



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
(CIRCUIT AT PORT BLAIR)**

No. O.A. 82/AN/2013

Date of order: 15.02.2018

Present: Hon'ble Mr. V. Ajay Kumar, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Puspa Rani Biswas (Sasmal),
W/o. Shri Samir Kumar Sasmal,
Aged about 51 years,
R/o. R.K. Gram, Diglipur,
North Andaman, Craft Instructor (Music),
Education Department,
Under Andaman & Nicobar Administration,
Port Blair.

.. Applicant

-Versus-

1. The Union of India,
Through the Secretary,
Ministry of Human Resource Development,
Shajahan Road,
New Delhi.
2. The Lieutenant Governor,
Andaman & Nicobar Islands,
Port Blair.
3. The Chief Secretary,
Andaman & Nicobar Administration,
Port Blair.
4. The Director of Education,
Directorate of Education,
Andaman & Nicobar Administration,
Port Blair.
5. The Assistant Director (Admn.),
Directorate of Education,
Andaman & Nicobar Administration,
Port Blair.
6. The Assistant Director of Education (Perl.),
Directorate of Education,
Andaman & Nicobar Administration,
Port Blair.

--- Respondents

V. S. Sasmal

For the Applicant : Ms. A. Nag, Counsel

For the Respondents : Mr. S.K. Mandal, Counsel
Mr. S.C. Misra, Counsel

ORDER (Oral)

Per Mr. V. Ajay Kumar, Judicial Member:

Heard Ms. A. Nag, Ld. Counsel for the applicant and Mr. S.K. Mandal along with Mr. S.C. Misra, Ld. Counsel for the official respondents.

2. The applicant, a Part Time Craft Instructor under the respondents, has filed O.A. No. 55/AN/2007, seeking a direction to the respondents for considering her case for regularization and the said O.A. was disposed of along with three other O.A.s by a common order dated 31.1.2008 (Annexure "A-12" to the O.A.). The operative portion of the said order reads as under:-

"25. We have noticed that the applicants are also continuing for a long time though have not completed 10 years and two such Part Time Craft Instructors have already been regularized in relaxation of age. We also notice that the respondents have issued employment notifications for recruitment of Craft Instructors from open market as per amended recruitment rules. In such circumstances and keeping in view the legal position stated above we are of the opinion that ends of justice will be met if respondents are directed to consider the case of applicants and other part time Craft Instructors who are working for a long time, after giving them age relaxation as was done earlier, along with other eligible candidates against available sanctioned posts. Since in the recruitment rules there is provision for placement of non-Graduates in a lower pay scale, the applicants, who are not Graduates, if selected, may be placed in a lower pay scale, as was done in case of others as stated earlier. This exercise be completed as expeditiously as possible. Till such time, they are considered as directed above, their part-time appointment as craft instructor may continue as before.

26. With the above observations and directions, all the four applications are disposed of. There will no orders as to costs in either of them."

3. In compliance of the aforesaid orders the respondents, vide Order No. 3621 dated 23.7.2008 (Annexure "A-13" to the OA) rejected the claim of the applicant on the ground of over-age in terms of the recruitment rules and also that though the applicant was allowed to appear for selection process, she had not qualified in the said selection process. Aggrieved by the same, the applicant had filed O.A. No. 176/AN/2009. The said O.A. was disposed of by this Tribunal

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by an order dated 27.4.2012 (Annexure A-17 to the O.A.) and the relevant paragraph of the same reads as under:-

"14. It is seen that in the operative part of OA 55/AN/2007 along OA 56/AN/2007, OA 58/AN/2007 and O.A. 86/AN/2006 dated 26.1.2008 the respondents were directed to consider the case of the applicants after giving them age relaxation as was done earlier. She was to be considered along with other eligible candidates against available sanctioned posts. The Tribunal also directed that there was a provision of placement of non-graduates in lower pay scale and the applicants, who were not Graduates, if selected, may be placed in a lower scale. In the impugned order dated 23.7.2008 no such consideration has been done. The directions of the Tribunal dated 26.1.08 have to be complied with and consideration requires due application of mind. The directions given by the Tribunal, namely, that the applicant should be considered along with other eligible candidates against available sanctioned posts after giving them age relaxation has not been complied with at all. The specific observation of the Tribunal was that there is provision for placement of non-Graduates in a lower pay scale and the applicants though not Graduate, if selected, may be placed in lower pay scale also finds no mention in the speaking order. Directions given by the Tribunal are judicial directions and have to be complied with.

15. Under the circumstances, we are of the considered view that the respondents have not complied with the Tribunal directions dated 26.1.2008. The orders are, therefore, quashed. The respondents are directed to comply with the directions as given by this Tribunal in OA 55/AN/2007 along with three other OAs. This should be done within three months from the date of issue of this order. OA is disposed of. No costs."

4. Again in compliance of the aforesaid order, the respondents passed the instant impugned Office Order dated 4975 dated 29.11.2012 by stating that they have agreed to grant age relaxation to the applicant subject to condition that the applicant should apply for the post in question as and when vacancies notified for direct recruitment and must fulfill the other essential qualifications prescribed in the recruitment rules for the post.

5. The applicant filed the instant O.A. questioning the said impugned office order dated 29.11.2012 to the extent of compelling her to apply for the post as and when notified for direct recruitment instead of appointing her in the same manner as that of Ms. Manjula.

6. Ms. A. Nag, Ld. Counsel for the applicant submits that the entire case of the applicant is based on the fact that an identically placed person, namely, Ms. Manjula, was appointed on regular basis as Craft Instructor by virtue of orders of

11-7-2012

this Tribunal, without compelling her to participate in the selection process. Accordingly, Ld. Counsel for the applicant submits that the case of the applicant should be considered for appointment on the same lines on par with the said Ms. Manjula.

7. On the other hand, Shri S.K. Mandal, Ld. Counsel appearing for the respondents, while opposing all the O.A. averments, has drawn our attention to Memorandum dated 5.7.2012 and the minutes of Meeting of the Selection Committee dated 24.8.2010 (wrongly recorded as 2010 but it is actually 2012) submits that the case of the applicant and Ms. Manjula are different. Ms. Manjula was appointed after she participated in a selection process and hence the applicant cannot claim appointment without participating in the selection process. Mr. S.K. Mandal, Ld. Counsel for the respondents, also submits that Ms. Manjula was within the age limit prescribed whereas the applicant is over-aged and as on today is 56 years old; hence her case cannot be considered for appointment. Moreso, the applicant is not identically placed as Ms. Manjula.

8. In view of the aforesaid rival submissions, we have carefully examined the orders of this Tribunal in O.A. No. 55 of 2007 and O.A. No. 176 of 2009 and the memorandum dated 5.7.2012 and the minutes of the Departmental Selection Committee dated 24.8.2010 (wrongly recorded as 2010 but it is actually 2012). The memorandum dated 5.7.2012 reads as under:-

F.No:1-24/Legal/Edn/HCC/2011/ 3676
ANDAMAN AND NICOBAR ADMINISTRATION
DIRECTORATE OF EDUCATION
Port Blair, dated the 5th July, 2012

MEMORANDUM

In compliance with the solemn judgement and order of the Hon'ble High Court, Calcutta Circuit Bench at Port Blair dated 20th February, 2012 pronounced in WPCT No. 063 of 2012 (Mrs. Manjula -Vs- UOI & Ors), Smti. Manjula, W/O Shri. T. Madhavan R/o Phonix Bay is hereby directed to submit the attested copies of all her educational qualification certificates, trade certificate in respect of Tailoring and embroidery and other testimonials to the undersigned on or before 9th July, 2012 without fail for scrutiny of her certificates and to place the same before the departmental

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selection committee for the post of Craft Instructor (T&E) in terms of Recruitment Rules.

The date of trade test and interview shall be intimated subsequently after scrutiny of the testimonials by the DSC.

Asst. Director of Education (Perl)"

9. Though the memorandum dated 5.7.2012 refers to a trade test and interview, but the Minutes of the Departmental Selection Committee dated 24.8.2010 (wrongly recorded as 2010 but it is actually 2012) nowhere mentions that the said Ms. Manjula participated in any trade test or interview consequent to the memorandum dated 5th July, 2012.
10. In the absence of any reference by the Department Selection Committee and the consideration of the result of trade test and interview of Ms. Manjula, it cannot be said that she was put to any trade test or interview, though the memorandum dated 5.7.2012 suggests for the same. Accordingly, the contention of the respondents is unsustainable and untenable. On the other hand this Tribunal on more than one occasion while relaxing the age limit for the applicant, held that she is entitled for appointment on par with Ms. Manjula.
11. In the circumstances and for the reasons mentioned above, the O.A. is allowed and the respondents are directed to appoint the applicant by considering her case on par with Ms. Manjula w.e.f. the same date and without compelling her to apply and to any tests, with all consequential benefits. However, in the circumstances, the applicant is not entitled for any arrears.

This exercise shall be completed by the respondents within 90 days from the date of receipt of a copy of this order.

(Nandita Chatterjee)
Administrative Member

(V. Ajay Kumar)
Judicial Member

SP