicant was ineligible as he could not produce equivalent certificate from NCTE as the certificate produced by the applicant was not recognized under Section 14(1) of NCTE Act, 1993. The Act being the final stipulation

on qualification in teacher training, amendment, if any, only would establish the incorporation of any equivalent qualification.

12. In this OA, we are dealing with persons who have to act as teachers to children. Hence, we cannot give a differing interpretation of qualifications to be held by such teachers as the quality of education would be different. Any decision on the qualification to be held by such persons, the recognition to be awarded to such qualification, would be the UGC or NCTE. The matter would also be decided by the provisions in the Chandigarh Administration Service School Cadre Recruitment Rules. It is not for the Tribunal to interpret or decide which qualification would be appropriate for a teacher's post. The Chandigarh Administration Service Recruitment Rules, 1991 amended from time to time and notified in exercise of powers conferred under Article 309, the clarifications given by Director Resettlement and the letter issued by UGC, should be the relevant documents to be consulted before a final decision is taken in the matter. The respondents had gone a one step ahead and constituted a Committee comprising of experts to look into the matter and the Committee has held that the applicant could not be considered eligible for the post of TGT Physical Education. One could make the argument that we are dealing with the post of TGT (Physical Education) which is not similar to that of a TGT, Academic Studies. But, in today's age, where physical fitness is as important as academic achievement, the presence of a good Physical Instructor, suitably qualified is also important in helping a

child to remain healthy in school and also make a career choice in this field.

13. Annexure A-1 is a detailed three page speaking order issued in pursuance of OA No. 060/00823/2015 filed by the applicant. In that OA, the applicant was directed to submit all relevant documents to prove the equivalence of the certificate obtained by him with reference to the qualification advertised by the post alongwith judicial pronouncements in support thereof. The qualifications possessed by the applicant were compared with reference to National Council for Teachers Training Act, 1993 and amendments made thereafter. The respondents have also considered the clarification sent by the University Grants Commission which states that the UGC Regulations do not provide any scope for equating training certificate possessed by the applicant, with Degree programmes. In the NCTE Act, Rules, and Regulations also, there is no provision for working out the equivalence of a Degree/Diploma awarded by any other authority with a teacher education programme.

14. Whereas re-employment of Ex-Servicemen is to be encouraged as they have a shorter work span than persons otherwise engaged by the Government, this encouragement should not be at the cost of education of children or by relaxing any rules or qualification for selection of teachers. Applicant has also been given the chance of submitting a detailed representation with documents to prove his candidature and a detailed three page argued and substantiated reply answering the applicant's contentions raised in

the representation, has been given citing the reasons for non-consideration of the applicant's candidature.

15. For the foregoing discussion, we find this OA to be devoid of merit and the same is dismissed accordingly. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
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