

**Central Administrative Tribunal
Principal Bench**

OA No.3471/2014

New Delhi this the 17th day of July, 2017.

***HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)***

Bhuvnesh Kumari
(retired as Vice Principal)
w/o Shri B.P.Singh,
r/o H.No. A-121, Gali No.4,
Delhi-110093.

- Applicant

(By Advocate: Shri Sourabh Ahuja)

Versus

1. GNCT of Delhi
Through Chief Secretary,
Delhi Secretariat,
New Delhi.
2. Principal Secretary (Education),
Department of Education
GNCT of Delhi, Old Secretariat,
Delhi-110054.
3. Director of Education,
Department of Education
GNCT of Delhi, Old Secretariat,
Delhi-110054.
4. Regional Director (Education),
East District,
Through Director of Education,
Department of Education
GNCT of Delhi, Old Secretariat,
Delhi-110054.
5. Education Officer (Zone-VI),
C-Block, Dilshad Garden,
Delhi-110095.
6. Mr. S.C.Gupta,

Deputy Director (Education),
 North East District,
 B-Block, Yamuna Vihar,
 Delhi-110053.

7. Ms. Neera Sharma
 [Then Education Officer (Zone-VI),
 Now Education Officer, Zone-29,
 Distt. South East,
 Directorate of Education (GNCT of Delhi),
 C-Block, Defence Colony,
 New Delhi-24.

8. Ms. Sheela Kumari Singh,
 Vice Principal/HOS,
 SKV no.2, Mansarovar Park,
 Delhi-110032. - Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

Hon'ble Mr. K.N. Shrivastava, Member (A):

Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

“(A) Quash and set aside order dated 19/08/2014 (whereby the valid claim of the Applicant for re-employment was rejected) and report dated 04/04/2014 (wherein the work and conduct of the Applicant has been shown not satisfactory).

And

(B) Direct the respondents to immediately re-employ the Applicant as Vice Principal with immediate effect up-till she attains the age of 62 years and accord monetary benefits to the Applicant w.e.f. 01/10/2013 till her re-employment with all consequential benefits viz. arrears of pay, along with interest @ 18% p.a. on such arrears and also in that event also re-fix the pension of the Applicant etc.”

2. The factual matrix of this case is as under:

2.1 The applicant was appointed as Trained Graduate Teacher (TGT) in the Directorate of Education, Government of National Capital Territory of Delhi (GNCTD) – respondent no.3. on 19.03.1981. She was promoted to the post of Post Graduate Teacher (PGT) (Political Science) on 31.03.1989. Thereafter on 26.11.2002 she was promoted to the post of Vice-Principal. She worked as Vice Principal and Head of School (HOS) at SKV School No.2, M.S. Park, Shahdra, Delhi between 07.05.2011 to 30.09.2013. She retired, on attaining the age of superannuation on 30.09.2013. Under the scheme of re-employment of retired teachers of GNCTD, the applicant applied for re-employment, which has been turned down by the respondent no.4 vide impugned Annexure A-1 order dated 19.08.2014.

2.2 Aggrieved by this order, the applicant has filed the instant OA, praying for the reliefs as indicated in para-1 supra.

3. The applicant has pleaded the following important grounds in support of the reliefs claimed by her:

3.1 During the period from 07.05.2011 to 30.09.2013 when she worked as Vice Principal and HOS in SKV School No.2, M.S. Park, Shahdra, Delhi, the passing percentage of class 12th students improved drastically from 78% to 93.70% in 2013. This had happened due to the strenuous efforts put in by the applicant by way of providing good leadership to the teaching faculty.

3.2 The respondent no.7, who in her capacity of an Education Officer was the reporting officer for the applicant, did not write the ACR of the applicant for the year 2012-13 till her superannuation despite numerous requests made by the applicant to that effect. Consequently, the applicant was constrained to report the matter to the higher authorities, i.e., Director of Education, respondent no.3. An explanation was sought by respondent no.3 from respondent no.7 with regard to not writing the ACR of the applicant. As a result of which, respondent no.7 got infuriated and gave 'average' ACR to the applicant for the year 2012-13 and awarded her a rating of **'four'**.

3.3 The applicant has rendered 35 years of service in the department and has never been communicated any adverse ACR nor has been inflicted with any major penalty during her career.

3.4 This Hon'ble Tribunal in the identical cases of **C.K. P. Naidu v. Govt of NCT of Delhi and another** (OA No.708/2013) order dated 07.11.2013 and in the case of **Dr. Mithlesh Swami** (OA No.3530/2011) order dated 03.11.2011 had granted the same reliefs that have been prayed for by the applicant in this OA. The judgment of the Hon'ble Tribunal in **Dr. Mithlesh Swami** (supra) has been upheld by the Hon'ble High Court of Delhi as well.

4. Pursuant to the notices issued, the respondents entered appearance. Reply was filed on behalf of the official respondents.

No reply, however, was filed by the private respondents 6-8 despite service of notice.

5. The official respondents in their reply have made the following averments:

5.1 The present OA is not maintainable, as the applicant has sought multiple reliefs. On the one hand she is seeking re-employment and on the other she is challenging the work and conduct report dated 04.04.2014. These reliefs are not inter-related and as such the OA is not maintainable in terms of Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987.

5.2 The applicant's conduct as HOS, in absence of the Principal, while posted at Sonia Vihar school had not been good. Due to her maladministration in the said school, the students got so annoyed that they agitated on the Wazirabad road by blocking the traffic. Looking at the gravity of the matter, the then Director of Education himself visited the school and found that the basic amenities provided in the school for the students were abysmal. For this reason, she was placed under suspension with immediate effect vide order dated 10.09.2008 and was later charge-sheeted under Rule 16 of the CCS (CCA) Rules, 1965, vide memo dated 01.11.2011 for imposition of minor penalty. Finally, she was imposed the penalty of '**censure**' vide order dated 09.01.2013.

5.3 The applicant did not have above benchmark service records. As a matter of fact, the applicant did not handover her service records to her successor HOS deliberately with the malicious intention of filing litigation against the respondents. The delay in disposing of her case for re-employment is entirely attributable to her. The successor HOS had written as many as 12 letters, details of which are at page 142 of the paper book, to the applicant in this regard.

5.4 The judgment of this Hon'ble Tribunal in the case of **C.K.P. Naidu** (supra) has been set aside by the Hon'ble High Court of Delhi vide judgment dated 17.09.2014 in W.P. (C) No.822/2014.

5.5 The Hon'ble High Court of Delhi in its judgment dated 29.04.2011 in W.P. (C) No.4330/2010 in the case of **Shashi Kohli v. Director of Education and Another**, has held that “fitness does not mean physical fitness alone, but it also includes professional fitness which is required to be assessed by DDE of the concerned District after considering work and conduct report.”

The Hon'ble High Court has further observed as under:

“At the cost of repetition, it may be stated that the petitioner has no right to re-employment. She only has a right to be considered and the school has a right to deny her re-employment, if after considering her over-all performance as a teacher, it finds that she is not fit for re-employment.”

5.5 In an identical matter in OA No.661/2012 – **S.K. Mittal v. Govt. of NCT of Delhi**, this Hon'ble Tribunal vide order dated

31.10.2012, relying upon the judgment of the Hon'ble High Court of Delhi in **Shashi Kohli** (supra), has dismissed the OA.

6. The applicant filed rejoinder to the reply filed on behalf of the official respondents in which by and large the averments made in the OA were reiterated.

7. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 17.07.2017. Arguments of Shri Sourabh Ahuja, learned counsel for the applicant and that of Shri Vijay Pandita, learned counsel for the respondents were heard.

8. We have gone through the pleadings and have also perused the record as well as have also considered the arguments of the learned counsel for the parties. We find that the official respondents have given cogent reasons for rejecting the request of the applicant for re-employment in the impugned Annexure A_1 order dated 19.08.2014. These reasons are as under:

“1. Smt. Bhuvnesh Kumari was placed under Suspension from 10/09/2008 to 08/06/2009 Vide order No. DE/7/56/NE/VPI/Vig/2008/4135, dated 10/09/2008, for the deficiencies as mentioned in the letter dated 09/01/2013 issued by the Chief Secretary, Delhi.

2. She was charge sheeted U/R – 16 of CCS (CCA) rule 1965 by the competent authority vide Memo. No.F.5/12/2008/DOV/8946-47, dated 01/02/2011 (received by C.E.O.).

3. As reported by Distt. Authorities she was subjected to disciplinary proceeding and a penalty of Censure was imposed upon her by Chief Secretary vide order No. F.15/12/2008/DOV/227 dated 09/03/2013 taking a lenient and sympathetic view as she was to retire.

4. She filed an appeal against the penalty of "Censure" before Hon'ble Lt. Governor which was turned down on 19/08/2013, Appellate authority refused to consider the appeal, as it was filed beyond limitation period.

5. Mrs. Bhuvnesh Kumari, was issued vigilance status by the Directorate of Vigilance GNCT of Delhi vide letter no. F.99/8/2013/DOV/Vig./10441 dated 16/12/2013 with the remark that penalty of censure imposed upon her vides order No. F.5/12/2008/DOV/227-228 dated 13/01/2013.

6. Mrs. Bhuvnesh Kumari was issued work and conduct report dated 04/04/2014 by the then Education Officer Zone - VI wherein it was reported that her work and conduct is not satisfactory.

7. She worked as Vice Principal and was functioning as HOS at SKV No.2 M.S.PARK, Shahdara, Delhi-32 up to 30.09.2013. Before leaving the school she was supposed to have handed over the charge of the entire office, school records including Service Books of the employees and other documents to the new Head of school, but she did not hand over the charge. Even she did not handover her own Service Book, Personal file and other office record such as RMSA Pass Book, Cheque Book etc. and thus she showed gross negligence toward the school. She deprived the students of the benefits which could have been accrued to the children if the record (RMSA pass book, cheque book) had been received timely.

8. The above cited records were carried by her unauthorizly from the school and few of these were submitted after several written requests from the present HOS.

9. Her lackadaisical attitude is reflected from the facts that:

- She never made any efforts to get her past services rendered in MCD verified which was very much required to decide here qualifying services to settle her Pensionary benefits.

- She did not bother to submit the pro-rata Pensionary Benefits from the organization where she had rendered her past services.

10. Both the reporting and Reviewing officers for Annual Performance Assessment report (APAR) in r/o Mrs. Bhuvnesh Kumari for the year 2012-13 have given her rating of 4 & 5 respectively and it was also mentioned therein that:-

- She is not very responsive to people's needs. Complaints received in Zone against the officer from the people and her staff.

- Training was recommended for her acquiring sufficient knowledge of rules and positive attitude towards work.

• She was issued the Censure in 2013 in respect of D.P. against her.

• The employee needs to improve inter personal relationship with her own staff and also the general public. More knowledge of rules is required. Integrity should also be spotless.

11. Though the result of School had been consistently good, however it can not be solely attributed to her efforts to make the academic atmosphere in the school good.

12. The prime responsibility of Head of School, is to act as a Mentor, philosopher and guide to the teachers and even the public around him/her and to act as a role model for the students with her conduct, punctuality, sincere effort and hard work so that they could perform their work and duty under his/her supervision not only to produce the best academic results in the school but also to set an example to others. But Mrs. Bhuvnesh Kumari failed to maintain Co-ordial relations with public and teachers which is very essentially required to maintain discipline in the school.

13. Mrs. Bhuvnesh Kumari even threatened the present Head of School several times that latter would have to face court case.”

9. For the aforementioned reasons the official respondents did not find the applicant suitable for re-employment.

10. It is well settled that no one can claim re-employment as a matter of right and that a retired official is only entitled for consideration for re-employment. The competent authority has to assess the suitability of the retired official for re-employment on the basis of reports as to his/her professional fitness, work and conduct, integrity etc.

10. The applicant has cited the judgment of this Tribunal in the case of **C.K.P. Naidu** (supra). The applicant therein had retired from the post of Principal in Sarvodaya Co-Ed Vidyalaya, Sector-6, Rohini and had sought re-employment. His case was not

considered by the Director of Education, GNCTD and consequently he approached this Tribunal. The said OA was allowed observing that the department has not been fair to him despite his having good service records. The Tribunal's order in **C.K.P. Naidu** (supra) has been set aside by the Hon'ble High Court of Delhi in W.P. (C) No.822/2014 vide judgment dated 17.09.2014. It has been observed therein that the authorities of GNCTD in not granting re-employment to Shri Naidu had given rational basis for that decision and hence such decision cannot be called arbitrary, whimsical or discriminatory.

11. The applicant has also relied on the judgment of this Tribunal in **Dr. Mithilesh Swami** (supra), which has been upheld by the Hon'ble High Court of Delhi in W.P. (C) No.2677/2012 vide judgment dated 08.04.2013. In that case the GNCTD had taken a decision to enhance the age of retirement of teachers in its schools from 60 years to 62 years. The benefit of this enhancement in the age of retirement was not granted to Dr. Mithilesh Swami despite her making repeated representations. The order, rejecting her request for re-employment, did not contain any rational reasoning. For this reason the Tribunal allowed the OA filed by Dr. Mithilesh which was also upheld by the Hon'ble High Court of Delhi vide judgment dated 08.04.2013 in W.P. (C) No.2677/2012.

12. In the instant case we find that the official respondents have given numerous reasons in the impugned order as to why the applicant is not worthy of consideration for re-employment. We are, therefore, of the view that such an order cannot be faulted upon. We also find that the applicant had filed OA No.1915/2014 before this Tribunal against imposition of penalty of censure on her vide order dated 09.01.2013. The Tribunal dismissed the said OA with the following observations:

“15. On 1.09.2008, the girls of the school agitated against the poor facilities in the school. When senior officers visited the school on receiving such information, they found that the applicant who was the Vice Principal, was missing and the students were rightly agitating as the school was kept in a very shabby condition. The defence of the applicant that she was not available between 2.09.2008 and 5.09.2008 because she was unwell and had to go hospital to take treatment, cannot be accepted and is clearly an afterthought. While I agree with the applicant that it was not all her fault, certainly it was her fault if the school premises was unclean and not maintained properly. She was given an opportunity to explain and thereafter the disciplinary authority gave her mildest punishment of ‘censure’. I do not find any reason to interfere in the same.”

13. From the above observations of the Tribunal and also from the reasons given in the impugned Annexure A-1 order, we are convinced that the applicant did not deserve re-employment. Her professional competence, work & conduct and integrity are certainly not up to the mark. Hence, we are of the view that no judicial intervention is required by this Tribunal in the impugned Annexure A-1 order of the official respondents.

14. In the conspectus of the discussions in the foregoing paras, this OA is dismissed, being found devoid of merit.

15. No order as to costs.

(K.N. Shrivastava)
Member (A)

‘San.’

(Justice Permod Kohli)
Chairman