

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No-575/2014

Order Reserved on: 29.09.2016

Order Pronounced on:15.11.2016

**Hon'ble Mr. Sudhir Kumar, Member (A)**  
**Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Smt. Kavita Rani  
W/o Rajesh Kumar  
D/o Shri Birbal  
R/o House No.29, Village Shahpur  
Garhi, Narela, North West,  
Delhi-110040.

-Applicant

(By Advocate: Shri H.K. Chaturvedi)

**Versus**

1. Delhi Subordinate Services Selection Board  
Govt. of NCT of Delhi  
FC-18, Institutional Area,  
Karkardooma, Delhi-110032  
Through: Secretary.
2. Govt. of NCT of Delhi  
Through: Chief Secretary  
New Secretariat, I.P. Estate,  
Near ITO, New Delhi.
3. Govt. of NCT of Delhi,  
Through: Director of Education  
Directorate of Education,  
Establishment-IV Branch,  
Room No.11-B,  
Old Sectt. Delhi-54.

-Respondents

(By Advocate: Ms. Alka Sharma)

**ORDER**

**Per Sudhir Kumar, Member (A):**

The applicant of this O.A. was a candidate for the post of Trained Graduate Teacher (TGT, in short) (Computer Science) Post Code

No.192/14, and had approached this Tribunal alleging that the respondents have failed to incorporate the age relaxation as available for women/widows candidates in all Govt. posts under the Govt. of National Capital Territory of Delhi (GNCTD, in short) up to the age of 42 years. The applicant has, therefore, submitted that the Respondent No.R-1 is bound to issue Corrigendum to that effect immediately, by incorporating age relaxation for women/widows up to 42 years, as shown in respect of other Post Codes in the Advertisement No.01/14, and hence this OA.

2. Through the above cited Advertisement No.01/14, applications had been called for recruitment to various posts in different Departments of GNCTD/Municipal Corporation of Delhi and New Delhi Municipal Council and Autonomous Bodies of GNCTD, with the closing date of applications being 27.02.2014. The applicant has submitted that for the post of TGT (Computer Science) Post Code No.192/14, the Advertisement did not mention age relaxation, which was a factual and legal mistake, and if such age relaxation had been provided, she would have been eligible for the post concerned, and her application would have been accepted. She has submitted that in the past in its Advertisement No.01/2013 annexed to the OA as Annexure A-2, such age relaxation in the case of female candidates up to 42 years had been mentioned.

3. The applicant had passed her Matriculation Examination from the Board of School Education, Haryana for the Examination held in March, 1995, as per Certificate dated 27.06.1995, and then again she had appeared in English, and had passed the Matriculation English

Examination held in March, 1996, as per the Certificate dated 27.06.1996. She had thereafter passed her Senior Secondary Certificate Examination held in March, 1997 through Certificate dated 10.06.1997 (Annexure A-4), B.A. Part I from Maharshi Dayanand University, Rohtak, through Annexure A-5 Certificate dated 01.06.1998, B.A. Part II Examination in the year 1999 through Annexure A-6 dated 07.06.1999, and B.A. Part III through Annexure A-7 Certificate dated 10.06.2000. She thereafter undertook a Post-Graduate Diploma in Computer Applications Examination, which was held in December, 2001, and qualified in the same through Annexure A-8 dated 28.03.2002, and again qualified as Master of Computer Applications 3<sup>rd</sup> Semester Examination held in January 2012 through Certificate at Annexure A-9 dated 18.09.2012 issued to her on 27.12.2012, and Master of Computer Applications 4<sup>th</sup> Semester Examination held in July 2012 through Certificate at Annexure A-10 dated 22.03.2013 issued to her on 11.07.2013.

4. The applicant has taken the ground for filing of this OA that she is eligible for age relaxation, which is available for women, and which was inadvertently missed out in respect of Post Code No.192/14, in the Advertisement placed by her through Annexure A-1, with the details being given on page-64 of the paper book of the OA. She has submitted that because of the discrimination meted out to her by the respondents, she could not apply online, as age relaxation had not been provided, and thereby her rights to apply for the post concerned were infringed, and in the result she has prayed for the following reliefs:-

- a) Direct the respondent No.1 for issue of corrigendum in advertisement no.01/2014 by giving age relaxation for women in the post of TGT (Computer Science) Post Code No.192/14, in Directorate Education, Govt. of NCT of Delhi;
- b) Direct the respondent No.1 to allow the applicant's application by giving the benefit of age relaxation for women in the post of TGT (Computer Science) Post Code No.192/14, in Directorate Education, Govt. of NCT of Delhi;
- c) Pass any other or further orders, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and for appointment of applicant in the post of TGT (Computer Science) Post Code No.192/14, in Directorate Education, Govt. of NCT of Delhi with all consequential benefits;
- d) Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice".

5. The applicant had also prayed for either staying the process of recruitment, or alternatively directions upon the respondents to accept her application, subject to other formalities, after giving her the benefit of age relaxation in the category of women as in respect of other posts codes.

6. A Coordinate Bench had on 26.02.2014 ordered that any selection made to the post concerned shall be subject to the result of the OA. The matter came to be listed for hearing on 21.09.2015, and was also heard for some time, after which it transpired that the OA, as it had been filed, cannot be decided, because some of the other opposite parties necessary for the purpose of adjudication of this case had not yet been impleaded as party respondents as on that date.

7. Learned counsel for the applicant then sought leave and permission to implead the Director of Education, Govt. of NCT of Delhi, also as an

opposite party Respondent No.R-3, which was permitted, and the case was again sent for completion of pleadings. Thereafter ultimately the case came to be heard and reserved for orders on 29.09.2006, with the amended Memo of Parties having been filed on 26.10.2015 in the meanwhile.

8. Counter reply of R-1 DSSSB had been filed on 13.11.2014. It was submitted that proper age relaxation as per the Guidelines of the Department of Personnel & Training (DoP&T, in short) had been provided, and in addition to that any specific age relaxations as per the RRs concerned have also been provided by the Respondent-DSSSB. It was, however, submitted that the user Department, i.e., the Directorate of Education, had not mentioned any age relaxation for women candidates for the posts concerned, and, therefore, the Respondent No.R-1, which is only a selection body, could not have provided any such age relaxation on its own. It was pointed out that as per the requisition/Recruitment Rules (RRs, in short) for the said post forwarded by the user department, i.e., Directorate of Education, GNCTD, the maximum age limit was mentioned to be only 30 years, and, therefore, no age relaxation for the women can be provided, and had also not submitted any policy of the GNCTD for providing any such age relaxation for women candidates for the specific post concerned.

9. It was, therefore, submitted that the maximum age limit for the post concerned continued to be 30 years, and the applicant was not eligible for the said post, and that there has been no violation of her constitutional

rights, since the vacancy had been advertised strictly as per the requisition, and RRs for the said post.

10. A detailed separate counter reply had been filed on behalf of Respondents 2 & 3 on 10.03.2016. It was pointed out that the RRs for the said posts had been framed in accordance with the DoP&T Guidelines, and in consultation with the UPSC, prescribing upper age limit for direct recruitment for general candidates as “not exceeding 30 years”, which was relaxable in the case of SC/ST/OBC/PH candidates, and for Government servants, as per the Govt. of India norms issued from time to time. It was submitted, however, that there were no age relaxations applicable for women candidates separately, as claimed by the applicant in the instant OA. It was further submitted that since the post concerned is categorized as Group ‘B’ post, no age relaxation is applicable to women and widow candidates, as per the Notification dated 27.03.2012 (Annexure R-1), containing consolidated orders on relaxation in upper age limit allowed to various categories of Government servants.

11. It was pointed out that RRs for the post of TGT (Computer Science) were first framed and notified on 25.04.2013 and published in the Delhi Gazette (Extraordinary) accordingly. It was submitted that since it is a Non-Ministerial, Non-Gazetted Group ‘B’ post, in the pay scale of Rs.9300-34800 PB-2 with Grade Pay of Rs.4600/-, these RRs had been framed in consultation with the Services Department of GNCTD and UPSC, with the approval of Lt. Governor of Delhi, and a copy of the RRs had been produced by the Respondents R-2 & R-3 at Annexure R-2. It was submitted that after Notification of RRs, requisition of 2026 newly

created posts of TGT (Computer Science) was sent to the Respondent No.R-1-DSSSB through letter dated 13.12.2013 (Annexure R-4) for undertaking the process of recruitment, on the basis of which the said posts had been advertised.

12. It was further pointed out that a similar case has already been decided by this Tribunal in OA No.959/2014-**Ms. Manita Rani vs. DSSSB** on 29.07.2015, and a copy of the order passed in that OA had been annexed as Annexure R-5, in which, after having taken notice of the provision for age relaxation for widows, divorced women and women judicially separated from their husbands, and who are not re-married, and after reproducing the DoP&T OM dated 30.01.2014 on the subject of action taken on the Paragraphs-4&5 of the order, a Coordinate Bench had, relying upon the Hon'ble Apex Court's judgment in **Mallikarhya (sic-Mallikarjuna) Rao & Others vs. State of Andhra Pradesh AIR 1990 SC 1251**, held as follows:-

"4. Thus, it is clear that there is no provision for age relaxation in favour of widow, divorced women and judicially separated women in recruitment for the post in Group 'B' categories. The applicant has not questioned the aforementioned policy decisions of the Government. As has been ruled by the Hon'ble Supreme Court in **Mallikarhya Rao Versus State of Andhra Pradesh AIR 1990 SC 1251**, it is not open to the Courts or Tribunals either to interfere with the existing policy decision or to legislate casually. The relevant excerpt of the judgment read thus :-

"11. This Court relying on Narender Chand Hem Raj & Ors. v. Lt. Governor, Union Territory, Himachal Pradesh & Ors., [1972] 1 SCR 940 and State of Himachal Pradesh v. A parent of a student of medical college, Simla and Ors., [1985] 3 SCC 169 : (AIR 1985 SC 910) held in Asif Hameed & Ors. v. State of Jammu & Kashmir & Ors., [1989] Supp. 2 SCC 364 : (AIR 1989 SC 1899) as under:

"When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has

acted within the powers and functions assigned under the constitution and if not, the court must strike-down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power-of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive."

12. The Special Rules have been framed under Article 309 of the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the constitution has to be exercised by the President or the Governor of a State as the case may be. **The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The Courts cannot usurp the functions assigned to the executive under the constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution.**

5. In view of the aforementioned, the OA is found devoid of merits and is accordingly dismissed. No costs."

(Emphasis supplied)

13. It was further submitted that when the RRs for the post of Assistant Teacher (Primary) were amended, the amended RRs were challenged before the Hon'ble Delhi High Court on C.W.P No. 7297/2007 **Sachin Gupta vs. Govt. of NCT of Delhi**, in which the Hon'ble High Court had upheld the said amendments in RRs as notified. It was, therefore, submitted that since the RRs for the post of TGT (Computer Science) had been framed strictly in accordance with DoP&T instructions, and in consultation with the UPSC, and with the approval of Lt. Governor of Delhi, and the RRs have been upheld by the Hon'ble Delhi High Court also, the applicant cannot make out a case in her favour on the ground of discrimination, and the OA, therefore, deserves to be dismissed.

14. The applicant filed her rejoinder on 17.05.2016 more or less reiterating her contentions as already made in the OA, as discussed above. Her only ground was that since she fulfils all the required qualifications, she should be given age relaxation as a woman, and that since applications are invited online, she could not even file her application online. She had again referred to the Advertisement for the previous years in order to buttress her claim, and had submitted that since age relaxation for women is a normal policy of the GNCTD, a suitable direction is required to be issued to provide such age relaxation to women, which cannot be denied, as otherwise it will be in violation of Articles 14, 16 and 21 of the Constitution. She had relied upon an earlier order dated 23.03.2010 passed by this Tribunal in OA No.1240/2008-**Anil Kumar Singhal vs. Govt. of NCT of Delhi** in which such relaxation had been provided for. However, that order was passed before the RRs for the post concerned in the present OA came to be framed and notified, and upheld by the Hon'ble Delhi High Court in **Sachin Gupta vs. Govt. of NCT of Delhi** (supra). Reliance was also placed on the judgment dated 10.07.2014 delivered by the Hon'ble Delhi High Court in W.P. (C) No.2887/2014 **Syed Mehedi vs. Govt. of NCT of Delhi & Ors.** and it was stated that relaxing the age of female candidates by 10 years had been mentioned by the Hon'ble Delhi High Court in para 4 of that judgment. The applicant had, therefore, submitted that based upon the judgment dated 10.07.2014 in **Syed Mehedi vs. Govt. of NCT of Delhi & Ors.** (supra), she was entitled for 10 years' age relaxation on the ground of gender based relaxation, being a female.

15. Heard. During arguments both the learned counsel for the applicant and the learned counsel for the respondents argued on the lines of their pleadings already recorded above, which need not be repeated again. It is clear that in terms of the order of the Coordinate Bench in OA No.959/2014-**Ms. Manita Rani vs. DSSSB** (supra), the applicant is not entitled to any relief as prayed for. Also, this Bench is bound by the order of the Coordinate Bench on exactly similar facts, as per the law laid down by the Hon'ble Apex Court in various cases, including in the case of **SI Roop Lal and Anr. Vs. Lt. Governor, Delhi and Ors. JT 1999 (9) SC 597.**

16. The order dated 23.03.2010 passed by this Tribunal in OA No.1240/2008-**Anil Kumar Singhal vs. Govt. of NCT of Delhi** (supra) cited by the applicant and reproduced at Annexure A-12 was on different facts, and related to the period prior to the Notification of the amended RRs, and the posts concerned becoming Group 'B' posts. Therefore, we are not bound by that order of another Coordinate Bench in **Anil Kumar Singhal vs. Govt. of NCT of Delhi** (supra).

17. Coming to the judgment of the Hon'ble Delhi High Court in **Syed Mehedi vs. Govt. of NCT of Delhi & Ors.** (supra), the applicant cannot be allowed to pick up a few words from the entire paragraphs and then seek relief. The Division Bench of the Hon'ble Delhi High Court had, in the judgment, stated in Paragraphs 4 & 5 as follows:-

"4. It is evident from the above narrative that the post of Special Educators was created pursuant to directions of this Court. Not only the Govt. of NCT of Delhi but other local bodies, such the MCD and NDMC were required to take such measures to cater to the

needs of the special children in view of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996. The judgment was delivered in 2009; however, the first recruitment drive appears to have been undertaken more than four years later in 2013. Naturally, at the stage when the rules were notified, the eligible candidates/individuals who might have been otherwise eligible to hold the posts became ineligible, by sheer lapse of time. In these circumstances, it was to cater to these situations and other exigency that the provision for age relaxation has been apparently factored in the rules. That the respondent Department is alive to the need to pass orders with respect to age relaxation, having regard to the larger public interest in filling-up posts, is also clear from its Public Notice dated 26.03.2013, relaxing the age of female candidates by 10 years. Concededly, this Court is not called upon to decide the legality of such a blanket age relaxation, exclusively based on gender. What is apparent, however, from such general order is that the respondents themselves are alive to the fact that there is a crying need to fill the posts and need to take one general measure, identifying all female candidates being eligible for age relaxation for 10 years. This implies that all candidates who are otherwise eligible but are not women should not be discriminated against at least with respect to consideration of their request for age relaxation. We are fortified in this conclusion because of the events which occurred; despite directions of this Court which were issued over 5 years ago and the advertisement, the Govt. of NCT of Delhi has not been able to fill the posts.

5. In the circumstances, we direct the GNCTD to consider the petitioner's request, having regard to the Notification dated 26.03.2013, without being inhibited by the fact that he would not be eligible in terms of the Notification on the ground that he does not fulfil the gender criteria. Instead, the GNCTD must keep in mind that a general relaxation of 10 years has been provided for. Other relevant factors too shall be taken into account. This exercise of considering the petitioner's application and case for age relaxation shall be completed and a reasoned order indicated to him directly, within six weeks from today. The order, if adverse shall be reasoned. The writ petition is allowed in the above terms."

18. It is, therefore, clear that the case before the Hon'ble Delhi High Court was in respect of Special Educators, and not in respect of the posts of TGT (Computer Science), with which the present OA is concerned, and, therefore, the single phrase relied upon by the applicant from out of the judgment of the Hon'ble Delhi High Court in **Syed Mehedi vs. Govt. of NCT of Delhi & Ors.** (supra) cannot enure any benefit to the applicant in the instant case.

19. In the result, we reiterate the law as correctly laid down by the Coordinate Bench in OA No.959/2014-**Ms. Manita Rani vs. DSSSB** (supra), and, therefore, we find no merit in the OA, and the OA is rejected, but there shall be no order as to costs.

***(Dr. Brahm Avtar Agrawal)***  
***Member (J)***

***(Sudhir Kumar)***  
***Member (A)***

cc.