

47

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO. 375 OF 2017

DATE OF DECISION:- 11 ⁶ March, 2019.

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

*Vishal Vinod Gupta,
Son of Vinod Shankar Gupta,
age:34+years,
Occ: Primary Teacher (PRT) in
Kendriya Vidyalaya Sangathan,
Residing at D-71 Acharya Niwas,
New Navy Nagar Colaba-05,
Mumbai.
(By Advocate Shri Shivraj Kunchge)*

...Applicant.

Versus

1. *Kendriya Vidyalaya Sangathan,
No.18, Institutional Area,
Saheed Jeet Singh Marg,
New Delhi-110 602.*
2. *The Commissioner,
Kendriya Vidyalaya Sangathan,
No.18, nstitutional Area,
Saheed Jeet Singh Marg,
New Delhi-110 602.*
3. *The Deputy Commissioner (Administration),
Kendriya Vidyalaya Sangathan,
No.18, nstitutional Area,
Saheed Jeet Singh Marg,
New Delhi-110 602.*
4. *The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office Powai,
Mumbai-400 076.*

5. ***The Principal,***
 Krndriya Vidyalaya No.2,
 Colaba, Mumbai-400 005.

6. ***Union of India,***
 Through Secretary,
 Ministry of Human Resource
 Development,
 (Department of School Education and
 Literacy), New Delhi-110001.

... Respondents.

(By Advocate Shri V. S. Masurkar)

Reserved on: 25.02.2019.

Pronounced on: 11.03.2019.

ORDER
PER: R. VIJAYKUMAR, MEMBER (A)

This application has been filed on 04.05.2017 by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(A) That this Hon'ble Tribunal be pleased to hold that the action of the Respondent- Kendriya Vidyalaya Sangathan denying the Applicant promotion to the post of 'Trained Graduate Teacher' Primary Teacher' [PRT], on the ground of not holding B.Ed Degree is illegal, null and void and in violation of Notifications dated 25.08.2010 [F.No. 61 -1/2011 NCTE (N & S) dtd. 23.08.2010] and 29.07.2011 [F No. 61-1/ 2011/ NCTE (N & S)] issued by the National Council for Teacher Education [NCTE].

(B) *That this Han'ble Tribunal be pleased to hold that the Applicant by holding Graduation Degree and 2 years Diploma Degree and thereafter by scoring 93 marks out of 150 in Limited Department Examination [LDE], the Applicant has satisfactorily fulfilled the qualification criteria laid down by National Council for Teacher Education [NCTE] vide Notifications dated 25.08.2010 [F. No. 61-1/2011 NCTE (N & S) dtd. 23.08.2010] and 29.07.2011 (F No. 61 - 1/2011/NCTE (N & S)] and therefore, the Applicant is eligible for promotion to the Post of 'Trained Graduate Teacher' [TGT] from Primary Teacher [PRT] and this Hon'ble Tribunal be further pleased to direct the Respondent – Kendriya Vidyalaya Sangathan to treat the Applicant as promoted to the Post of 'Trained Graduate Teacher' (TGT) from 'Primary Teacher' (PRT), by extending all the benefits to the applicant of 'Trained Graduate Teacher' (TGT) w.e.f. 09.05.2016.*

(C) *Cost of this application may kindly be provided;*

(D) *Any such other and further relief may be granted in favour of the applicant, in the facts and circumstances of the present case."*

2. The applicant is serving as a Primary Teacher with

the respondents and has a Master of Arts in English Literature and Diploma in Elementary Education (D.Ed). He applied for promotion to the post of Trained Graduate Teacher (TGT) by limited departmental examination for the years 2012-2013 and 2013-2014 notified in letter No. F.11053/7/2010-KVS(RPS) dated 15.07.2014 by the Respondent No.2 and 3 for which there were 148 posts for the year 2012-2013 and 70 posts for the year 2013-2014 in English (TGT). The eligibility conditions for this posts were notified as Bachelor Degree in concerned subject and B.Ed or Equivalent from the post of Primary Teacher with experience of 05 years as on 01.01.2012 for the year 2012-2013 and as on 01.01.2013 for the year 2013-2014. Since the applicant was appointed as Primary Teacher on 13.09.2007, he was qualified for the years 2013-2014 but did not posses a B.Ed Degree. The applicant appeared in the written examination conducted for the LDE purpose and although he secured more than the cut off marks, he was rejected on the basis that he did not hold a B.Ed Degree. The applicant represented on 10.05.2016 (Exhibit-H) and in reply dated 26.08.2016, obtained under the RTI Act (Exhibit-A), the applicant learnt that he was rejected on the basis of not having a B.Ed Degree.

3. The applicant argues that the minimum qualification for the post of Trained Graduate Teacher has been

notified by the National Council for Teacher Education (NCTE) in notification F.No.61-1/2011/NCTE(N&S) dated 29.07.2011 and states that for class VIth to VIIIth the requirement is for a graduation and two years diploma in Elementary Education (D.Ed) in addition to a pass in Teacher Eligibility Test. He argues that the requirement specified by the respondents in their notification was not in conformity with this notification which took precedence. In this regard, he also refers to the gazette notification of the Government of India date 31.03.2010 published in the gazette of 5th April, 2010 which reads as under:

“NOTIFICATION
New Delhi, the 31st March, 2010.

S.O. 750(E) – In exercise of the powers conferred by Sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009, the Central Government hereby authorises the National Council for Teacher Education as the academic authority to lay down the minimum qualifications for a person to be eligible for appointment as a Teacher.”

4. The applicant argues that the specification of the NCTE will over-ride the eligibility prescribed by the respondents and with the reduced qualification requirement, the applicant would become eligible for promotion.
5. The respondents have stated that the Kendriya Vidyalaya Sangathan (KVS) is an autonomous body with a Commissioner and Board of Governors. The service conditions

of the KVS employees are governed by a separate Education Code. Further, in KVS, TGT are employed for taking classes from VIth to Xth and not from VIth to VIIth as visualized in the notification of the NCTE referred by the respondents. In view of this, the applicant was rightly rejected by reference to the rules specified by the respondents for their teaching administration.

6. During arguments, the learned counsel for applicant reiterated his position in this matter. The learned counsel for respondents argued that the pattern in the KVS is different from that of other schools. The requirement as per the eligibility conditions prescribed are not contrary to the statutory rules. Further, he emphasized that the respondents were a Central Society with a Governing Council and their own rules in this regard. The learned counsel for applicant in rebuttal again emphasizes the pre-ordinant character of the notification.

7. We have gone through the O.A. along with Exhibits A to K. We have also gone through the Reply filed by the Respondents and have also carefully examined the various documents annexed in the case.

8. We have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, rival contentions

and rulings of the law and precedence in this regard.

9. The applicant has relied on the minimum qualification specified by the NCTE for teaching classes VIth to VIIIth in support of his eligibility for the promotion as Trained Graduate Teacher (TGT) by the respondents. In their reply, the respondents have noted that they have met minimum qualification requirement specified by the NCTE and further, since the TGT is also employed for taking classes VIth to VIIIth their specification requirement is minimum level of graduation and B.Ed. In that sense, they are not bound to adhere to the minimum fixation by the NCTE and in view of their needs for the higher classes, their specifications are accordingly higher. This is clearly not inconsistent with the notification of the NCTE. The applicant has clearly confused the minimum requirement fixed by the NCTE with that of a mandatory requirement which is clearly a incorrect understanding of the position in law and its interpretation.

10. A supplementary argument is that the KVS is an autonomous council and it is evident even from the manner of categorization of classes, that they have deviated from the categorization adopted by the NCTE and increased the rigour of their requirement. The NCTE notification does not preclude them from doing so.

11. In these circumstances, this OA is devoid of merits and is accordingly dismissed without any orders as to cost.

(R.N. Singh)
Member (J)

(R. Vijaykumar) 11/31
Member (A)

srp

1/10/09
Jd.