

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of hearing and Order: 10.02.2015**

+ W.P.(C) No.9330/2014 & C.M.A. No. 21124/2014

SHRI MUKESH KUMAR ..... Petitioner  
Through: Mr. Sudhanshu Tomar, Advocate  
versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents  
Through: Ms.Zubeda Begum, Standing  
Counsel, GNCTD

**CORAM:**

**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

**HON'BLE MR. JUSTICE I.S.MEHTA**

**ORDER**

**KAILASH GAMBHIR, J (ORAL)**

1. By this petition, the petitioner questions the tenability of the order dated 29.08.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi, thereby dismissing the O.A. preferred by the petitioner being devoid of any merit.

2. Assailing the said order of the learned Tribunal Mr. Sudhanshu Tomar, learned counsel appearing for the petitioner submits that vide notification dated 21.12.1998, general age relaxation of two years was granted for any recruitment by method of direct open competitive examination to the Central Civil Services and Civil Posts specified in the

relevant service/Recruitment Rules on the date of commencement of the Central Civil Services and Civil Posts. But this age relaxation of two years was not given by the respondents in the advertisement No.1/13 through which applications were invited for the post of librarian vide post Code 2/13. Counsel thus submits that the said advertisement in question, not giving the age relaxation of two years period is in clear contravention of the said notification dated 21.12.1998 issued by the Government of India giving general age relaxation with regard to all Central Civil Posts under the Central Government where the appointment to the respective posts was also through direct open competitive examination. Counsel further submits that the post of librarian is equivalent to TGT post and with regard to TGT post, respondents have given the age relaxation of two years, despite the fact that Recruitment Rules specify the upper age limit of 30 years. Counsel also submits that in the earlier advertisement of 2010 for the same post of librarian the upper age limit laid down was 32 years and later in the 2013 advertisement, the upper age limit laid down was 30 years but the respondents were holding combined examination for the post of librarian for the said years but with different criteria which is not permissible.

3. In support of his arguments, learned counsel for the petitioner relies

on the judgment of this Court in the case of *Asha vs. Govt. of NCT of Dehi & Ors.* dated 22.08.2014.

4. Opposing the present petition Ms. Zubeda Begum, learned Standing Counsel appearing for the respondents submits that Recruitment Rules for the post of librarian were amended in consultation with the UPSC and with the prior approval of Lieutenant Governor of Delhi and the same were notified on 23.01.2003 and the age limit prescribed for direct recruits was 30 years (relaxable for Government Servants upto 5 years in accordance with the instructions or orders issued by the Central Government). Learned counsel further submits that the DOPT OM No.15012/6/98/Estt. (D) dated 21.12.1998 where the upper age limit for the direct recruitment was increased by two years on which reliance was placed by the counsel for the petitioner, the same is not applicable, firstly because the said Rule is applicable to all Central Civil Servants and Civil Posts under the Central Government and, secondly, the Recruitment Rules were amended by the Govt. of NCT of Delhi in the year 2003 which is much after the date of the said OM and was not followed by the Government of NCT of Delhi at the time of amending the rules for the post of librarian.

5. It is further argued that in the year 2007, the Directorate of

Education, Government of NCT had sent request for the recruitment of 39 vacancies for the post of librarian to the Delhi Subordinate Services Selection Board (herein after referred to as DSSSB for short) and these vacancies were notified by the DSSSB under post Code 163/07 wherein the upper age limit was mentioned as 'not exceeding 32 years' but this age limit was inadvertently mentioned as the same was clearly in contravention of the upper age limit laid down in the amended Recruitment Rules notified on 23.01.2003 and when this discrepancy was brought to the notice of the Directorate of Education later in time, then Directorate of Education vide letter dated 25.04.2012 clarified the position by reiterating that the maximum age limit for the post of librarian through direct recruitment may be read as 30 years in accordance with the recruitment rules. Counsel, thus, submits that the petitioner cannot take any advantage of the said inadvertent mistake of laying down upper age limit as 'not exceeding 32 years' when the upper age limit of 30 years as notified in the amended Recruitment Rules is not under dispute. Another contention raised by the counsel for the respondents is that the petitioner has not challenged the Recruitment Rules before the Tribunal and, therefore, he has no right to challenge the Recruitment Rules in the present Writ Petition that too at the stage of

addressing arguments; and that too after the petitioner had applied for the post in response to the advertisement and got a rejection letter due to the reason of his being over age. Learned counsel for the respondents further submits that there is no infirmity or perversity or illegality in the order passed by the Tribunal and the same may be upheld by this Court.

6. We have heard learned Counsel for the parties and given our thoughtful consideration to the arguments advanced by them. The DSSSB had invited applications for various posts under GNCTD/NDMC/MCD vide advertisement No.01/13. The present appellant was one of the applicants who had applied for the post of librarian against the post code 02/13. The upper age limit for the post of librarian for the post code 02/13 was laid down as 30 years and indisputably, the petitioner was overage and, therefore, ineligible to have applied for the said post. The grievance raised by the petitioner before the Tribunal and before this Court is that the post of librarian which was advertised in the year 2010 i.e. post code 69/10 examination of which was also to be conducted along with post code 02/13, the upper age limit for the same post was kept at 32 years and so far as the 2013 examination is concerned, there was a variation in the age limit which was kept at 30 years and this variation at the end of the respondents in

laying down the upper age limit has created a class between two set of candidates applying for the same post against the same code. The other grievance raised by the petitioner is that the respondents have not taken into consideration OM of 1998 at the time of carrying out amendment in the Recruitment Rules in the year 2003 and the said OM being issued by the President of India in exercise of the powers under Article 309 read with Article 148(5) of the Constitution of India would have precedence over the amended Recruitment Rules of 2003.

In so far as the advertisement Nos.07/2007 and 10/2007 are concerned, the learned Tribunal has said that if the respondents have extended some benefits to an individual or a category de hors the rules of 2003, the other similarly situated persons cannot claim a similar benefit on the principle of equality or otherwise. In support of this reasoning, the Tribunal has also placed reliance on the judgment of the Apex Court in the case of *State of West Bengal & Others v. Debasish Mukherjee & Others* JT 2011 (11) SC.

7. There cannot arise any dispute with regard to the settled legal position that guarantee of equality before the law is a positive concept and cannot be enforced in a negative manner. The respondents have admitted this fact that

an inadvertent error had taken place at their end in mentioning the age limit as 32 years in the earlier advertisement, contrary to the upper age limit laid down in the amended Recruitment Rules of the year 2003 and when this mistake was brought to the notice of Directorate of Education it was immediately clarified that the maximum age limit may be read as 30 years and not 32 years. The necessary correspondence in this regard was placed on record by the respondents along with the counter affidavit filed by them before the learned Tribunal. The petitioner, thus, cannot derive any advantage of the said mistake which had taken place at the end of the respondents and which was later rectified by them. The petitioner also cannot claim the benefit of the said mistake based on the established principle of negative equality that Article 14 does not envisage negative equality. In case a wrong benefit has been bestowed upon someone inadvertently or otherwise it may not be a ground to grant similar relief to others. The Hon'ble Supreme Court in the case of ***Basawaraj & Anr. V. The Spl. Land Acquisition Officer, AIR 2014 SC 746*** considered this issue and held as under:

*"It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative*

*equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well.*

*If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order.*

*A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: Chandigarh Administration & Anr. v. Jagjit Singh & Anr., AIR 1995 SC 705, M/s. Anand Button Ltd. v. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; and Fuljit Kaur v. State of Punjab, AIR 2010 SC 1937)."*

8. Another hurdle which the petitioner faced before the Tribunal and before this Court is that he did not challenge the Recruitment Rules of the year 2003 and, therefore, in the absence of any challenge raised by him, he cannot now raise the grievance that the amended rules of 2003 do not fall in line with the OM dated 21.12.1998 issued by the DOPT. The OM of 1998

deals with Central Civil Services and Civil Posts under the Central Government and we fail to comprehend as to how the said OM would apply to the posts in question which were posts under the Government of NCT of Delhi and separate Recruitment Rules were framed by the GNCT of Delhi in due consultation with the UPSC and with prior approval of the Lieutenant Governor of Delhi. In the absence of any challenge raised by the petitioner we need not carry with any further discussion on this aspect of the matter. In any event of the matter, the petitioner had applied for the said post with open eyes, despite the fact that as on the relevant cut off date he was ineligible for applying for the same, being overage to the laid down upper age limit of 30 years.

9. There is no merit in the Writ Petition and the same is hereby dismissed. C.M.A. No. 21124/2014 also stands dismissed.

**KAILASH GAMBHIR**  
**(JUDGE)**

**I.S.MEHTA**  
**(JUDGE)**

**FEBRUARY 11, 2015**

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