

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.10470 of 2017

DATE OF DECISION:19.07.2019

SANDEEP DHULL

...Petitioner

Vs.

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH AND OTHERS**

...Respondents

**CORAM:- HON'BLE MR.JUSTICE JASWANT SINGH
HON'BLE MR.JUSTICE LALIT BATRA**

Present: Mr. R. K. Malik, Senior Advocate with
Mr. Samrat Malik, Advocate
for the petitioner.

Mr. Vikas Chatrath, Advocate and
Ms. Shubhreet Kaur, Advocate
for respondents No.2 to 4.

LALIT BATRA, J.

This writ petition has been filed by petitioner-Sandeep Dhull impugning the legality of order dated 28.03.2017 (Annexure P-4) rendered by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter to be referred to as “Tribunal”), in Original Application No.060/01038/2015 titled “Sandeep Dhull Vs. Union Territory, Chandigarh and others” (hereinafter to be referred to as “OA”), vide which petitioner had challenged the decision dated 09.10.2015 of the Committee constituted by respondents No.2 to 4 to consider and assess the eligibility

condition of candidates, whereby the petitioner has been held to be ineligible for appointment to the post of TGT (Physical Education) and the above said OA moved by applicant-Sandeep Dhull (petitioner herein), has been dismissed.

2. Petitioner's case in brief is that respondent No.4, Director Public Instructions (Schools), Chandigarh Administration, issued an advertisement inviting online applications for various posts of Masters/Mistresses (TGT), including forty six posts in the subject of Physical Education (D.P.E.). As per advertisement, the requisite educational qualification for the post in subject Physical Education (D.P.E.) runs as follows:-

“11. Physical Education (D.P.E.)

(A) (i) Graduate of a recognized University with at least 50% marks in aggregate

(ii) D.P.Ed. /B.P.Ed. or its equivalent with at least 50% marks in aggregate

OR

[B] Integrated degree in Physical Education (B.P.Ed.) or its equivalent with at least 50% marks from a recognized University.”

Petitioner applied for the post in the subject of Physical Education (D.P.E.). He possesses degree of M.P.Ed. (Master of Physical Education), whereas the prescribed qualification for the post in question is D.P.Ed./ B.P.Ed. or its equivalent with 50% marks from recognized University. Petitioner had secured 140 marks and was declared successful in the written examination conducted by the Chandigarh Administration

for the post in question and he stood at serial No.14 of merit list of general category candidates. There were 21 posts of TGT (Physical Education). Candidates whose merit positions were serial Nos.15 to 21, they have already been appointed. As per version of the petitioner, he applied for the above said post and fulfilled all the requisite educational qualifications as having acquired higher qualification. After declaration of result and verification of documents, respondents No.2 to 4 had issued discrepancy list, wherein against the name of petitioner, it has been indicated that as he did not possess degree of D.P.Ed./ B.P.Ed., as such he is ineligible. Petitioner made representation and in pursuance thereof, respondents No.2 to 4 constituted a Committee to decide the eligibility of the candidates, who were having degree of M.P.Ed. Committee gave its recommendations qua the issues raised before it as under:-

Sr. No.	Issues raised	Recommendations
1.	Candidates who have passed 3 years Bachelor of Physical Education/B.A. with Physical Education and M.P.Ed. are to be considered eligible or not for the post of D.P.E.	Prescribed qualification for the post of D.P.E. is Graduate with D.P.Ed./B.P.Ed. or its equivalent having 50% marks. Since the candidates who have passed B.P.E./B.A. with Physical Education and M.P.Ed. have not passed D.P.Ed./B.P.Ed. from NCTE recognized institution, as such, they cannot be considered eligible.

Since petitioner possesses degree of M.P.Ed., which is higher qualification than the prescribed qualification, for the post of D.P.E.,

therefore, decision/recommendation of the Committee to say that petitioner is ineligible for the post of D. P. E., is wrong. Since action of respondents No.2 to 4 while not considering the candidature of petitioner for the post in question is arbitrary, illegal and unconstitutional, petitioner had challenged the action of the Committee before the Tribunal, but vide order dated 28.03.2017, claim of petitioner was dismissed by the Tribunal with the findings that Masters of Physical Education (M.P.Ed.) is not a higher and better qualification than the B.P.Ed./ D.P.Ed. in the same line and discipline and further degree of M.P.Ed. does not pre-suppose acquisition of B.P.Ed./ D.P.Ed. and as such petitioner did not fulfill the essential qualification for the post of TGT (Physical Education). Feeling aggrieved with the findings recorded by Tribunal, instant writ petition has been instituted by the petitioner.

3. On notice, respondents No.2 to 4 did not prefer to furnish separate reply to instant petition and submitted that reply already furnished at their instance before the Tribunal while contesting the proceedings in OA may be considered their reply for the purpose of instant petition as well. In their reply, respondents No.2 to 4 have refuted the claim of petitioner while emphasizing the eligibility condition and general conditions as enshrined in the advertisement. Above said respondents while reiterating the validity of their impugned action have placed reliance on Chandigarh Education Service (School Cadre) (Group “C”)

Recruitment Rules, 1991, as amended from time to time (hereinafter to be referred to as “Rules”). It is contended that petitioner did not possess requisite educational qualification that is D.P.Ed. /B.P.Ed. Rather he possesses higher qualification that is Master of Physical Education (M.P.Ed.), which is not the required educational qualification in terms of advertisement for the post in question. Since petitioner was not possessing basic educational qualification, hence status regarding his selection was kept under consideration and then Committee of Experts in the subject was constituted, who after having considered all aspects, gave its recommendation that prescribed qualification for the post of D.P.E. is graduate with D.P.Ed./B.P.Ed. or its equivalent having 50% marks and, thus, the candidates, who have passed B.P.E./B.A. with Physical Education and M.P.Ed., are not eligible. Keeping in view recommendations of Committee, petitioner was declared ineligible for the post of D.P.E. for want of requisite educational qualification. In this manner, respondents No.2 to 4 have categorically denied the claim of petitioner and prayed for dismissal of instant petition.

4. We have heard learned counsel for the parties and have carefully gone through the record of the case.

5. Learned counsel for the petitioner while reiterating the cause of petitioner has urged that since petitioner possesses degree of Master of Physical Education (M.P.Ed.) and especially the fact that curriculum prescribed for B.P.Ed. and D.P.Ed. by various Universities in the States of

Punjab and Haryana is more or less similar in material aspects as that of curriculum of Master of Physical Education (M.P.Ed.), in that circumstance, possession of higher qualification (M.P.Ed.) in the same line and discipline, pre-supposes the acquisition of lower qualification prescribed for the post in question.

6. On the other hand, learned counsel for respondents No.2 to 4 while rebutting the cause of petitioner has vehemently urged that as petitioner did not possess requisite educational qualification (D.P.Ed./B.P.Ed.) for the post of D.P.E. as per Rules, 1991, then after having obtained recommendations of experts in the subject, since educational qualification of M.P.Ed. did not pre-suppose acquisition of educational qualification of B.P.Ed./D.P.Ed., in that circumstance petitioner has been rightly held to be ineligible for the post of D.P.E. and for the said reason alone OA filed by the petitioner before the Tribunal was rightly dismissed. He further urged that instant writ petition filed by the petitioner being devoid of merits may be dismissed.

7. Having due regard to the contentions of both the parties, it is observed that in the instant case matter in controversy revolves around the fact as to whether a candidate having possessed better and higher educational qualification in the same line and discipline than prescribed in the advertisement is eligible for the advertised post or not ?

8. In terms of advertisement for the post of D.P.E., respondents No.2 to 4 have prescribed essential qualification that (A) the candidate

must be graduate of a recognized University with at least 50% marks in aggregate and further having passed D.P.Ed./B.P.Ed. or its equivalent with at least 50% marks in aggregate or (B) integrated degree in Physical Education (B.P.Ed.) or its equivalent with at least 50% marks from a recognized University. In a given situation, petitioner who has graduated having elective subject of “Health and Physical Education” in all the three years of graduation and further having passed Post Graduate Degree of Master of Physical Education (M.P.Ed.), has applied for the above said post.

9. To give impetus to the cause of petitioner, learned counsel for petitioner has extensively taken us to curriculum prescribed for B.P.Ed. and D.P.Ed. by various Universities in the States of Punjab and Haryana which read as under:-

Panjab University

B.P.Ed.-2 Years Semester System

Subjects Offered

First Semester

1. History, Principles and Foundation of Physical Education
2. Anatomy and Physiology
3. Educational Technology and Methods of Teaching in Physical Education
4. Olympic Movement (Elective Subject)
5. Officiating and Coaching (Elective Subject)

Second Semester

6. Yoga Education
7. Health Education and Environmental Studies
8. Organization and Administration

9. Contemporary Issues in Physical Education, Fitness and Wellness (Elective Subject)
10. Sports Nutrition and Weight Management (Elective Subject)

Third Semester

11. Computer Application in Physical Education
12. Sports Psychology and Sociology
13. Sports Training
14. Sports Medicine, Physiotherapy and Rehabilitation (Elective Subject)
15. Curriculum Design (Elective Subject)

Fourth Semester

16. Measurement and Evaluation in Physical Education
17. Kinesiology and Bio-mechanics
18. Research and Statistics in Physical Education
19. Theory of Sports and Games (Elective Subject)
20. Sports Management (Elective Subject)

Note: In each semester, student has to opt one subject out of two elective subjects.

Diploma in Physical Education (D.P.Ed.)
2 Years Semester System

First Semester

1. English and Communication Skills (ECS)
2. Punjabi (C) PBI/History and Culture of Punjab (HCP)
3. Foundations of Physical Education (FPE)
4. History of Physical Education (HPE)

Second Semester

5. English and Communication Skills (ECS)
6. Educational Psychology (EP)
7. Introduction to Human Anatomy (IHA)
8. Introduction to Human Physiology (IHP)
9. HCP/Punjabi

Third Semester

10. English and Communication Skills (ECS)
11. Educational Methodology (EM)
12. Kinesiology and Bio-mechanics (KBM)

Fourth Semester

13. English and Communication Skills (ECS)
14. Recreation (REC)
15. Sports Psychology (SP)

**Bachelor of Physical Education-4 Years Innovative/Integrated
Teacher Education Programme (Semester System)**

First Semester

1. English and Communication Skills (ECS)
2. Punjabi (C) PBI/History and Culture of Punjab (HCP)
3. Foundations of Physical Education (FPE)
4. History of Physical Education (HPE)

Second Semester

5. English and Communication Skills (ECS)
6. Educational Psychology (EP)
7. Introduction to Human Anatomy (IHA)
8. Introduction to Human Physiology (IHP)
9. HCP/Punjabi

Third Semester

10. English and Communication Skills (ECS)
11. Recreation (REC)
12. Sports Psychology (SP)

Fourth Semester

13. English and Communication Skills (ECS)
14. Educational Methodology (EM)
15. Kinesiology and Bio-mechanics (KBM)

Fifth Semester

16. English and Communication Skills (ECS)
17. Fundamentals of Computer Education (FCE)
18. Sports Management (SM)

Sixth Semester

19. English and Communication Skills (ECS)
20. Test Measurement and Evaluation (TME)
21. Computer Application in Physical Education (CAPE)

Seventh Semester

22. Health Education (HE)
23. Scientific Approach to Sports Training (SAST)
24. Sports Law (SL)
25. Organizational Behaviour (OB) (Optional Subject)
26. Adapted Physical Education (APE) (Optional Subject)

Eighth Semester

27. Sports Journalism (SJ)
28. Applied Physiotherapy and Rehabilitations (APR)
29. Sports Sociology (SS)
30. Health Fitness Wellness (HFW) (Optional Subject)
31. International Sports Law (ISL) (Optional Subject)

Kurukshetra University**B.P.Ed. (Bachelor of Physical Education)****SEMESTER-I**

B.P.Ed.-101	History and foundation of Physical Education
B.P.Ed.-102	Anatomy and Physiology
B.P.Ed.-103	Health Education and Environmental Studies
B.P.Ed.-104	Officiating and Coaching
B.P.Ed.-105	Practicum
	(i) Athletics (Track Events)
B.P.Ed.-106	(ii) Game-I
	(Basket Ball & Kabaddi)
B.P.Ed.-107	(iii) Game-II
	(Football & Kho Kho)
B.P.Ed.-108	(iv) Anatomy, Physiology and Health Education

SEMESTER-II

B.P.Ed.-201	Yoga Education
B.P.Ed.-202	Computer Applications in Physical Education
B.P.Ed.-203	Sports Psychology and Sociology
B.P.Ed.-204	Contemporary issues in Physical Education,

	Fitness and Wellness
B.P.Ed.-205	Practicum:
	(i) Athletics
	(Throwing Events)
B.P.Ed.-206	(ii) Game-I
	(Volleyball & Yoga)
B.P.Ed.-207	(iii) Game-III
	(Handball & Gymnastics)
B.P.Ed.-208	(iv) Computer Application, Rehabilitation & Sports Psychology

SEMESTER-III

B.P.Ed.-301	Sports Training
B.P.Ed.-302	Educational Technology and methods of Teaching in Physical Education
B.P.Ed.-303	Organization and Administration
B.P.Ed.-304	Curriculum Design
B.P.Ed.-305	Practicum
	(i) Athletics (Jumps)
B.P.Ed.-306	(ii) Game-I (Cricket and Softball/Baseball)
B.P.Ed.-307	(iii) Game-II (Weight Training and Hockey)
B.P.Ed.-308	(iv) Mass Display Activity (Freehand)

SEMESTER-IV

B.P.Ed.-401	Olympic Movement
B.P.Ed.-402	Sports Nutrition and Weight Management
B.P.Ed.-403	Sports Management
B.P.Ed.-404	Sports Medicine and Rehabilitation
B.P.Ed.-405	Practicum (i) Athletic Meet (Opening, March Past, Victory Ceremony and closing)
B.P.Ed.-406	(ii) Game-I (Badminton and Table Tennis)
B.P.Ed.-407	(iii) Game-II (Boxing and Wrestling)
B.P.Ed.-408	(iv) Mass Display Activity (Lezium, Dumbbell and Tipri)

10. At this juncture, it is relevant to point out here that a bare perusal of Marks Statement of Senior School Certificate Examination of petitioner reveals that he had passed said examination having subject “Physical and Health Education”. Further, in terms of Result-cum-Detailed

Marks Cards of B.A. Part-I, II and III of petitioner, it is quite apparent on the record that he had studied subject “Health and Physical Education” as one of the elective subjects throughout graduation. In terms of Result-cum-Detailed Marks Cards of Master of Physical Education (M.P.Ed.) of petitioner, it is evident that he had studied number of subjects, which are detailed as under:-

MASTER OF PHYSICAL EDUCATION (PREVIOUS) EXAM

1.MPOI	History and Principles of Physical Education
2.MP02	Kinesiology
3.MP03	Anatomy and Physiology
4.MP04	Sports Management
5.MP05	Techniques of Officiating and Coaching
6.MP06	Health Education
7.MP07	Teaching of Gymnastic Lesson
8.MP08	Teaching and Coaching of Athletic Lesson
9.MP09	Teaching and Coaching of Game Lesson

MASTER OF PHYSICAL EDUCATION (FINAL) EXAM

1.MP51	Sports Psychology
2.MP52	Tests Measurements and Evaluation Physical Education
3.MP53	Research Methodology in Physical Education
4.MP54	Sports Medicine
5.MP55	Scientific Principles of Sports Training
6.MP56	Sports Sociology
7.MP57	Class Room Theory Lesson Practical
8.MP58	Athletic Lesson Practical
9.MP59	Game Lesson Practical

A bare perusal of subjects offered in different courses viz. D.P.Ed. (Two Years Semester System), B.P.Ed. (Two Years Semester System) and Bachelor of Physical Education- Four Years Innovative/Integrated Teacher Education Programme (Semester System) of

Panjab University and subjects offered in Bachelor of Physical Education (B.P.Ed.) (Four Semesters) by Kurukshetra University, as detailed above, and comparison thereof with the educational qualifications of petitioner i.e. B.A. (Three Years Degree Course) and Master of Physical Education (M.P.Ed.) and subjects studied by the petitioner in the said courses, it is quite apparent on the record that all the basic subjects offered in D.P.Ed. and B.P.Ed., have been studied by the petitioner in B.A. (Three Years Degree Course) as well as in Master of Physical Education (M.P.Ed.).

11. Regarding aspect of controversy as to whether Master of Physical Education (M.P.Ed.) is higher degree than Bachelor of Physical Education (B.P.Ed.)/Diploma in Physical Education (D.P.Ed.) in the same line and discipline as per the National Council of Teacher Education (NCTE), it is observed that Chairperson, Department of Physical Education, Chaudhary Ranbir Singh University, Jind, vide his certificate dated 13.04.2017 (Annexure P-6), has certified that M.P.Ed. is higher degree than D.P.Ed./B.P.Ed. in the same line and discipline as per NCTE. Chairperson, Department of Physical Education, Chaudhary Devi Lal University, Sirsa, and Head of Department (Physical Education), Maharshi Dayanand University, Rohtak, vide their respective certificates dated 12.04.2017 and 15.04.2017 (Annexures P-7 and P-8) have also graded degree of M.P.Ed. as higher degree than D.P.Ed./B.P.Ed. in the same line and discipline as per NCTE. If a person has acquired higher qualification in the same faculty, such qualification can certainly be stated to pre-

suppose the acquisition of the lower qualification prescribed for the post. Once petitioner having post-graduated in the subject of Physical Education (M.P.Ed.) has got higher qualification in the same faculty, such qualification (M.P.Ed.) can certainly be stated to pre-suppose the acquisition of lower qualifications (D.P.Ed./B.P.Ed.) prescribed for the post of TGT (Physical Education). Petitioner having acquired higher qualification (M.P.Ed.) is eligible for the post of TGT (Physical Education), wherein lower qualifications (D.P.Ed./B.P.Ed.) have been prescribed. Petitioner who has scored 140 marks was declared successful in the written examination for the post in question and stood at serial No.14 in the merit list of general category candidates. Since there were 21 posts of TGT (Physical Education), petitioner being eligible is entitled to be appointed for the said post.

12. As a sequel to above said findings, it is held that since respondents did not consider the claim of petitioner in right perspective, thus, impugned recommendations dated 09.10.2015 (Annexure A-6) made by Committee constituted by respondents No.2 to 4 as well as impugned order dated 28.03.2017 (Annexure P-4) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, rejecting the claim of petitioner are set aside. Resultantly, instant writ petition is allowed in the manner that petitioner-Sandeep Dhull is entitled to be appointed as TGT (Physical Education) in the Education Department of Chandigarh Administration, UT Chandigarh, as name of petitioner-Sandeep Dhull falls in the selection

zone in the General Category, with effect from the date his junior in merit was appointed with all consequential benefits of arrears of salary, seniority etc. The respondents are further directed to implement the aforesaid order/directions within two (2) months of the receipt of the certified copy of the order, failing which the petitioner shall be entitled to interest @ 9% per annum on the arrears of salary from the date of accrual till date of realization, apart from liability to be hauled up in contempt proceedings. The Department/U.T.Chandigarh shall be free to recover the component/element of interest, if payable, from the sanctioning/competent authority.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

19.07.2019
rimpal

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No