
(2018) 10 CAT CK 0026

In the Central Administrative Tribunal

Case No : Original Application No. 2652 Of 2017

Rajesh Kumar And Ors

APPELLANT

Vs

GNCT Of Delhi And Ors

RESPONDENT

Date of Decision : 12-10-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 10 CAT CK 0026

Hon'ble Judges : K.N. Shrivastava, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : Ajesh Luthra, Ashok Rajagopalan, Sangita Rai, Pradeep Tomar, Kumud Roy, Amit Anand

Final Decision : Allowed

Judgement

K.N. Shrivastava, Member (A)

1. This Original Application (OA) has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main reliefs:

"(a) Hold and declare that the applicants are eligible for the post of TGT (Computer Science) Post Code 192/14.

(b) Direct the respondents to further consider and appoint the applicants to the post of TGT (Computer Science) (Post Code 192/14)"

2. The factual matrix of the case, as noticed from the records, is as under:

2.1 The Delhi Subordinate Services Selection Board (DSSSB), respondent no.2 published Annexure A-1 advertisement no.01/14, inviting applications for various posts, including the post of Trained Graduate Teacher (TGT) (Computer Science) Post Code-192/14. The closing date for receipt of the applications was 27.02.2014. The advertisement indicated the eligibility criteria, essential qualifications and vacancy positions in regard to the said post as under:

"Post Code:192/14

TGT (COMPUTER SCIENCE) in DIRECTORATE OF EDUCATION

No. of Vacancies: Total -2026 (UR-1025,OBC-547,SC-303,ST-151) including PH-60 {OH-30 (OA, OL), HH-30}

Essential Qualification: Essential: 1. Bachelors Degree in Computer Application (BCA) from a recognized University. OR Graduation in computer Science from a recognized University. (Provided that the Computer Science subject must be studied in all years as main subject). OR B.E./ B. Tech. (Computer Science/ Information Technology) from a recognized University. OR Graduation in any subject and 'A' level course from DOEACC, Ministry of Information & Communication and Technology, Govt. of India.

Note: Qualifications are relaxable at the discretion of the Competent Authority for reasons to be recorded in writing, in the case of candidates otherwise well qualified. Pay Scale: Rs.9300-34800+Grade Pay Rs. 4600/-

Age Limit: 30 years (relaxation in upper age limit available to:-SC-05 years, ST-05 years, OBC-03 years, PH-10 years, PH & SC/ST-15 years, PH & OBC-13 years, for Govt. servants up to 5 years in accordance with the instructions or orders issued by Central Govt.).

This post is identified suitable for PH (OH, HH) persons only as per the requisition of the User Department. R. No. F.DE.TGT (CS)/E-IV/REQ/2013/7189 dated 13/12/13."

2.2 These applicants are possessing Masters in Computer Application (MCA). Since they could not upload their application forms online on the DSSSB website presumably on the ground of qualification, i.e., they possess MCA degree whereas the advertisement mentioned BCA as required qualification, they approached the Tribunal in the instant OA and the Tribunal vide an interlocutory order dated 08.08.2017 issued an interim direction to the respondents to accept hard copies of their applications provisionally subject to the outcome of the OA. Accordingly, their applications were accepted and they were allowed to participate in the selection process.

2.3 The selection was primarily done through written examination which was conducted on 21.05.2017. The applicants participated in it. The table below would indicate the marks obtain by these applicants in the written examination:

Name

Marks

Category

Roll No

Graduation

Post

GR/I

1

Akash Akhil

76

SC

13825785

B.Com (H)

MCA

2

Amit Malik

78.5

OBC-DELHI

13817840

B.Sc.

MCA

3

Anju Dhiraan

76

SC

13843871

B.Sc.(Biotech)

MCA

4

Aryender Kumar

82

OBC-DELHI

13818017

B.Sc. (PCM)

MCA

5

Ashu Jain

98.75

GENERAL

13819821

B.A.

MCA

6

Asif

97.5

GENERAL

13832167

B.Sc. (PCM)

MCA

7

Gaurav

81.25

SC

13836420

B.Sc. (PCM)

MCA

8

Jhankar Tyagi

114

GENERAL

13817581

B.Sc. Electronics

MCA

9

Kulveer Singh

88.75
OBC-DELHI
13850058
B.Sc. Electronics
MCA
10
Kunwar Anjali Tyagi
110.25
GENERAL
13817055
B.Sc. (PCM)
MCA
11
Madhu Sirohi
73.75
OBC-DELHI
13837923
B.Sc.(Zoology
MCA
Hons)
12
Prayas Kaushik
97.75
GENERAL
13820045
B.Sc. (PCM)
MCA
13
Preety Dalal
97.5

OBC-DELHI

13812247

BA

MCA

14

Puneet Rana

95.5

OBC-DELHI

13806959

B.Sc. (PCM)

MCA

15

Rajani Shah

102

GENERAL

13833600

B.Sc. (PCM)

MCA

16

Rajesh Kumar

77.25

SC

13848211

B.Com

MCA

17

Rakhi

76

OBC-DELHI

13850133

B.Com (P)

MCA

18

Rameshwar Datta

108

GENERAL

13819991

B.Sc. (PCM)

MCA

Pandey

19

Reena Kumari

103.5

GENERAL

13842024

B.A.

MCA

20

Reetika Chawla

97.25

GENERAL

13851659

B.Sc. Physics(H)

MCA

21

Shobhit Kumar

101.5

GENERAL

13826708

B.Sc.

MCA

22

Vikas Goyal

114.75

GENERAL

13824683

B.Sc. Electronics

MCA

23

Vinay Kumari

102.25

GENERAL

13850786

B.Sc. (PCM)

MCA

2.4 In the merit list, these applicants are above the private respondents as they had secured higher marks in the written examination.

3. Pursuant to the notices issued, the official respondents entered appearance and filed their reply. After MA No.2799/2018 was allowed, the private respondents No.4 to 22 were also impleaded in the OA. Considering the nature of controversy involved, written reply on behalf of the private respondents was not insisted upon and the learned counsel for the private respondents was permitted to argue.

4. Arguments of Shri Ajesh Luthra, learned counsel for the applicants, Shri Amit Anand, learned counsel for the official respondents 1-3 and Ms. Sangita Rai, learned counsel for private respondents 4-22 were heard on 10.10.2018.

5. The main contention of Shri Ajesh Luthra, learned counsel for the applicants was that the post required minimum qualification of BCA whereas these applicants are possessing higher qualification of MCA and as such they were qualified to participate in the selection process. Shri Luthra in this regard placed reliance on the following judgments:

i) Judgment of the Hon'ble Apex Court in the case of Jyoti K.K. & Ors. v. Kerala Public Service Commission and Ors., [JT 2002 Suppl 1 SC 85] where the Hon'ble Apex Court held as follows:

"It is no doubt true, as stated by the High Court that when a qualification has been set out under the relevant rules, the same cannot be in any manner whittled down and a different qualification cannot be adopted. The High Court is also justified in stating that the higher qualification must clearly indicate or presuppose the acquisition of the lower qualification prescribed for that post in order to attract that part of the rule to the effect that such of those higher qualifications which presuppose the acquisition of the lower qualifications prescribed for the post shall also be sufficient for the post. If a person has acquired higher qualifications in the same faculty, such qualification can certainly be stated to presuppose the acquisition of the lower qualifications prescribed for the post. In this case it may not be necessary to seek far. Under the relevant rules, for the post of assistant engineer, degree in electrical engineering of Kerala University or other equivalent qualification recognised or equivalent thereto has been prescribed. For a higher post when a direct recruitment has to be held, the qualification that has to be obtained, obviously gives an indication that such qualification is definitely higher qualification than what is prescribed for the lower post, namely, the post of sub-engineer. In that view of the matter the qualification of degree in electrical engineering presupposes the acquisition of the lower qualification of diploma in that subject prescribed for the post, shall be considered to be sufficient for that post. In the event the government is of the view that only diploma holders should have applied to post of sub-engineers but not all those who possess higher qualifications, either this rule should have excluded in respect of candidates who possess higher qualifications or the position should have been made clear that degree holder shall not be eligible to apply for such post. When that position is not clear but on the other hand rules do not disqualify per se the holders of higher qualifications in the same faculty, it becomes clear that the rule could be understood in an appropriate manner as stated above. In that view of the matter the order of the High Court cannot be sustained. In this case we are not concerned with the question whether all those who possess such qualifications could have applied or not. When statutory rules have been published and those rules are applicable, it presupposes that everyone concerned with such appointments will be aware of such rules or make himself aware of the rules before making appropriate applications. The High Court, therefore, is not justified in holding that recruitment of appellants would amount to fraud on the public."

ii) Judgment of the Hon'ble High Court of Delhi in the case of Mrs. Manju Pal v. Govt. of National Capital Territory of Delhi, [2002 (61) DRJ 58], where the Hon'ble High Court of Delhi held as follows:

"....The person should be such who can also teach Sanskrit portion of the Hindi Course. The qualification prescribed for Sanskrit Teacher for Intermediate' is 'M.A. with Sanskrit preferably trained'. As respondent no. 3 is M.A. in Sanskrit, he is fully qualified to teach Sanskrit also. Consequently, respondent no. 3 cannot be said to be disqualified for being appointed teacher in Hindi simply because he is not 'B.A. with Sanskrit', especially when he is M.A. in Sanskrit and is qualified

to teach Sanskrit portion of Hindi Court, so that requirement of 'B.A. with Sanskrit' is not applicable in his case. Moreover, respondent no. 3 may not be having Sanskrit as a subject for his Bachelors' degree. He is, however, having Master's Degree in Sanskrit, which is certainly a higher qualification than B.A. with Sanskrit. Consequently, the claim of respondent no. 3 could not be rejected merely on the ground that he is not 'B.A. with Sanskrit', when he is admittedly M.A. Sanskrit'."

iii) Order of the Principal Bench of this Tribunal in the case of Ms. Julie Devi v. Govt. of NCT of Delhi, [OA No.701/2016, dated 01.08.2017], wherein this Tribunal held as follows:

".....We are of the opinion that the respondents were not justified in rejecting the candidature of the applicant. The applicant had higher qualification than the one prescribed in the Recruitment Rules. The qualifications prescribed in the Recruitment Rules should be taken as the minimum requirement and those having higher qualification cannot be treated as ineligible until and unless there is a specific provision in the Recruitment Rules to this effect."

5.1 Shri Luthra further submitted that the DSSSB, respondent no.2 on the basis of the higher marks of the applicants has already recommended their candidature to user department, i.e., Directorate of Education, GNCTD and most of the applicants have already been appointed against the posts of TGT (Computer Science).

6. Shri Amit Anand, learned counsel for the official respondents submitted that the DSSSB has sent recommendation for appointment in respect of 20 out of 23 of these applicants and out of the 20 recommended, 18 have already been issued letters for medical examination by the concerned Government hospitals. He stated that in case of two recommended candidates (applicants) deficiency memoranda have been issued against which they have submitted their representations which are under examination.

7. Ms. Sangita Rai, learned counsel for the private respondents stated that the applicants did not possess the educational qualification for the post, as indicated in the advertisement no.01/14 of DSSSB. The educational qualification was BCA whereas these applicants are possessing MCA qualification as a result of which they could not upload their applications on the website of DSSSB and that only on the basis of the interim order dated 08.08.2017 of the Tribunal the DSSSB accepted the hard copies of their applications. This would indicate that prima facie they were not eligible.

7.1 Ms. Rai further argued that one does not have to pass BCA before getting admission in MCA. She said that one can get direct admission in MCA without passing BCA. She further stated that the course taught in BCA is not the same as that taught in the MCA and as such a MCA degree holder cannot be allowed to participate in a selection where educational qualification required for the post is BCA. To buttress his arguments, learned counsel relied on the following

judgments of the Hon'ble Supreme Court:

a) P.M. Latha and Another v. State of Kerala & Ors., [(2003) 3 SCC 541; wherein the Hon'ble Supreme Court held as under:

"Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot over-ride written or settled law. The division bench forgot that in extending relief on equity to B.Ed. candidates who were unqualified and yet allowed to compete and seek appointments contrary to the terms of the advertisement, it is not redressing the injustice caused to the appellants who were TTC candidates and would have secured a better position in the Rank List to get appointment against the available vacancies, had B.Ed. candidates been excluded from the selections. The impugned judgment of the division bench is both illegal, inequitable and patently unjust. The TTC candidates before us as appellants have been wrongly deprived of due chance of selection and appointment. The impugned judgment of the division bench, therefore, deserves to be set aside and of the learned single judge restored."

b) Yogesh Kumar and Others v. Govt. of NCT, Delhi and Others, [(2003) 3 SCC 548]; where the Hon'ble Supreme Court held as under:

"Recruitment to Public Services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the Rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the B.Ed. candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and B.Ed. are available yet they chose to restrict entry for appointment only to TTC pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as B.Ed. qualification is concerned, in the connected appeals [CA No. 1726-28 of 2001] arising from Kerala which are heard with this appeal, we have already taken the view that B.Ed. qualification cannot be treated as a qualification higher than TTC because the natures of training imparted for grant of certificate and degree are totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from B.Ed. category and very few from TTC category. Whether for the aforesaid reasons, B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates for the present vacancies advertised as eligible."

c) State of Punjab & Others v. Anita and Others, [(2015) 2 SCC 170], where it was held by the Hon'ble Supreme Court as follows:

"Having given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the private respondents, based on the

government instructions dated 20.12.1995, we are of the view, that the private respondents do not satisfy the pre-condition of valid appointment expressed therein, inasmuch as, it was imperative for the Selection Committee, in the first instance, to consider only those candidates who possessed the qualification of JBT/ETT, and thereupon, posts that remained unfilled could be filled up with persons possessing higher qualifications, i.e., graduate/post graduate qualifications along with B.Ed.. That was not the procedure which came to be adopted in the present controversy. Therefore per se, no benefit can flow to the private respondents, from the government instructions relied upon by the learned counsel. Be that as it may, it needs to be emphasised, that para 6 of the Government Instructions dated 20.12.1995, are in clear violation of the statutory process of selection and appointment postulated under the 1981 Rules. Even if the above Government Instructions would have bestowed validity on the selection process, through which the private respondents came to be appointed, the same could not have been acceded to, since Government Instructions in violation of the statutory rules, are a nullity in law. In view of the foregoing reasons, it is not possible for us to bestow legitimacy/legality to the appointment of the respondents as JBT/ETT teachers."

8. Replying to the arguments of Ms. Rai, Shri Ajesh Luthra, learned counsel for the applicants submitted that the fact that the DSSSB has recommended the applicants for appointment to user department would go to indicate that the recruiting agency, i.e., DSSSB was fully satisfied with regard to the eligibility of the applicants in terms of their educational qualifications. Shri Luthra further stated that DSSSB has sent recommendations in respect of the remaining applicants also for appointment to the Directorate of Education in accordance with their merit positions.

9. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings. It cannot be disputed that MCA is a higher degree than BCA which is evident from their very nomenclature. We are not in agreement with the contention of Ms. Sangeet Rai that something more is taught at BCA level which is not taught at MCA level. One has to bear in mind that after acquiring of BCA degree, many students go in for MCA course. We have also perused the judgments relied upon by Ms. Sangita Rai in furtherance of her arguments. First of all, the judgments are not directly relating to the controversy involved and we also find that these judgments nowhere put an embargo on consideration of a candidate with higher educational qualification against a post requiring lower educational qualification.

10. On the other hand, we find that the judgments relied upon by the learned counsel for the applicants have got direct applicability to the controversy involved. As a matter of fact, the judgment of this Tribunal in the case of Ms. Julie Devi (supra) exactly deals with the similar controversy relating to higher qualification. Furthermore, the action of the DSSSB, respondent no.2 and Directorate of Education, GNCTD, respondent no.3 would go to indicate that both

these departments were satisfied about the eligibility of the applicants for the post in question in terms of their educational qualification.

11. In the conspectus of the discussions in the foregoing paras, we allow the OA.

12. There shall be no order as to costs.