

**Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.429/2015

With

OA-111/2015
OA-166/2015, MA-125/2015
OA-170/2015, MA-128/2015
OA-178/2015
OA-201/2015
OA-234/2015
OA-237/2015
OA-383/2015, MA-300/2015
OA-388/2015, MA-303/2015
OA-390/2015, MA-312/2015
OA-397/2015
OA-408/2015
OA-418/2015, MA-328/2015, MA-329/2015
OA-421/2015, MA-330/2015
OA-428/2015
OA-433/2015, MA-337/2015

Reserved on: 20/04/2017
Pronounced on:28/04/2017

**Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

1. OA-429/2015

Ms. Meera Devi, 41 years
D/o Sh. Ramphal Singh,
W/o Sh. Mukesh Sehrawat,
R/o Flat No. 115 Akshardham Apartment,
Pocket-III, Sector-19,
Dwarka, New Delhi-110075.

..... Applicant

Versus

1. Govt. of NCT of Delhi through
The Chief Secretary,
5th Floor, Delhi Sachivalaya,
New Delhi.

2. Delhi Subordinate Services Selection Board
Through its Secretary,
Govt. of NCT of Delhi, F-18,
Karkardooma Institutional Area,
Delhi-92.
3. Directorate of Education through
Its Director, GNCT of Delhi,
Old Secretariat, Delhi-54. Respondents

2. OA-111/2015

1. Mrs. Monika Yadav, 33 years
W/o Lokender Kumar,
R/o Village and P.O. Khaira,
Mohalla-Sadhara Najafgarh,
New Delhi-110043.
2. Mrs. Kiran Devi, 35 years
W/o Sh. Surender Singh,
R/o Village Hasanpur
& Post Office Ujwa,
New Delhi-110073.
3. Mrs. Kamlesh Rana, 37 years
W/o Mr. Surender Kumar,
R/o Village Asalatpur Khawad,
P.O. Daulatpur, Najafgarh,
New Delhi-110043. Applicants

Versus

1. The Lt. Governor,
Raj Niwas,
1, Raj Niwas Marg,
Delhi-54.
2. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat,
ITO, New Delhi-2.
3. The Director of Education,
Directorate of Education,
Old Secretariat,
Civil Lines, Delhi-54.

4. The Chairman,
Delhi Subordinate Services Selection Board(DSSSB),
Govt. of NCT of Delhi,
FC-18, Institutional Area,
Karkardooma, Delhi-92. Respondents

3. OA-166/2015, MA-125/2015

1. Banita, 37 years
W/o Surender Khatri,
R/o U-65, Vijay Nagar,
Narela, Delhi-110040.
2. Pushpa, 34 years
W/o Sh. Rohtas,
R/o 29/A, Malik Pur Village,
Kingsway Camp, Delhi.
3. Rajwati, 39 years
W/o Sh. Dayachand,
R/o H.No. 61, Villate Nithari,
P.O. Sultan Puri, Delhi-86.
4. Anju, 35 years
S/o Sh. Vishnu Bhagwan,
R/o 277, Pitam Pura,
Village Pitam Pura, Delhi.
5. Sarita Kumari, 34 years
W/o Sh. Manoj Gehlot,
R/o G-23/90-91, Sector-7,
Rohini, Delhi-110085.
6. Kiran, 37 years
D/o Sh. Suraj Bhan,
R/o H.No. 85,
Munshi Ram Colony,
Delhi.
7. Anita Sharma, 37 years
D/o Sh. H.C. Sharma,
R/o G-3/95, Sector-15,
Rohini, Delhi.
8. Rekha Kumari, 32 years
D/o Sh. Ram Kumar,
R/o E-102, Yadav Nagar,
Samaypur, Delhi.

9. Sonia (33 years)D/o late Sh. Narender,
R/o Bhagat Singh Colony,
Rohtak Road, Sonapat, Haryana.
10. Sunita Sharma, 35 years
D/o Sh. Mahavir Prasad Sharma,
G-5/201, Sector-6, Rohini,
New Delhi. Applicants

Versus

1. Govt. of NCT of Delhi through
its Chief Secretary,
Having Office at: Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-110002.
2. Lieutenant Governor of Delhi,
Raj Niwas, Civil Lines, Delhi.
3. Delhi Subordinate Services Selection Board
Through its Secretary
Having Office at: Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-110002.Respondents

4. OA-170/2015, MA-128/2015

1. Sh. Pushpender Singh, 33 years
S/o Sh. Dharam Singh,
R/o VPO Bakhtawarpur (Tanda)
In front of Kabir Mandir, Delhi-110036.
2. Surender Singh, 33 years
S/o Sh. Dharam Singh,
R/o VPO Bakhtawarpur (Tanda)
In front of Kabir Mandir,
Delhi-110036.
3. Vijay Singh, 33years
S/o Sh. Ramesh Chander,
R/o VPO Sandal Khurd,
Distt. Sonipat, Haryana.
4. Vikas, 32 years
S/o Samsheer Singh,
R/o House No. 344/27,
West Ram Nagar, Sonipat, Haryana.

5. Sandeep Malik, 37 years
S/o Sh. Sukhbir Singh,
R/o H.No.516, New Tara Nagar,
Sonapat, Haryana.
6. Kapil Dev, 33 years
S/o Sh. Raj Gopal,
R/o 214, Vill. Nizam Pur,
Delhi-110081.
7. Sh. Virender Singh, 33 years
S/o Sh. Ramphal,
R/o 51, Shiv Mandir Wali Gali,
Village Samaspur Khalsa, New Delhi.
8. Sh. Parvind Kumar, 34 years
S/o Sh. Prem Singh,
R/o 174, Goswami Marg,
Village Khichri Pur, Delhi-110091.
9. Sh. Mukesh Kumar, 37 years
S/o Sh. Mahender Singh,
R/o 98, Shahabad Daulatpur,
Delhi-110042.
10. Sh. Pardeep, 38 years
S/o Sh. Jagbir Singh,
R/o Village Majri,
Post Office Karala, Delhi.
11. Sh. Dharambir Dabas, 33 years
S/o Sh. Sultan Singh,
R/o Village & Post Office-Majra Dabas,
Delhi.
12. Rakesh Kumar Dabas, 39 years
S/o Sh. Rajender Singh,
R/o 42, Village & Post Office-
Budhanpur Majra Dabas, Delhi.
13. Sh. Rajesh Kumar, 37 years
S/o Sh. Satyavir Singh,
R/o H.No. 123, Majra Dabas,
Delhi.
14. Sh. Amit Yadav, 33 years
S/o Sh. Ajay Kumar Yadav,
R/o H.No. 272, VPO-Naharpur,
Sector-7, Rohini, Delhi-110085.

15. Sh. Sunil Dabas, 37 years
S/o Jagdish Singh,
R/o Village Madanpur Dabas,
Post Office Rani Khera, Delhi.
16. Sh. Amit Kumar, 36 years
S/o Sh. Bishambhar Singh,
R/o M-584, Mangol Puri,
Delhi-110083.
17. Sh. Bharat Bhushan, 36 years
S/o Sh. Moti Ram,
R/o H.No. 692, Shahabad Daulatpur,
Delhi-110042.
18. Sh. Satya Prakash Sehrawat, 36 years
S/o Sh. Rameshwar Dayal Sehrawat,
R/o C-7/157, Sector-8,
Rohini, Delhi-85.
19. Sh. Rajbir, 36 years
S/o Sh. Salip Chand,
R/o H.No. 297, Village Jhangola No.1,
Post Office-Palla, Delhi-36. Applicants

Versus

1. Govt. of NCT of Delhi through
its Chief Secretary,
Having Office at: Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-110002.
2. Lieutenant Governor of Delhi,
Raj Niwas, Civil Lines, Delhi.
3. Delhi Subordinate Services Selection Board
Through its Secretary
Having Office at: Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-110002.Respondents

5. OA-178/2015

Parveen Kumar, 34 years
S/o Sh. Raj Singh,
R/o VPO Tharu, Distt. Sonapat,
Haryana. ...Applicant

Versus

1. Govt. of NCT of Delhi through
its Chief Secretary,
Having Office at: Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-110002.
2. Lieutenant Governor of Delhi,
Raj Niwas, Civil Lines, Delhi.
3. Delhi Subordinate Services Selection Board
Through its Secretary
Having Office at: Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-110002. ...Respondents

6. OA-201/2015

Mrs. Poonam, 33 years
W/o Sh. Jitender Dagar,
R/o D-47, Dagar House,
Bijwasan, New Delhi-110061. ...Applicant

Versus

1. The Lt. Governor,
Raj Niwas, 1, Raj Niwas Marg,
Delhi-100 054.
2. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat,
ITO, New Delhi-2.
3. The Director of Education,
Directorate of Education,
Old Secretariat,
Civil Lines, Delhi-54.
4. The Chairman,
Delhi Subordinate Services Selection Board
(DSSSB),
Govt. of NCT of Delhi,
FC-18, Institutional Area,
Karkardooma, Delhi-92. ...Respondents

7. OA-234/2015

Jai Rani, 40 years
W/o Sh. Anoop Singh,
R/o H.No. 560,
Pana Begwan,
Bawana, Delhi.

....Applicant

Versus

1. Govt. of NCT through
its Chief Secretary,
Asaf Ali Road, Civil Line,
Delhi.
 2. Delhi Subordinate Services Selection Board
Through its Chairman,
F-16-18, Institutional Area,
Karkardooma, Delhi-110092.
 3. Directorate of Education
Through its Secretary,
Old Secretariat,
Govt. of NCT Delhi.
- ... Respondents

8. OA-237/2015

Preeti Goyal, 34 years
W/o Sh. Nitin Goyal,
R/o 1931, Gali Leshwa, Kucha Pati Ram,
Bazar Sita Ram, Delhi.

...Applicant

Versus

1. Govt. of NCT through Chief Secretary,
Asaf Ali Road, Civil Line,
Delhi.
 2. Delhi Subordinate Services Selection Board
Through its Chairman,
F-16-18, Institutional Area,
Karkardooma, Delhi-110092.
 3. Directorate of Education
Through its Secretary,
Old Secretariat,
Govt. of NCT Delhi.
- ...Respondents

9. OA-383/2015, MA-300/2015

1. Ms. Shashi Bala, (Physical Education Teacher)
D.O.B. 20.06.1975 (age about 39 years),
D/o Sh. Sukhbir Singh,
R/o 115, Village Mandoli, Delhi-93.
2. Ms. Ku. Anita, (Physical Education Teacher)
D.O.B. 20.06.1978, (age about 36 years)
D/o Sh. Phool Singh,
R/o 349, Gali No. 12, Near Ravi Das Mandir,
Mandoli, Delhi-93.
3. Ms. Nirmala Rani (Physical Education Teacher),
D.O.B. 28.07.1977, (age about 37 years)
W/o Sh. Rakesh Kumar,
R/o B-10, Main 20 Ft. Road,
Meet Nagar, Delhi-94. ...Applicants

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary,
New Secretariat, New Delhi.
2. Delhi Subordinate Service Selection Board
Through Chairman,
FC-18, Institutional Area Karkardooma,
Delhi-92. ...Respondents

10. OA-388/2015, MA-303/2015

1. Saran Kumari,
D/o Sh. Nathu Ram,
R/o G-26, H.No. 80, Sector-3,
Rohini, Delhi.
2. Geeta Rani d/o Sh. Lichman Singh,
R/o House No. 361-A/11,
Adarash Nagar, Sonapat, Haryana.
3. Manorama d/o Sh. Brahama Nand Gautam,
R/o House No. 117/Pocket No.13,
Sector-21, Rohini, Delhi.
4. Rajesh Rani w/o Sh. Samay Singh,
R/o H.No. 415,
Village & Post Office-Pooth Khurd,
Delhi-110039.

5. Neelam w/o Sh. Satish Kumar,
R/o Village & Post Office – Pooth Khurd,
Delhi-110039. ...Applicants

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary,
Having Office at: Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-110002.
2. Lieutenant Governor of Delhi,
Raj Niwas, Civil Lines, Delhi.
3. Delhi Subordinate Services Selection Board
Through its Secretary,
Having Office at: FC-18, Institutional Area,
Karkardooma, Delhi-110092.
4. Directorate of Education,
Govt. of NCT of Delhi through
Its Secretary, Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-110002. ...Respondents

11. OA-390/2015, MA-312/2015

1. Raj Bala, 42 years
W/o Sh. Vijay Singh,
R/o Flat No. 101/169,
Gali No. 7, Puran Nagar,
Palam Colony, Delhi.

2. Meenaxi Yadav, 38 years
W/o Sh. Bikram Singh,
R/o H.No. 1657, Sect.4, Rewari,
Haryana. ...Applicants

Versus

1. Delhi Subordinate Services
Selection Board through the Secretary,
FC-18, Institutional Area,
Karkardooma, Delhi-92.
2. Government of NCT, Delhi through
the Principal Secretary,
Department of Education,
Old Secretariat, Delhi-54. ...Respondents

12. OA-397/2015

Mrs. Urmila, 38 years
 W/o Sh. Padam Singh,
 R/o Flat No.265,
 Abhilasha Apartment,
 Pocket-3, Sector-23,
 Rohini, Delhi-110089.

..... Applicant

Versus

1. The Lt. Governor,
 Raj Niwas,
 1, Raj Niwas Marg,
 Delhi-110 054.
2. The Chief Secretary,
 Govt. of NCT of Delhi,
 Delhi Secretariat,
 ITO, New Delhi-110 002.
3. The Director of Education,
 Directorate of Education,
 Old Secretariat,
 Civil Lines, Delhi-110054.
4. The Chairman,
 Delhi Subordinate Services Selection Board,
 (DSSSB), Govt. of NCT of Delhi,
 FC-18, Institutional Area,
 Karkardooma, Delhi-110 092. Respondents

13. OA-408/2015

Ms. Rashmi Tokas, 36 years
 D/o Sh. Ram Kishan Tokas,
 R/o F-93, Katwria Sarai,
 P.O. Hauz Khas, New Delhi-16.

...Applicant

Versus

1. Govt. of NCT of Delhi through Chief Secretary,
 5th Floor, Delhi Sachivalaya,
 New Delhi.
2. Delhi Subordinate Services Selection Board
 Through its Secretary,
 Govt. of NCT of Delhi, F-18, Karkardooma
 Institutional Area, Delhi-92.

3. Directorate of Education through
Its Director, GNCT of Delhi,
Old Secretariat, Delhi-54. ...Respondents

14. OA-418/2015, MA-328/2015, MA-329/2015

1. Geeta Rani w/o Sh. Jeet Singh,
R/o A/56, Yadav Park,
Kamruddin Nagar,
Nangloi, Delhi-110041.
2. Meenakshi w/o Sh. Vikas,
R/o 8/35-A, Sector-3,
Rajender Nagar, Sahibabad, Ghaziabad,
Uttar Pradesh.
3. Sunita Kumari w/o Sh. Ashok Kumar,
R/o Village Surkahpur, P.O.- Jharoda Kalan,
New Delhi-110027. ...Applicants

Versus

1. Govt. of NCT of Delhi through
Its Chief Secretary
Having Office at: Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-110002.
2. Lieutenant Governor of Delhi,
Raj Niwas, Civil Lines, Delhi.
3. Delhi Subordinate Services Selection Board
Through its Secretary
Having Office at: FC-18, Institutional Area,
Karkardooma, Delhi-110092.
4. Directorate of Education
Govt. of NCT of Delhi through its Secretary,
Delhi Secretariat, Players Building,
I.P. Estate, New Delhi-110002. ...Respondents

15. OA-421/2015, MA-330/2015

Parveen Kumar, 36 years
S/o Sh. Shyam Sunder,
R/o 168, Satghara, Village-Karala,
Delhi-110081. ...Applicant

Versus

1. Govt. of NCT of Delhi through
Its Chief Secretary
Having Office at: Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-110002.
2. Lieutenant Governor of Delhi,
Raj Niwas, Civil Lines, Delhi.
3. Delhi Subordinate Services Selection Board
Through its Secretary
Having Office at: FC-18, Institutional Area,
Karkardooma, Delhi-110092.
4. Directorate of Education,
Govt. of NCT of Delhi through
Its Secretary, Delhi Secretariat,
Players Building, I.P. Estate,
New Delhi-110002. ...Respondents

16. OA-428/2015

Mrs. Geeta Rani, 35 years
W/o Sh. Brijesh Rathi,
R/o 14/151, Surya Nagar, Baraut,
District-Baghpat, UP-250611. ...Applicant

Versus

1. The Lt. Governor,
Raj Niwas, 1, Raj Niwas Marg,
Delhi-100 054.
2. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat,
ITO, New Delhi-110 002.
3. The Director of Education,
Directorate of Education,
Old Secretariat, Civil Lines,
Delhi-110054.
4. The Chairman,
Delhi Subordinate Services Selection Board
(DSSSB),
Govt. of NCT of Delhi,
FC-18, Institutional Area,
Karkardooma, Delhi-110 092. ... Respondents

17. OA-433/2015, MA-337/2015

1. Ms. Gayatri Sharma,
(Physical Education Teacher)
D.O.B. 10.02.1975 (age about 39 years),
D/o late Sh. V.K. Sharma,
R/o 256-257, Doonger Mohalla,
Farsh Bazar, Shahdra, Delhi-32.
2. Ms. Manju,
(Physical Education Teacher)
D.O.B. 12.10.1972, (Aged about 42 years),
D/o late Shri Prem,
R/o A-44, Gali No.2, Brahmpuri,
Delhi-53. ...Applicants

Versus

1. Govt. of NCT of Delhi through
Its Chief Secretary, New Secretariat,
New Delhi.
2. Delhi Subordinate Service Selection Board
Through Chairman,
FC-18, Institutional Area Karkardooma,
Delhi-92. ... Respondents

Appearance: Mr. Pawan Kumar Singh, Mr. Ajesh Luthra, Mr. Ashutosh Dixit with Mr. Anuj Aggarwal, Mr. Ajay Kumar and Mr. Harish Kumar, counsel for applicants.

Mr. Vijay Pandita, Mr. Amit Anand, Ms. Rashmi Chopra and Mr. K.M. Singh, counsel for respondents.

ORDER

By Hon'ble Mr. Shekhar Agarwal, Member (A):

All these 17 OAs are similar and are, therefore, being disposed of by this common order.

2. The applicants are aggrieved by Advertisement No.02/14 dated 12.12.2014 issued by Delhi Subordinate

Services Selection Board [DSSSB] inviting applications, *inter alia*, for the posts of Physical Education Teacher in the Government of National Capital Territory of Delhi [GNCTD]. Their grievance is that the age limit notified for the aforesaid post is “not exceeding 30 years” whereas in the same advertisement for posts of Music Teacher, Drawing Teacher and Domestic Science Teacher, the age limit notified is 32 years. Further, they are aggrieved because 10 years relaxation admissible to women teachers has not been extended to Physical Education Teachers. They have, therefore, filed these OAs seeking the following relief(s):-

- a. *Admit and allow the original application of the applicant.*
- b. *Set aside the advertisement 02/14 issued by the respondents in as much as it provides for age limit: not exceeding 30 years for Physical Education Teacher in Directorate of Education, Govt. of NCT of Delhi, for the post Code 2010/2014 in vacancy notice advertised through Advertisement apart from general age relaxation as stipulated in Para 6 of the advertisement.*
- c. *Issue directions to the respondents to raise the age limit to: not exceeding 32 years: for physical education teacher in Directorate of Education, Govt. of NCT of Delhi, for the post code 210/2014 in vacancy notice advertised through advertisement apart from general age relaxation as stipulated in Para 6 of the advertisement.*
- d. *Issue directions to the respondents to give age relaxation to the applicant considering him to be meritorious sports person for the post code 210/2014 in vacancy notice advertised through advertisement No.02/2014.*
- e. *Issue further directions to the respondents to allow the applicant to fill and submit the forms for*

the examination for physical education teacher 2014 either online or through any other suitable means on or before 25th January, 2015 and to consider the candidature of the applicant for the employment for the post code 210/2014.

- f. *Pass any other or further order/s direction/s relief/s which this Hon'ble Tribunal deem just and equitable under the facts and circumstances mentioned in the application in favour of the applicants."*

The relief(s) sought are almost identical in all the OAs.

3. Arguing for the applicants, learned counsel Sh. Pawan Kumar Singh submitted that the decision of the respondents to provide for age limit not exceeding 30 years for these posts is based on the recruitment rules of the posts notified in the year 2011. These recruitment rules, according to him, were arbitrary and had been framed without any object or reasons or any guidelines. Thus, they were against the principles of natural justice and should be struck down. These rules were also ultra vires of the Constitution being violative of Articles 14 & 16. This is because while for other posts, such as, Music Teacher, Drawing Teacher and Domestic Science Teacher, age limit of 32 years has been notified, in a discriminatory manner, the age for the post of Physical Education Teacher has been kept at maximum of 30 years. This is despite the fact that all the posts are in the same Pay Band and carry the same Grade Pay. These rules have arbitrarily been framed under the proviso to Article 309

of the Constitution but do not conform to various provisions of the Constitution. Sh. Singh further argued that the respondents sat on the vacancies of Physical Education Teacher for last five years. This delay in recruitment was without any justifiable reasons. Many candidates desirous of securing appointment on these posts have become overage in the meanwhile. Thus, their rights under Article 21 of the Constitution have been violated. Further, he argued that the applicants had made various representations for removing this discrimination, but no reply was received by them. No reasons have also been given for withdrawal of age relaxation of 10 years given to women candidates.

4. Learned Counsel Sh. Anuj Agarwal also argued for the applicants. He submitted that the Advertisement No. 02/14 does not provide for 10 years relaxation extended to women candidates granted by Notification No.F.1/16/3/R&S/79 dated 01.11.1980 issued with the approval of the Lt. Governor of Delhi. According to him, this relaxation has been given to all women teachers. Not extending the same to the Physical Education Teachers was itself arbitrary, unconstitutional, unreasonable and violative of Article 14 of

the Constitution. He has relied on several judgments to support his case. They are as follows:-

- i) **Asha Vs. Govt. of NCT of Delhi & Ors.** [WP (C) No.1035/2014, decided on 22.08.2014];
- ii) **Richa Mishra Vs. State of Chhattisgarh & Ors.** [2016 (4) SCC 179];
- iii) **Govt. of NCT of Delhi & Ors. Vs. Sangeeta Gaur & Ors.** [WP(C) No.10803/2009 decided on 12.08.2009];
- iv) **Preeti Goyal Vs. Govt. of NCT of Delhi & Ors.** [OA No.3104/2012 decided on 03.04.2013];

5. He further submitted that Notification dated 01.11.1980 was issued in exercise of powers vested in the Administrator [LG in this case) under Rule 43 of Delhi School Education Rules, 1973 and the word "Delhi Schools" used in this Notification covers all schools in Delhi.

6. Sh. Ajesh Luthra has also argued for the applicants and has submitted his written arguments as well. According to him, the respondents have not taken into consideration the Notification dated 27.03.2012 placed at Annexure A-6 [page 33 of the OA No.429/2015] whereby the Government of India had reiterated the provisions of enhancement of upper age limit by two years in direct recruitment vide Notification dated 21.12.1998. This was done in the context of enhancement of age of superannuation in Government appointments from 58 years to 60 years. Correspondingly,

the upper age limit for direct recruitment was also enhanced by two years. He further argued that the applicant in OA No.429/2015 was entitled to age relaxation as a departmental candidate as well since she has been working as a Guest Teacher with the respondents. In this regard, reliance can be placed on the judgment of Hon'ble Supreme Court in case of **Union Public Service Commission vs. Dr. Jamuna Karup** [AIR 2008 (SC) 2463].

7. The respondents have filed their reply opposing the submissions of the applicants. Arguing for the respondents, Shri Vijay Pandita submitted that these OAs are not maintainable in view of the decision of the Hon'ble High Court of Delhi in the case of **Sachin Gupta & Vs. Govt. of NCT of Delhi & Others** [WP (C) 7297/2007 decided on 28.08.2008]. In the aforesaid case, amendment to the recruitment rules for the post of Assistant Teacher (Primary) whereby the age limit for direct recruitment was modified to 20-27 years from 30 years for male and 40 years for female candidates, was challenged. Hon'ble High Court of Delhi had ruled in favour of the respondents therein and held as follows:-

"54. To my mind, like any other employer it is the prerogative of the Respondents to decide the age limit and academic suitability of candidates which they wish to employ and so long as the

same are not contradictory to the academic eligibility as prescribed by the NCTE Act any challenge to the same, merely because it renders some candidates ineligible, ought to be rejected. For several posts minimum and maximum limits of age are prescribed by different authorities along with the required academic qualifications. It may be possible for the candidates to attain the requisite academic qualifications even at lesser or higher ages but that does not imply that the authorities are duty bound to consider all of them for employment at any age is eligible for appointment to the said posts. In our view, the mere completion of an eligibility course gives no vested right or right of consideration to a candidate enforceable against the State.

55. Moreover, as rightly pointed out by Mrs. Ahlawat prescribing of any age for a given post is a matter of policy and as held by the Apex Court in *Shivbachan Rai (supra)* is open to the Government while framing rules under the proviso to Article 309 to prescribe such age limits as it may deem necessary and the same cannot be termed as arbitrary or un-reasonable. In the present case we also find that the new age limit has been fixed in accordance with the Office Memorandums issued by the Government of India and Government of NCT of Delhi, whereby the age limit for group C & D posts has been fixed between 18 to 25 years. In facts, by the impugned RRs the respondents have actually rectified their mistake and brought their RRs in conformity with the Government's policy. The Supreme Court in *Yogesh Kumar (supra)* has held that merely because in the past there was some deviation and departure, the courts cannot allow a patent illegality to continue.
56. We also agree with Mrs. Ahlawat that the teachers appointed by the Respondents are government employees and are to be governed by the terms and conditions applicable to other government employees in the same category/group as laid down by the Department of Personnel and Training, Government of India from time to time. Consequently, the age limit stipulated in the notification under Rule 43 of Delhi School Education Act, 1973 would not govern the recruitment to the post of government teachers. In any event, as the impugned RRs have been approved by the Lt. Governor of Delhi who had issued the notification dated 1st November, 1980,

it would mean that the said notification stands impliedly repealed.

57. *As far as the under-aged candidates are concerned, we are of the view that it is open to State Government to stipulate a cut off age as it may like to recruit only candidates having sufficient maturity. In any event, the under-aged candidates suffer no prejudice as they would be eligible to apply for the post of Assistant Teacher (Primary) in the future.*
58. *In our opinion, a cut off limit has to be prescribed along with eligibility conditions to select the best and the most suitable from amongst the available talent and so long as a uniform yardstick is applied for all, it cannot per se be claimed to be arbitrary or discriminatory. According to us far from being absurd or preposterous, fixing of age limit between 20-27 years would only encourage young motivated, committed professionals to take up the challenge of teaching the small children."*

8. Shri Pandita further argued that these OAs are also not maintainable in view of the judgment of the Hon'ble Apex Court in the case of **V.K. Sood Vs. Secretary, Civil Aviation** [1993 (Suppl.) (3) SCC 9] wherein the Court had ruled that it was not for the Court to prescribe particular qualification for a particular post. This was the function of the Executive. No motive can be attributed to the rule making body under Service Rules framed under the proviso to Article 309 of the Constitution. He further submitted that in the case of **Malik Vajana vs. State of A.P.** [1990 (2) SCC 707], it was held that Tribunals or Courts cannot direct the Government to frame statutory rules or amend the statutory rules in a specific

manner so as to alter service conditions of civil servants in terms of directions. Sh. Pandita further relied on the judgment of the Hon'ble Supreme Court in the case of **Captain B.D. Gupta vs State of UP & Ors.** [JT 1990 (3) SC 712], wherein the Hon'ble Court held that challenge to the rules, on ground of *mala fide*, was not sustainable. He further stated that in the case of **M.P. Vs. Dharam Bir** [1998 (6) SCC 165], the Apex Court had ruled that administrative Tribunals had no powers to override the mandatory provisions of the rules on sympathetic consideration. Further, he submitted that the Constitutional Bench of Hon'ble Supreme Court in case of **Bishan Swaroop Vs. Union of India** [AIR 1974 (SC) 1618] 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 as it is presumed that it knew what is best in the public interest. Govt. knows the calibre of candidates available..."

9. Shri Pandita argued that this Tribunal in the case of **Asha Vs. Govt. of NCT of Delhi** [OA No.1702/2013 decided on 06.01.2014] had rejected the case of age relaxation. He further submitted that on the recommendations of the 6th Central Pay Commission, the post of Physical Education Teacher had been upgraded from Group-C to Group-B. This is also evident from the amended recruitment rules of

this post notified on 09.12.2011, wherein the classification of the post is mentioned as Group-B. He submitted that while framing the amended recruitment rules, the respondents had kept in mind the instructions of the DOP&T applicable for Group-B posts, according to which, upper-age limit for recruitment of all such posts was 30 years. Accordingly, with the approval of the Hon'ble Lt. Governor of Delhi, the age limit prescribed for the post of Physical Education Teacher was also kept at 30 years. This was not only in accordance with DOP&T guidelines, but also has the approval of the UPSC. In the advertisement whatever age relaxations are permitted as per DOP&T guidelines have also been provided for. Thus, age limit of 30 years was relaxable by 5 years for SC/ST candidates and 3 years for OBC candidates. Apart from that, 5 years relaxation was also admissible to departmental candidates/government servants and ex-servicemen. Further, he stated that prior to the aforesaid amendment notified on 09.12.2011, the prescribed age limit for this post was also 32 years like other posts. The benefit of Notification dated 01.11.1980 issued by the Lt. Governor of Delhi giving age relaxation of 10 years to female candidates was also applicable. However, while amending the recruitment rules, DOP&T guidelines have been followed

wherein no such relaxation was admissible for female candidates. This decision was taken despite the Notification dated 01.11.1980.

10. Sh. Pandita submitted that the recruitment rules for the post of Assistant Teacher (Primary) in the Directorate of Education were amended vide Notification dated 08.05.2006. The age limit for direct recruitment was modified to 20-27 years which, prior to the amendment, was 30 years for male and 40 years for female candidates. The said recruitment rules were challenged in the High Court of Delhi in the case of **Sachin Gupta** (supra). The challenge did not succeed. [Observations of the Hon'ble High Court have already been extracted in earlier part of this order].

11. Sh. Pandita further submitted that recruitment rules for the post of Physical Education Teacher (Computer Science) were framed for the first time and notified on 23.04.2013. This is also a Group-B post in the same Pay Band carrying Grade Pay of Rs.4600/-. In this case also, the upper age limit had been kept as 30 years in accordance with the DOP&T norms. These recruitment rules have also been framed in consultation with UPSC.

12. Learned counsel Sh. K.M. Singh has also argued for the respondents and given his written submissions. He stated that the advertisement No.02/14 challenged by the applicants was based on the recruitment rules for the post. The applicants have challenged this advertisement without challenging the recruitment rules, even through the age limit notified in the advertisement was only a consequence of the provisions of recruitment rules. He further submitted that in a similar case titled **Mukesh Kumar vs. GNCTD & Ors** [WP(C) No.933/2014], the Hon'ble High Court of Delhi did not entertain the writ petition on the ground that the petitioner had not challenged the recruitment rules. He has also relied on the judgment of the Apex Court in the case of **V.K. Sood** (supra) and submitted that a coordinate Bench of this Tribunal had dismissed OA No.897/2014 titled **Manju vs. DSSSB & Ors.**, relying on the aforesaid judgment of the Apex Court. He further argued that this Tribunal may not like to interfere in this matter as it lies exclusively within the sphere of Legislature and Executive. In this regard, he cited the judgment of the Apex Court in the case of **Ekta Sahu Foundation vs. GNCTD** [AIR 2006 (SC) 2609].

13. We have heard counsel for both the sides and also perused the material on record. The written submissions

submitted by all the counsel have also been taken on record and perused by us.

14. The first argument advanced by the applicants was that the aforesaid advertisement was violative of Articles 14 & 16 of the Constitution because the upper age limit prescribed for the post of Physical Education Teacher was 30 years whereas for other similarly situated Group-B posts, such as, Music Teacher, Drawing Teacher and Domestic Science Teacher, it was 32 years with age relaxation of 10 years for female candidates. It was argued on behalf of the applicants that the advertisement as well as the recruitment rules on which it was based were ultra vires of the Constitution being discriminatory and violative of Articles 14 & 16 of the Constitution.

15. The respondents in their reply had submitted that age limit for the post of Physical Education Teacher was also 32 years prior to the amendment in the recruitment rules. However, pursuant to the recommendations of the 6th CPC, the classification of this post was changed from Group-C to Group-B. Thereafter, the recruitment rules were amended on 09.12.2011 and the amended recruitment rules were framed in accordance with the DOP&T guidelines for

Group-B posts. According to these guidelines, the upper age limit prescribed for Group-B post was 30 years and no relaxation of 10 years was admissible for female candidates. Accordingly, provisions were made in the recruitment rules. Thus, their argument was that the upper age limit prescribed for Physical Education Teachers was different from other similar posts because recruitment rules of this post had been revised in the year 2011 in accordance with DOP&T guidelines. While other posts had also been classified as Group-B, since their recruitment rules had not been revised, old provisions were continuing according to which the upper age limit continued to remain at 32 years with relaxation of 10 years for female candidates. The implication of the argument of the respondents was that as and when the recruitment rules of other posts are also revised, their upper age limit would change in accordance with the DOP&T guidelines. At the time of issue of this Advertisement No.02/14, since only recruitment rules for the post of Physical Education Teachers had been revised, the upper age limit for this post was notified to be different from other posts.

16. After considering the submissions of both sides, we are not inclined to agree with the applicants that the Advertisement No.02/14 insofar as it pertains to the post of

Physical Education Teacher was violative of Articles 14 & 16 of the Constitution. This is because it is entirely within the domain of the Executive to prescribe qualifications and age limit for a particular post depending upon the job requirements of that post. Merely because age limit for some similarly situated posts is different, would not make the recruitment rules for that post ultra vires of the Constitution. It is not necessary for the respondents to have identical qualifications and age limit for all posts of teachers. For each post, qualifications and age limit can be prescribed as per the requirements of the post. Thus, we notice that in the same advertisement challenged by the applicants, for other posts of teachers, different essential qualifications have been prescribed. For example, for the post of Music Teacher, the essential qualification is BA Degree with Music as one of the subjects from a recognized University whereas for the Drawing Teacher, the qualification required is MA in Drawing & Painting or BA Degree with minimum of two years full time Diploma from a recognized University. Again, for the post of Domestic Science Teacher, the qualification prescribed is Graduate from a recognized University with Diploma in Home Science. We also find that posts of Music Teacher, Drawing Teacher and Domestic Science Teacher

have also been identified suitable for physically handicapped persons and reservation for them has accordingly been provided for. However, for obvious reasons, the post of Physical Education Teacher has not been identified as suitable for PH category. Thus, it is obvious that the qualifications and age limit etc. and other provisions in the recruitment rules are made in accordance with the requirements of the post. There is no justification in claiming that such provisions should be identical for all posts. Difference in age limit and qualifications would not vitiate the rules making them ultra vires of the Constitution.

17. The applicants have also argued that age relaxation of 10 years given to female candidates in all other posts had not been extended to Physical Education Teachers. The respondents have explained this difference by saying that such relaxation is not provided under DOP&T guidelines for Group-B posts. Since the amended recruitment rules for the post of Physical Education Teachers have been framed in accordance with the DOP&T guidelines, it was consciously decided not to grant this relaxation, despite the Notification dated 01.11.1980 of the Hon'ble Lt. Governor of Delhi. Thus, it was not an omission or a lapse on part of the respondents but a conscious decision not to grant this relaxation. Non-

grant of this relaxation does not vitiate the rules. Moreover, it is exclusively upto the Executive and the Legislature to decide the manner in which recruitment rules are to be framed.

18. In this regard, we place reliance on the judgment in the case of **Sachin Gupta** (supra) wherein the Hon'ble High Court has held that it is upto the employer to decide the age limit and academic suitability of candidates which he wishes to employ. Merely because the provisions under the rules make some candidates ineligible cannot be a ground to challenge the rules. For several posts, minimum and maximum age limits are prescribed by different authorities along with the required academic qualifications. Further, Hon'ble High Court has held that prescribing any age for a given post was a matter of policy and rules framed under proviso to Article 309 cannot be termed as arbitrary or unreasonable merely because different age limits have been prescribed.

19. As regards the argument of the applicants that the Notification dated 01.11.1980 of the Lt. Governor has not been followed by the respondents while framing amended recruitment rules for the post of Physical Education Teachers

in the same judgement the Hon'ble High Court of Delhi observed that since these recruitment rules have been approved by the Hon'ble Lt. Governor of Delhi, who had also issued the Notification dated 01.11.1980, it would mean that the said Notification stands impliedly repealed.

20. The applicants have relied on the judgment of the Hon'ble High Court of Delhi in the case of **Asha** (supra). On going through this judgment, we find that Hon'ble High Court had ruled that the Notification dated 01.11.1980 regarding giving age relaxation of 10 years to female candidates was also applicable to the post of Librarian. However, in our opinion, this judgement does not help the applicants at all as we have already come to the conclusion that it was not necessary for the respondents to follow this Notification when amended recruitment rules were framed.

21. The applicants have also relied on the judgment of the Hon'ble Apex Court in the case of **Richa Mishra** (supra). On going through this judgment, we find that in this case the Apex Court noticed that while there was a provision for relaxation of age by 10 years to the female candidates in the 1997 Rules as well as in the 2005 Rules, the same did not

exist in the 2000 Rules. Finding this to be a case of omission, the Apex Court had allowed relaxation under the 2000 Rules. In our opinion, this judgement also cannot be of any help to the applicants for the reason that in the cases in hand a conscious decision has been taken not to give age relaxation of 10 years to female candidates as no such relaxation was provided for in the DOP&T guidelines. It is not a case of omission or a lapse as was the situation in **Richa Mishra's** case.

22. The judgement of Hon'ble High Court of Delhi in the case of **Sangeeta Gaur** (supra), relied upon by the applicants, also pertains to 10 years relaxation to women teachers under the Notification dated 01.11.1980. The Hon'ble High Court had ruled that even Music Teachers were covered by the said Notification and there is no reason to exempt them from the same. However, again, for the reasons mentioned above, this judgement cannot be of any help to the applicants in any manner.

23. The decision of the Coordinate Bench of this Tribunal in the case of **Preeti Goyal** (supra) relied upon by the applicants, again for the same reason, does not help them in any manner as it also pertains to extending 10 years

relaxation to women teachers for the post of Domestic Science Teachers.

24. The applicants had submitted that by Notification dated 21.12.1998 the upper age limit for direct recruitment in Government was enhanced by two years. These instructions were reiterated on 27.03.2012. However, they have not been followed in the instant case. In our opinion, it was not necessary for the respondents to follow these instructions. This is because these instructions were issued in the context of enhancement of age of superannuation in Government posts from 58 to 60 years because of which no recruitment could have been made for two years as there was no retirement. Therefore, two years relaxation in upper age limit in government recruitments was given. However, it is not necessary to repeat this relaxation now almost 20 years after the superannuation age was enhanced.

25. It was also argued on behalf of the applicants that recruitment to the post of Physical Education Teachers had not taken place for last several years thereby depriving many aspirants of their right to employment. This was violative of their rights under Article 21 of the Constitution. In our opinion, this cannot be a ground for challenging upper

age limit prescribed in the advertisement. This age limit has to conform to the provisions of the recruitment rules. Moreover, it is upto the Executive to decide when to fill up the vacant posts and no direction in this regard can be given by any Court of Tribunal. Mere existence of vacancies would not give indefeasible right to any candidate for being appointed.

26. We notice that the applicant in OA No.178/2015 [Praveen Kumar] was seeking age relaxation as a meritorious sports person having participated in the National Handball Championship. We also notice that the applicant in OA NO.429/2015 [Meera Devi] was seeking age relaxation as a departmental candidate having worked as Guest Teacher with the respondents.

27. From the impugned advertisement, we find that age relaxation has been provided for both departmental candidates as well as meritorious sports persons. The respondents on their own shall no doubt examine their cases in the light of the provisions notified in the advertisement.

28. We find that none of the arguments advanced by the applicants are tenable. We,

therefore, do not find any merit in these OAs and the same are accordingly dismissed. No costs.

29. Let a copy of this order be placed in all the files.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/AhujA/