

(2018) 08 CAT CK 0062

In the Central Administrative Tribunal

Case No : Original Application No. 263 Of 2016, Miscellaneous Application No. 256 Of 2016

Balbir Singh

APPELLANT

Vs

GNCT Delhi And Ors

RESPONDENT

Date of Decision : 27-08-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 9(2)
Constitution Of India, 1950 — Article 14, 16

Citation : (2018) 08 CAT CK 0062

Hon'ble Judges : Nita Chowdhury, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : Kumar Rajesh Singh, Pratima K. Gupta, Archana Gaur

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member (A)

1. By filing the instant OA, the applicant has sought the following reliefs :-

"(I) set aside Respondent's reasoned order dtd. 27.04.15 and the one-line order dtd. 02.07.14 rejecting Applicant's case for re-employment;

(II) direct the Respondents to consider Applicant's case for re-employment in accordance with the judgment of this Hon"ble Tribunal in OAs No.3967/13 & 3968/13 titled "Ramesh Chand vs. Govt. of NCT of Delhi" and "Hari Prasad Vs. Govt. of NCT of Delhi".

(III) impose exemplary costs/penalties upon the Respondents for causing acute mental, psychological and emotional stress upon the Applicant post his retirement through their unlawful acts.

(IV) direct the Respondents to reimburse to the Applicant the cost of the present litigation.

(V) pass such other order(s) as may deem fit and proper under the facts &

circumstances of the case."

2. Brief facts of the case are that the applicant, who was to be retired from the post of Vice Principal on 30.4.2014, applied for re-employment under respondents" order dated 27.1.2012 (Annexure A/6).

2.1 Vide impugned order dated 2.7.2014, the respondents rejected the applicant"s case for re-employment. Aggrieved by the same, the applicant earlier filed OA 3323/2014 before this Tribunal challenging the said order dated 2.7.2014, which was dismissed as withdrawn with liberty to the applicant to file a fresh OA vide Order dated 8.1.2016 (Annexure A/11).

2.2 Now the applicant has filed the instant OA challenging the said order dated 2.7.2014 (Annexure A/2) as well as order dated 27.4.2015 (Annexure A/1). By the order dated 2.7.2014, the applicant was informed that his candidature was rejected for re-employment by the competent authority and by the later order dated 27.4.2015 the case of the applicant was again considered for re-employment as per the provisions of Order dated 27.1.2012 and found that the following short comings were observed:-

"That Sh. Balbir Singh was working as Vice Principle in Sarvodaya Bal Sr. Sec. Vidyalaya, Qutab Mehrauli, New Delhi and the result of Class-VII for the academic year (2013-2014) has shown negative deviation of 25.1% from 26.5% (2012-13) to 40.4% (2013-14). Therefore, the professional fitness certificate has not been given by the Distt. Authority in view of the negative deviation of the result of 26.1%.

That the above result indicate that not only the officer is negligent in carrying out his assigned duties with sincerity but also has shown lackadaisical attitude towards the academic aspect of the school.

And whereas, a complaint was filed by Sh. Vidya Nand Sharma against Sh. Balbir Singh regarding irregularities and misuse of Govt. fund.

And Whereas, an Inquiry Committee was constituted regarding financial irregularities done by Sh. Balbir Singh and as per the inquiry report it has been established that he has committed financial irregularities by way of claiming the payment of three security guards whereas only one security guard namely Sh. Ram Chander has performed the duties in the school for the month of March-2012.

While passing the said order, the respondents have also placed reliance of the Hon"ble Delhi High Court Order dated 29.4.2011 passed in WP (C) No.4330/2010 (Shashi Kohli vs. Directorate of Education) and the case of the applicant for re-employment was rejected.

2.3 The applicant"s contention is that the first ground taken by the respondents in the impugned order is not tenable as the issue of "result" has been considered by this Tribunal while deciding the OAs No.3967/13 and 3968/2013 vide common

order dated 21.7.2014 and held as under:-

".....according to the information obtained by the applicant through RTI, the result in case of Shri Talewar Singh, Vice Principal, during the year 2010-11 was 84.8% but it came down in the year 2011-12 to 50.94% and further down to 47.41% in the year 2012-13. However, the officer was given re-employment vide order dated 10.02.2012. In another case, that of Smt. Veena Bansal, re-employment was given vide order dated 04.10.2013 despite the fact that the result had come down from 97.7% in the year 2010-11 to 82.7% in the year 2011-12. Thus, the respondents are not following any definite policy in granting re-employment to the superannuating Principals/Vice Principals. According to the learned counsel this was violative of Article 14 & 16 of Constitution of India as the respondents are going in an arbitrary, illegal and discriminatory manner. They are adopting a pick and choose policy of re-employment to one and refusing to another.

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7. the issue in this case is that of yardstick adopted by the respondents in adjudging the professional fitness of candidates for re-employment. From the cases quoted by the applicants, it is observed that in the case of Sh. O.P.Gaur and Smt. Veena Bansal, the respondents chose to give re-employment despite the fact that the results of class XII had gone down during the year 2011-12. Thus, lower percentage of results could not have been the ground for denying re-employment in the case of the applicants. In the case of applicant in OA-3697/2013 there was an additional ground of the show cause notice having been given to him in 2012. There also, it is observed that firstly, the respondents did not pursue the matter further after receiving the explanation or reply given by the applicant, thereby, implying that the explanation given by the applicant was satisfactory and the case would have been closed.....

8. In the light of the aforesaid facts and reasons, we are of the view that respondents have not been able to show as to how the request of the applicants in these two OAs were rejected on certain grounds while some other officers who were in similar position were given re-employment. The respondents have not been able to refute the allegations made by the applicants that the action of the respondents in rejecting the applicants cases were violative of Article 14 & 16 of the Constitution of India being prima facie arbitrary and discriminatory. We, therefore, quash the orders no.4216-20 dated 13.09.2013 impugned in OA-3967/2013 and no. 4208-12 dated 13.09.2013 and direct the respondents to consider request of re-employment of the applicants in these two OAs in terms of the Govt. of NCT of Delhis letter dated 27.01.2012 and keeping in view our observations in the preceding paras, and pass a speaking and reasoned order within four weeks from the date of receipt of a copy of this order."

2.4 Applicant"s further contention is that second ground taken by the respondents is also not sustainable as the so called "inquiry report" dated

23.2.2015 cannot possibly be a reason which the respondent took after seven months before the date 2.7.2014 when his application for re-employment was rejected by the respondents on the first ground and further contended that a Writ Petition (Civil) No.2709/2014 was filed by the said Shri Vidya Nand Sharma, the complainant, before the Hon"ble Delhi High Court and the Hon"ble High Court dismissed the same on the ground that

"Only the respondent no.5 who is the Vice Principal is targeted. It is unexplained as to why no action is sought against the Principal or against the Management Committee of the School."

3. Pursuant to notice issued to the respondents, they have filed their reply in which they have stated that the applicant was appointed as Teacher w.e.f. 27.01.1979 & promoted as Vice Principal through seniority as usual & joined Sarvodaya Bal Sr. Sec. School Mehrauli, Qutab as Vice Principal. The result of class-XII for the academic year 2013-14 shown negative deviation of 26.1% from 96.5% (2013-13) to 70.4% (2013-14). The negative deviation shows that he was not professionally fit for re-employment.

3.1 They further stated that Vidya Nand Sharma made complaints dated 20.2.2014 and 29.3.2014 and filed Writ Petition No.2709/2014 before the Hon"ble Delhi High Court. 3.2 There are the following three level of vigilance clearance report for class-II officers/Gazetted Officer:

1. Distt. Level
2. Head Quarter Level
3. Directorate of Vigilance Level, GNCTD

3.3 First two level of vigilance clearance was issued.

However, the Directorate of Vigilance, GNCTD has not issued vigilance clearance to the applicant and vigilance status was issued on 20.4.2014 as complaints have been received in the said Directorate, which were under examination/consideration. The applicant retired from the service on 30.4.2014. The applicant has filed an OA 2444/2014 praying therein that direction be issued to the respondents to release the pension, pensionary benefits. The bills of pension and other benefits were submitted in PAO for release of payment but the PAO returned the bills with the remarks that clear cut vigilance was required from Directorate of Vigilance, Delhi Secretariat, New Delhi and the Directorate of Vigilance issued status of the applicant on 20.4.2014 stating that complaints have been received in the Directorate which were under consideration. Further the aforesaid Writ Petition was also filed by one of the complainants before the Hon"ble Delhi High Court. The matter was again pursued with Directorate of Vigilance to issue fresh vigilance clearance report and after considering the facts the Directorate of Vigilance has issued Vigilance Clearance Report on 7.11.2014 and pension & other benefits were released to him on 6.12.2014.

3.4 They further stated that applicant has only submitted medical fitness certificate but, as per the said Circular, re-employment is based on performance and subject to fitness and vigilance clearance. The performance of the applicant was not upto the mark as there was negative deviation in result as well as complaints filed against the applicant. Therefore, professional fitness certificate was not issued to him by District Authorities.

3.5 The respondents further stated that on the basis of complaints of Shri Vidya Nand Sharma dated 20.2.2014 & 30.3.2014, preliminary enquiry was conducted and as per the Report dated 23.2.2015, out of two charges, one was proved.

The applicant concealed the fact that he had filed OA No.2745/2015 seeking setting aside of the aforesaid enquiry report dated 23.2.2015 as also and the communication dated 31.12.2014 initiating the preliminary inquiry, and this Tribunal vide Order dated 14.1.2016 disposed of the said OA filed in 2015 with the following directions:-

"6. The Tribunal at this stage cannot record any finding relating to the correctness or otherwise of such contention of the applicant. A preliminary inquiry having been conducted and the inquiry committee having submitted the report, it is for the disciplinary authority to look into it and take a decision relating to the initiation of the departmental proceedings or otherwise. The disciplinary authority, however, in doing so shall take into consideration all the relevant materials including the fact that the applicant has already retired from service on attaining the age of superannuation. The disciplinary authority shall also take into consideration that the vigilance clearance has already been given to the applicant. The applicant having already retired from service, no proceedings however, can be initiated against him without the sanction of the President as provided under Sub-Rule (2) of Rule 9 of CCS (Pension) Rules, 1972."

3.5 Lastly they stated that the instant OA is liable to be dismissed by this Tribunal.

4. The applicant has also filed his rejoinder reiterating the averments made in the OA and further submitted that having granted final vigilance clearance to the applicant and having released all his pensionary benefits thereafter, it is outrageous that the respondents should keep doubting their own vigilance clearance.

5. We have heard learned counsel for the parties and have carefully perused the material placed on record.

6. The issue involved in this case is whether the rejection of the applicant's case for re-employment is justified or not. 7. Counsel for the applicant reiterated the averments made in the OA and submitted that the grounds of rejection of applicant's case vide impugned orders dated 27.4.2015 and 2.7.2014 are not sustainable in the eyes of law in view of the judgment of this Tribunal (supra) as

also the fact that reference of complaints of one Shri Vidya Nand Sharma who filed a Writ Petition before the Hon"ble High Court was also dismissed by the Hon"ble Delhi High Court.

8. Counsel for the respondents also drew our attention to the averments made in the counter affidavit and submitted that preliminary inquiry was initiated by the respondents pursuant to the complaints made by Shri Vidya Nand Sharma and the same was concluded on 23.2.2015 which was challenged by the applicant by filing OA 2749/2015 and this Tribunal vide Order dated 14.1.2016 disposed of the same. As such it is evidently clear that as on 13.1.2016, the disciplinary proceedings were pending against the applicant and therefore, the applicant could not have been considered for re-employment in view of the peculiar facts and circumstances of the present case.

9. Before dealing with the issue involved in this case, we would like to say that it is a trite law that employee has no right to re-employment, as the employee only has a right to be considered and the school has a right to deny re-employment, if after considering over-all performance, it finds that the employee is not fit for re-employment.

10. It is an admitted fact that earlier the applicant has filed OA 3323/2014 challenging the decision of the respondents rejecting the claim of the applicant for re-employment vide order dated 2.7.2014 before this Tribunal, which was dismissed as withdrawn with liberty to the applicant to file fresh OA, vide Order dated 8.1.2016. Thereafter the applicant has filed the instant OA on 19.1.2016 challenging the aforesaid order dated 2.7.2014 as well as order dated 27. 4.2015 on the aforesaid grounds.

11. So far as first ground taken by the respondents in the impugned orders is concerned, the applicant"s counsel placed reliance on the judgment of this Tribunal in OA Nos.3967/2013 & 3968/2013 decided on 21.7.2014, relevant portions have already quoted above, and contended that in this case also the respondents have not been able to show as to how the request of the applicant was rejected on certain grounds while some other officers who were in similar position were given re-employment. To this contention, counsel for the respondents submitted that the case of the applicant was not rejected only on the said sole ground but on the other ground also as complaints against the applicant were pending and further an inquiry was also held which was concluded on 23.2.2015 and the applicant concealed the fact that he had filed OA No.2745/2015 seeking setting aside of the aforesaid enquiry report dated 23.2.2015 and this Tribunal vide Order dated 14.1.2016 disposed of the said OA filed by the applicant in 2015 with the directions as quoted above. As such it is evidently clear that applicant"s case could not have been considered for re-engagement in view of the pendency of disciplinary case against the applicant also. Counsel for respondents further submitted that judgment relied upon by the applicant in the cases of OA Nos.3967/2013 and 3968/2013 (supra) is not applicable to the facts of the present case. Counsel further submitted that

applicant earlier filed OA No.3323/2014 challenging the decision of the respondents rejecting the claim of the applicant for re-employment before this Tribunal, which was dismissed as withdrawn with liberty to the applicant to file fresh OA, vide Order dated 8.1.2016 but the applicant has not chosen to amend the said OA to impugn the order dated 27.4.2015 which was a detailed order and filed the present OA in 2016 and also did not choose to press for interim relief. As such he is well aware of the fact that prima facie case is not in his favour.

12. After giving thoughtful consideration to the rival contentions of the parties on the first ground, we are of the view that judgment relied upon by the applicant of this Tribunal (*supra*) is not relevant to the facts of this case as in that case, this Tribunal found that rejection of the cases of the applicants therein for re-employment was only lack of professional fitness on account of reduction in the result percentage of concerned classes for different years but in this case besides this ground, other grounds were also taken by the respondents for rejecting the claim of the applicant for re-employment. Further in that case, this Tribunal directed the respondents only to frame a set of guidelines including the criteria for determining the fitness of a retiring officer for processing the request of retiring employees after re-employment. As such we are fully in agreement with the contentions raised by the learned counsel for the respondents.

13. So far as second ground taken by the respondents in the impugned order dated 27.4.2015 is concerned, counsel for the applicant submitted that the same is not sustainable as the so called "inquiry report" dated 23.2.2015 cannot possibly be a reason which the respondent took after seven months the concerned date, i.e., 2.7.2014 when his application for re-employment was rejected by the respondents on the first ground and further contended that a Writ Petition (Civil) No.2709/2014 filed by said Shri Vidya Nand Sharma, the complainant, before the Hon'ble Delhi High Court was dismissed on the ground that "Only the respondent no.5 who is the Vice Principal is targeted. It is unexplained as to why no action is sought against the Principal or against the Management Committee of the School." To this contention, learned counsel for the respondents submitted that pursuant to complaints received by the respondents, inquiry was conducted by the respondents and the same was concluded vide report dated 23.2.2015 and the same was mentioned in the impugned order as the said impugned order was passed on 27.4.2015. The said inquiry report dated 23.2.2015 was challenged by the applicant by filing OA No.2749/2015 and the same was disposed of by this Tribunal vide Order dated 14.1.2016. As such it is evidently clear that as on 13.1.2016, the disciplinary proceedings were pending against the applicant and therefore, the applicant could not have been considered for re-employment in view of the above circumstances of the case.

14. After giving thoughtful consideration to the rival contentions of the parties on the second ground, we accept the contention of the learned counsel for the

respondents, as it is an admitted fact that as on 7.2.2014, the complaints were pending against the applicant which were required to be adjudicated upon and the respondents had made preliminary inquiry as well as conducted the inquiry which was concluded on 23.2.2015, so the same can be said to be a valid ground for not considering the case of the applicant for re-employment as the re-employment has to be done only after ensuring the necessary requirement of physical fitness from an Authorized Medical Attendant and Vigilance Clearance, which admittedly in the case of the applicant was issued only on 7.11.2014 in respect of payment of the applicant's retiral dues which were withheld by the respondents. It is further relevant to mention here that the said OA 2749/2016 filed by the applicant challenging the inquiry report dated 23.2.2015 as well as the communication dated 31.12.2014 initiating the preliminary inquiry was disposed of by Order of this Tribunal dated 14.1.2016 with certain directions as quoted above. As the respondents have also stated that as per observations of this Tribunal in the said OA passed on 14.1.2016 that the applicant having been retired from service, no proceedings, however, can be initiated against him without sanction of the President as provided under sub-Rule (2) of CCS (Pension) Rules, 1972 and the fact that the said re-employment can be granted for two years to an employee upto the age of 62 years and the applicant has completed the age of 62 years, the relief claimed in this OA now cannot be granted in favour of the applicant.

15. In the peculiar facts and circumstances of the case, for the foregoing reasons, we do not find any illegality in the action of the respondents rejecting the request of the applicant for re-employment. Accordingly, the present OA being devoid of merit is dismissed. There shall be no order as to costs.

16. Accordingly, MA No.256/2016 is also disposed of accordingly.