

**Central Administrative Tribunal
Principal Bench**

OA No.3260/2019

MA No. 3587/2019

New Delhi, this the 25th day of November, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mohd. Jamshed, Member (A)

Rubi Soni,
Aged about 21 years,
D/o Gulab Chand Soni,
R/o RZ-92, K-Block,
New Roshanpura, Najafgarh,
New Delhi-110043
Mob. No.9873067413
Post: Special Educator,
Post Code:15/17, Group – B - Applicant

(By Advocate : Shri Anuj Aggarwal)

Vs.

1. Delhi Subordinate Services Selection Board
(DSSSB)
Through its Chairman,
FC-18, Institutional Area,
Karkardooma, Delhi-110092
2. South Delhi Municipal Corporation (SDMC)
Through its Commissioner,
23rd Floor, Civic Centre,
Minto Road, New Delhi-110002
3. North Delhi Municipal Corporation (NDMC)
Through its Commissioner,
Dr. SPM Civic Centre,
JL Nehru Marg,
New Delhi-110002
4. East Delhi Municipal Corporation (EDMC)
Through its Commissioner,
419, Udyog Sadan,
Patparganj Industrial Area,
New Delhi-110096 - Respondents

(By Advocates : Ms. Sarita Aggarwal for R-1, Mr. RK Jain for respondent no.2 and Ms. Sangita Rai for respondent no.4)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

With a view to impart a special type of education to the disabled and other handicapped students, the post of Special Educator was created in the Delhi Administration. The qualifications for that post are also stipulated. However, despite repeated advertisements issued in this behalf, adequate candidates are not being available and posts are remaining vacant. On certain occasions, Hon'ble High Court of Delhi has relaxed the conditions of age, and to certain extent, qualifications also.

2. An advertisement was issued by 1st respondent on 07.08.2017, inviting applications for selection of 70 categories of Teachers for the Municipal Corporations of Delhi. One of the posts is the Special Educator, with Post Code No. 15/2017. The applicant responded to the same and was also issued a hall ticket. She appeared in the examination conducted for that purpose and on the basis of the marks secured by her in the examination, her dossier was forwarded to South Delhi Municipal

Corporation, the 2nd respondent herein. However, 2nd respondent did not appoint the applicant. On verification, she was informed that the Diploma stipulated as a qualification for the post was obtained by her long after the last date for receipt of applications. This OA is filed, with a prayer to declare that the applicant is qualified for appointment to the post of Special Educator and to direct the respondent to issue order of appointment to her, with all consequential benefits.

3. The applicant contends that though she did not hold the Diploma qualification as on 15.09.2017, the last date stipulated for submission of applications, she got the same in June, 2018, much before the examination for the post of Teacher was conducted on 22.07.2018. Reliance is placed upon two judgments of the Hon'ble Delhi High Court.

4. 2nd respondent filed the counter affidavit, opposing the OA. It is stated that the applicant did not hold the Diploma qualification as on the stipulated date, and the question of her being appointed does not arise. It is also stated that even if any post is vacant, the only step to be taken is to issue fresh advertisement in which case, all the qualified candidates can apply.

5. Heard Mr. Anuj Aggarwal, learned counsel for the applicant and Ms. Sarita Aggarwal, Mr. RK Jain and Ms. Sangita Rai, learned counsel for the respondents 1, 2 and 4 respectively,

6. The post in question is the Special Educator in the Municipal Corporations of Delhi with Post code 15/17.

The qualifications stipulated for that post are as under:-

Educational Qualification:-	Essential:-	(i) Senior Secondary School Certificate (12 th Class) or its equivalent from a recognized board/institution. (ii) Two year's Diploma Programme in special education recognized by the Rehabilitation Council of India in any Category of Disability or any other equivalent qualification approved by the RCI. (iii) Pass in Central Teacher Eligibility Test conducted by Central Board of Secondary Education.
	Desirable	Nil
Experience:-	Essential	Nil
	Desirable	Nil
Pay Scale:-	35400 as per pay matrix (Revised) (PB-2 Rs.9300-34800+Grade pay 4200) Group 'B'	
Age limit:-	Not exceeding 30 years, Age Relaxable to	

	SC/ST/OBC/Departmental Candidates/Exsm/PH in accordance with the instructions/orders issued by Govt. of India from time to time.
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7. A candidate is required to a) hold a certificate in SSC, b) complete diploma programme of two years in special education recognized by the Rehabilitation Council of India and c) to pass CTET examination conducted by CBSE. The advertisement clearly stipulated that the candidates must hold the prescribed qualifications as on the last date for submission of the applications.

8. The undisputed facts are that the applicant did not complete the Diploma programme in special education, by 15.09.2017. It is only in June, 2018 that she completed it. Therefore, her application ought to have not been received at all. If for any reason, the application was received, the same does not confer any right upon the applicant.

9. It is a different matter that the applicant participated in the examination held on 22.07.2018 and secured fairly good marks therein. The mere fact that she completed two years' Diploma in special education, just before the competitive examination, does not make any difference.

10. In **Syed Mehedi Vs., Govt. of NCT of Delhi & Ors.**, i.e., WP(C) 1200/2016, the Hon'ble High Court of Delhi dealt with the matter in detail. It appears that the post of Special Educator was created on the directions issued by the Hon'ble High Court. Obviously, because it is a special category of post, qualified candidates were not immediately available. The candidates therein crossed the age limit as on the relevant date. Taking into account the fact that there existed a circular providing for relaxation of age limit, the Writ Petition was disposed of, directing the respondents to extend the relaxation of age limit. The issue in this case is not about age limit.

11. In **Praveen Khatri & Ors. Vs. Govt. of NCT of Delhi & Ors.**, i.e. WP(C) No. 9040/2019, the plea of the petitioners was that they did not secure the CTET because the CBSE did not conduct the examination at the relevant point of time. The relaxation in that behalf was granted. In the instant case, what is involved is the absence of the essential qualifications, as on the stipulated date. For a Special Educator, completion of two years' Diploma in special education recognized by the Rehabilitation Council of India is extremely important.

Without that qualification, no candidate can be appointed.

The applicant cannot be extended a special treatment.

12. In the **Rakesh Kumar Sharma Vs. Govt. of NCT of Delhi & Ors.**, 2013(10) SCALE 42, the Hon'ble Supreme Court held that the last date of submission of applications has its own significance and importance and under no such circumstances, any deviation from that is allowed. The situation was aptly explained by the Hon'ble Supreme Court of India, as under:-

“17. It also needs to be noted that like the present Appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the Appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement. There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance. The appeal is devoid of any merit and does not present special features warranting any interference by this Court. The appeal is accordingly dismissed.”

13. When the appointment of the candidates who were not qualified on the relevant date were set aside, the question of appointing the applicant does not arise. Granting any relief to the applicant alone would lead to a situation where hundreds of other candidates, who were similarly situated and did not acquire the qualification of diploma, would be left out, whereas the applicant, who was a bit courageous in applying without qualification, gets the benefit. Further, the controversy does not end here. In the context of appointment as well as fixation of seniority, several complications would arise. The rights of the candidates, who were qualified and appointed, would also be affected, on account of seniority being assigned on the basis of marks obtained in the test. The applicant did not qualify at all.

14. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

Pending MA, if any, shall also stand disposed of.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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