

**Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.581/2014

Reserved on :13.01.2016
Pronounced on:28.07.2016

Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)

Chand Singh Bijyan, age 61 years
S/o Late Sh. Ram Chander
R/o H.No.398, Old Housing
Board Colony, Sonapat-131001 (Haryana). ...Applicant.

(By Advocate: Shri R.K. Sehrawat)

Versus

1. State of NCT of Delhi
Through its Chief Secretary,
Secretariat, Players Building
Indrapastha Estate, New Delhi.
2. Regional Director of Education,
Directorate of Education
Old Secretariat, Delhi.
3. Director of Education,
Directorate of Education
Old Secretariat, Delhi. ...Respondents.

(By Advocate: Shri K.M. Singh)

ORDER

Per Sudhir Kumar, Member (A):

The applicant filed this OA on 06.05.2015, at the age of 61 years, after he had attained superannuation on 31.12.2013 from the post of Education Officer. Soon after his retirement on superannuation, he had given a representation dated 24.01.2014,

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praying for extension to him of the policy of automatic re-employment of retiring teachers up-to the PGT level, praying for re-employment policy to be made applicable to the Education Officers also, and is aggrieved because the respondents had, through their impugned Memorandum dated 03.03.2014, rejected his request, stating that there is no provision for re-employment of a person who has retired as Education Officer on attaining the age of superannuation.

2. Through this OA the applicant approached this Tribunal 14 months after the impugned order had been passed. His grievance is that the automatic re-employment for two years policy, had since been extended to the Vice-Principals, Principals and the DEOs also, through orders of this Court, and of the Hon'ble Delhi High Court, and since the work profile of DEO and EO is the same, his case also ought to have been considered.

3. The applicant had joined as TGT (Science-A) with the respondents on 12.02.1982. He was selected as PGT on 11.03.1992, and thereafter he was selected to the post of Principal, after qualifying the examination conducted by the UPSC, and through order dated 31.12.2001 he was appointed as a Principal.

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4. The applicant has pointed out that the Notification allowing automatic re-employment of all retiring teachers upto PGT level for two more years had been extended to retired Vice-Principals and Principals of the Govt. and the Govt. Aided Schools through order dated 27.01.2012. He has submitted that he had been posted as Education Officer on current duty charge and joined as such on 08.04.2013, although his substantive designation remained DEO/Principal. Subsequently, through order dated 29.08.2013/02.09.2013, it was confirmed for pay purposes that he had joined as DEO with effect from 01.04.2013. However, through his application dated 31.05.2013, the applicant had refused to avail substantive promotion to the post of Education Officer, due to personal reasons, in terms of the respondents' Standing Circular dated 28.01.2005 issued in this regard. However, the applicant is aggrieved that without assigning any reason, and without any basis, the respondents declined his request through order dated 11.11.2013, which he has not challenged in the present OA, and as per Para 4(xi), he had submitted that he will take appropriate remedy in respect of that order separately.

5. Yet, while filing this O.A., the applicant had taken the ground that since he has declined his substantive promotion to

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the post of Education Officer, his case for re-employment cannot be denied on the basis of any discrimination, and just because he was promoted to the post of Education Officer, he cannot be denied the benefit of the policy of re-employment. He has submitted if he would have been allowed to continue as DEO, he would have automatically got the re-employment, but the respondents have willfully and deliberately declined his request. He has submitted that in this process, his fundamental rights have been infringed, as the policy, which has been framed for teaching cadre, cannot be applied discriminately, by denying the said benefit to the seniors, who had got their promotion after having had experience of teaching, and excellent service record. He has submitted that no plausible reason has been assigned in the impugned Memorandum, and it is bad in law, in view of the law as laid down by the Hon'ble Delhi High Court in the case of **Sushma Nayar vs. Managing Committee, Delhi Public School Mathura Road & Others** in Writ Petition (Civil) No.8562 of 2009 vide judgment dated 17.07.2009, in which it was held that when once one is a teacher to start with, he/she "remains a teacher" even if promoted to a higher post, which involves supervision of the schools rather than teaching in the schools. He has submitted that the same ratio had been followed in **Charanjit Singh Nischal vs. Municipal Corporation of Delhi :**

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106 (2003) DLT 691 also, and in view of the fact that when Principals/DEOs, who are also having supervisory work just similar to that of Education Officers, have been given the benefit of automatic re-employment at the age of 62 years, he is also entitled for the same benefits. In the result, the applicant has prayed for the following reliefs:

"a) quash/set aside the memorandum dated 04.04.2014 whereby the request of the applicant for re-employment upto the age of 62 years after retirement has been rejected illegally and arbitrarily.

b) Direct the respondents to consider the case of the applicant for re-employment and reemploy him as Education Officer or to any other such post as this Tribunal may deem fit from date of his retirement i.e. 31.12.2013 by passing such order as may be necessary for re-employment of the applicant and direct the respondents to give all consequential benefits including full back-wages;

c) allow the cost of litigation;

d) Pass any other or further orders which this Hon'ble court may deem fit and proper in the facts and circumstances of this case."

6. In their counter reply filed on 20.07.2015, the respondents submitted that soon after the applicant's representation dated 24.01.2014 had been rejected by the competent authority on 25.02.2014, the applicant had filed his OA seeking the same directions for his re-employment from 31.12.2013. It was further pointed out that on 22.12.2014, the applicant prayed through MA

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No.637/2015 to be allowed to file an amended OA, and upon that MA being allowed, the present amended OA, filed on 06.05.2015, was brought on record. It was submitted that the cause of action had actually arisen on 25.02.2014, when the request of the applicant for re-employment was rejected and that rejection letter has been challenged now on 06.05.2015, through the amended O.A., and, therefore, it is time barred, and the amended OA deserves to be dismissed on the ground of delay itself.

7. It is further submitted by way of preliminary objections that the decision of the Hon'ble Lt. Governor, Govt. of NCT of Delhi to extend the facility of re-employment to the Vice-Principal/Principals was circulated vide order dated 27.01.2012, which has been annexed with the amended OA as Annexure A-8, but the applicant has not laid a challenge to that decision, and till that decision/order holds the field, the present claim of the applicant is not maintainable/permissible.

8. It was further pointed out that the applicant had himself informed the Deputy Director of Education about his having joined on the post of Education Officer in pursuance of the order dated 24.05.2013 through Annexure R-1, based upon the recommendations of the Departmental Promotion Committee Meeting held on 12.04.2013. It was further submitted that the

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judgments cited in the OA have been misquoted and misconceived, and those judgments are related to the challenge to re-employment of the Vice-Principals and the Principals, while the applicant had retired as an Education Officer, and the re-employment facilities have not been extended to the Education Officers. It was, therefore, prayed that the amended OA filed through MA No. 637/2015, and brought on record thereafter, deserves to be dismissed with costs.

9. The applicant filed his rejoinder on 16.07.2015, and submitted that the question of limitation did not arise once an application for amendment of the O.A. had been allowed by this Tribunal, and the plea of the respondents regarding limitation is not sustainable. It was further submitted that the order, which has been impugned in the amended OA, having been passed during the pendency of the Original OA, itself proves that the plea regarding limitation is totally misconceived and unsustainable. It was reiterated that the order passed by the respondents is non-speaking and liable to be set aside, and, therefore prayed that the OA be allowed.

10. Heard. During the course of the arguments, learned counsel for the respondents produced the joining report of the applicant dated 22.11.2013, which had stated as follows:

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"To

The Dy. Director of Education
BL Block, Shalimar Bagh,
Delhi-110 088.

Sub:-Joining to the post of Education Officer.

Respected Madam,

In response to your office letter No. F.(5)/GO/ADM/2012/17 dated 22.11.2013, I hereby joined to the post of Education w.e.f.24.05.2013. You are, therefore, requested to down load my joining report from this MIS Module.

Yours faithfully,
Sd/-
(Chand Singh Biyan)
EDUCATION OFFICER:ZONE-09."

11. At the same time, on the other hand, learned counsel for the applicant had filed a copy of the judgment of the Hon'ble High Court dated 17.11.2009 in **Sushma Nayar** (supra), and had read out paras 10 and 11 of the said judgment which are as follows:

"10.....In **Charanjit Singh Nischal** (supra) the High Court whilst relying on the judgment of a Division Bench of this Court in Smt. Sheila Puri vs. Municipal Corporation of Delhi; 1985 (2) SLR observed:

"3. It was contended on behalf of the respondent that the petitioner was not a teacher as he was promoted as a School Inspector, therefore, he could not have been granted the superannuation at the age 60 years and the Municipal Corporation has rightly superannuated him when he attained the age of 58 years. Another argument put forth by the Counsel for the

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respondent is that the accord was granted to the employees who were absorbed by the Delhi Administration subject to the observance of rules and instructions etc. laid down in this behalf by the Government of India from time to time.

4. I need not go into the arguments advanced by the Counsel for the respondent as all these contentions were raised before the Division Bench which heard the matter, Smt. Sheila Puri v. Municipal Corporation of Delhi, 1985 (2) SLR. Division Bench of this Court in Sheila Pun's case (supra) held as under:

'We think that this problem cannot be solved by mere reference to the affidavit. **The petitioner was a teacher. She was a Headmistress of a school then she became a School Inspectress, then became a Senior School Inspectress. If she is a Senior School Inspectress, does she cease to be a teacher? Does she become an officer and not a teacher? It seems to us that if you are a teacher to start with, you remain a teacher even if you are promoted to a post which involves supervision of the schools rather than teaching in the schools.** It would be a strange result that a Headmistress promoted to the post of School Inspectress should have a lower retirement age. The position set out in the Resolution of 1970, i.e., Resolution No. 127 did not make any distinction between teachers and School Inspectress. We fail to understand how two sets of persons belonging to the same class should have different retiring age if they are promoted or not promoted. Also, when some persons of that class are transferred to the Delhi

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Administration on the understanding that they would retain their retiring age of 60, we fail to understand why the remaining persons should not retain the same retiring age of 60. Also, there seems to be some confusion as to who is a teacher? If the interpretation of the Municipal Corporation is accepted it leads to a number of awkward complications. The promotion post of Headmistress is that of School Inspectors. Normally, seniors are promoted and they are not far from the age of retirement. So, it would be strange result that when a Headmistress is promoted, she would immediately retire whereas if she remained Headmistress, she would retire at 60. This result could not have been desired.

Furthermore, the word 'teacher' means a person in the teaching profession. The entry of such persons into service would normally be in lower grades. They would be promoted from say Assistant Teacher to Teacher and then Vice Principal, Principal or Headmistress, and so on. They would then be promoted to the post of Inspector and there may be further posts like Senior Inspectors and so on. We cannot imagine an Inspector to Schools not being a teacher. A very concept of an Inspector is to see that the teaching is conducted in accordance with some standard practice and the progress of students is as desired. An Inspector or Inspectors must, therefore, be a teacher. Such a person does not cease to be a teacher by becoming an Inspector. An Inspector's job is not that of looking after the up-keep

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of the school, but to see that the teaching is done properly. We are of the view that such a person would remain a teacher even after promotion. **No doubt, the Resolution states that officers would retire at 58 and teachers at 60, presumably by officers are meant non-teachers employed in other branches of the Corporation. There is a difference between the administrative line in the Corporation and the teaching line. We would prefer to hold that the petitioner continues to be a teacher in spite of being promoted to the post of School Inspectors. The real meaning of the Resolution is that persons employed on the teaching side, or educational department of the Municipal Corporation have a retiring age of 60, whereas others have a retiring age of 58.** Referring again to the judgment cited at the Bar, Shri B.N. Chaudhary v. The Commissioner, Municipal Corporation of Delhi and Ors., herein it seems to have been accepted that the retiring age was 58, we think that is not a precedent, because the petition was dismissed in limine without a careful examination of the Resolution Nos. 127 of 1970 and 666 of 1978. We do not think that we are bound by a petition dismissed in liming.'

6. On the basis of the aforesaid decision of Division Bench of this Court, I am. of the considered view that the petitioner was a teacher and even after becoming School Inspector he remained a teacher. therefore, the petitioner ought to have been retired at the age of 60 years.” (Emphasis supplied)

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12. When the case was heard and reserved for orders, learned counsel for the applicant had sought time to file connected case law, on which he places reliance, which time was allowed. On 05.02.2016, learned counsel for the applicant submitted copies of the judgments in (i) **Tapash Kumar Paul vs. BSNL & Another** : AIR 2015 SC 257, (ii) **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Others** : (2013) 10 SC 324, and (iii) a copy of the order of this Tribunal passed in OA No.2979/12 in **Sh. Bhawar Pal vs. Chief Secretary, GNCTD and Another** pronounced on 27.01.2014 by a Coordinate Bench including one of us [Sudhir Kumar, Member (A)].

13. During the course of his arguments, learned counsel for the applicant had stressed on the post of Education Officer being a post directly connected with the supervision of Education, and, in that sense, being same as the posts of the Principal and the DEO. It was emphasized by him that no distinction can be drawn between the DEO and his immediate superior the Education Officer. On the other hand, learned counsel for the respondents had submitted that the withdrawal of the earlier OA filed by the applicant was entirely voluntary, and, therefore, since the prayer as made through MA No.637/2015, for filing an amended OA, was itself made after a reply having been filed to the Original OA, the law of limitation would apply in respect of the amended OA.

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14. It is true that before the order dated 13.04.2015, through which the MA for amendment of the OA had been allowed, counter reply to the OA had already been filed by the respondents on 30.05.2014, and an opportunity had, therefore, been granted to them to file their further/fresh counter reply to the amended OA also. But, this Tribunal having allowed the fresh O.A. to be taken on record, it is apparent that the aspect of limitation ought not to be allowed to be agitated at this juncture, and therefore, it is held that due to the fact of the MA for filing an amended OA having been expressly allowed, and the amended OA having been filed in pursuance of the order dated 13.04.2015, since it was only an amendment of the original O.A. the law of limitation will not apply to bar the amended O.A. from being considered by us.

15. We have considered the other contentions of the rival parties, and have examined the case law cited by them. It is seen that in the case of **Sushma Nayar** (supra), the case concerned the age of retirement, which had been prescribed differently in the case of teachers and the Principals in the Delhi Education Rules, 1973, and that judgment was concerning to Rule 110 of the said Rules. In that judgment, the previous judgment in the case of **Smt. Sheila Puri vs. Municipal Corporation of Delhi**; 1985 (2) SLR, as has been observed in **Charanjit Singh**

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Nischal (supra), had been noted, and that in para-4 of the **Sushma Nayar** (supra) judgment, the previous judgment in **Smt. Sheila Puri** (supra) had been cited.

16. Here, in the instant case, the applicant had indeed become an officer when he had assumed the charge of the post of an Education Officer. Therefore, in terms of the judgment in **Smt. Sheila Puri** (supra) itself, the applicant had become an officer, and he was no longer in a teaching cadre. The relevant portion of the judgment reads thus:

"4.....We think that this problem cannot be solved by mere reference to the affidavit. **The petitioner was a teacher. She was a Headmistress of a school then she became a School Inspectors, then became a Senior School Inspectors. If she is a Senior School Inspectors, does she cease to be a teacher? Does she become an officer and not a teacher? It seems to us that if you are a teacher to start with, you remain a teacher even if you are promoted to a post which involves supervision of the schools rather than teaching in the schools.**

No doubt, the Resolution states that officers would retire at 58 and teachers at 60, presumably by officers are meant non-teachers employed in other branches of the Corporation. There is a difference between the administrative line in the Corporation and the teaching line. We would prefer to hold that the petitioner continues to be a teacher in spite of being promoted to the post of School Inspectress. The real meaning of the Resolution is that persons employed on the teaching side, or

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educational department of the Municipal Corporation have a retiring age of 60, whereas others have a retiring age of 58.

(Emphasis supplied)

17. However, the question before us is not the question of equality in the age of retirement being prescribed. The age of retirement, both in respect of TGT, PGT, Vice-Principal, Principal, DEO and the Education Officer and other Officers has remained 60 years even as on today. The present case is only regarding a specific policy of the respondents to cope up with the shortage of teachers in their schools, and due to delays in fresh appointments, providing re-employment to the retiring teachers, after the date of retirement, and while giving such re-employment, the respondents are certainly entitled to make a distinction between the teachers who would actually make good the shortage of teachers, and the Officers in the field of education administration, which, in the instant case, the applicant had been. Therefore, the law as laid down in **Sushma Nayar** (supra) cannot not enure any benefit to the present applicant.

18. The judgment in the case of **Tapash Kumar Paul** (supra) cited by the applicant was in the context of the Industrial

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Disputes Act, and has no relevance whatsoever to the present case.

19. The judgment of the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase** (supra) was related to the case of termination of service, which termination had been challenged as being wrongful and illegal, and the Apex Court had then considered the case of reinstatement, backwages and the arrears etc., and had laid down the law in regard to reinstatement. The instant case is not a case of termination of services of the applicant, and it relates to re-employment after normal regular superannuation. Therefore, the law as laid down by the Hon'ble Apex Court in **Deepali Gundu Surwase** (supra) cannot enure any benefit to the applicant before us.

20. The order of this Tribunal dated 27.01.2014 in **Shri Bhawar Pal** (supra) was, however, in the context of a claim for re-employment only, with which aspect the present OA is also concerned. In that case, a person, who already came within the ambit of the policy directions issued by the respondents had missed being so re-employed, and there was also delay in such re-employment. In that context, the Bench had on that day held in paras 11 to 14 of that Order as follows:

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"11. In the instant case before us, we find that the applicant had retired on the date of his superannuation, and it was not a case of termination or disengagement, which could be found to be tainted with mala fides, and where the employer had used the power to dismiss/disengage the services of the applicant as a camouflage, bringing this case within Para 15(i) of the Hon'ble High Court's order dated 08.04.2012 in Mithilesh Swami's case (supra). Here, the applicant had retired on the normal date of his superannuation, but since at that point of time, the issue as to whether Vice-Principals or Principals are to be treated at par with Teachers for the purpose of re-employment was still open and undecided, and under contest before the Hon'ble Delhi High Court, the respondents had not given the applicant the benefit of such re-employment as Vice-Principal from 01.06.2010, immediately after the date of his superannuation. It was only on 23.11.2010 that the Division Bench of the Hon'ble Delhi High Court in MCD vs. Giriraj Sharma & Ors (supra) held that the Cabinet Decision of the Delhi Government notified on 29.01.2007 would encompass within its fold a Vice Principal or a Principal as well. On the strength of that judgment only, the Coordinate Bench of this Tribunal had allowed the applicants first OA No.1834/2010 on 09.12.2010 (Annexure A-3). The applicant had thereafter represented for such re-engagement through Annexure A-4 dated 27.12.2010 (supra), but was given the benefit of such re-employment only w.e.f. 17.02.2012.

12. Applying the ratio as laid down by the Hon'ble Delhi High Court in the case of Govt. of NCT of Delhi & Ors. vs. Mithilesh Swami (supra) on 08.04.2013 in Para 15 (ii) and Para-15 (iii) of the judgment, we, therefore, hold that the entitlement or eligibility of the applicant for re-employment had concretized only on 09.12.2010, the day his first O.A. filed along with three co-applicants, OA No.1834/2010, had been allowed. The fact that there were legal proceedings, and conflicting judgments led the respondents to delay his actual re-engagement till 17.02.2012, but only the delay

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from 09.12.2010 to 17.02.2012 can be ascribed to be delay on the part of the respondents. The applicants entitlement to such two years re-engagement after the date of his normal superannuation would have automatically come to an end on 31.05.2012.

13. Therefore, since the respondents have acted bona fide during this whole period, following the judgment of the Hon'ble Delhi High Court in Govt. of NCT of Delhi & Ors. vs. Mithilesh Swami (supra), and the order of the Hon'ble High Court of Delhi in the matter of GNCTD vs. Ajit Kumar (supra), cited by the respondents, we allow the present third OA of the applicant in part, ordering that while for the period from 01.06.2010 to 08.12.2010, one day prior to the date his first OA No.1834/2010 had been allowed, the applicant will be entitled only to the normal pension, but from 09.12.2010 to 16.02.2012, the date prior to the passing of the order of his re-engagement dated 17.02.2012, he would be eligible for 50% back wages, even though he was not re-engaged and did not do any teaching work in this period, as per the principle laid down by the Honble Delhi High Court in Govt. of NCT of Delhi & Ors. vs. Mithilesh Swami (supra) in Para 15(iii) (c) (as reproduced above).

14. With this, the OA is allowed in part, but there shall be no order as to costs."

21. Here, in the instant case, the applicant had moved from being a DEO, equivalent to a Principal, and had assumed the charge of the administrative post of an Education Officer with effect from 24.05.2013 itself, which was the date of issuance of the order giving effect to DPC's recommendations for his promotion from the level of Principals/DEOs to the post of Education Officer/Assistant Director of Education, on regular

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basis, through Annexure R-1. It is, therefore, held that when the applicant moved to the category of being an officer, and he joined as Education Officer/Assistant Director of Education with effect from 24.05.2013, the benefits, as may have been available to the Vice-Principals, Principals and the DEOs cannot, therefore, be extended or made available to him after that date.

22. In the result, since the ratios of the judgments in **Sushma Nayar** (supra) and **Smt. Sheila Puri** (supra) related only to the age of retirement, and did not relate to the aspect of re-employment, there is no merit in the argument that when the applicant had moved to a completely administrative post and Cadre of Education Officer/Assistant Director of Education, he could still be covered under the policy for re-employment of teachers, notified in order to cope up with the teaching work-load in the schools. Therefore, we find no merit in the O.A., and the same is rejected, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/