

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 1326/2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Ursula Sushma Soreng, wife of Amit Kumar Toppo, aged about 48 years, working as Primary Teacher, D. B. V. SPE/H.M, CLW, Chittaranjan, West Bengal, residing at Quarter No. 12B, Street No. 1A, Chittaranjan Locomotive Works (CLW), Chittaranjan, District- Burdwan, Pin: 713 331.

.....Applicants

-versus-

1. Union of India through the General Manager, Chittaranjan Locomotive Works, Chittaranjan, District- Burdwan, West Bengal, Pin- 713 331.
2. The General Manager, Chittaranjan Locomotive Works, Chittaranjan, District- Burdwan, West Bengal, Pin- 713331.
3. The Chief Personnel Officer, Chittaranjan Locomotive Works, Chittaranjan, District- Burdwan, West Bengal, Pin- 713 331.

.....Respondents.

For the Applicant : Mr. S.K. Dutta, Counsel
Mr. B. Chatterjee, Counsel

For the Respondents : Mr. A. K. Banerjee, Counsel

Heard on : 27.09.2018

Order on : 12th October 2018

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved at deletion of her name from the eligibility list of Post Graduate Teacher (PGT), the applicant has approached this Tribunal seeking the following relief:

"8(a) An order holding that the deletion of the name of the applicant from the eligibility list is not sustainable.

(b) An order quashing and/or setting aside the impugned memo dated 12.8.15.

(c) An order directing the respondents to consider the case of the applicant treating her as eligible for the post of PGT (Hindi) as applied for by the applicant and to grant her all consequential benefits.

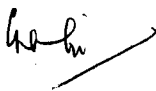
(d) An order directing the respondents to produce/cause production of all relevant records.

(e) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. Heard Id. Counsel for both the parties, perused pleadings and annexed documents. It is noted here that although no rejoinder of the applicant is found on record, written notes of arguments have been submitted by Id. Counsel for applicants.

3. The brief facts of the case are as under:

The applicant holds a civil post in the CLW in the capacity of Primary School Teacher. Being eligible in all respects, she had applied for PGT (Hindi) but surprisingly, the respondents have unilaterally deleted her name from the eligibility list vide Corrigendum dated 12.08.2015 without assigning any reasons thereof. Hence, being aggrieved by the corrigendum dated 12.08.2015, the applicant has approached the Tribunal for relief.



The grounds advanced by the applicant in her support are that the action of the respondents was tainted with malice and that the corrigendum issued without assigning any reasons is violative of the principle of natural justice. The said action of the respondents hence deserves to be quashed.

4. Per contra, the respondents have contended that a notice had been issued for filling up the vacancies in the category of Post Graduate Teachers (PGTs) in different subjects in the scale of Rs. 9300-34800/- with G.P. of Rs. 4800/- from serving staff of the School Department of C.L.W vide notification dated 30.03.2015. The applicant had applied in the prescribed proforma for the said post and although the applicant is enjoying the scale of Rs. 9300-34800/- with G.P. of Rs. 4600/- as PRT, the said scale was enjoyed by the applicant as per the recommendation of Chattopadhyay Commission. Admittedly, a readiness list for the eligible candidates was issued by the respondents and the name of the applicant was mentioned therein; on subsequent scrutiny of service records and her application, however, it was found that the applicant's candidature was not acceptable and accordingly her name was deleted from the list of eligible candidates vide corrigendum dated 12.08.2015.

The respondents have further argued that the applicant is working as a Primary Teacher and not as a Trained Graduate Teacher (TGT). The applicant was allowed the scale of Rs. 9300-34800/- with G. P. of Rs. 4600/- only for the purpose of financial upgradation in terms of Railway Board's letter dated 11.01.1988 as well as CPO CLW's Office order dated 05.12.2012. The applicant however, was not allowed any regular promotion to TGT. According to the respondents, TGT is a feeder post to PGT and as the applicant is presently working only a Primary

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Teacher, her avenue of promotion would be TGT and not PGT. Accordingly, the corrigendum was issued whereby her candidature to the post of PGT was eliminated.

5. The point of determination in this original application is whether the corrigendum dated 12.08.2015 was validly issued by the respondents in the context of the applicant.

(i) At the outset, we refer to the notification annexed as A-1 to the OA to which the applicant has responded. The said notification is reproduced below for better understanding of the issue at hand:

"NOTICE

Sub: Filling up of vacancies in category of Posts Graduate Teacher (PGT) in different subjects in scale Rs. 9300-34800/- plus Grade Pay Rs. 4800/- (RSRP) Rules, 2008, from serving employees of School Department.

It has been decided by the Competent Authority to form panel(s) to fill up 11 (Eleven) vacancies in the category of Post Graduate Teacher (PGT) in different subjects in scale Rs. 9300-34800/- + Grade Pay Rs. 4800/- RSRP Rules, 2008 from serving employees of School Deptt.

02. The posts are earmarked for following subjects as per PBR

Sl. No.	PGT(Subject)	Vacancy	Communal Composition	Medium of Instruction
01.	PGT(Bengali)	01	01-ST	Bangla
02.	PGT(English)	02	01-ST	English
			01-UR	English
03.	PGT(Hindi)	02	01-ST	Hindi
			01-UR	Hindi
04.	PGT(Physics)	01	01-SC	English
05.	PGT(Mathematics)	01	01-UR	Bangla
06.	PGT(History)	01	01-UR	Bangla
07.	PGT(Geography)	01	01-UR	Bangla
08.	PGT(Pol. Science)	02	01-UR	Hindi
			01-UR	Bangla

03. The following staff will be considered eligible to volunteer for appearing in the selection for promotion to the post of Post Graduate Teacher (PGTs) in different discipline in scale Rs. 9300-34800/- + Grade Pay Rs. 4800/- RS (RP) Rules, 2008.

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(i) All teaching staff and other allied categories of Staff of CLW Schools fulfilling the following conditions:

(a) Must have 2nd Class Master Degree in concerned subject.

(b) Must have university Degree/Diploma in Education/Teaching or Integrated two years Post Graduate Course of Regional Colleges of Education of NCERT.

(c) Presently working in scale Rs. 9300-34800/- + Grade Pay Rs. 4600/- RS(RP) Rules, 2008.

(d) Completed two (02) years regular service in scale Rs. 9300-34800/- + Grade Pay Rs. 4600/-. This service rendered on ad hoc basis shall, however, be taken into account for this purpose if it is followed by regularization without break. The staff having less than two (02) years service may also apply for the Selection provided they fulfill other conditions but their promotion will be effective only after completion of two (02) years service in scale Rs. 9300-34800/- + Grade Pay Rs. 4600/-, if selected.

(e) Competence to teach through the Medium/Media as required. The candidate will have to appear in the Written Test as well as viva-voce test in the respective medium only for English Medium in English, for Bangla Medium in Bangla and for Hindi Medium in Hindi.

(ii) Trained Graduate Teacher (TGT) fulfilling the following conditions:

(a) Must have Master Degree in concerned subject.

(b) Must have University Degree/Diploma in Education/Teaching or Integrated two years Post Graduate Course of Regional Colleges of Education of NCERT.

(c) Presently working in scale Rs. 9300-34800/- + G.P. Rs. 4600/-.

(d) Must have five (05) years teaching experience as TGT in scale Rs. 9300-34800/- + G. P. Rs. 4600/-.

(e) Competence to teach through the Medium/Media as required. The candidate will have to appear in the written test as well as viva-voce test in the respective Medium only for English Medium in English, for Bangla Medium in Bangla and for Hindi Medium in Hindi.

4. The eligibility criteria as mentioned in Para-3 above will be reckoned as on 01.04.2015."



It is inferred from the said notification that for the purpose of eligibility for promotion to PGT, the following categories of staff will qualify:

(a) The candidates must have 2nd Class Master Degree in concerned subject.

(b) They must have university Degree/Diploma in Education/Teaching or Integrated 2 years Post Graduate Course of Regional Colleges of Education of NCERT.

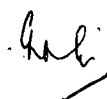
(c) They should be working at the material point of time in the scale of Rs. 9300-34800/- + G. P. Rs. 4600/-.

(d) The candidates should have completed two years regular service in the scale of Rs. 9300-34800/-+ G. P. Rs. 4600/-. Service rendered on ad-hoc basis will be taken into account if followed by regularization without break. The staff having less than two years service may also apply for the Selection and promotion will be effected only after completion of two years of service in the said post.

(e) The candidates must be competent to teach through the Medium/Media as required. The candidates will have to appear in the written test and viva-voce test in the respective medium only.

(ii) We next examine Annexure A-2 to the OA wherein the proforma application of the applicant is attached. The applicant has admitted in the designation column that she is a PRT, namely, a Primary Teacher and has quoted the following teaching experience against column 12 of the same.

"12. Teaching Experience : (i) 3 oct 88 to 2th March 1990 (ii) July 91 to 15 May 92 (iii) 93 to Feb, 96 (iv) since 24.04.1996 to till now."



Admittedly, the applicant had a Masters Degree in Hindi and also had qualified as a Bachelor of Education.

(iii) According to the respondents there are two reasons as to why the applicant is not eligible for being enlisted to appear in the selection process for PGT.

(a) The post of Trained Graduate Teacher is the feeder post to Post Graduate Teacher namely, PGT and the post of Primary Teacher (PRT) is the feeder post to the post of TGT. Accordingly, the applicant's normal promotional avenue is the post of TGT. The applicant, however, had not applied for selection as TGT.

(b) That, although the applicant had been enjoying the scale of Rs. 9300-34800/- + G. P. Rs. 4600/- , she had obtained the scale by virtue of the recommendation of Chattopadhyay Commission and has never been substantively promoted.

The respondents, in their support, have furnished an Office Order dated 05.12.2012, (Annexure R-1 to the reply) wherefrom it is seen that the range of designations of candidates in the said list vary from PRT to TGT to PGT, implying thereby that despite the scale, the applicant was substantively appointed only as a PRT, a fact admitted by the applicant in the proforma application in Annexure A-2 to the OA.

The respondents have further contended that although the applicant is enjoying the scale of Rs.9300-334800/- + G. P. Rs. 4600/- it did not confer regular promotion. The applicant had hence not completed 2 years of regular service in the said scale which was a necessary eligibility condition for being considered for the post of PGT.

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The applicant has not averred in the pleadings that she had been appointed substantively so as to claim 2 years of regular service in the scale of Rs. 9300-34800/ + G.P. Rs. 4600/-. The applicant has also not claimed that she was appointed as a TGT. Hence, on both grounds her eligibility to stake her candidature as PGT is not substantiated.

(iv) It is a settled principle of law that recruitments in deviation of published qualifications amounts to arbitrary exercise of power and will be hit by Articles 14 and 16 of the Constitution.

In **State of Rajasthan vs. Hitendra Kumar Bhatt** reported in 1997 (6) SCC 574, the Hon'ble Apex Court has held that an ineligible person cannot claim to continue in service merely because called for interview under an interim order of the Court and provisionally selected.

The Hon'ble Apex Court has also observed that a mistake of authorities cannot confer eligibility to an appointment (**Kishorilal Charmakar And Anr. Vs. Distt. Education Officer And Anr.** reported in 1998 (9) SCC 395).

(v) Further, promotion must be distinguished from upgradation. The main purpose of upgradation is to confer financial benefits and promotion is for filling up the post on the basis of seniority and on merit, subject to availability of vacancies. The distinction having been explained by a full Bench of Kerala High Court in **N.P. Prabhu vs. Chief Justice (Kerala) 1973(2) SLR 251**, wherein the Hon'ble Court had held as follows:

"Promotion is, of course, appointment to a different post carrying a higher scale of pay in the service. If the upgradation, however, relates to all the posts on a category, there is no sense in calling promotion as because there is no question of appointment from one post to another".

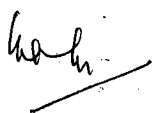
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In this case also, the applicant was enjoying an upgraded scale of pay as directed by the Chattopadhyay Commission. Not having been substantively appointed to the feeder post to PGT, her rights to be considered as eligible for the post of PGT either on the ground of two years of regular service in the upgraded scale of pay or having qualified in the feeder post (namely, TGT) to the post of PGT not having been established, we do not find any merit in the claim of the applicant.

The applicant has alleged malice in issue of the corrigendum but nowhere has established mala fide in the selection process. In **Sadhan Kumar Basu vs. Anirudha Mukherjee 1993(4) SLR 473** it was held that recommendation of expert bodies cannot be interfered with by Courts unless it was established that the power of selection was not exercised bona fide.

Although not averred in the pleadings, in the written notes of arguments, the applicant has claimed that eligibility conditions for the post of PGT required two years regular service in the scale and not in the post with pay scale of Rs. 9300-34800/- plus grade pay of Rs. 4600/-.

In **FR 9 (28)** it has been provided that "substantive pay means pay, other than special pay, personal pay, or emoluments classed as pay by the President under Rule 9(21)(a)(iii) to which a government servant is entitled on account of a post to which he had been appointed substantively or by reason of his substantive position in the cadre."



Undoubtedly, therefore, "regular service in scale" refers to pay scale in substantive capacity as distinct from "ad-hoc service" referred to in para 3(d) of the notice dated 30.03.2015 and it is not the applicant's case that she was ever appointed substantively in the feeder post to PGT.

6. Accordingly, in our considered view, the corrigendum dated 12.08.2015 issued by the respondents does not suffer from any infirmity.

Hence, OA would stand dismissed. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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