



**Central Administrative Tribunal
Principal Bench**

RA No.40/2020
In
OA No.366/2020

New Delhi this the 16th day of March, 2020.

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

1. Annu Khatri
D/o Sh. Mahinder Singh Khatri
R/o 14, Saubhagya Appts. Sector-9,
Rohini, Delhi-110085.
Aged about 39 years
(Group 'B')

(Candidate to the post of Educational and
Vocational Guidance Counselor)

...Applicant

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary,
A-Wing, 5th Floor,
Delhi Secretariat, I.P. Estate,
New Delhi.
2. Delhi Subordinate Services Selection Board
(DSSSB)
Through its chairman
FC-18, Karkardooma Institutional Area,
Delhi-92
3. The Director
Directorate of Education,
Govt. of NCT of Delhi
Old Secretariat, Delhi-54.
4. Lieutenant Government of Delhi
Raj Niwas, Rajpur Road,
Delhi.

...Respondents



O R D E R (By Circulation)

Hon'ble Mr. Pradeep Kumar, Member (A):

The applicant herein had applied to DSSSB for recruitment to the post of Educational and Vocational Guidance Counselor (EVGC) against post code No.149/17 in advertisement No.4/17 dated 20.12.2017. Even though she qualified the written examination, the candidature was rejected on account of her being overage. She approached the Tribunal in this OA against this rejection.

2. The grant of age relaxation or prescribing eligibility criterion, is in the domain of Executive and in such cases, Tribunal has to see whether natural justice has been imparted. Tribunal cannot sit as an Appellate Authority or as an Expert Body.

3. In keeping with this, the OA was dismissed vide order dated 07.02.2020. Following judgment was passed:

“7.0. On a specific query as to whether applicant is overage as per the terms and conditions of the Advt. in question, the applicant fairly replied in the affirmative.

8.0. The Tribunal does not find any merit in the contentions raised in para 4 above. They are not relevant for the issue at hand as what is of relevance is the terms specified in Advt. in question. However, the respondents are at liberty to decide any age relaxation which they may deem fit.



Such relaxation shall be applicable to all candidates who might have written the said examination.

9.0. Accordingly, the OA is dismissed at admission stage, itself, being devoid of merit. No costs.”

4. Feeling aggrieved, applicant has now preferred this RA seeking review of these directions.

5. Applicant pleads that EVGC is not a popular category and not enough qualified candidates are available for regular or contractual appointments. Further since the issue involves education of children, respondents are duty bound to keep all posts filled.

6. In this connection reliance has been placed on judgment by Hon'ble High Court of Delhi in W.P.(C) No.1200/2016 (**Syed Mehedi v. Govt. of NCT of Delhi & Ors.**), where judgment was delivered on 02.07.2019 and another judgment in OA No.301/2020 (**Shailja Singh & Ors. v. Govt. NCT of Delhi**) dated 12.02.2020.

7. Applicant has also in a way alluded that the Tribunal is also somehow obliged to ensure that all posts are kept filled up.

8. Applicant has also specifically averred as under:



“That however, this Hon’ble Tribunal vide order dated 07.02.2020 (Annexure RA/X-1) was pleased to dismiss the OA at admission stage while the main counsel for the applicant was out of town and at Mumbai Bench of this Hon’ble Tribunal.”

9. The Hon’ble High Court judgment (para-6 supra) is in the context of recruitment of Teachers of differently abled children where posts were not filled and Hon’ble Court ordered for age relaxation.
10. The judgment by the Tribunal in OA No.301/2020 (para-6 supra), is in the context of non-grant of age relaxation for the post of EVGC for which advertisement was issued by DSSSB on 02.01.2020 (Post Code 35/2020). In this case, Tribunal held as under:

“5. It is true that the age limit stipulated for certain other posts is 36 years, whereas for EVGC, it is 30 years. In matters of this nature, it is for the employer to stipulate relevant service conditions. The Tribunal cannot sit as an appellate authority or an expert body.

6. The second contention advanced by learned counsel for applicants is that the adequate number of applications were not received when the posts were advertised earlier. The record in this behalf is not before us. Assuming that adequate number of qualified candidates are not available for the posts, it is for the respondents to take a decision either to increase the age limit or to modify the qualifications. Here again, the Court/Tribunal cannot step-in to modify the service conditions prescribed in the relevant Recruitment Rules.

7. We are not inclined to entertain the O.As. They are accordingly dismissed. We, however, make it clear that in case the respondents do not receive the adequate number of applications for the post of EVGC, they shall consider the feasibility of taking necessary steps in such a



way that the posts do not remain vacant for want of qualified candidates.”

11. Matter has been considered.

12. As regards the averment in para-8 above, the matter was argued in detail by the counsel who appeared for the main counsel. Had adjournment been sought, it would have been considered. Once the matter was argued in detail, logical corollary was to decide it and it was decided. The averments of absence of main counsel and by implication that it could not be decided in view of this absence, made at review stage, cannot be accepted.

13. The Hon’ble High Court judgment (para-6 supra), is in a different context as brought out in para-9 above and not applicable in the present OA.

The issue at hand OA No.301/2020 (para-10 supra), is similar to grievance in the instant OA. It has been held that it is for respondents to take a view regarding eligibility. In the instant OA also, it has been held that it is for respondents to decide the eligibility conditions and any relaxation thereof and such a decision shall be applicable for all candidates, who appeared in the said examination.



It will be beyond the scope of Tribunal to enter into the domain of Executive to decide the eligibility conditions and relaxations thereof so as to keep all posts filled up. This area lies in the purview of Executive.

14. In view of foregoing, Tribunal does not find any apparent error in judgment dated 07.02.2020. This judgment stands. The RA is dismissed being devoid of merit.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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