

**(2010) 04 DEL CK 0219**

**In the Delhi High Court**

**Case No :** WP (C) No. 2592 of 2010 and CM No's. 5173-74 of 2010

Delhi Subordinate Service Selection Board and Another

APPELLANT

Vs

Nisha Kapoor

RESPONDENT

**Date of Decision :** 26-04-2010

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19

Constitution of India, 1950 — Article 226

Right to Information Act, 2005 — Section 19(1)

**Citation :** (2010) 04 DEL CK 0219

**Hon'ble Judges :** Mool Chand Garg, J;Anil Kumar, J

**Bench :** Division Bench

**Advocate :** Ruchi Sindhwani, for the Appellant; Deepak Verma, for the Respondent

**Final Decision :** Dismissed

## Judgement

Anil Kumar, J.—The petitioners, Secretary, Delhi Subordinate Service Selection Board and Anr. had challenged the order dated 4th November, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A no.1567 of 2009 titled Nisha Kapoor Vs. Chief Secretary, GNCTD & Ors. allowing the Original Application of the respondent and directing the petitioners to appoint the respondent against the post of TGT in any available vacancy and if need be even by creating a supernumerary post. The Tribunal, however, directed the petitioners that appointment of the respondent shall be with prospective effect.

2. Brief facts to comprehend the disputes are that in response to an advertisement for the post of TGT (Social Science) (Female), post code 45/06 by the petitioners on 4.6.2006, the respondent had applied under unreserved category. The result of selection was declared on 24th August, 2007, however, respondent was not declared selected though, she had secured more marks than the last candidate recommended for appointment against this post.

3. The respondent raised a query under Right to Information Act, when she came

to know that she had been found ineligible for the post on the premise that she had not done three years of graduation in the prescribed subject, i.e., Political Science in her case as she had done BA (Hons.) in Education.

4. The representation/appeal of the respondent was declined by the petitioner resulting into filing of an Original Application u/s 19 of the Administrative Tribunals Act, which was allowed by the Tribunal by order dated 4th November, 2009 which is impugned before us.

5. The learned counsel for the petitioner has not disputed that to be eligible for the post, a candidate was required to have a bachelor's degree or equivalent from a recognized University having secured 45% marks in aggregate. The relevant extract of the notice dated 27th February, 1997 is as under:-

A Bachelor's Degree (Honours-Pass) or equivalent from a recognized University having secured 45% marks in aggregate, in two school subjects of which at least one out of the following should have been at the elective level.-

1. English.
2. Mathematics
3. Natural/Physical Science
4. Social Science.

6. The Tribunal also noted a note clarifying that the main subject for TGT (Social Science) could have various options which include the subject of Political Science but not Education. The respondent regarding her educational qualification in para 4.5 of the application had given the details which is extracted as under:-

That the applicant had done her Bachelor's degree (pass) from Calcutta University recognized by UGC with the Political Science, English and studied these subjects with over 100 marks each in both the years and fulfills the eligibility. In addition to that she opted for third year and acquired Bachelors Degree (Honours) in Education. She has also done her Post Graduate in Political Science from Himachal University in 2002 and B.Ed. from University of Delhi (Annexure A-3 colly).

7. Before the Tribunal, the plea of the petitioners was that the respondent had done BA (Hons.) in Education and not in any of the prescribed options as main subject in the three years of graduation. However, in an appeal which was filed as per Section 19(1) of the RTI Act, it was contended that (Hons.) is a specific subject and in case of respondent, it was Education, which was to be counted as elective subject and other subjects were to be counted as subsidiary subjects.

8. In the circumstances, before the Tribunal, it was asserted that the respondent had done three years degree (Hons.) in Education and the subject Political Science had been studied by the respondent only in BA Part-I (Hons.) Examination, 1995 for two years.

9. The Tribunal while allowing the petition, noticed the arguments of the respondent which were that her subject Political Science does fulfill the stipulation of being an elective subject as she had studied for over 100 marks each for both years in BA (Pass) and also relied on the fact that prior to 1998-99, the Calcutta University had a system under which simultaneously, a two years BA (Pass) Degree and three years BA (Hons.) degree could be pursued. The respondent for her two years had studied Political Science and Botany as the elective "Pass" subjects and English as a compulsory language and she had also studied Education as the subject for "Honours" exclusively in the third year. Emphasis was also laid that in the recruitment rule or the advertisements there is no stipulation of any specific duration i.e., two or three years for studying an elective subject. Relying on various precedents, it was also asserted that the respondent had studied the subject concerned for at least 100 marks in the Graduation and the word elective may include main subject as organized in different Universities.

10. The Tribunal after hearing the parties has held that on the basis of certificates and mark sheets from Calcutta University attached with original application as also the clarificatory letters issued by the concerned college, the doubts of the petitioner that the respondent may have studied political science only in one year, was repelled and found to be misconceived. Since the recruitment rules did not specify as to number of years a subject had to be studied in the degree course, the Tribunal held that the respondent fulfills the eligibility norms for the post in question. Similarly, pleas as were raised before the Tribunal has been raised before this Court impugning the order of the Tribunal.

11. The learned counsel for the petitioner is, however, unable to show under which recruitment rules, it can be insisted by the petitioners that the respondent should have studied political science for three years and not for two years. Nothing has been produced by the petitioners to counter the certificates and mark sheets and clarificatory letters issued by the concerned college of the respondent.

12. This also cannot be disputed that the respondent studied political science as an elective subject as she had studied for over 100 marks in all parts of graduation. In the circumstances, it is difficult to accept the plea of the petitioner that the respondent is not eligible according to recruitment rules for the post of TGT (social Science) (Female) and on the grounds as raised by the petitioner, the order of the Tribunal cannot be faulted.

13. Learned counsel for the petitioner has also raised the plea of delay on the ground that even though the result had been declared on 22nd August, 2007, the original application was filed only in 2009 which was beyond the period of limitation prescribed under the Administrative Tribunals Act. However, the Tribunal has relied on the fact that the information was given to the respondent about her being ineligible only when the respondent sought it under Right to

Information Act, which was given to her after considerable time and thereafter, the respondent had filed the original application in 2009. Considering the totality of the facts and circumstances that the respondent is eligible and the selection to the post was denied to her on the ground that she had not done three years does not born out from the requisite recruitment rules, the Tribunal exercised its jurisdiction and declined to reject the plea of the petitioners. It cannot be denied that the Tribunal had the right to condone the delay if any. However, if the time taken by the respondent to get the information from the petitioners is excluded, the petition of the respondent would not be barred by time. In any case, taking into totality of the facts and circumstances, the order of the Tribunal cannot be held to be perverse, illegal or suffering from such irregularity which will necessitate any interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

14. This cannot be disputed that for issuing a writ for any other purpose under article 226 of the Constitution of India, it has always been in the discretion of the High Court to interfere or not, depending upon the facts and circumstances of each case. It is not necessary for the High Court in exercise of its writ jurisdiction to interfere in every case where there is alleged violation statutory rights. Reference in this connection may be made to the decisions of the Supreme Court in *Durga Prashad Vs. Chief Controller of Imports and Exports*, , holding that even where there is an allegation of breach of fundamental right, the grant of relief is discretionary and such discretion has to be exercised judicially and reasonably. Constitution Bench of the Supreme Court in *The Moon Mills Ltd. vs M.R. Meher*, AIR 1967 SC 1450 had held that writ is legally a matter of sound discretion and would not be issued if there be such negligence or omission on the part of the party to assert his right as taken on conjunction with the lapse of time and other circumstances, which may cause prejudice to the adverse party. Writs so far as they are concerned with the enforcement of the other rights are not issued as a "matter of course." In *Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another*, , the Supreme Court had held that " the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extra ordinary, is normally exercisable keeping in mind the principle of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair game before granting relief.

15. The writ petition in the facts and circumstances is without any merit and it is therefore, dismissed. The parties are however, left to bear their own costs. Consequently, the petitioners are directed to appoint the respondent against the post of TGT in any available vacancy and if need be even by creating a supernumerary post with prospective effect as had been directed by the Tribunal

and compliance with the order of the Tribunal be made within two months. All the pending applications are also disposed of.