

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

TA No. 6/2018

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Prof. (Dr.) Sangeeta Tripathy, aged about 52 years, D/o Sri S.B. Padhi, now working as HOD-cum-Professor, Dept. Of Radiodiagnosis, Super Speciality, Paediatric Hospital and Post Graduate Teaching Institute, At/PO/PS- Sector-10, Noida, State – Uttar Pradesh.

.....Applicant

VERSUS

1. Union of India, represented through Secretary, Ministry of Health & Family Welfare, At- Nirman Bhawan, PO/PS- New Delhi – 110011.
2. Director, AIIMS, Bhubaneswar, (All India Institute of Medical Sciences), Bhubaneswar.
3. Administrative Officer, AIIMS, Bhubaneswar, Both Sl. Nos. 2 & 3 are of At-Sijua, PO- Dumduma, PS-Khandagiri, Bhubaneswar, Dist.- Khurda – 751019.

.....Respondents.

For the applicant : Mr. P. Panigrahi, counsel

For the respondents: Mr. S. Behera, counsel

Heard & reserved on : 3.1.2019

Order on :

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

This Transfer Application (in short TA) is received on transfer from Hon'ble High Court. The applicant has sought the following main reliefs:-

"It is therefore humbly prayed that this Hon'ble court be graciously pleased to issue "Rule Nisi" calling upon the opp. Parties to show cause as to why:

- (i) The impugned letter dated 6.4.2016 , as per Annexure-3 shall not be set-aside and consequently, the petitioner shall not be allowed to join in the post concerned;
- (ii) The loss of post and pay incurred by the petitioner for the period from 30.3.2016 to 02.5.2016 shall not be adequately compensated by opp. Parties under their created compelled circumstances:

....."

2. The applicant, in response to an advertisement issued by the respondents for recruitment of the post of Addl. Professor in Radiology department, had applied and after interview, she was selected for the post after verification of documents. She was issued the appointment letter dated 28.3.2016 (Annexure-2 to the TA), subject to certain conditions like production of documents and other formalities as specified in the letter. After she resigned from the post she was holding at that point of time, she received another letter dated 6.4.2016 (Annexure-3 to the TA) keeping the offer of appointment in abeyance on the ground that the applicant was holding a contractual job as on last date of application and she more than 50 years of age as on last date of receipt of application. The applicant submitted a representation dated 27.4.2016 (Annexure-4 to the TA) requesting to be informed about the decision in the matter. She was aggrieved as no decision has been taken. In the meantime, her previous employer had revoked the resignation on 2.5.2016, for which she was without any job from 30.3.2016 to 2.5.2016 for which, she has claimed compensation.

3. The respondents, in their counter, have opposed the TA mainly on the following grounds:-

(i) The advertisement, in para (C) (i) of the terms & conditions stipulated that upper age limit of the applicant should be 50 years, relaxable for Government Servant, SC/ST or otherwise exceptionally qualified applicants upto 5 years and 3 years for candidates belonging to OBC category. The applicant was more than 53 years as on the cut-off date i.e. 7.9.2015. She was holding a post of Professor on contract in NDMCH & Hindu Rao Hospital, which is a government hospital.

(ii) She was shortlisted by the Screening Committee inadvertently considering her to be a regular government servant for whom the relaxation in upper age was applicable. But the letter issued to call the applicant for interview also mentioned that her selection is provisional. The appointment letter issued wrongly to her, was provisional, subject to fulfilling the eligibility criteria, as stated in para 22 of the appointment letter.

(iii) The issue of the applicant was referred to the Ministry of Health and Family Welfare, which after consulting the DOPT, informed that the age relaxation was for Central government employees and the applicant, holding a contractual post under a government organization, cannot be considered to be a government employee.

(iv) The applicant's request to treat her as exceptionally qualified candidate for the purpose of age relaxation was placed before the

Selection Committee which, in its meeting dated 24.6.2016 (Annexure E/3) decided that the same cannot be granted post facto.

4. Heard learned counsel for the applicant, who argued that the applicant is entitled to be considered as exceptionally qualified candidate for whom the relaxation in upper age limit is permissible. He also submitted that after getting the appointment order dated 28.3.2016, the applicant had resigned from the earlier employer w.e.f. 30.3.2016. After her selection was kept in abeyance, the applicant had re-joined in her earlier Institution on 3.5.2016, for which, the applicant claimed to be compensated for loss of salary for the period from 30.3.2016 till 2.5.2016 when she was out of job due to the mistake of the respondents. Learned counsel for the applicant also filed the copy of the judgment on Hon'ble Apex Court in the case of **Dr. Akshya Bisoi and another v. All India Institute of Medical Science and others reported on (2018) 3 Supreme Court Cases 391.**

5. Mr. S. Behera, learned counsel for the respondents, submitted that the age relaxation was available for regular government servant, but the applicant was not holding a government job. The advertisement has clearly specified the circumstances under which the age relaxation will be permissible.

8. The questions to be decided in this case are: (i) whether the applicant is entitled for relaxation in upper age and (ii) whether the applicant is entitled for the compensation for financial loss incurred due to a wrong order issued by the respondents. As explained in the counter, the Ministry of Health and Family Welfare, after due examination of the issue of admissibility of age relaxation to the applicant, has mentioned that the applicant, being an employee of a government organization/Institute, cannot be treated as a government servant. Hence, the upper age relaxation on the ground of being a government servant, was not available for the applicant. The relaxation on the ground of being an exceptionally qualified candidate, has not been allowed by the respondents as decided by the Standing Committee in its meeting held on 24.6.2016 (vide the minutes at Annexure-E/3 of the counter). As stated correctly, the applicant's case for exceptionally qualified candidate cannot be allowed post facto. It is also seen the Screening Committee/Selection Committee at the time of selection, did not consider the applicant to be exceptionally qualified. There is nothing on record to show that the decision of the Standing Selection Committee on this issue is incorrect. Hence, the answer to the question (i) will be against the applicant.

9. Regarding the question (ii) of para 8 above, it is the contention of the applicant that she had to resign from earlier organization before reporting to

the respondents in compliance of the appointment letter dated 28.3.2016. Para 22 of this letter stated as under:-

"22. This offer of appointment is purely provisional and subject to your fulfilment of all eligibility criteria such as age, educational qualifications, teaching & research experience etc. as per the advertisement and it is found that you are not fulfilling the same at any stage, then this Offer of Appointment will be treated as cancelled."

10. It is clear from the para 22 of the appointment letter issued to the applicant that it was provisional and the respondents can cancel the appointment letter on the ground of the applicant not fulfilling the age criteria mentioned in the advertisement. However, as stated in the counter, the mistake was committed by the Screening Committee as well as the respondents, since before issuing the appointment letter, the admissibility of age relaxation for the applicant could not be checked. Hence, the applicant had to sustain loss of salary from 30.3.2016 till 2.5.2016 due to the mistake committed by the respondents.

11. Learned counsel for the applicant has cited the judgment of Hon'ble Apex Court in the case of **Dr. Akshya Bisoi (supra)**, in which the dispute related to the inter se seniority. It was held that since the ranking recommended by the Selection Committee was acted upon, it cannot be unsettled after a lapse of about twelve years. The ratio of this judgment has no application to the present TA, in which the Screening Committee had inadvertently shortlisted the applicant under a misconception that the applicant was entitled for the upper age relaxation. As discussed earlier, as per the appointment letter issued, the respondents had scope to cancel the said appointment letter on the ground of eligibility criteria.

12. In view of above discussions, while we are unable to grant the reliefs prayed for by the applicant in the TA, we are of the view that the applicant is entitled for the cost on account of the litigation due to the mistake of the respondents. Hence, this TA is disposed of accordingly with the cost of the litigation estimated to be Rs. 5,000/- (Rupees five thousand) payable by the respondents to the applicant.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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