

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01795/2018

DATED THIS THE 27th DAY OF NOVEMBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

N.Balaji Babu Rao
S/o Sri.N.Satyanarayana
Aged about 43 years
Working as Primary Teacher
Demonstration School
Regional Institute of Education
Manasgangotri
Mysore-570006.

....Applicant

(By Advocate Sri Izzhar Ahmed)

Vs.

1. Principal
Regional Institute of Education
Manasgangotri
Mysore-570006.
2. Under Secretary
National Council for Educational Research & Training(NCERT)
Sri.Arindo Marg
New Delhi-110016.
3. Union of India
Through the Secretary
Ministry of Human Resource Department
Shastri Bhavan
New Delhi-110001.
4. Smt.C.V.Vijyalakshmi
Working as TGT, Demonstration School
Regional Institute of Education (RIE)
Manasgangotri
Mysore-570006.

...Respondents

(By Advocates Sri H.R.Sreedhara for R1 to 3 & Sri.B.S.Venkatesh Kumar for R4)

ORDER(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant in a nutshell is that he was appointed to the post of Primary Teacher on 7.6.2002. The respondent No.1 issued memorandum dtd.12.10.2012(Annexure-A3) to appear in the written examination for promotion to the post of Trained Graduate Teacher(TGT) in Maths on 19.10.2012 under Limited Departmental Examination(LDE). The applicant having the requisite qualification of B.Sc in Mathematics, Ed(PCM) and M.Ed had appeared in the examination but he was not selected. The respondent No.1 after accepting the recommendation of DPC dtd.2.11.2012(Annexure-A4) had promoted the 4th respondent Smt.C.V.Vijayalakshmi who is having the qualification of B.Sc in Chemistry and B.Ed only to the post of TGT in Maths and she was accommodated to the post of TGT in Science under Direct Recruitment Quota(DRQ) by the respondent No.1 without review DPC and ignoring her requisite qualification and the seniority of the applicant. As per seniority list of Primary Teacher dtd.4.2.2010(Annexure-A1), the applicant is senior to the 4th respondent in the feeder cadre and the 4th respondent is having less educational qualification compared to the applicant. The respondents have not declared the total number of vacancies for the post of TGT in Maths. The 2nd respondent issued letter to the 1st respondent on 22.2.2016(Annexure-A5) regarding revised/amended Recruitment Rules(RRs) for the post of TGT w.e.f.1.6.2012 but there was no change in the qualification on subject wise classification. Earlier the 2nd respondent issued letter dtd.2.7.2010 regarding amendment of RRs-1971 of KVS for filling up the posts of TGT by Departmental Examination-cum-Screening with at least 5 years of service and the same was implemented by the

respondents w.e.f. 4.2.2011 and other provisions to RR for the post of TGT remain the same(Annexure-A2).

2. The applicant submits that he filed representation dtd.31.8.2016(Annexure-A6) to the 2nd respondent (Director) requesting to consider his case for promotion to the post of TGT in Maths on the ground that he has completed 14 years of teaching experience in Mathematics while attending 6th to 10th Standard group of students. Then the 2nd respondent issued guidelines to the 1st respondent dtd.7.10.2016(Annexure-A7) considering the representation dtd.31.8.2016 that the promotion to the post of TGT in Maths is under Promotion Quota(PQ) only. In that case, promotion of 4th respondent is erroneous to the post of TGT in Maths as without requisite qualification. The applicant filed another representation dtd.15.10.2016(Annexure-A8) to the 1st respondent referring the letter dtd.7.10.2016 at Annexure-A7 and further requested to consider the promotion to the post of TGT in Maths w.e.f. 19.10.2012 on eligibility criteria on the subject classification in Mathematics and also seniority in the feeder grade. The 1st respondent issued the tentative seniority list dtd.27.10.2017(Annexure-A10) wherein the 4th respondent is at Sl.No.47 with the service particulars that she was promoted to the post of TGT in Maths dtd.2.11.2012 against the vacancy of TGT Science under Direct Recruitment Quota(DRQ) which is a serious irregularity on the part of the 1st respondent as the post of TGT in Maths is unfilled from 2.11.2012. Then the question arises that whether the 4th respondent filed any representation against the tentative seniority list for correction TGT in Maths instead of TGT in Science and the answer is negative on the facts of records. One candidate at Sl.No.44 in the said seniority list dtd.27.10.2017 was promoted to the post of TGT in Maths dtd.31.5.2010. Then there is no vacancy for TGT in

Maths and the 4th respondent was promoted against without vacancy and it is also not found on record that as to how the 4th respondent was promoted to the post of TGT Science under DRQ when there is no DPC and review DPC from 2.11.2012. The applicant submitted representation dtd.17.11.2017(Annexure-A11) requesting for promotion to the post of TGT in Maths which is vacant and further requested to consider the seniority but the respondents have not considered the same. Then the 2nd respondent issued a letter dtd.22.11.2017(Annexure-A12) referring the representation dtd.17.11.2017 but did not verify the facts to the 1st respondent. The applicant filed another representation dtd.1.12.2017(Annexure-A13) referring the letter dtd.22.11.2017 stating that he has not objected the seniority list dtd.17.10.2017 but submitted that the 4th respondent was considered to the post of TGT Science under DRQ and then the post of TGT Maths is unfilled from 2012 till now. The applicant filed one more representation dtd.7.2.2018(Annexure-A14) requesting for promotion to the post of TGT in Maths on the ground that one candidate N.Harini who has not passed written examination was promoted to the post of TGT in Maths on 28.4.2010 and also Sri G.Krishna Nayak was promoted on 19.10.2012 without passing written examination. The 1st respondent has not considered the requisite qualification of the 4th respondent who is ineligible to the post of TGT Maths with the B.Sc Chemistry.

3. The applicant further submits that the 1st respondent has issued tentative seniority list dtd.28.2.2018(Annexure-A15) of TGT staff wherein the 4th respondent is listed at Sl.No.46 indicating that she was working as TGT in Science from 2.11.2012 and now she was considered as TGT Maths. With that it is confirmed that the vacancy of TGT Maths was unfilled from 2.11.2012 to

28.2.2018 i.e. 5 years, 3 months and 26 days. The Secretary of NCERT, New Delhi vide letter dtd.19.2.2018(Annexure-A16) had forwarded the representation dtd.7.2.2018 of the applicant to the 2nd respondent for taking necessary action at the Council level but the 2nd respondent did not take any action on the same instead sent a letter dtd.7.3.2018 to the Administrative officers of RIE of Ajmer, Mysore and Bhubaneswar seeking clarification on the request of the applicant. The applicant filed another representation dtd.15.3.2018(Annexure-A18) referring the earlier representation dtd.7.2.2018 and the direction of the higher authority dtd.19.2.2018. The 1st respondent issued a letter dtd.1.5.2018(Annexure-A19) to the 2nd respondent seeking clarification on the request of the applicant and also to furnish the particulars in the prescribed format for taking further necessary action in the matter by the Council at an early date. The applicant filed representation to the Secretary on 24.5.2018(Annexure-A20) referring the letter dtd.1.5.2018 as contrary to the representation dtd.7.2.2018. Then the 1st respondent issued a letter dtd.1.6.2018(Annexure-A20) to the 2nd respondent stating that the representation of the applicant dtd.24.5.2018 is self explanatory. Then the 2nd respondent issued a letter dtd.8.6.2018(Annexure-A21) to the 1st respondent for providing comments on the request of the applicant vide his representations and reminders. But the 1st respondent without submitting any comments on the representations and reminders of the applicant, issued a letter dtd.24.7.2018(Annexure-A22) clarifying that at the time of granting promotion to the post of TGT Maths, Smt.Harini, PRT was the senior most to the applicant as per the seniority list and as such she was considered for promotion to TGT Maths under 50% promotion quota as per RRs. Subsequently, one more vacancy has arisen and the same was filled through 50% LDE quota and in that the 4th

respondent was selected and appointed for the post of TGT Maths. At present there is one more TGT Maths post vacant and it will be filled by the Council following the new RRs which is released by the Council only. That means out of 3 sanctioned posts, one vacancy is unfilled because the 4th respondent was promoted to the post of TGT Maths instead of TGT Science. Then the applicant had sent a legal notice through an Advocate to the Secretary on 30.9.2018(Annexure-A23) requesting to decide the issue regarding eligibility criteria of the 4th respondent. The applicant submits that when he sought information through RTI, the respondents have given reply dtd.16.1.2018 stating that Institute has issued the offer of appointment to the post of TGT on promotion only and no offer of appointment was issued to the said post either through direct recruitment or LDE during the recruitment year 2016-17 and as per the statutory requirement for filling the post of TGT, the Institute should have followed the ratio of 50:50 at that time and accordingly the Institute had taken steps to fill up the post of TGT under promotion quota after obtaining approval of the Council(Annexure-A24). When the applicant filed application under RTI on 7.8.2018(Annexure-A25) seeking information regarding the eligibility criteria for the post of TGT Maths, the respondents have furnished the documents dtd.29.8.2018 and the recruitment rules for the post of TGT Maths as per which Bachelor Degree in subject/combination of subject as prescribed in DRQ is applicable in the procedure of promotion under PQ. The post of TGT in Maths is unfilled from 2012 due to serious irregularity of the 1st respondent. When the Advocate for the applicant filed application under RTI, the 2nd respondent furnished information/documents vide letter dtd.17.9.2018(Annexure-A26) along with Office Note containing compliance report dtd.17.3.2017(Annexure-A9) to the

order passed in OA.No.64/2012 by the Cuttack Bench of this Tribunal stating that the promotion to the post of TGT is under promotional quota. Then the question arises is as to how the 4th respondent was promoted to the post of TGT Science on 2.11.2012 under DRQ. But for that the answer is negative on the records. The 2nd respondent replied vide dtd.4.10.2018(Annexure-A27) to the RTI furnishing the order in OA.No.64/2012. Accordingly, the respondents have violated the Articles 14, 309 and 311(2) of the Constitution of India and also violated the recruitment rules. The applicant has filed MA for condonation of delay of 1825 days in filing the OA. Being aggrieved by the inaction of the respondents, the applicant has filed the present OA seeking the following relief:

- i. To set aside the promotion of the respondent-04 the post of TGT in Maths vide memorandum No.F.Estt/RIEM/2012 dated 02.11.2012 (Annexure: A-04) as illegal and against the subject-wise requisite qualification in terms of the Recruitment Rule for the said post and further she was accommodated to the post of TGT Science instead of TGT in Maths and matter under correspondence between the respondent-01 and 02 from 2012 to 2018 without formal action regarding the promotion of the applicant.*
- ii. Direct the respondents to consider the promotion of the applicant for the post of TGT in Maths against the vacancy under the respondent-01 in terms of the subject-wise requisite qualification in terms of the Recruitment Rules with all consequential benefits, within the stipulated time, in the interest of justice and equity, and*
- iii. Grant relief or reliefs as deemed fit and proper with costs in the interest of justice and equity.*

4. Per contra, the respondents No.1 to 3 have submitted in their reply statement that the contention of the applicant that the 4th respondent was promoted to the post of TGT in Mathematics under Promotional Quota without requisite qualification in terms of Recruitment Rules dtd.1.4.2008 is false and misconceived. In fact both the applicant and 4th respondent possess similar educational qualifications i.e., B.Sc. Ed., and B.Sc., B.Ed. respectively which is a pre-requisite for promotion to the post of TGT in Mathematics. It is also false to

state that the 4th respondent was accommodated to the post of TGT in Science under Direct Recruitment Quota by the 1st respondent without Review DPC etc. The claim of the applicant that 4th respondent possesses less educational qualifications than the applicant is false as the 4th respondent possessed the requisite educational qualifications(Annexure-R1& R3). As per the Recruitment Rules prescribed by KVS, the educational qualification for direct recruits for the post of TGT Maths is 4-year Integrated Degree course of Regional College of Education, NCERT in the concerned subject with at least 50% marks in aggregate and the candidate must have studied Mathematics along with Physics, Chemistry, Electronics, Computer Science and Statistics. In the case of promotion through Departmental Examination, the same is done from amongst the eligible PRTs having 5 years of regular service with Bachelor's Degree in the subject/combination subject as prescribed for direct recruits. In fact, the 4th respondent fulfils all the qualifications required for promotion through LDE to the post of TGT Maths. On the contention that the 1st respondent had admitted the irregularity in the selection process, the respondents submit that in fact the 4th respondent was promoted as TGT Maths as per the new Recruitment Rules promulgated by the Kendriya Vidyalaya Sangathan as per which, her promotion was done through Limited Departmental Examination(LDE). Although the applicant appeared in the LDE and inasmuch as the 4th respondent had scored more marks than the applicant(Annexure-R2), she was promoted to the post of TGT in Mathematics strictly in accordance with the new RRs. It is to be noted that the promotion was made through LDE not by way of seniority as alleged by the applicant. Therefore, the contention of the applicant that his seniority was ignored is false and unfounded. The further allegation that the 1st respondent has

not issued any notification specifying the nature of recruitment for the said post is false. It goes unsaid that when the Memorandum dtd.12.10.2012 calling upon the applicant to appear for Departmental Education for promotion to the post of TGT in Maths is itself indicative of the mode of recruitment. Therefore, the contention of the applicant is false and imaginative. The order passed in OA.64/2012 by the Cuttack Bench of this Tribunal is applicable only to that case and the same analogy is not applicable to the case in hand.

5. The respondents submit that in the tentative seniority list, the designation of the 4th respondent is wrongly mentioned as TGT in Science as the 4th respondent was promoted to the post of TGT Maths only but not to the post of TGT Science. Since the said list is tentative in nature, inviting objections from the teachers listed therein, the designation of the 4th respondent listed at SI.No.47 is changed as TGT in Mathematics vide circular dtd.22.2.2018. And also there was no need for inserting any corrigendum thereto. Therefore, the contention of the applicant that the 4th respondent was considered as TGT in Science is unsustainable. In fact the 4th respondent had taken objection to that effect vide her representation dtd.30.10.2017(Annexure-R4). It is false to say that the 4th respondent was promoted to the post of TGT in Maths against a non-existing vacancy. Admittedly she was promoted to the post of TGT in Maths against a vacant post as per the order dtd.15.11.2012(Annexure-R5). Hence, the averment that the post of TGT in Mathematics has remained unfilled from 2.11.2012 to 28.2.2018 is false and imaginary. The averments made in para 4.15 of the OA are false on the ground that Smt.N.Harini and Sri Krishna Nayak were seniors to the applicant and therefore, they were promoted as TGTs under 50% promotion quota which does not require any written examination as per the recruitment rules promulgated by

KVS. The other 50% is through Direct Recruitment as provided under Rules(Annexure-R6). In fact, three posts of TGT in Mathematics were lying vacant in that one post was offered to Smt.Harini under old rules through promotion(50% promotion), being senior to the applicant as shown in the final seniority list dtd.16.12.2009. Another post was offered to the 4th respondent as per the new RRs by promotion through LDE. The remaining one post which is lying vacant has been offered to the applicant vide office order dtd.5.12.2018. Therefore, the allegations made by the applicant that the 1st respondent recommended the 4th respondent for promotion to TGT Maths without following the requisite qualification is false and unfounded. The respondents have rightly rejected the representations made by the applicant. A suitable reply to the legal notice was sent to the applicant's Counsel repudiating the claim of the applicant. But in so far as the representation dtd.24.5.2018, a reply dtd.1.6.2018 is sent by the 1st respondent promoting the applicant to TGT in Mathematics vide communication dtd.5.12.2018. Hence, the contention that no action was taken by the respondents is false and unsustainable under law. Inasmuch as the applicant has been promoted to the post of TGT in Mathematics after becoming eligible, the OA has become infructuous and is liable to be dismissed with costs.

6. The 4th respondent has also filed reply statement stating that the OA is barred by limitation as the cause of action for the applicant has arisen in the year 2012 when the Departmental Competitive Examination was held for promotion to the post of TGT and the OA is filed as late as on 13.11.2018. In the MA filed for condonation of delay of 1825 days in filing the OA, no ground is urged in support of condonation of delay. The applicant submits that he made a representation on 31.8.2016 which itself is well after nearly four years from the date of cause of

action.

7. The 4th respondent submits that the allegation that the applicant has done better than the 4th respondent is denied since if he had done better than this respondent, he would have been selected. As could be seen from the Annexure-R2 filed with the reply of the respondents, the 4th respondent has scored more marks than the applicant. The 4th respondent possessed the qualification of 2 year B.Ed from Regional Institute of Education under NCERT Mysore in Physical Science and Mathematics. In addition, she has the first class in Bachelor of Education from University of Mysore. Therefore, the contention that the 4th respondent does not possess the qualification of B.Sc. in Maths is without any basis. When the promotion is on the basis of departmental examination and if one does not qualify in the said examination, mere possession of M.Ed. would not be sufficient to contend that he has more qualification. What is required is whether the person promoted was having required educational qualification. The qualifications possessed by this respondent cannot be said to be not meeting the requisite qualification. The applicant cannot seek to challenge the promotion of this respondent granted after she qualified the departmental examination. Despite having promoted as averred by the official respondents, the applicant seems to be espousing his cause unjustly and laying a claim against the promotion of this respondent that too after lapse of more than six years. On the other grounds, this respondent adopts the reply statement of the official respondents.
8. The applicant has filed rejoinder to the reply filed by the respondents No.1 to 3 reiterating the submission already made in the OA and submits that the respondents have not filed reply statement on the issues raised by the applicant

on records regarding educational qualification of the 4th respondent for the promotion to the post of TGT in Mathematics. They submit that the 4th respondent got B.Sc degree with main subject Chemistry with Physics and Mathematics as subsidiary subjects. The official respondents as well as the 4th respondent have not produced the marks sheet of B.Sc of the 4th respondent. It is very much clear that the respondents have intentionally suppressed the facts about the mark sheet of the 4th respondent dtd.16.1.1999 issued by the University(Annexure- Re-28). From this, it is very clear that the 4th respondent has no main subject of Mathematics and her appointment is erroneous in terms of the existing Recruitment Rules dtd.14.5.2010 vide OM dtd.2.7.2010 furnished by the 1st respondent vide letter dtd.2.9.2018(Annexure-A25). Accordingly, 4th respondent is not eligible for promotion for the post of TGT in Mathematics following amended existing recruitment rules for promotion of TGT in Maths. The applicant submits that the DPC held on 2.11.2012 and the 4th respondent was promoted on 2.12.2012 without following RRs dtd.14.5.2010 and the revision of RRs dtd.13.7.2012(Annexure-Re29). The respondents are misleading the issue that the qualification of the 4th respondent as B.Sc in Mathematics as main subject instead of reading subsidiary subject. Therefore, the action of the 1st respondent is against the parameters of rules of law. According to final year B.Sc marks card, it is not supporting the promotion of the 4th respondent to the post of TGT in Maths in accordance with law because she was promoted as TGT in Maths in subsidiary subject which is not permitted in the RRs and the respondents have intentionally overlooked the eligibility of the applicant that his degree of B.Sc in Mathematics as main subject for three years while promoting erroneously the 4th respondent. Vide seniority list dtd.4.2.2010(Annexure-A1), the respondents have

admitted that the 4th respondent has qualification of B.Sc Chemistry as main subject. Actually the respondents considered her B.Sc in Chemistry and wrongly promoted to the post of TGT in Maths by pick and choose policy and it is well settled that the violation of rule is malafide intention. The records produced by the respondents at Annexure-R2 is not authentic one because the marks awarded by the examiner has standard format which is signed by the evaluator but the 1st respondent has written the marks by hand which is viewed as fabricated one and the marks awarded to the applicant and the 4th respondent has no relevancy in case of the applicant. The respondents have not produced the marks signed by the evaluator. The respondents produced B.Ed degree of the 4th respondent at Annexure-R3 in the reply which has no relevancy for her promotion. The requisite qualification is B.Sc in Maths for promotion to TGT Maths. The respondents have admitted that the 4th respondent has B.Sc in Chemistry as main subject with two subsidiary subjects Physics and Mathematics. The 1st respondent has changed the service records of the 4th respondent related to her qualification at Sl.No.47 as 'Science' under column subject and written her promotion as under Direct Recruitment Quota instead of Promotional Quota.

9. The applicant submits that when the 4th respondent filed representation dtd.30.10.2017(Annexure-R4 in the reply) to revise the seniority list, the 1st respondent has not revised the same rectifying the mistake in case of the 4th respondent. Neither corrigendum nor final seniority list is submitted by the 1st respondent. It is not clear in the reply as to how one candidate Sri G.Krishna Nayak was promoted to the post of TGT in Social Studies on seniority cum suitability without written examination vide letter dtd.15.11.2012. Similarly, the 4th

respondent and the applicant were called for written examination and Sri G.K.Nayak was exempted for written examination ignoring the uniformity of rules. The respondents have not stated under what condition the 2nd respondent has not taken decision on the representation dtd.7.2.2018 considering the same as self-explanatory by the 1st respondent. The representations and legal notice are kept pending by the respondents. The respondents admitted that Smt.Harini was promoted to the post of TGT in Maths on 28.4.2010 under promotional quota without written examination and ignoring the Recruitment Rules implemented w.e.f. 1.1.2008. The respondents have stated that the 4th respondent was promoted by the DPC to the post of TGT Maths under promotional quota considering the existing Recruitment Rule dtd.14.5.2010 as per which the 4th respondent is not eligible for promotion as she has no main subject of Mathematics in her B.Sc degree. Hence, the respondents should rectify the illegal promotion of the 4th respondent.

10. The applicant has filed rejoinder to the reply filed by the 4th respondent and submits that the 4th respondent has no requisite qualification of B.Sc in Mathematics as main subject for promotion to the post of TGT in Mathematics. She has B.Sc in Chemistry as main subject and the one subject in Mathematics is subsidiary subject. She has not produced B.Sc degree in her reply. She has the legal obligation to submit the same. The facts relating to the qualification of the 4th respondent are suppressed by both the official respondents and 4th respondent. Suppression of facts is mischief to the judicial observation on legal issues. For promotion to the post of TGT Maths, the requisite qualification in B.Sc in Maths is eligibility criteria and B.Ed is not the eligibility criteria. The official respondents as well as the 4th respondent have admitted that the 4th respondent

has B.Sc in Chemistry as main subject with two subsidiary subjects i.e. Physics and Mathematics and the same is confirmed by Annexure-Re-28. The 4th respondent studied Chemistry in B.Sc for all 3 years and the subjects such as Physics and Mathematics for only 2 years in 3 years degree course which does not complete a bachelor degree in Mathematics. It is correct that the 4th respondent is enjoying the promotional post as TGT in Maths erroneously on the administrative fault and negligence. The negligence is on account of the 4th respondent who has not objected that she has B.Sc Chemistry but not B.Sc Maths. In that case, how the 4th respondent teaches 10th and 11th standards in Mathematics from 2012 if she has no knowledge in mathematics as main subject. The 1st respondent has not taken any action on the letter of the 2nd respondent dtd.7.10.2016 to enquire about as to whether the vacancy falls under Direct Recruitment Quota(DRQ) or Promotional Quota(PQ) through LDE when it is notified to fill up the vacancy. Therefore, the official respondents and 4th respondent have suppressed the facts.

11. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. The facts of the case point out that vide Annexure-A1, the applicant is at Sl.No.6 and the 4th respondent is at Sl.No.7 in the final seniority list of Primary Teachers as on 16.12.2009 and that the applicant has B.Sc in Maths and the 4th respondent has B.Sc in Chemistry. Vide Annexure-A2, the Primary Teachers with at least 5 years of regular service in KVS are eligible for writing the departmental examination for promotion to the post of TGT which the applicant and the 4th respondent have done in October 2012. The rules that were in existence at that time have been confirmed by the respondents at Annexure-A25 and Annexure-R6 wherein the educational

qualification prescribed for promotion is the same as for the Direct Recruits i.e. (1) Four years Integrated degree course of Regional College of Education(RCE) of NCERT in the concerned subject and (2) Second Class Bachelor's Degree in the concerned subject(s). For direct recruits, they have to have at least 50% marks in aggregate in the four year integrated degree course of RCE and in the basic degree, the same 50% marks in the concerned subject as well as in aggregate including electives. Vide Sl.No.7(e), for TGT Maths, the qualification is Graduation in Maths with any two of the subjects such as Physics, Chemistry, Electronics, Computer Science and Statistics. Vide 7(f) of the same rules, for TGT Science, Botany, Zoology and Chemistry are the subjects. As per the method of recruitment, 50% is by Direct Recruitment and the balance 50% is by promotion or by other methods. In the case of recruitment by promotion, Limited Departmental Examination is envisaged and the persons eligible are those PRT's having 5 years of regular service with Bachelors degree in the subjects/ combination of subjects as prescribed for direct recruitment. The Rules also mention that the promotions can be by departmental examination open to PRTs with at least 5 years of regular service in KVS. It is not clear as to under what rule provisions the respondents are promoting the PRTs to the post of TGT without any examination and based purely on their seniority. The respondents have repeatedly stated that one Smt.Harini was promoted as TGT Maths w.e.f. 31.5.2010 by way of promotion. Vide Annexure-A22, the respondents would say that Smt.Harini was considered for the promotion to the post of TGT in Maths under 50% promotion quota as per RRs(50% by promotion and 50% by LDE) adopted in this regard. We are unable to understand as to how this 50% quota has been arrived at by the respondents for promotion by seniority since it does

not appear to be part of the recruitment rules. As we can see, there are only two methods of recruitment, one is direct recruitment and the other through promotion which is essentially through a limited departmental examination meaning that the examination will be restricted to the internal candidates who are Primary Teachers. We have also noted that in all the cases, the essential qualification is Bachelors' degree in the concerned subject. The fact that the respondent No.4 is not a graduate in the subject has been made amply clear since she was a graduate in Chemistry as has been further confirmed by Annexure-Re-28. The respondent No.4 was clearly ineligible to sit for the Limited Departmental Examination for the post of TGT Maths since her basic qualification was the Bachelors degree in Chemistry and she would be eligible to be considered only for the post of TGT Science. This has also been inadvertently confirmed by the respondents themselves in the seniority list dtd.30.9.2017 vide Annexure-A10 where she is shown at Sl.No.47 as TGT in Science. However much the respondents would now claim that she was fully qualified, that she got more marks in the written examination etc., a clear finding is that she was not eligible to be appointed as TGT Maths w.e.f. 2.11.2012 vide Annexure-A4. Therefore, this Annexure-A4 is quashed since respondent No.4 was not entitled for the said post of TGT Maths as she was not having the qualification of the Bachelors degree in the concerned subject. If the applicant was the only other person eligible at that point of time, there is no doubt that he should be appointed as TGT Maths from 2.11.2012 based on the results of the examination conducted in October 2012. We wish to point out that since the respondent No.4 has already been appointed and she has been functioning in that position since 2012, it will not be justified if she is reverted back for no fault of hers. The only option

left to the respondents is to sanction a post of TGT Science to accommodate her with effect from the date when she was promoted as TGT. The applicant has been appointed in the year 2018 only as TGT and therefore he has clearly not shouldered the higher post along with the concomitant additional pay etc. He is also guilty of not raising any objection to the selection in the year 2012 probably because of his ignorance of rules or otherwise and his first attempt in this regard is only in late 2016. Therefore, he will not be eligible for any monetary benefits with effect from 2012 but he will be eligible for all notional benefits from that date and his seniority in the post of TGT Maths will be w.e.f.2.11.2012 if he was the only other person eligible at that time.

12. The OA is allowed as above. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01795/2018

Annexure-A1: A copy of seniority list dtd.4.2.2010
Annexure-A2: A copy of letters dtd.2.7.2010 and 4.2.2011
Annexure-A3: A copy of letter dtd.12.10.2012
Annexure-A4: A copy of memo dtd.2.11.2012
Annexure-A5: A copy of letter dtd.22.2.2016

Annexure-A6: A copy of representation dtd.31.8.2016
Annexure-A7: A copy of letter dtd.7.10.2016
Annexure-A8: A copy of representation dtd.15.10.2016
Annexure-A9: A copy of compliance order dtd.17.3.2017
Annexure-A10: A copy of seniority list dtd.27.10.2017
Annexure-A11: A copy of representation dtd.17.11.2017
Annexure-A12: A copy of letter dtd.22.11.2017
Annexure-A13: A copy of representation dtd.1.12.2017
Annexure-A14: A copy of representation dtd.7.2.2018
Annexure-A15: A copy of tentative seniority list dtd.28.2.2018
Annexure-A16: A copy of letter dtd.19.2.2018
Annexure-A17: A copy of letter dtd.7.3.2018
Annexure-A18: A copy of representation dtd.15.3.2018
Annexure-A19: A copy of letter dtd.1.5.2018
Annexure-A20: A copy of representation dtd.24.5.2018 and letter dtd.1.6.2018
Annexure-A21: A copy of letter dtd.8.6.2018
Annexure-A22: A copy of letter dtd.24.7.2018
Annexure-A23: A copy of legal notice dtd.30.9.2018
Annexure-A24: A copy of reply under RTI dtd.28.12.2017 and 16.1.2018
Annexure-A25: A copy of application under RTI dtd.7.8.2018 and reply dtd.29.8.2018
Annexure-A26: A copy of reply under RTI dtd.17.9.2018
Annexure-A27: A copy of reply under RTI dtd.4.10.2018

Annexures with reply statement filed by R1 to 3:

Annexure-R1: Educational qualifications possessed by R4
Annexure-R2: Departmental Exam results for TGT of R4 & applicant
Annexure-R3: Educational qualification of R4
Annexure-R4: Representation dtd.30.10.2017 of R4
Annexure-R5: Memorandum dtd.2.11.2012 of RIE, Mysore
Annexure-R6: RRs for the post of TGT

Annexures with reply filed by R4:

-NIL-

Annexures with rejoinder to the reply filed by R1 to 3:

Annexure-Re-28: A true copy of Memo final year B.Sc degree dtd.16.1.1999
Annexure-Re-29: A true copy of OM dtd.13.7.2012

Annexures with rejoinder to the reply filed by R4:

Annexure-Re-28: A true copy of Memo final year B.Sc degree dtd.16.1.1999
Annexure-Re-29: A true copy of OM dtd.13.7.2012
