

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1442/2014

Reserved on: 28.03.2019
Pronounced on: 09 .04.2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr.S.N.Terdal, Member (J)

Payamber Raza
S/o Mr. Arif Hussain,
R/o 230, Gali Mandir Kucha Chellan,
Daryaganj, Delhi.

... Applicant

(By Advocate: Mr. Shoeb Shakil)

VERSUS

1. Govt. of NCT of Delhi
Through Lt. Governor,
Raj Niwas, Delhi-110054
2. Delhi Subordinate Services Selection
Board, Through Secretary,
FC-18, Institutional Area, Kardardooma,
Near Railway Reservation Centre,
Delhi-110302
3. South Delhi Municipal Corporation
South Zone, Sector-9, R.K.Puram,
New Delhi-110022
4. North Delhi Municipal Corporation
Rohini Institutional Area, Sector-5,
Rohini, Delhi-110085.
5. East Delhi Municipal Corporation
419, Udyog Sadan, Patparganj,
Institutional Area, Patparganj,
New Delhi-110096.

.... Respondents

(By Advocate: Mr. Sameer Sharma for Amit Yadav for R-1 and 2
Mr. R.K.Jain for R-3 (South DMC)
Ms. Sangeeta Rai, standing counsel for R-5 (EDMC))

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mr. Shoeb Shakil, counsel for applicant and Mr.
Sameer Sharma for Amit Yadav, Mr. R.K.Jain and Ms. Sangeeta Rai,

counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- "i) That the Annexure A-1 may be quashed and set aside;
- ii) That the respondent 1 to 3 may be directed to appoint the applicant;
- iii) That any other benefit or relief which in the circumstances of the case deemed fit and proper be allowed to the applicant;
- iv) That the cost of the suit be awarded to the applicant."

3. The relevant facts of the case are that in response to the advertisement no.004/2009, the applicant applied for the post of Teacher (Primary) Urdu in the schools of the respondents under the reserved OBC category. He had participated in the selection process but, however, after the examination his candidature was rejected vide rejection notice dated 1.03.2014 on the ground that he did not study Urdu as a language in secondary level. Challenging the rejection notice, the applicant has filed this OA seeking the above stated reliefs.

4. The counsel for the applicant vehemently and strenuously contended that the applicant is possessing higher qualification and he had studied in National Institute of Open Schooling in 2004 with Urdu subject at Senior Secondary level nevertheless his candidature was rejected as he had not studied Urdu at Secondary level. In support of his contention, he relied upon the following judgments:

- (1) **Govt. of NCT of Delhi & Ors Vs. Sachin Gupta**
(W.P (C) 1520/2012)
- (2) **Rubina Begum Vs. SDMC and Ors**
(OA 3505/2012)
- (3) **Praveen Sharma Vs. Govt. of NCT of Delhi and Ors**
(4650/2014)

5. The respondent no. 1 and 2 in their counter reply have stated that as per the Recruitment Rules (RRs) the essential qualification is that candidate must have passed Urdu as a subject at Secondary level and as the applicant had not studied Urdu at secondary level, he does not fulfill the eligibility essential qualification for the post as per the RRs. The relevant averments are extracted below:-

- "1. Sr.Secondary (10+2) or Intermediate or its equivalent with 50% marks from a recognized Board.
2. Two years diploma/certificate course in ETE/JBT or B.EL.Ed from recognized institution or its equivalent.
3. Must have passed Urdu as a subject at Secondary level.

Desirable Qualification: Computer knowledge

The applicant passed Secondary exam without Urdu subject whereas as per Recruitment Rules of User Department, the candidate must have passed Urdu as a subject at Secondary level."

Respondent No. 3 in the counter reply have also stated that the candidature of the applicant have been rejected as he had not studied Urdu as a subject at Secondary level. The relevant averments are extracted below:

- "7. That the candidature of the applicant was rejected by the respondent no. 2 i.e. the DSSSB as the applicant had not studied Urdu as a subject at Secondary Level as mentioned in the advertisement notified by the DSSSB on 29.12.2002.
8. That as per the RRs dated 13.07.2007 besides other qualifications, Urdu as a subject is mandatory at secondary level."

6. The counsel for the respondents on the basis of the above averments vehemently and strenuously contended that as the applicant has not got essential qualification as per the RRs, the impugned rejection notice do not requires to be interfered with. In support of their

contention, the counsel for the respondents relied upon the order of the CAT (PB) in the case of **Anju Drall Vs. Govt. of NCT of Delhi and Ors** (OA 4651/2014), in Para 18 of the said order dated 3.08.2016 this Tribunal has referred to the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab and Others Vs. Anita and Others** (2015) 2 SCC 170) in which referring to the law laid down by the Hon'ble Supreme Court in the case of **P.M.Latha and another Vs. State of Kerala and Others** (2003) 3 SCC 541), it was specifically stated that it is for the appointing authority to prescribe the qualification as per the RRs and if the candidate has higher qualification and if he does not possess the essential qualification as per the RRs, the qualification prescribed by the appointing authority shall be adhered to. The relevant portion of the judgment is extracted below:

"9. The issue which requires our consideration is, whether the advertisement issued by the Doaba Arya Senior Secondary School, Nawanshahr, had invited applications by truly reflecting the prescribed qualifications, and also whether, the private respondents possess the qualification prescribed for the post of JBT/ETT teachers, which was advertised on 25.2.2002.

10. While examining the advertisement, which has been extracted hereinabove, we are satisfied that applications were not invited from candidates possessing the qualification depicted in the appendix to the 1981 Rules, pertaining to the posts of JBT/ETT teachers. It is also apparent, that none of the private respondents possess the qualification of JBT/ETT, and as such, none of them can be stated to be possessed of qualifications statutorily prescribed and delineated in the appendix of the 1981 Rules. None of the private respondents was therefore per se eligible for appointment to the posts of JBT/ETT teachers. This was one of the pointed reasons why the State Government did not grant its approval to the selection and appointment of the private respondents. In our considered view, no infirmity can be found in the aforesaid determination at the hands of the State Government.

11. Insofar as the issue in hand is concerned, reference may be made to the decision rendered by this Court in **P.M. Latha and another vs. State of Kerala and others** (2003) 3 SCC 541, wherein this Court held as under:

“10. We find absolutely no force in the argument advances by the respondents that BEd qualification is a higher qualification than TTC and therefore the BEd candidates should be held to be eligible to compete for the post. On behalf of the appellants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for BEd degree, the training imparted is to teach students of classes above primary. BEd degree-holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or BEd qualification, is a matter of recruitment policy. **We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not BEd. Whether BEd qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates, for the present vacancies advertised, as eligible.”**

(Emphasis supplied)

7. In view of the facts and circumstances narrated above and in view of the law laid down by the Hon'ble Supreme Court extracted above referred to by the counsel for respondents, the impugned rejection notice do not require to be interfered with.

8. Accordingly, the OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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