

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) NO. 5361/2008**

Reserved on : September 07, 2009
Date of Decision : September 10, 2009

Girish Ahuja

.....Petitioner

Through : Mr. M.K. Bhardwaj, Advocate.

versus

Kendriya Vidyalaya Sangathan & Ors.

.....Respondents

Through : Mr. S.Rajappa, Advocate,
for respondent no.1.

Mr. Sanjeev Sachdeva,
Advocate, for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MS. JUSTICE REVA KHETRAPAL

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be
reported in the Digest? | YES |

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JUDGMENT

10-09-2009

MUKUL MUDGAL,J.

1. This writ petition by the petitioner who is a former Air Force Officer challenges the judgment of the Central Administrative Tribunal (for short 'CAT') dated 28th May, 2008 in OA NO. 2241/2007 dismissing his O.A.. By the said OA, the petitioner had challenged respondent no.1, Kendriya Vidyalaya Sangathan's decision declining to appoint the appellant to the post of physical education teacher (PET for short), even though he was selected, on the ground that he did not have the requisite qualification for the post due to his not having secured B.P.Ed. or equivalent degree.

2. Thus the issue arising in the present writ petition is whether a physical Training Instructor with 20 years experience in the Air Force whose qualification has been determined by the Department of Personnel & Training in the Ministry of Personnel, Public Grievance & Pensions, Government of India to be equivalent to the qualification set out by the respondents can be denied the appointment to the Kendriya Vidyalaya Sangathan, a Government organization, by questioning of the said equivalence determined by the expert body i.e. Department of Personnel & Training.

3. The relevant facts for the determination of this appeal are as under: -

An advertisement was issued on 30th September, 2006 by the

respondent no.1, Kendriya Vidyalaya Sangathan for the post of PET and the petitioner, who is a former Air Force personnel, appeared in the written examination in which he qualified and subsequently also appeared in the interview held on 21st August, 2007, but he was not selected as per the final results declared. Upon an enquiry being made by the petitioner in R.T.I. from the respondents, he was informed by the order dated 16th October, 2007 by the respondent no.1, that he was not selected due to his lacking the requisite qualification stipulated in the Recruitment Rules for appointment to the post of PET as any partial training in Physical Education cannot be considered equivalent to Physical Education course run by Physical Training Colleges.

4. The petitioner challenged the said order before the Central Administrative Tribunal, leading to the impugned judgment dated 28th May, 2008. The petitioner pleaded that he had served the Indian Air Force for more than 20 years as Ground Training Instructor and had undergone and successfully completed the prescribed training and passed the requisite examination for equating his post with the civilian qualification, that is, of physical training instructor and thus the certificate issued to him on 10th August, 2007 by the Indian Air Force made him eligible for appointment as PET, as besides the equivalence determined by the Department of Personnel

& Training it was also considered as equivalent to B.P.Ed. by an office memorandum issued by the Ministry of Labour, pursuant to which the service trade/qualification of Ground Training Instructor of the Indian Air Force had been equated with that of Sports Coach, Physical Instructor and Umpire, and Referee. He, therefore, contended that since he fulfilled the qualifications qua equivalence, he was denied the appointment on a wrong premise. He also submitted that a similarly placed person having similar qualifications as the petitioner, namely Sh. Prabu Narainan Yadav was appointed as PET in the year 2003 and thus the respondent violated Articles 14 and 16 of the Constitution in denying him such appointment.

5. The case set up by the respondent was that the qualification prescribed in the Recruitment Rules were as under: -

“University Degree with recognized Diploma in Physical Education or B.P.Ed from Laxmi Bai College of Physical Education or equivalent qualification. Distinguished sportsmen who have represented the Country in recognized National or International events may also be eligible for appointment on trial basis provided they possess the University Degree and the condition of possessing the Diploma in Physical Education or equivalent qualification shall not apply.”

6. The respondent contended that the petitioner had only 20 years of experience in the Indian Air Force as a Ground Training Instructor, which was not equivalent to the post of Physical Education Teacher since it was not

equivalent to Diploma in Physical Education or B.P.Ed. or equivalent. The appellant having undergone only partial training in physical education, could not be considered as equivalent to a physical education course run by the Laxmibai College of Physical Education.

7. In the rejoinder, the petitioner contended that apart from the Department of Personnel & Training's determination of equivalence, the Ministry of Labour and Employment's classification also clearly supported his case and since the defence personnel were not awarded degrees like other Universities but in fact given even better education coupled with practical experience, therefore, classification had been made by the Government of India, Ministry of Labour to decide the equivalence between the degrees and diplomas and the training and experience of defence personnel. He, thus, contended that the petitioner's qualifications were equivalent to those prescribed for appointment to the post of PET and had in fact been so determined by an expert bodies, i.e. Department of Personnel & Training in the Ministry of Personnel, Public Grievance & Pensions and the Ministry of Labour.

8. The relevant portion of the required qualification necessary to determine the issue in this writ petition is reproduced as under: -

“University Degree with recognized Diploma in Physical

Education or B.P.Ed from Laxmi Bai College of Physical Education or equivalent qualification.

(emphasis supplied)”

9. By the letter dated 3rd April, 2008, the Kendriya Vidyalaya Sangathan i.e. respondent no.1, had stated as under: -

“The petitioner was having the following qualifications as per his application:-

1. Graduate
2. 20 years experience as GTI in IAF.

The petitioner was not having the requisite prescribed qualification as per Recruitment Rules. The certificate of experience as Ground Training Instructor for 20 years in the IAF is not the substitute for the requisite prescribed qualification for the post.

In the KVS there is no post of PTI.

As per Recruitment Rules in vogue the petitioner is not eligible for the post of PET due to lack of prescribed essential qualifications.”

10. The letter dated 10th August, 2007 which was a certificate of competence issued by the Indian Air Force was also relied upon by the petitioner and the following was stated in the said letter: -

“This is to certify that Service No. 704180-B Rank Sergeant Name Girish Kumar Ahuja has served in Indian Air Force from 22 Dec. 1986 to Till Date of Signing [i.e. 10.08.2008] in the trade (sic) of **Gnd. Trg. Instr.** He has undergone and successfully completed the prescribed training and passed the requisite examination at A.T.S. **Belgaum (name of Institute) for equaling (sic) his post with Physical Training Instructor.**”

11. The Tribunal, in our view, has erred in law in ignoring the equivalence

certified by the Department of Personnel & Training in the Ministry of Personnel, Public Grievance & Pensions and the Ministry of Labour in respect of a Ground Training Instructor.

12. In our view, the Tribunal has also erred in law in applying the judgment of the Hon'ble Supreme Court in **Basic Education Board, U.P. vs. Upendra Rai and Others** 2008 (2) SCT 49. The relevant portion of the said judgment relied upon by the Tribunal is extracted as under: -

“17. The Hon'ble Supreme Court in **Basic Education Board U.P. vs. Upendra Rai and Others**, 2008 (2) SCT 49 has observed as under:-

“14. The respondent admittedly got appointment after the Circular dated 11.8.1997 and hence this Circular applies to him. Admittedly, the respondent does not possess the qualification mentioned in the said Circular. He does not either possess BTC, Hindustani Teaching Certificate, JCT or Certificate of Teaching. The D.Ed. Certificate is no longer regarded as equivalent to BTC after the circular dated 11.8.1997. This was a policy decision of the U.P. Government, and it is well settled that the Court cannot interfere with policy decisions of the Government unless it is in violation of some statutory or constitutional provision. Hence, we are of the opinion that the respondent was not entitled to be appointed as Assistant Master of the Junior Basic School in U.P.

15. Grant of equivalence and/or revocation of equivalence in an administrative decision which is in the sole discretion of the concerned authority, and the Court has nothing to do with such matters. The matter of equivalence is decided by experts appointed by the government, and the Court does not have expertise in such matters. Hence it should exercise judicial restraint and not interfere in it.

(emphasis supplied)”

13. In our view paragraph 15 of the above judgment of the Hon'ble Supreme Court, far from helping the case of the respondent, in fact, supports the case set up by the petitioner. The Directorate General of Employment and Training in the Labour Ministry and the Department of Personnel & Training in the Ministry of Personnel, Public Grievance & Pensions were the concerned governmental authorities having the requisite experience and expertise in the present case and the matter of equivalence was decided by the said government departments. It is the Tribunal, which has not followed the above position of law laid down by the Hon'ble Supreme Court and failed to see that it is the Kendriya Vidyalaya Sangathan which has ignored the equivalence determined by the Government of India which was duly qualified and competent to judge the said equivalence. The Kendriya Vidyalaya Sangathan, being a government organization could not have brushed aside such a determination by the Ministry of Labour. The Tribunal has totally ignored the following averments in the Counter Affidavit before it filed by the respondent:-

“The Kendriya Vidyalaya Sangathan follows Government of India rules and regulation in the manner of recruitment and reservation policy.”

In light of the above averment, it is the respondent no.1 which ought

not to have questioned the equivalence determined by the Central Government.

14. We must not lose sight of the fact that the qualification required by the respondent themselves stated 'a Diploma in Physical Education or B.P.Ed. from Laxmi Bai College of Physical Education or equivalent qualification. The second part of the requirement also stated that distinguished sportsmen appearing for the country could also be eligible for the appointment and for them even the condition of possessing the Diploma in Physical Education or Equivalent Education could be waived in appropriate cases.

15. We must also take note of the fact that the Tribunal has totally lost sight of the fact that in the Armed Forces the level of fitness is far higher than the civilian employment and the petitioner has no less than 20 years of experience in the Indian Air Force as a Ground Training Instructor. The Tribunal has unfortunately totally accepted the version put forward by the respondent that only 20 years of experience in the Indian Air Force as Ground Training Instructor was possessed by the petitioner. Far from being a factor against the petitioner, this was a factor which should have weighed in with the Tribunal that the petitioner was fully qualified and could and should not have been denied appointment by the respondent on the ground of his lack of qualification.

16. Furthermore, the Tribunal failed to give any credence to the plea put forward by the petitioner that a similarly situated person, that is, Sh.Prabu Narainan Yadav, possessing the same qualification had been appointed by the respondent to the said post in the year 2003. The Tribunal has failed to take note of the evasive answers of the respondent in stating that the said respondent was not a party in the present petition. In our view, the respondent was duty bound to answer this plea and the question of the said Prabu Narainan Yadav, being a party would only arise if any relief was claimed against him. In any case, the Tribunal has not even dealt with this plea and in our view, has consequently wrongly held in favour of the Kendriya Vidyalaya Sangathan.

17. The Tribunal also noticed that a notification dated 12th February, 1986 was issued by the Ministry of Personnel, Department of Personnel and Training, which prescribed a lower standard of selection which has to be applied in the case of vacancies reserved for ex-servicemen. The relevant portion of the said notification reads as under: -

“1. XXX XXX XXX XXX XXX XXX

2. In rule 6 of the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 (hereinafter referred to as the said rules), after Sub-rule (3), the following sub-rules shall be inserted, namely:

(a) For appointment to any reserved vacancy in Group C Posts,

a matriculate ex-servicemen (which term includes an ex-serviceman who has obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force), who has put in not less than 15 years of service in the Armed Forces of the Union may be considered eligible for appointment to the posts for which the essential qualification prescribed is graduation and where,....”

Significantly, this notification gave the petitioner the requisite equivalence required by the Respondent as it made his qualification equivalent to graduation as the petitioner had put in 20 years of service.

18. However, this was brushed aside by the Tribunal stating that it has to be applied only when sufficient candidates belonging to the category of ex-servicemen are not available. We are surprised at this approach of the Tribunal. This was not even the case set up by the respondent before it that sufficient number of candidates in the category of ex-servicemen were not available and the Tribunal has on its own relied on this premise to dismiss the writ petition. The petitioner had applied as an ex-serviceman and the above stipulation of the Department of Personnel could not have been brushed aside by either the respondent no.1 which was on its own showing bound by the Government of India Rules and Regulations or indeed by the Tribunal.

19. Accordingly, the writ petition deserves to be allowed and is allowed with costs quantified at Rs.5,000/- payable to the petitioner not later than

four weeks from today. The order of the Tribunal dated 28th May, 2008 is set aside and the respondent is directed to give a fair and proper consideration to the claim of the petitioner after treating his qualification as equivalent to the required qualification according to this judgment, as certified by the Ministry of Labour not later than 10th October, 2009 and take necessary consequential steps within the above prescribed period for appointment of the petitioner to the post of PET.

20. The writ petition stands disposed of. All the pending applications also stand disposed of.

(MUKUL MUDGAL)
JUDGE

(REVA KHETRAPAL)
JUDGE

September 10, 2009
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