

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.3915 OF 2013

New Delhi, this the 17th day of September, 2015

CORAM:

HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Smt. Bimla Yadav,

w/o Shri M.S.Yadav,

R/o CH-4H/82, Janak Puri,

New Delhi 110058

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Applicant

(By Advocate: Mr.Sanjay Verma)

Vs.

1. Government of NCT of Delhi,
Through its Chief Secretary,
New Delhi

2. Director of Education,
Directorate of Education,
Government of NCT of Delhi,
Old Secretariat,
Delhi

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Respondents

(By Advocate: Mr.Amit Anand)

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RAJ VIR SHARMA, MEMBER(J):

The applicant has filed the present O.A. seeking the following reliefs:

õa) direct the Respondents to consider and re-employ the Applicant into the service w.e.f. 1.11.2013 initially for a

period of one year extended up to 5 years on renewal basis with all back wages and consequential relief as per the rules and policies of the Respondents, in the interest of justice.

- b) Any other or further order/relief(s) which this Honøble Tribunal may deem fit and circumstances of the present case, may also be passed in favour of the applicant and against the Respondents.ö

2. We have perused the records, and have heard Mr.Sanjay Verma, learned counsel appearing for the applicant, and Mr.Amit Anand, learned counsel appearing for the respondents.

3. The undisputed facts of the case are that on 1.1.1980 the applicant joined as a Trained Graduate Teacher (TGT) under the respondents. Thereafter, she was appointed as a Post Graduate Teacher (PGT) with effect from 19.11.1983. On the basis of selection made by the UPSC, she was promoted as Principal with effect from 1.1.1998. She was posted to different Schools under the respondents and worked as Principal till 22.5.2012. While the applicant was holding the post of Principal, the respondents, by order dated 18.5.2012, directed her to work as Deputy Education Officer on current duty charge with immediate effect. She was also transferred from one Zone to the other to work as Deputy Education Officer on current duty charge. The respondents, vide order dated 24.5.2013 (Annexure A/6), promoted her from the post of Principal to the post of Education Officer on regular basis. She made a representation dated 31.5.2013 (Annexure A/7) expressing her unwillingness to accept the promotion from the post of Principal to the post of Education Officer due to personal problems and deteriorating health condition. By the said

representation dated 31.5.2013, the applicant also requested the respondents to allow her to continue to work in the office where she was then posted as Deputy Education Officer on current duty charge. She submitted a representation on 21.6.2013 (Annexure A/8) to the Deputy Director of Education (W.A.), Directorate of Education, whereby and whereunder option was exercised by her for re-employment, and the respondents were requested to consider her case for re-employment. There being no response, and as her date of retirement, i.e., 31.10.2013, was fast approaching, the applicant made a further representation dated 29.8.2013 (Annexure A/10) requesting the respondents to take a decision in the matter of her re-employment. The applicant retired from service on attaining the age of superannuation on 31.10.2013.

4. As per the order dated 29.1.2007 issued by the respondents, all the retiring teachers up to PGT level are eligible for automatic re-employment, subject to fitness and vigilance clearance, till they attain the age of 62 years. Subsequently, the respondents issued order dated 27.1.2012 stipulating that Vice-Principals/Principals are eligible for re-employment for a period of one year and extendable for another one year based on the performance and subject to fitness and vigilance clearance till they attain the age of 62 years, whichever is earlier. The respondents again issued notification dated 24.9.2013 allowing re-employment of teachers of all categories in Government and Government aided schools under the Directorate of Education on the following terms and conditions:

- õ (i) Teachers of all categories in Govt. and Govt. Aided schools under the Directorate of Education will be eligible for re-employment upto a maximum age of 65 years.
- (ii) However, re-employment of teachers after the age of 62 years will be for one year at a time upto a maximum age of 65 years.
- (iii) Re-employment of teachers will not be automatic and will be subject to their being found to be suitable in all respects. Suitability will be determined on the basis of their performance reports/annual confidential report, work and conduct certificate and integrity certificate and on their being declared medically fit.
- (iv) Re-employment of the teachers will be linked to the vacancy position and teachers may be re-employed only against vacant posts. Further, if the department is able to fill up the vacant posts of teachers on a regular basis, the tenure of a re-employed teacher would be curtailed on the principle of -first in first outø
- (v) The re-employed teachers will have to sign an annual contract with the Department wherein the terms and conditions of their employment will be clearly stipulated.ö

5. It is the contention of the respondents that since the applicant, while refusing her promotion to the post of Education Officer, had admitted her deteriorating health condition and least interest in new assignment, her refusal of promotion on medical grounds was accepted by them. Accordingly, letter dated 11.11.2013 (Annexure R/2) was issued by the respondents communicating the said decision to the applicant. By the said letter dated 11.11.2013, the applicant was also informed that her case for re-employment would not be considered due to medical problems. Thus, it is contended by the respondents that the applicant herself having admittedly refused to accept her promotion from the grade of Principal to the grade of Education Officer on medical grounds, and her such request having been

acceded to by the respondents on medical grounds, there was nothing wrong in declining to consider the applicant's case for re-employment on medical grounds. In support of their contention, the respondents have filed copies of applicant's representation dated 31.5.2013, and letter dated 11.11.2013 (ibid).

6. During arguments, Mr. Sanjay Verma, learned counsel appearing for the applicant, filed copies of medical certificate dated 24.7.2013, and APAR of the applicant for the period from 1.1.2013 to 31.3.2013. It was submitted by Mr. Sanjay Verma that the applicant was medically fit for re-employment after her retirement on 31.10.2013, and that the respondents have failed to consider the applicant's case in accordance with the orders and notification issued in the matter of re-employment of teachers. Thus, it was submitted by Mr. Sanjay Verma that the applicant's representation dated 31.5.2013 (ibid) has no bearing on the case of the applicant for re-employment, and that the respondents have acted arbitrarily and illegally in declining to consider the applicant's case for re-employment with effect from 1.11.2013, and therefore, the reliefs sought in the O.A. should be granted by the Tribunal to the applicant.

7. The sole question that arises for consideration in the present O.A. is as to whether the respondents are justified in declining to consider the applicant's request for re-employment.

8. For considering the said question, it would be apposite to refer to the applicant's representation dated 31.5.2013 (Annexure A/7) which is quoted below:

To
The Director of Education,
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat,
DELHI 110054

Sub: Non-acceptance of promotion for the post of education officer.

Respected Sir,

With your gracious permission I may bring to your kind reference the following facts for kind consideration:

That vide order no.F.9(25)/07/Edn./COC/3961-3992 dated 28/03/2013 I was transferred from DBT as DEO, South Zone 24, District South on CDC.

On 01.04.2013 I personally met your goodself and explained my grievance that my retirement is due in the month of October 2013 and for this short of span I am least interested in my new assignment/transfer so I may be allowed to continue in DBTB till my retirement in October 2013. The copy of my representation was also submitted to your goodself as well as to your office (copy attached).

Respected sir, your good self pleased to keep my request in abeyance and advised me to join on CDC and assured that when the next batch of EO will join my request will accordingly be looked into.

Respected sir, vide order no. F.D(28)/2011/Sectt. Branch/Edn./DP/2193-2206 dated 24/05/2013, I came to know that I have been promoted as regular education officer.

Honøble Shri, I may very humbly submit that as I have already requested that I am not interested in promotion for a short span of five months so I am unable to accept this promotion due to my personal liabilities and deteriorating health condition.

I hope that your goodself will accept my request for non-acceptation of promotion and allow me to continue to work with my previous designation.

Sir, I shall be grateful for this act of kindness.

Yours faithfully,
Sd/ 31.5.2013
Bimla Yadav
Principal/EO(CDC),
Zone 24, Distt. South, Defence Colony,
ID 19790578ö

8.1 It would also be necessary to refer to the letter dated 11.11.2013 (Annexure R/2) issued by the Special Director (Sectt.Branch), which is quoted below:

öGOVERNMENT OF NCT OF DELHI
GENERAL ADMINISTRATION DEPARTMENT
(SECRETARIAT EDUCATION BRANCH)
ROOM NO.223, OLD SECTT., DELHI
F.No.9(28)/2011/Sectt. Br./Edn./DP/P-I/2525-27 Dated 11.11.13

To
Smt. Bimla Yadav
Education Officer (CDC),
Zone 24, District South,
Directorate of Education,
Govt. of NCT of Delhi, Delhi.

Sub: Regarding refusal for promotion to the post of Education Officer ö case of Smt. Bimla Yadav, Education Officer (CDC), Zone 24.

Reference your application dated 31/05/13 on the above noted subject, I am directed to inform that your request regarding refusal for promotion to the post of Education Officer has been accepted by the Competent Authority on medical grounds. Further your case of re-employment will not be considered due to medical problem.

This is for your information please.

Sd/
(Shashi Kaushal)
Special Director (Sectt. Branch)ö

9. Admittedly, the applicant, while holding the post Principal and working as Education Officer on current duty charge, retired from service on attaining the age of superannuation on 31.10.2013. Prior to the date of her retirement, the applicant, vide representations dated 21.6.2013 (Annexure A/8) and dated 29.8.2013 (Annexure A/10), requested the respondents to consider her re-employment as Principal, which post she was holding on substantive basis. As per the notification dated 24.9.2013 (Annexure A/14), the respondents were required to consider the applicant's case for re-employment subject to her being found suitable in all respects. Her suitability was required to be determined on the basis of her performance reports/annual confidential report, work and conduct certificate and integrity certificate and on her being declared medically fit. The notification dated 24.9.2013 (Annexure A/14) does not stipulate that in the event any Teacher, while in service, refused to accept promotion on medical ground, the respondents can deny consideration of his/her case for re-employment on the same ground without obtaining any further medical report. Thus, in our considered view, the respondents ought to have considered the request of the applicant for re-employment in accordance with the notification dated 24.9.2013 (Annexure A/14), inasmuch as the applicant's refusal to accept promotion from the grade of Principal to the grade of Education Officer for personal problems and deteriorating health condition prevailing in May 2013

did not render her ineligible and/or unsuitable for her re-employment in terms of the notification dated 24.9.2013 (ibid), and the applicant's medical fitness for re-employment was required to be determined by the respondents on the basis of medical report as on the date of her retirement. Admittedly, the respondents neither got the applicant medically examined after the date of her retirement, nor was any report declaring the applicant as medically unfit for re-employment available before the respondents in November 2013 when they declined to consider the applicant's re-employment.

10. After having given our anxious consideration to the facts and circumstances of the case and the rival contentions of the parties, we have no hesitation in holding that the respondents were not justified in declining to consider the applicant's request for re-employment in accordance with the notification dated 24.9.2013 (Annexure A/14).

11. Now it has to be considered as to whether the applicant is entitled to the reliefs claimed by her in the O.A. As noted earlier, in the present O.A., the applicant has prayed for a direction to the respondents to consider and re-employ her in service with effect from 1.11.2013 initially for a period of one year and extend her such re-employment up to 5 years on renewal basis, with back wages, etc.

12. As per the terms and conditions contained in the notification dated 24.9.2013 (ibid), the teachers of all categories in Government schools under the Directorate of Education, Government of NCT of Delhi, are eligible for re-employment up to a maximum age of 65 years. Their re-

employment is not automatic and is subject to their being found suitable in all respects. Their suitability has to be determined on the basis of their performance reports/annual confidential report, work and conduct certificate, and integrity certificate, and on their being declared medically fit. Their re-employment is linked with the vacancy position. If the Department is able to fill up the vacant posts of teachers on regular basis, the tenure of re-employed teachers has to be curtailed on the principle of 'first in first out'. The re-employed teachers have also to sign annual contracts with the Department wherein the terms and conditions of their re-employment have to be clearly stipulated. In view of these terms and conditions, the applicant cannot claim re-employment with effect from 1.11.2013, i.e., the day following the date of her retirement from service and extension of her tenure of re-employment on yearly renewal basis up to 5 years as a matter of right. As has been found by us, the respondents have declined to consider the case of the applicant for re-employment. The respondents are yet to consider the applicant's request for re-employment in accordance with the notification dated 24.9.2013(ibid). In the circumstances, the reliefs sought by the applicant in the O.A. cannot be granted by the Tribunal.

13. However, in view of the finding arrived at by us in paragraph 10 of this order, we direct the respondents to consider the applicant's case for re-employment in accordance with the notification dated 24.9.2013 (Annexure A/14) and to take a decision by passing a reasoned and speaking

order, and communicate the same to the applicant within two months from today.

14. Resultantly, the O.A. is allowed to the extent indicated above.

No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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