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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1860/2004

Tuesday, this the 3rd day of August, 2004

Hon'ble Shri Justice V. S. Aggarwal, Chairman
Hon'ble Shri S. K. Naik, Member (A)

Sushil Kumar Rajput
s/o Shri Krihna Kant Rajput
R/o R-200, Section-21, NOIDA

..Applicant

(By Advocate: Shri Atul Bandhu & Ms. Mukta Sharma)

Versus

1. Director of Education
New Secretariat
New Delhi
2. Municipal Corporation of Delhi
through its Commissioner
Town Hall, Chandni Chowk
Delhi-6
3. Delhi State Subordinate Services
Selection Board, UTCS Building
Near Karkardooma Court
Vishwas Nagar, Delhi

..Respondents

O R D E R (ORAL)

Justice V.S.Aggarwal:

The applicant by virtue of the present petition,
seeks to assail the order dated 21.7.2004 which reads:-

"ORDER

Shri Sushil Kumar Rajput, PET presently posted in diverted capacity in Govt. Co-Ed. Secondary School, Kondli Gharoli, Delhi and drawing his salary from Govt. Boys Sec. School, Block-27, Trilok Puri, Delhi, and prior to his appointment on the strength of Directorate of Education, Govt. of NCT of Delhi to the post of P.E.T., vide appointment order No.29 dated 20.01.2000 under District North-West-B, was an Assistant Teacher in M.C.D. As per the record at the time of forwarding of his application by M.C.D. to D.S.S.S.Board for the post of P.E.T., the age of the said Shri Sushil Kumar Rajput was 34 years, 03 months and 05 days whereas maximum age limit for appointment to the post of PET was 30 yrs. A show cause notice was issued to

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Shri Sushil Kumar Rajput vide letter No. DE. 47(4)(8)/S-63/E/A/ 2122 dated 25.04.2001 to explain his position w.r.t. his being overaged and hence not being eligible for appointment to the post of PET. The reply of Shri Sushil Kumar Rajput dated nil received on 1.5.2001 has been considered and found not satisfactory by the competent authority. And hence, his candidature for the appointment to the post of P.E.T. has been found not eligible as being over aged and rejected by the competent authority.

In view of the ineligibility of the said Shri Sushil Kumar Rajput from the day of applying for the post of PET to the D.S.S.S.Board, the appointment of the said Shri Sushil Kumar Rajput is illegal and his candidature for the said post of PET under Directorate of Education, Govt. of NCT of Delhi is hereby rejected and as such the said Shri Sushil Kumar Rajput is reverted to his parent department i.e. M.C.D. from where the said Shri Rajput got his application forwarded erroneously to D.S.S.S.Board by the authorities of M.C.D. Shri Sushil Kumar Rajput is hereby directed to report to M.C.D. for his further posting.

This issues with the prior approval of the Director of Education.

(DHARAM VIR SINGH)
DY. DIRECTOR OF EDUCATION
DISTRICT EAST/NORTH EAST"

2. Some of the relevant facts can again be delineated to precipitate the question in controversy. The applicant was earlier serving in the Municipal Corporation of Delhi. In pursuance of an Advertisement, the applicant applied for the post of Physical Education Teacher (for short "PET"). The age limit for the post was 30 years in case of males. Relaxation was provided in case of Government servants, sportsmen, SC/ST and OBCs.

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3. Admittedly, on the relevant date, the applicant was 34 years and 8 months old. He is a general candidate. His application, despite the aforesaid, was entertained and he was appointed as PET. In pursuance of his appointment, he resigned from the post in the Municipal Corporation of Delhi.

4. After the appointment letter had been issued, the respondents discovered that the applicant on the relevant date was over age. Admittedly, a show cause notice was issued to the applicant and after considering the reply, the impugned order has been passed, declaring his appointment as PET to be invalid.

5. Learned counsel for the applicant urges:-

- a) he had disclosed the correct facts. It is the mistake of the respondents, who were conscious of the instructions and the rules, and once they have appointed the applicant, they now cannot retake such steps; and
- b) the applicant must be taken to be a Government servant and, therefore, he is entitled to age relaxation.

6. We have carefully considered the said submissions. At the outset, it must be stated that it is an unfortunate matter where the applicant in pursuance of an Advertisement applied and after he has been appointed, it is discovered that in fact he was not eligible. In the meantime, the applicant resigned from Municipal Corporation of Delhi.

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7. However, sympathetic consideration will not outweigh the rule of law. This Tribunal would always remain the servant of law and, therefore, the provisions of law on compassion cannot be defeated.

8. Admittedly, the applicant was over aged as a general candidate on the date he applied. For the mistake of the functionaries of the State, a right to get permanent appointment cannot be conferred. Once there were specific instructions and the rules that a person concerned must be of the age of 30 years on a particular date and the applicant was about 34 years of age, indeed, one cannot deviate from the said fact mentioned in the Advertisement. The applicant indeed can take recourse in law against the concerned persons. On that ground, it cannot be held that the applicant can seek relaxation or continuation for appointment. We hasten to add that it is not one of those cases where decades have passed after the appointment and, therefore, the Court may come to his rescue.

9. Reverting back to the second argument that the applicant should be taken to be a Government servant, in our opinion, it has to be stated to be rejected. Municipal Corporation of Delhi has been set up under the Municipal Corporation of Delhi Act, 1957. The employees of the Municipal Corporation are also governed by the relevant rules and regulations framed under the said Act. Thus, the applicant, who was at the relevant time an employee of the Municipal Corporation of Delhi, cannot claim himself to be a Government servant.

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10. At this stage, we, as held above, cannot restrain but observe that in the impugned order the applicant has been directed to report to the Municipal Corporation of Delhi. The applicant has already resigned from the said post. The authorities in the Municipal Corporation *in accordance with law* hopefully may consider the matter of the applicant, keeping in view what we have recorded above.

11. OA is disposed of.

Issue Dasti.

S. K. Naik
(S. K. Naik)
Member (A)

/sunil/

V. S. Aggarwal
(V. S. Aggarwal)
Chairman