

Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-1380/2013

Reserved on : 10.02.2015.

Pronounced on : 11.02.15

Hon'ble Mr. A.K. Bhardwaj, Member (J)  
Hon'ble Mr. Shekhar Agarwal, Member (A)

Shri Rohit,  
S/o Sh. Nand Kishore,  
R/o H.No. 55,  
Vill & P.O. Jaunti,  
Delhi-81.

..... Applicant

(through Sh. Anuj Aggarwal, Advocate)  
Versus

1. Kendriyal Vidyalaya Sangathan  
through its Commissioner,  
18, Institutional Area,  
Shaheed Jeet Singh Marg,  
New Delhi-16.

2. Central Board of Secondary Education  
Through its Chairman  
"Shiksha Kendra",  
2, Community Centre,  
Preet Vihar, Delhi-92.

..... Respondents

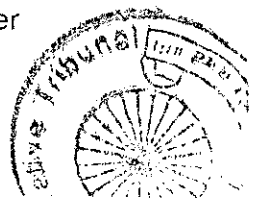
(through Sh. K.M. Singh, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

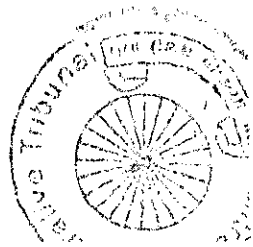
According to the applicant he passed the CBSE Exam for Class-12 in March, 2001. He, however, appeared in the same again to improve his marks and obtained 52% marks in March, 2002. He also passed the diploma course in Elementary Teacher

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Education (ETE) conducted by SCERT, Delhi. He has stated that only those who had passed the CBSE Exam were eligible to seek admission to this course. In September, 2009, he responded to an advertisement published by KVS inviting applications for the post of Primary Teachers. He appeared in the written examination conducted on 31.01.2010 and qualified the same. He was invited for interview on 15.09.2010. The applicant secured 109 marks out of 120 marks in the written examination and 04 marks out of 40 marks in the interview. His total score was 74.67% arrived at by giving weightage of 80:20 to the written test and interview. The applicant did not make it to the select panel of 405 in the general category candidates due to low merit. However, his name was placed at S.No. 76 in the reserve panel of 100. Thereafter, even though some of those lower in merit as compared to him were appointed, the applicant was not appointed. He preferred an application under RTI on 13.10.2011. The KVS replied to the same on 27.10.2011 and informed him that since he had not passed Class-12 Examination, he was not eligible for appointment to the post of Primary Teacher. The applicant then submitted a representation on 11.11.2011 against denial of appointment to him. This was rejected by KVS in their reply dated 06.01.2012. Being aggrieved by this order, the applicant filed OA No. 414/2012 before this Tribunal. This was disposed of on 30.10.2012 by an order, the operative part of

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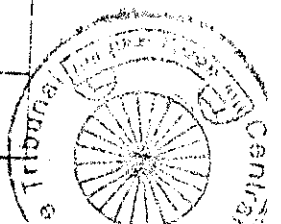
which reads as follows:-

"12. In the circumstances, impugned order is quashed and the respondents are directed to re-assess the eligibility of the applicant for the post of Primary Teacher keeping in view the aforementioned contentions raised by him in appeal dated 11.11.2011 (Annexure A-1) within a period of two months and pass a reasoned and speaking order. OA stands disposed of. No costs."

In compliance of the aforesaid order, the KVS issued an impugned Memorandum dated 05.03.2013 again rejecting the candidature of the applicant. Hence, the applicant has filed this O.A. before us.

2. The contention of the applicant is that the essential qualification for appointment to the post of Primary Teacher was passing the Class-12 Examination with 50% marks for general category candidates. He has secured the same calculated on the basis of best 05 subjects. On the other hand, the respondents are counting his marks in the additional subject English Core and have calculated his percentage based on all 06 subjects and rejected his candidature. The marks secured by the applicant are given in the table below:-

Subject Code	Subject	Theory	Practical	Total Marks	Grade
301	English Core	22	-	22	E
002	Hindi Elective	53	-	53	B1
028	Pol. Science	50	-	50	C1
029	Geography	31	24	55	D1



030	Economics	41	-	41	C2
048	Phy. Education	20	41	61	D2

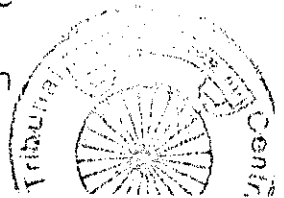
2.1 Applicant's further contention is that the impugned Memorandum dated 05.03.2013 is factually incorrect and legally untenable. It is also contrary to the CBSE Rules and Regulations. The relevant Rules are printed on the back side of the mark sheet of the candidate and read as follows-

"3(a). To pass the examination, candidate must obtain at least Grade D2 in all subjects in vocational assessments unless the candidate is exempted and 33% or Grade 2 in each of the 5 subjects or extracurricular examination as per scheme of studies, (b) in respect of candidate offering an additional subject, the following norms shall apply"

(a) Any language offered as an additional subject may replace a language in the event of a candidate failing in the same provided after replacement the candidate as English/Hindi as one of the languages;

(b) In overall division/distinction/record is award."

2.2 He has stated that only 05 subjects are counted for the purpose of passing and if his marks in best 05 subjects including one language are taken into consideration, it will be found that he has secured 260 marks out of 500 marks i.e. 52% and is, therefore, eligible for appointment. The applicant has relied on the judgment of Hon'ble Supreme Court in the case of **Kusum Lata Vs. State of Haryana & Ors.**, 2002(6) SCC 343. He has also relied on the judgment of Hon'ble High Court of Delhi in the case of **Arvind Mehra & Ors. Vs. DSSSB & Ors.**, 2009(II) AD Delhi 512. On

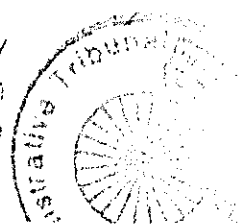


the basis of these averments, he has sought the following relief:-

- "(i) issue an appropriate order or direction thereby setting aside the impugned Memorandum dated 05.03.2013 (**Annexure A-1**) issued by Kendriya Vidyalaya Sangathan (HQ) whereby it was declared that the Applicant is not eligible for appointment to the post of Primary Teacher in Kendriya Vidyalaya Sangathan as per the Recruitment Rules as he had secured less than 50% marks in Class XII Examination;
- (ii) Issue an appropriate order/direction thereby declaring that the Applicant fulfils all the essential qualifications of having 50% marks in the Senior School Examination (10+2) which has been prescribed by KVS as a requisite qualification for the post of Primary Teacher;
- (iii) issue an appropriate direction/order thereby directing the respondents to consider the candidature of the Applicant for appointment to the post of Primary Teacher in KVS and, after such consideration, appoint the Applicant to the post of Primary Teacher in KVS with effect from the date when he was duly entitled/eligible for the same with all consequential benefits (monetary as well as non-monetary) thereof;
- (iv) Pass any such other or further order (s) as this Hon'ble Tribunal may deem fit and appropriate in the interest of justice and in favour of the Applicant;
- (v) Allow the present Application with costs in favour of the Applicant."

3. In their reply, the respondents after narrating the facts of the case have stated that the applicant is not eligible for appointment to the post of Primary Teacher as he has secured less than 50% marks in Class-12 Examination. During the course of arguments, learned counsel for the respondents relying on the Bye-Laws of CBSE stated that in Bye Law No. 40.1 (iv)(a) it is provided as follows:-

"A language offered as an additional subject may replace a language in the event of a candidate failing in the same provided after replacement of the candidate

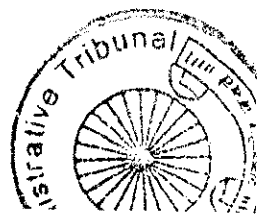


has English/Hindi as one of the languages."

learned counsel argued that the applicant had failed in English Core and replacement of this language by an additional subject was allowed only in situation where the candidate was failing. Thus, while the applicant had been declared passed in the CBSE Examination, as per this criteria the 6<sup>th</sup> subject cannot be ignored for the purpose of calculating the percentage of marks obtained by him.

4. We have heard both sides and have perused the material on record. The only issue to be decided in this case is whether the applicant has to be considered as having secured 52% marks in Class-12 on the basis of best 05 subjects ignoring English Core or whether his percentage should be calculated based on his aggregate in all 06 subjects. In this regard, we have seen the judgments relied upon by the applicant. In the case of *Kusum Lata (supra)* in Para-8 of the judgment, Hon'ble Supreme Court has held as follows:-

"8. As per the scheme of CBSE the marks obtained in the additional subjects are not taken into consideration in the passing of the examination. The additional subject is optional. A candidate may take it or not. The requirement is that a candidate should obtain 33% marks or grade D-2 in each of the five subjects of external examination as per the scheme of the studies. When the eligibility clause stipulates that a candidate should have passed 10+2 examination with at least 50% aggregate marks, it is implicit that the aggregate marks are required to be calculated keeping in view only the subjects which are necessary to pass 10+2 examination and not the marks of the additional subject which is not taken into account for passing the

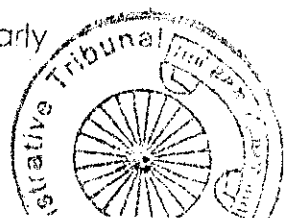


examination. This is the only reasonable interpretation having regard to the spirit of the clause providing for eligibility conditions. The relevant factor is to see what is necessary to pass 10+2 examination conducted by CBSE and on that basis decide whether a candidate fulfils or not the requirement of the eligibility clause. If seen from this perspective, the aggregate marks would have to be worked out having regard to the marks obtained in five subjects and not in the additional subject which is not taken into account for passing the examination."

Further, in the case of **Arvind Mehra & Ors.** (Supra) Hon'ble High Court of Delhi has observed as follows:-

"9. In the light of these decisions of the Supreme Court let us now examine the merits of the rival submissions in the instant case. Undoubtedly, the terms and conditions as prescribed by the relevant Recruitment Rules are binding and have to be adhered to. However, as per the scheme of examination of CBSE the marks obtained in the additional subjects are not taken into consideration in the passing of the examination. The additional subject is obviously optional. It is for the candidate to either take it or not. Therefore, when the eligibility clause stipulates that a candidate should have passed 10+2 examination with at least 50% aggregate marks, it is implicit that the aggregate marks are required to be calculated keeping in view only the subjects which are necessary to pass 10+2 examination and not the marks of the additional subject which is not to be taken into account for passing the examination. This according to the decision of the Supreme Court in *Kusum Lata (supra)* is the only reasonable interpretation having regard to the spirit of the Clause providing for eligibility conditions. The relevant factor to determine the eligibility is to see what is necessary to pass 10+2 examination conducted by CBSE and on that basis one has to decide whether a candidate fulfills or otherwise the requirements of the eligibility Clause."

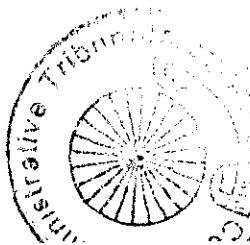
5. From the above, it is obvious that the case of the applicant is squarely covered by the above citations. Hon'ble High Court of Delhi as well as Hon'ble Supreme Court have clearly



ruled that the 50% aggregate marks were required to be calculated keeping in view the conditions which were necessary to pass the 10+2 examination and not the marks of the additional subject.

6 From the impugned order, we find that the Commissioner KVS has taken note of the ruling of Hon'ble High Court of Delhi in Arvind Mehra's case in Para-12 of the order. Yet in Para-13 he rejected the contention of the applicant rather flamboyantly and arrogantly without assigning any reason simply by observing that in his view the applicant was ineligible for appointment. He has not mentioned how this case is distinguishable from the case of Arvind Mehra. In our view, such an order is unsustainable and deserves to be quashed.

7 We, therefore, allow this O.A. and quash the impugned Memorandum dated 05.03.2013. We direct that the applicant be declared eligible for appointment based on his Class 12 marks and be so appointed to the post of Primary Teacher against any available vacancy if he is otherwise eligible. In case, no vacancy is immediately available, he shall be appointed against the next available vacancy. He shall also be entitled to consequential benefits of pay fixation and seniority commensurate with his position in the merit list. The above benefits shall be extended to him within a period of eight weeks





from the date of receipt of a certified copy of this order. In the facts and circumstances of the case we also think it fit to award Rs.5000/- as cost to the applicant.

(Shekhar Agarwal)  
Member (A)

(A.K. Bhardwaj)  
Member(J)

/s/

