

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

OA No.719/2015

Reserved on :07.01.2016
Pronounced on:25.07.2016

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

Shri Bhola Nath Bedi, Aged about 60 years
S/o Shri Balraj Bedi
Retired as PGT/Lecturer (Economics)
R/o BG-5a/40A, Paschim Vihar,
New Delhi-110063. ...Applicant.
(By Advocate: Ms.Nisha Priya Bhatia)

Versus

Govt. NCT of Delhi through

1. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Sachivalaya, IP Estate, New Delhi.
2. The Director,
Directorate of Education
Govt. of NCT of Delhi,
Old Secretariat, Delhi-110054.
3. The Deputy Director,
Directorate of Education
Govt. of NCT of Delhi,
District West A, Karampura,
New Moti Nagar, New Delhi-110050. ...Respondents.

(By Advocate: Shri Anmol Pandita for Shri Vijay Pandita)

ORDER

Per Sudhir Kumar, Member (A):

The applicant filed this OA as a PGT (Economics) and had approached this Tribunal because through impugned order dated 17.01.2015, the respondents had rejected his claim for re-

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employment as a teacher, after his retirement, on the basis of his professional un-fitness, as determined on the basis of last five years' classes taught by him, as submitted by him along with this application for re-employment. His case is that the action of the respondents is contrary to the orders of this Tribunal dated 03.11.2011 passed in OA No.3530/2011 in the case of **Dr. Mithilesh Swamy vs. Govt. of NCT of Delhi and Others**, in which the Tribunal had considered the Notification dated 29.01.2007, and had allowed automatic re-employment of all retiring teachers upto PGT level, only subject to professional fitness and vigilance clearance. He has alleged that the view taken by the respondents in the impugned order is totally illegal and contrary to their own instructions, and hence the same is liable to be set aside. Hence this OA.

2. The applicant had joined the respondents as Assistant Teacher on 10.02.1983, and was regularized as Teacher on 21.01.1992 with effect from 21.01.1989, and then later promoted as PGT/Lecturer (Economics) on 01.04.2010 around 3 or 4 months prior to his retirement. Through the letter dated 11.09.2014 it was notified that the date of his retirement on superannuation was 31.12.2014, and vide letter dated

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02.12.2014, the respondents had also clarified that no vigilance case was pending or contemplated against him. On 05.12.2014, a certificate was issued that the result of Class-XII, which he had been teaching in the year 2011, was 80.4% and in respect of year 2012 it was 56%.

3. The applicant superannuated on 31.12.2014, but rather than automatically considering his case for re-employment for further period of two years, vide impugned order dated 17.01.2015 the respondents rejected his case for re-employment on the ground of his professional unfitness. The applicant has submitted that it cannot be sustained in the eyes of law.

4. The applicant made a representation to the respondents on 19.01.2015 to consider his case for re-employment, claiming that in comparison to the result of other classes, result of the classes taught by him was better, and the same was more than 50%, and therefore his case for re-employment may be considered. Just two days later, the applicant gave another representation pointing out that in the matter of comparison of result, the School Principal could have adopted only a uniform policy, which cannot vary from teacher to teacher, and six days later, the applicant gave another representation dated 27.01.2015 pointing out that

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his ACRs and teaching are better in comparison to other classes, but to no avail. Therefore, claiming that the action of the respondents is arbitrary & illegal, the applicant filed this OA on 18.02.2015.

5. For filing of this OA, the applicant has taken the following grounds:

- i) That the actions of the respondents are in violation of Articles 14 and 16 of the Constitution.
- ii) That the respondents are duty bound to consider the applicant's case in terms of policy dated 29.01.2007 for re-employment of all the retiring teachers upto PGT level, but they have violated their own Scheme;
- iii) That this Tribunal had in **Dr. Mithilesh Swamy** (supra) dealt with the same Scheme, and had directed to provide automatic re-employment for a period of two years, and the salary which one would have drawn on re-employment from the very next day after the date of superannuation, and, therefore, the respondents are duty bound to follow that policy;

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- iv) That the judgment of this Tribunal in **Dr. Mithilesh Swamy** (supra) was upheld by the Hon'ble Delhi High Court vide its judgment dated 08.04.2013 in Writ Petition (Civil) No.2677/2012;
- v) That while rejecting the applicant's claim for re-employment, the respondents have considered other irrelevant facts, and have not applied their mind, and, therefore, they have taken a view contrary to the provisions of their own Scheme, and have not considered the averments raised in his representations.

6. In the result, the applicant had prayed for the following reliefs:

"8.1) That this Hon'ble Tribunal may graciously be pleased to allow this Original Application and set-aside the impugned order dated 17.1.2015 with consequential benefits.

8.2) That this Hon'ble Tribunal may further graciously be pleased to direct the respondents to re-employ the applicant as PGT forthwith w.e.f. 1.1.2015 along with arrears of salary.

8.3) That any other or further relief, which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case, may also be granted in favour of the applicant.

8.4) That the cost of the proceedings may be awarded may be awarded in favour of the applicant."

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7. The respondents filed their counter reply on 13.05.2015 taking the preliminary objections that the present OA is liable to be dismissed, in view of the Hon'ble Delhi High Court's judgment dated 17.09.2014 in **C.K.P.Naidu vs. Govt. of NCT of Delhi** in Writ Petition No.822/2014 and 756/2014. It was further submitted that another similar and identical matter had been dismissed by the Hon'ble Delhi High Court vide its judgment dated 29.04.2011 in **Shashi Kohli vs. Director of Education** in Writ Petition No.4330/2010, clarifying that as per the Notification dated 28.09.2007, fitness does not mean physical fitness alone, but it also includes professional fitness, which is required to be assessed by the concerned officers of the District after considering the work and conduct report, and the Hon'ble Delhi High Court had held that the petitioner has no right to automatic re-employment, and only has a right to be considered for such re-employment, rather they have the right to deny him/her re-employment after taking into account the overall performance of the teacher. They have, therefore, prayed that there is no merit in the contentions of the applicant for re-employment.

8. It was further submitted that this Tribunal had also dismissed the OA No.661/2012 on 31.10.2012 in **Surinder**

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Kumar Mittal vs. Govt. of NCT of Delhi relying upon the High Court's judgment in **Shashi Kohli vs. Director of Education** (supra). They have taken a preliminary objection that the instant OA is barred by Sections 19, 20 and 21 of the Administrative Tribunals Act, 1985, and the OA having been filed is an abuse of the process of law, and the same is liable to be dismissed with costs.

9. It was thereafter submitted that lack of professional fitness can be a ground for rejection of applicant's claim for re-employment, which is justified, correct and in tune with the policy of Directorate of Education, Govt. of NCT of Delhi, vide order dated 28.02.2007 read with order dated 27.01.2012 (Annexures A-4 and A-5). It was further submitted that the impugned order clearly states as to why the applicant is being denied the re-employment, and that order passed by the competent authority is just and legally valid, and, therefore, deserves to be upheld.

10. It was submitted that since re-employment of a teacher is done after the age of superannuation, it is subject to the fitness and vigilance clearance, and comparison with one class to the other class cannot stand at that stage, and cannot be a subject matter for giving rise to a cause of action in the hands of the

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applicant. It was further submitted that there has been no discrimination in the case of applicant, and since his case has no parity with the case of **Dr. Mithilesh Swamy** (supra), his case is liable to be summarily rejected, on account of his not bearing professional fitness. It was, therefore, prayed that the OA be dismissed with costs, and the copies of the cited judgments were enclosed.

11. The applicant filed a rejoinder on 09.07.2015. In this, he had more or less reiterated his contentions as already made out in the OA. It was further submitted that with reference to the other retired colleagues, who had been even provided re-employment, their result of past five years, or any number of years, was not treated as the basis for providing such re-employment. Admitting that though there is no vested right for re-employment, but right for consideration is there, it was pleaded that his case is different from the case of **C.K.P.Naidu vs. Govt. of NCT of Delhi** (supra), as well as the case of **Shashi Kohli vs. Director of Education** (supra). It was submitted that in the case of Shashi Kohli, the ACRs were not upto the prescribed 'benchmark', whereas in the case of the applicant, records can be summoned to see his ACRs, which are above the

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'benchmark'. It was further submitted that the judgment in **Surinder Kumar Mittal** (supra) is not attracted since the performance of the teacher before his retirement is assessed on the basis of various factors, and in respect of the applicant, the respondents have considered the result of last five years, which had never been the basis in respect of others. It was denied that the OA is barred by Sections 19, 20 and 21 of the Administrative Tribunals Act, 1985. It was again repeated that in respect of Vice Principal of the School and his colleague, Physical Education Teacher, the result was not the factor which had ever been taken into consideration when they were re-employed. It was, therefore, prayed that the OA be allowed.

12. The respondents filed a *sur rejoinder* on 27.11.2015 through an affidavit, which had been permitted as per the order dated 31.10.2015. Through this they had pointed out that the applicant was a PGT (Economics) before his retirement, and his case could not be compared with the cases of the Vice Principal and the Physical Education Teacher, who had got re-employment, and that the fitness/performance of a teacher is evaluated on the basis of classes taught by him during the last five years. It was submitted that since the applicant was working as PGT, which is a

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purely teaching post, therefore evaluation of his performance could have been measured only on the basis of his performance of teaching, and the result of the students taught by the teacher is the only criteria for evaluation of his performance.

13. It was further submitted that the Vice Principal holds administrative and teaching post simultaneously, and the performance of Physical Education Teacher is counted by the number of awards, medals and certificates won by the students of the school, at school level and other levels, under the guidance & support of the Physical Education Teacher seeking re-employment. It was submitted that the respondents have a number of categories of teachers, having purely teaching work, teaching-cum-administrative work, and teaching skill levels like teachers of Music, SUPA, Home Science, Yoga etc., and the evaluation of the performance of all categories of teachers is done on the basis of their respective duties in the school, and, therefore, the case of the applicant cannot be equated to be at par with the cases of the Vice Principal and the Physical Education Teacher. It was further submitted that the applicant's performance on the aspect of his teaching duties was measured and evaluated in terms of his teaching performance and its result,

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and it was found that the performance of the students had shown drastic decline in the past five years, and, therefore, the applicant's case for re-employment was rightly rejected by the competent authority. They had filed all the records of the teachers and the cases pertaining to the re-employment of the Vice Principal and the Physical Education Teacher through this affidavit.

14. Heard. During the course of arguments, learned counsel for the applicant had submitted the written arguments, and had even read out some portions of the same. He had also filed a copy of the information obtained by the applicant under the RTI Act, through which he had sought information for trying to compare his case to the case of the named Vice Principal and the Physical Education Teacher, as already discussed above. He had also filed a copy of the Coordinate Bench's judgment in OA No.3967/2013 & OA No.3968/2013 dated 21.07.2014 in **Ramesh Chand vs. Govt. of NCT of Delhi and Others.**

15. On the other hand, learned counsel for the respondents had particularly relied upon the judgment of the Hon'ble Delhi High Court dated 29.03.2012 in WP(C) No.6450/2011 in **Directorate of Education & Others vs. Ajit Kumar.**

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16. It is seen that the OA was filed by one Advocate, the rejoinder was filed by another, and the case was argued before us by a third Advocate on behalf of the applicant. We have already discussed the contents of the OA and the rejoinder, but since there was a different Advocate who had submitted the written arguments before us, it would be proper to point out some of the written arguments, as submitted before us, which had travelled beyond the pleadings already on record. In Para 2 (a) of the written arguments, the applicant had questioned the absence of any circulars on the basis of which "professional fitness" was decided by the respondents. Through Para 2(b), it was pointed out that there were no provisions or circulars which could determine the "professional fitness", and through Para 2(c), it was submitted that no provisions of any circulars of the respondents lay down any criteria that the "professional fitness" of a teacher for the purpose of his re-employment would be considered on the basis of last five years' result, as submitted by the Head of the School.

17. It was, therefore, submitted by the learned counsel for the applicant that since there are no circulars which lay down any precise "provisions", leave alone any provision for consideration

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of last five years' results, submitted by the Head of the School for determining the "professional fitness" of a teacher, it was erroneous on the part of the respondents to reject the case of the applicant for re-employment. A copy of the RTI reply was then relied upon by him and it was submitted that the result could not have been a criteria for determining either the applicant's "professional fitness", or that of the Vice Principal, and the Physical Education Teacher, and the applicant was right in trying to compare his case with their cases. It was further submitted that mere participation of students in the Sports Events could not have been the basis to provide re-employment to the Physical Education Teacher concerned, and when it was not denied that the Vice Principal concerned had not taught any class, there could not be a valid criteria to consider him fit for his re-employment.

18. It was submitted that there have been many cases before this Tribunal where the respondents have cleared the re-employment of some teachers despite their erratic results, and, at the same time, rejected re-employment to those teachers, whose results were far better. It was submitted that the impugned orders rejecting the applicant's case for re-employment actually amounts to contempt of this Tribunal's order dated

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21.07.2014 in **Ramesh Chand vs. Govt. of NCT of Delhi and Others** (supra). It was submitted on behalf of the applicant that as per the directions contained in this order dated 21.07.2014 (supra), the respondents ought to have actually framed a set of guidelines, including the criteria for determining the fitness of a retiring teacher for the purposes of re-employment, within a period of three months from the date of receipt of the said judgment, and yet they had not done so in time, and had passed the impugned order dated 17.01.2015 in the case of applicant, without having framed any such guidelines, as ordered by this Tribunal six months earlier.

19. It was once again submitted that the "professional fitness" of the applicant is not lacking in any manner, and that if it was so lacking, his ACRs for the relevant period would have reflected that. It was further submitted that the manner in which the detailed teaching record of applicant's result has been considered is also wrong, as the respondents have erred in attributing pass percentage to Classes VI to VIII, while no student is ever 'passed' or 'failed' in these classes, in terms of Section 16 of Right of Children to Free & Compulsory Education Act, 2009, which covers completion of elementary education upto Class-VIII.

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20. Thereafter, learned counsel for the applicant had produced an year-wise analysis of claimed discrepancies in the applicant's result, as had been mentioned in the impugned order, which need not be reproduced here. It was claimed that since there were many discrepancies between the results of the Classes taught by the applicant, as tabulated by the respondents in the impugned order on the one hand, and the applicant's detailed result, as submitted along with the written arguments on the other hand, these discrepancies suggest that the figures in the impugned orders were incorrect, contrived and manipulated, and that the result of the classes taught by the applicant was far better than what the respondents had claimed it to be. It was submitted that the respondents have not placed on record the detailed results of all the classes taught by the applicant, and they have judged the applicant's "professional fitness" by a parameter 'result', which nowhere exists in the circulars which they claim to have used to decide his case, and, therefore, it was evident that the respondents had unreasonably and un-justifiably acted against the applicant, with malice, bias and ill will.

21. It was further submitted that the respondents' decision to regard him as not "professionally fit" for re-employment on the

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basis of his performance over a five year period, after having promoted him in the meanwhile, and having given him 'good' and 'very good' ACRs over the same period, was not correct, apart from being contempt of this Tribunal's orders. It was submitted that the respondents should have taken into account the applicant's generosity, integrity and devotion to duty, because of which he had continued to teach lower classes, even though he had been promoted to the rank of PGT (Economics). Thereafter, learned counsel for the applicant had drawn our attention to Para 8 and 9 of the judgment dated 21.07.2014 in OA No.3967/2013 & OA No.3968/2013 in **Ramesh Chand** (supra) in which it had been held as follows:

8. In the light of the aforesaid facts and reasons, we are of the view that **respondents have not been able to show as to how the request of the applicants in these two OAs were rejected on certain grounds while some other officers who were in similar position were given re-employment. The respondents have not been able to refute the allegations made by the applicants that the action of the respondents in rejecting the applicants cases were violative of Article 14 & 16 of the Constitution of India being prima facie arbitrary and discriminatory.** We, therefore, quash the orders no.4216-20 dated 13.09.2013 impugned in OA-3967/2013 and no. 4208-12 dated 13.09.2013 and direct the respondents to consider request of re-employment of the applicants in these two OAs in terms of the Govt. of NCT of Delhis letter dated 27.01.2012 and keeping in

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view our observations in the preceding paras, and pass a speaking and reasoned order within four weeks from the date of receipt of a copy of this order.

9. We have come across several such cases where the automatic re-employment of superannuating teachers/ Vice Principals/Principals have been rejected and the respondents have not been able to place before us a clear cut policy, criteria or guideline for determining the fitness or otherwise of a superannuating candidate for re-employment. In the present case also the learned counsel for the respondents has not been able to explain as to how despite lower result in one case was not considered a handicap in giving re-employment while the same became a ground for denying re-employment in another case. We, therefore, further direct the respondents to frame a set of guidelines including the criteria for determining the fitness of a retiring officer for processing the request of retiring employees for re-employment. This exercise may be completed preferably within a period of three months from the date of receipt of a copy of this order.”

(Emphasis supplied)

22. We have given our anxious consideration to the facts of the case. Firstly, it may be mentioned that as per the law laid down by the Hon'ble Apex Court in many cases, including the case of **S. I. Roop Lal vs. Lt. Governor, Delhi**, AIR 2000 SC 594, a Coordinate Bench of this Tribunal is bound to follow the judgment of another Bench of co-equal strength, which does not appear to have been done in the case of common order dated 21.07.2014 pronounced in OA No.3967/2013 & OA No.3968/2013 (supra), in

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which the Bench that day had failed to notice the order dated 31.10.2012 in OA No.661/2012, as cited by the learned counsel for the respondents during his arguments, in which another Coordinate Bench had on that day held as follows:

"7..... It is seen that the so called automatic re-employment of the retired teacher is not fully automatic. It is subject to fitness and vigilance clearance. The overall performance of the teacher before his retirement is assessed on the basis of various factors and if he is found fit then only his name would be recommended by the concerned Deputy Director of Education. Since the Head of the School is in direct charge of the teacher concerned, his report is very important. In the present case, the applicant was not found fit to be given the automatic extension by the Head of the School. The Deputy Director of Education, in-charge of the District in which the applicant's School is situated has also not found the applicant fit and, therefore, not recommended for automatic re-employment.

(Emphasis supplied)

23. Thus a Coordinate Bench had on 31.10.2012 (supra) held that unless there is a proved allegation of bias against either the Head of the School, or the Deputy Director of Education concerned, the assessment of the work and conduct of the applicant, as made by them, cannot be interfered with by this Tribunal, and that by simply saying that the Head of the School, or the Deputy Director of Education, were biased against the

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applicant, and that was the reason that they did not recommend his name for automatic re-employment is not sufficient. Since the applicant had not given any supporting documents to substantiate such an allegation, and the Coordinate Bench, which had decided the OA No.3967/2013 & OA No.3968/2013 on 21.07.2014 (supra), had failed to take notice of the aspect that this Tribunal is ill-equipped to decide upon the aspect of reports regarding teaching performance submitted by the Head of the School, or the concerned Deputy Director of Education, and that we cannot sit in judgment, and interfere with those reports in a lighter manner, unless and until there is a proved case of bias against any of them. Therefore, agreeing with the findings of the Coordinate Bench dated 31.10.2012 in OA No.661/2012 (supra), and holding that the judgment dated 21.07.2014 was *per incuriam*, as the Bench that day did not notice the previous order passed by a Coordinate Bench in OA No.661/2012, we agree with the ratio as laid down by the Coordinate Bench passed in OA No.661/2012 on 31.10.2012 (supra).

24. Further, the judgment of the Delhi High Court dated 29.03.2012 in the case of **Directorate of Education & Others** vs. **Ajit Kumar** (supra) had dealt with the case of backwages in

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respect of re-employment of retiring teachers in Government Aided School, and the High Court had in its findings presumed that since the pension was paid during the period, there was no justification for payment of full back wages, or any other amount over and above the pension paid to the re-employed teacher for the aforesaid period during which he had not worked.

25. In the instant case, the applicant had not been re-employed at all. Therefore, the question of payment of any backwages or any other amount does not arise, and the applicant cannot derive any benefit from this cited judgement.

26. Therefore, we do not find any abysmal wrong in the impugned order dated 17.01.2015, as passed by the respondents, and they have adopted an objective method for evaluating the applicant's performance in teaching in Class VI to VIII 2009 - 2010, prior to his promotion as PGT (Economics), and prior to the implementation of the RTE, Section 38 of the Right of Children to Free & Compulsory Education Act, 2009 (35 of 2009), and have followed the policy framed in respect of Government of National Capital of Territory by the Lt. Governor dated 23.11.2009, it appears that they have correctly appreciated the final result of his teaching, which was a decline in the years 2009-

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2010, 2010-2011, 2011-12 and 2012-13, but abysmally low in the year 2013-14, and it cannot be held that the respondents have in any manner erred in denying re-employment to the applicant of this OA.

27. Therefore, the OA is dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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