

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

O.A.No.210/406/2016

Dated this Wednesday the 3rd day of April, 2019.

Coram: R. Vijaykumar, Member (A).
R. N. Singh, Member (J).

1. Asmita Pritam Rathod,
wife of Priam Hasmukh Rathore,
date of Birth: 27.07.1981, age
36 years, working/worked as:
ASSISTANT TEACHER (Short Term
CONTRACT BASIS, in government
Higher Secondary School, Bhimpore,
Daman under Director of Education,
U.T. Administration of Daman & Diu,
Education Department, Daman (U.T.)
and House No.6, Village Bhamti
(Mahayavanshi Falia), Post-Moti Daman,
Daman & Diu (U.T.), Pin code:396220.

...Applicant.

(By Advocate Shri R. G. Walia).

Versus

1. Union of India
through the Administrator,
Union Territory of Daman and
Diu and Dadara & Nagar Haveli
Secretariat Moti Daman, Pin
Code-396220.
2. The Secretary-Education,
UT Administration of Daman
& Diu, Secretariat Building,
Fort, Moti Daman, Daman (UT),
Moti Daman, Pin Code 396 220.
3. The Administrator,
Through Director of Education,
Union Territory Administration
of Daman & Diu Directorate of
Education, Secretariat Building,
Moti Daman, Fort 396220.
4. Patel Hemlataben Dhirubhai
OBC Certificate selected for

Teacher Grade-I post Through-
Director of Education,
UT Administration of
Daman & Diu Directorate of Education,
Secretariat Building, Moti Daman,
Fort 396220.

5. Dhodi Jayaben Natvarlal
ST Candidate selected for
Teacher Grade-I Post Through-
Director of Education,
UT Administration of
Daman & Diu Directorate of Education,
Secretariat Building, Moti Daman,
Fort 396220.
6. Patel Pravinbhai Mohanbhai
(OBC Candidate selected for Assistant
Teacher Post) Through-
Director of Education,
UT Administration of
Daman & Diu Directorate of Education,
Secretariat Building, Moti Daman,
Fort 396220.

... Respondents.

(By Advocate Shri V. S. Masurkar).

O R D E R (O R A L)

Per : R. N. SINGH, Member (Judicial)

Present.

1. Shri R. G. Walia, learned counsel for the applicant.
2. Shri V. S. Masurkar, learned counsel for the respondents no.1 to 3.
3. None appeared for the respondents no.4 to 6 inspite of service of notice. Therefore, they have been proceeded ex-parte.
4. The applicant who has participated in the selection process for appointment to the post of

Teacher Grade-I and Assistant Teacher in pursuance to the order dated 25.06.2014 issued by the respondents is aggrieved by the revised provisional selection list dated 11.05.2016 for the post of Teacher Grade-I and Assistant Teacher and she has filed the present OA under Section 19 of the Administrative Tribunal's Act, 1985 praying for the following reliefs:

"a) This Hon'ble Tribunal will be pleased to call for the records and proceedings of the case which led to the passing of the **two impugned Orders/Notes dated 1.05.2016 (Annexure "A1") and Revised Merit List (Annexure "A2")** (to the extent it is challenged) as declared on or about 11.05.2016 only to the extent that it alters the Category of the Applicant from SC to General and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same with full consequential benefits.

b) This Hon'ble Tribunal will be pleased to hold and declare that the Applicant is entitled to be appointed as Teacher Grade-I pursuant to the Advertisement dated 25.09.2014 against SC vacancy/post.

In the alternative: (Second Choice):

b) This Hon'ble Tribunal will be pleased to hold and declare that the Applicant is entitled to be appointed as Assistant Teacher pursuant to the Advertisement dated 25.09.2014 against SC Vacancy/Post.

c) This Hon'ble Tribunal will be pleased to hold and declare that the Applicant is entitled to be considered and appointed as Teacher Grade-I or Assistant Teacher in the SC Category post and accordingly direct the Respondents to appoint the Applicant as Teacher Grade-I or Assistant Teacher **(Second Choice)**.

d) This Hon'ble Tribunal will be pleased to hold and declare that the impugned act on the Respondents of changing the category of Applicant from SC (Scheduled Caste) to General is wrong and illegal and accordingly direct the Respondents to restore and consider the Applicant as SC (Scheduled Caste) Candidates for the purpose of appointment to the post of Teacher Grade-I and Assistant Teacher **(Second Choice)**.

e) This Hon'ble Tribunal will be pleased to order and direct the Respondents to regularize the service of the applicant with effect from November 2013 with full consequential benefits of pay fixation, seniority etc.

f) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstance of the case.

g) Costs of this Original Application be provided for."

5. The learned counsel for the applicant at the outset submits that he is not pressing the relief sought qua the selection of the applicant to the post of Teacher Grade-I and applicant is pressing the relief only related to her candidature

and selection to the post of Assistant Teacher in pursuance to the aforesaid advertisement.

6. In response to the notice issued by this Tribunal, the respondents have filed reply affidavit and Shri V. S. Masurkar, learned counsel for the respondents with the assistance of such reply affidavit submits that there is no subject wise reservation as there is a single Recruitment Rule for the post of Teacher Grade-I (PGT) and Assistant Teacher (TGT) and subject wise posts were advertised as per the requirement of the Union Territory Administration of the Daman and Diu, Directorate of Education, Daman. It is submitted by the parties that 08 posts were advertised for Gujarati subject of Assistant Teacher (TGT) and all the 08 posts have been filled up. It is contended on behalf of the respondents that applicant is on 6th position of the SC merit list and as per roster Sr.No.33 has to be allotted whereas, the post for Gujarati subject gets filled up at Sr.No.28. With regards to Teacher Grade-I (PGT), the 03 posts gets filled up at Sr.No.8 and the applicant is on 3rd position of the SC merit list and as per roster Sr.No.21 has to be allotted whereas, the post for Gujarati subject gets filled up at Sr.No.8. There

is no dispute that the applicant belongs to SC community and the respondents in para 14 of their reply affidavit have given status of all top 5 SC Category candidates for Gujarati subject for the post of Assistant Teacher which is as under:-

Sr. No.	Name of the candidate	Total Marks secured	Position in combine merit list	Position in Gujarati subject merit list	Selection status
1	Nita Hansraj Patel	74.47	8 th	2 nd	Selected under SC category
2	Parmar Rashmiben Dodabhai	70.54	34 th	9 th	Selected under SC category
3	Applicant	67.48	52 nd	18 th	Not Selected. SC Waiting 1 candidate for Gujarati subject
4	Solanki Zankhana Pravinbhai	65.54	79 th	24 th	Not Selected. SC Waiting 2 candidate for Gujarati subject
5	Mahayavanshi Sunitaben Hansraj	65.25	86 th	26 th	Not selected.

7. The learned counsel for the applicant Shri R. G. Walia invites our attention to the aforesaid

table given by the respondents and contends that the aforesaid Nita Hansraj Patel who has scored 74.47 marks has been selected under SC category candidates inspite of the fact that she has scored 2nd in the merit list prepared for the post of Assistant Teacher in Gujarati Subject and thus she could have been selected on her own merit and not on the basis of invoking reservation. To substantiate his such stand Shri R. G. Walia, learned counsel for the applicant relies upon the law laid down by the Hon'ble Apex Court in case of Jitendra Kumar Singh & Anr. Vs. State of Uttar Pradesh & Others, reported in (2010) 1 SCC (L&S) 119. He invites our attention to paras 75 to para 78 of the said judgment which read as under:-

"75. In our opinion, the relaxation in age does not in any manner upset the "level playing field". It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has commenced. It commences when all the candidates who fulfill the eligibility conditions, namely, qualifications,

age, preliminary written test and physical test permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition.

76. Mr Rao had suggested that Section 3(6) ensures that there is a level playing field in open competition. However, Section 8 lowers the level playing field providing concessions in respect of fees for any competitive examination or interview and relaxation in upper age-limit. We are unable to accept the aforesaid submission. Section 3(6) is clear and unambiguous. It clearly provides that a reserved category candidate who gets selected on the basis of merit in open competition with general category candidates shall not be adjusted against the reserved vacancies. Sections 3(1), 3(6) and Section 8 are interconnected. Expression "open competition in Section 3(6) clearly provides that all eligible candidates have to be assessed on the same criteria.

77. We have already noticed earlier that all the candidates irrespective of the category they belong to have been subjected to

the uniform selection criteria. All of them have participated in the preliminary written test and the physical test followed by the main written test and the interview. Such being the position, we are unable to accept the submissions of the learned counsel for the appellant-petitioners that the reserved category candidates having availed relaxation of age are disqualified to be adjusted against the open category seats. It was perhaps to avoid any further confusion that the State of Uttar Pradesh issued directions on 25-3-1994 to ensure compliance with the various provisions of the Act, Non-compliance with any office was in fact made punishable with imprisonment which may extend to period of three months.

78. In view of the above, the appeals filed by the general category candidates without any substance, and are, therefore, dismissed. "

8. The learned counsel for the applicant also places reliance upon the judgment of this Tribunal in the case of Trilokchand Verma Vs. Union of India & Ors. Reported in 2007(2) (CAT), 77. Para 25 of the Trilokchand Verma reads as under:-

"25. One bestowing our careful consideration of the relevant rules on the subject and in the light of Apex Court decision in R.K.Sabharwal and Indra Sawhney (supra) we are of the considered opinion that the officials who passed according to the general standard and came within the normal zone of consideration are

required to be adjusted against general post. The other SC/ST employees will be adjusted against reserved quota."

9. It is contended by the learned counsel for the applicant that in Trilokchand Verma (Supra) this Tribunal has considered the law laid down by the Hon'ble Apex Court in R.K.Sabharwal & Others Vs. State of Punjab & Ors. 1995(3) SLJ 227 (SC)=1995 SCC (L&S) 548. In the aforesaid facts and law, the learned counsel for the applicant contends that in view of her merit position the aforesaid Nita Hansraj Patel should have been considered selected against a post made for UR category and not against the post meant for SC category. He further contends that once Nita Hansraj Patel shall be considered against the UR category to the post of Assistant Gujarati Teacher (TGT), the position of the applicant who is at serial no.3 of the aforesaid table and stated to be at SC waiting list 1 - a said post of Assistant Gujarati Teacher (TGT) may change and she shall come in the merit list prepared by the Respondents for being considered for appointment to the post of Assistant Teacher (TGT) for Gujarati Subject.

10. The learned counsel for the respondents

Shri V. S. Masurkar vehemently opposed the prayer made on behalf of the applicant and has prayed for dismissal of the OA. However, he has neither been able to dispute the facts nor been able to show as to why aforesaid judgments are not applicable and binding on us, more particularly in view of the fact that the table has been prepared by the Respondents only.

11. In view of the aforesaid facts and circumstances and law settled by the Hon'ble Apex Court and followed by this Tribunal in case of Trilokchand Verma (supra) we are of the considered view that the OA deserves to be partly allowed and the same is accordingly allowed with following directions:-

(i) The respondents shall revisit the aforesaid impugned orders dated 11.05.2016 (Annexure A-1) and revised merit list (Annexure A-2) to the extent that the aforesaid Ms. Nita Hansraj Patel shall be considered against the vacancies meant for UR category and on her being so considered the vacancy arising under the category of SC, the applicant shall be considered.

12. In case after the aforesaid exercise the applicant is found suitable for appointment, the

respondents shall pass orders for her appointment with all the consequential benefits from the date of aforesaid Ms. Nita Hansraj Patel has been appointed with regard to seniority, pay fixation, etc except back wages.

13. However, in the above facts and circumstances no order as to costs.

(R. N. ~~Singh~~)
Member (J)

(R. ~~Vijaykumar~~)
Member (A)

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