

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3805/2014

Order reserved on: 22.12.2015
Order pronounced on: 5.01.2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Syed Mehedi, age 38 years
S/o Shri Shabeh Haider
R/o Village Ikrotya
P.O. : Asmoli, Dist. Sambhal
Pin. 244 302 ... Applicant

(Through Shri Anuj Aggarwal for Shri Ashok Aggarwal, Advocate)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary,
Delhi Secretariat, I.P. Estate,
New Delhi-110002
2. Director of Education
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat Building,
Civil Lines, Delhi-110054
3. Delhi Subordinate Services Selection Board (DSSSB)
Through its Secretary,
FC-18, Institutional Area,
Karkardooma, Delhi-110092

(Through Shri Vijay Pandita, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The Delhi Subordinate Services Selection Board (DSSSB),
on a requisition from Directorate of Education, Government of
National Capital Territory of Delhi (GNCTD) for recruitment to

the post of Special Education Teacher (SET), issued advertisement No.1/2013 (Post Code 1/2013).

2. The DSSSB issued a public notice dated 26.03.2013 informing the candidates for the post code 1/2013, SET, that the government has granted following relaxation:

- (i) Those working in Sarva Shiksha Abhiyan (SSA) as resource person for children with special needs will be eligible for age relaxation to the extent of number of years they have put in SSA; and
- (ii) General relaxation of 10 years in case of women candidates

3. The age of the applicant in the year 2013, at the time he applied for the post, was 36 years and the cut off age limit was not exceeding 30 years. The applicant, therefore, made a representation dated 28.03.2013 to the respondents seeking relaxation of age limit in his case in terms of Clause 5 of the Recruitment Rules (RRs), which reads as follows:

"5. Power to relax – Where the Government is of the opinion that it is necessary or expedient so to do, it may by order and for reasons to be recorded in writing, relax any of the provisions of these Rules with respect to any class or category of persons."

4. The applicant, in April 2013 also, approached this Tribunal through OA No.1173/2013 seeking age relaxation. Vide order dated 9.04.2013, as an interim measure, this Tribunal directed the respondents to permit the applicant to participate in the selection process. It was, however, made clear that the result of

the applicant would be kept in sealed cover. As a result, the applicant could appear in the examination for the post of SET on 28.04.2013. This Tribunal vide order dated 7.03.2014 in the aforementioned OA declined to grant any relief to the applicant, whereupon the applicant approached the Hon'ble High Court by way of Writ Petition (C) No. 2887/2014 and the Hon'ble High Court, vide order dated 10.07.2014, was pleased to hold as under:

"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 fulfill the general 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."

5. The respondents thereafter passed the impugned order dated 17.09.2014 holding that the request for age relaxation of male candidates for SET cannot be acceded to and the applicant was informed accordingly. Being aggrieved by the said order, the applicant has filed the instant OA seeking the following reliefs:

- (i) Issue an appropriate order or direction thereby setting aside impugned Office Order bearing No. DE.4/1/366/E.IV/C.Case/2013/541 dated 17.09.2014 (Annexure A-1) issued by the Directorate of Education, Govt. of NCT of Delhi, respondent no.1 & 2 herein, whereby the request of the applicant, for age relaxation for

recruitment to the post of Special Educator in Govt. of NCT Schools, has been rejected;

- (ii) Issue an appropriate order or direction thereby declaring that the impugned Notification/ Public Notice bearing No. F.1(140)/P&P/DSSSB/10/Pt.fl./2939 dated 26.03.2013 (Annexure A-2) is discriminatory to the extent the same fails to grant a general age relaxation of 10 years in case of male candidates for the purpose of recruitment of Special Education Teachers as has been granted in favour of women candidates.
- (iii) Issue an appropriate order or direction thereby directing the respondents to consider the case of applicant for age relaxation for the post of Special Educator and, after such consideration, grant age relaxation to the applicant for the post of Special Educator.
- (iv) Issue an appropriate order or direction thereby directing the respondents to consider the candidature of the applicant for the post of Special Educator and, after such consideration, appoint the applicant to the post of Special Educator; and
- (v) Allow the present application with costs in favour of the applicant.

6. Learned counsel for the applicant states that there were total 927 vacancies against which about 750 candidates applied and around 250 got selected. Therefore, there is crying need to fill up the vacancies as these teachers cater to the needs of special category children and no harm will be caused if male teachers are also recruited by extending 10 years age relaxation as extended to female teachers provided they are otherwise qualified.

7. The learned counsel for the applicant also argued that keeping separate age limits for male and female teachers is

discriminatory and violative of Articles 14 and 16 of the Constitution of India.

8. Lastly, it is argued that respondents have the power to relax any of the provisions of the RRs under Clause 5 thereof and, therefore, they be directed to relax the age limit for male teachers also by 10 years.

9. The learned counsel for the respondents, first of all, questioned the maintainability of this OA in view of the following judgments:

(i) **State of Madhya Pradesh Vs. Dharam Bir**,
(1998) 6 SCC 165, where the Hon'ble Supreme Court held as follows:

"The courts as also the Administrative Tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the government under Article 309 of the Constitution."

(ii) **V.K. Sood Vs. Secretary, Civil Aviation and others**, AIR 1993 SC 2285, where the Hon'ble Supreme Court held that prescribing the particular qualification for a particular post is not the function of the Supreme Court. The President or authorized person is entitled

to prescribe the method of selection, qualification for appointment to an office or to a post under the State. No motive can be attributed to the rule making body under Service Rule, Constitution of India Article 309.

(iii) **Bishan Sarup Gupta etc. Vs. Union of India and others**, AIR 1974 SC 1618, where the Constitution Bench of the Hon'ble Supreme Court held as follows:

“.....When considering this point it must be clearly understood that the Court is not concerned with Govt. Policy in recruiting officers to any service. Govt. runs the service and it is presumed that it knew what is best in the public interest. Govt. knows the calibre of candidates available.....”

(iv) **Mallikarjuna Rao and others Vs. State of Andhra Pradesh and others**, 1990 (2) SCC 707, where the Hon'ble Supreme Court held as follows:

“It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution.

(v) **Captain B.D. Gupta Vs. State of U.P. and another**, JT 1990 (3) SC 712, where the Hon'ble Supreme Court held as follows:

"Challenge to the Rules on the ground of mala fides – Rules made under Article 309 are a piece of legislation – No legislation can be challenged on the ground of mala fides. Constitution of India, 1950, Article 309."

10. It is submitted that in an identical case the RRs for the post of Assistant Teacher (Primary) in Directorate of Education were amended vide notification dated 8.05.2006 whereby at column no.6 of the RRs, the age limit for direct recruitment was modified to 20-27 years (relaxable in case of SC/ST/OBC/PH/Ex-serviceman as per Government of India instructions issued from time to time), which prior to amendments was 32 years (relaxable in the case of Government Servants of the Delhi Admn.). The said Recruitment Rules were challenged in the Hon'ble High Court in various Writ Petitions namely, C.W. (P) No.7297/2007 titled Sachin Gupta Vs. Govt. of NCT Delhi & others etc. etc. The said Writ Petition and connected matters were decided by the Hon'ble High Court vide judgment dated 28.08.2008 in favour of the Department.

11. The respondents have further submitted that on representation made by some resource persons working/ who have worked under SSA and other candidates, they have relaxed the upper age limit by 10 years in case of women candidates and those working as resource person in SSA to the extent of number of years they have served in SSA by issuing order dated 26.03.2013. There was no such age relaxation in general for male candidates. It was notified in some leading newspapers. The cut off age limit for male teachers was thus 30 years and

the applicant did not fulfil this criteria and was ineligible as his age was 36 years.

12. It was also brought to our notice that OA No.1173/2013 (supra) filed by the applicant herein, was dismissed by the Tribunal vide order dated 7.03.2014, as follows:

"7. We find force in the contention of the respondents and accordingly, we hold that the OA is liable to be dismissed.

8. However, before parting with the case, we are constrained to observe that the post of Special Education Teachers are created on the directions of the Courts for a laudable purpose to help, assist, train and guide those unfortunate children who are differently able, to meet the challenges of the life. If the posts of Special Education Teachers are allowed to be lying vacant, despite qualified persons are available (may be overage), not only the purpose for which they are created is frustrated but also it affects the rights of those innocent specially/ differently abled children. Hence, we expect that 1st Respondent shall address the whole issue in a proper perspective and take a conscious decision to provide one time age relaxation to all those persons, who are otherwise eligible and qualified for appointment, so that all the Special Education Teacher posts are filled up, as expeditiously as possible, preferably before the next notification for filling up Special Education Teacher posts, is issued.

9. In the result, this OA is dismissed, and the interim order is vacated. No order as to costs."

13. In view of dismissal of his OA, the applicant approached the Hon'ble High Court by filing Writ Petition (Civil) No.2887/2014, **Syed Mehedi Vs. Govt. of NCT of Delhi**, which was disposed of by the Hon'ble High Court, as stated above, directing the respondents to pass a reasoned order. The order so passed by the respondents is the order impugned in this OA dated 17.09.2014. It is argued that the impugned order is a

reasoned and speaking order in which the respondents have considered, in extenso, the order passed by the Tribunal in OA No.1173/2013 (supra) and thereafter rejected the claim.

14. It is also pointed out that out of 927 vacancies, 670 remained unfilled and the said 670 vacancies have again been sent to the DSSSB with the request to advertise the same afresh and that the competitive examination for those 670 vacancies has already been conducted by the DSSSB.

15. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

16. In its order dated 7.03.2014 in OA 1173/2013 (supra), a Coordinate Bench of this Tribunal had agreed with the contention of the respondents that the relief seeking direction to the respondents to give age relaxation is not permissible as per law and it is totally the prerogative of the executive in exercising the power under Rule 5 of the Recruitment Rules and unless sufficient ground has been shown, this Tribunal cannot interfere in such matters. This reasoning is also supported by various judgments of the Hon'ble Apex Court cited by the respondents (para 9 above). Based on this reasoning, the OA was dismissed. In other words, the Tribunal held that different criteria for male and female candidates is a reasonable classification and is not violative of Articles 14 and 16 of the Constitution of India. We cannot take a view contrary to that.

17. Moreover, the fact is that for balance 670 vacancies, the examination has already been held, which indicates the sincerity of the respondents to honour the observations of the Courts to fill up the vacancies on priority basis.

18. In view of above discussion, we do not find merit in this OA and it is, therefore, dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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