

**In the Court of Commissioner for Persons with Disabilities
National Capital Territory of Delhi**

25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2
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[Vested with powers of Civil Court under the Rights of Persons with
Disabilities Act, 2016]

Case No.323/1082/2018/06/11022-24

Dated:9/10/2018

In the matter of:

Ms. Meenakshi Arora,

Flat No. BE-102, Ground Floor,
Street No. 2, Near Vikas General Store,
Hari Nagar, New Delhi-110064.

..... Complainant

Versus

The Director,

Directorate of Education,
Old Sectt. Bldg., Civil Lines,
Delhi-110054.

.....Respondent No.1

The Chairman

Delhi Subordinate Service Selection Board,
FC-18, Institutional Area, Karkardooma
Delhi-110092.

.....Respondent No.2

Date of hearing: 28.09.2018

Present: Ms. Meenakshi Arora, Complainant on telephone.

Sh. Ajay Kumar, Sr. Assistant on behalf of respondent No. 1.

ORDER

The above named complainant, a person with 90% locomotor disability (wheel chair user), vide her complaint dated 24.01.2018 submitted that she is working in Jawahar Navodya Vidayala School, Ministry of HRD, Govt. of India as a Librarian since February, 2002 and is posted at Jafar Pur Kalan, Delhi. The Navodya Vidayala job has all India transfer liability. She, therefore appeared in the examination

conducted by DSSSB in 2016 for the post of Librarian in Directorate of Education, Govt. of NCT of Delhi.

2. The complainant further submitted that she was selected for the post but was not in a position to join due to some official and personal reasons as the condition of her 70 year old mother, who is suffering from Blood Cancer, was critical. She was given an extension for joining till 06.02.2017. Even at that time, her mother was under treatment at AIIMS and she could not join. In July 2017, she informed that she wanted to join and the concerned officer told her that her request for further extension of 10-15 days would be accepted and she was verbally advised to resign from her post in Navodya Vidayala. However, before she could resign, she was informed on telephone that her Dossier was being sent to DSSSB. In reply to her RTI application, she was informed that her file had not been sent to DSSSB. She had not got any reply to her last application dated 27.07.2017. The complainant has also submitted that she needs the support of her brother as she cannot live alone in the campus of Navodya Vidayala through out her life due to her physical condition. It is, therefore critical for her to join a Delhi Govt. School close to her family residence. She has, therefore requested that the Authorities should understand her problem and allow her to join the post of Librarian.

3. Her complaint was taken up with the Directorate of Education vide notice dated 25.01.018. Directorate of Education vide reply dated 09.04.2018 submitted as under :

- 1) *As per appointment consolidate order No. F.No. 2/DRC/E-IV/DE/Lib./2016/1339-50 dated 02/09/2016 (posting ID 20160025) as well as individual order No. 2/DRC/E-IV/DE/Lib./2016/1339-50 dated 06/09/2016 Ms. Meenakshi Arora (Empl. ID -20160888) was appointed as Librarian and posted in Hari Nagar, Block-L S(Co-ed)- 1514022 with the direction to report to her place of posting latest by 10/10/2016*

failing which her appointment shall stand cancelled without any further communication (copy enclosed).

- 2) *As per her request dated 04/10/2016 and 01/11/2016, extension was granted for joining up to 13/01/2017 vide order dated 07/11/2016, as per Govt. of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training OM No. 9/23/71-Estt. (D) dated 6th June, 1978 and OM No. 35016/2/93-Estt. (D) dated 9th Aug. 1995 (Copies of GM's are enclosed).*
- 3) *Ms. Meenakshi Arora again requested for some more time extension vide diary No. 81/E-1V dated 11/01/2017 competent authority vide memorandum dated 24/01/2017 has grant a last opportunity to Ms. Meenakshi Arora to join her place of posting by 06/02/2017 and it was informed to her that failing which her appointment will automatically be treated as cancelled and no further correspondence will be entertained.*
- 4) *Further Ms. Meenakshi Arora has requested for some more time vide application dated 02/02/2017. However as per As per Govt. of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) OM No 9/23/71-Estt. (D) dated 6th June, 1978 and OM No. 35016/2/93-Estt. (D) dated 9th Aug. 1995 extension can not be granted beyond six months. The OM is reiterated as under :*

*"The matter has been examined in consultation with the UPSC and it has been decided to reduce from nine months to six months the maximum time upto which an offer of appointment can be kept to open. In other words an offer of appointment should be clearly specify the period (which shall not normally exceed one or two months) after which the offer would lapse automatically if the candidate **did not join within the specified period**. If however within the specified period, a request is received from the candidate for extension of time, it may be considered by the Ministries/Deptts. and it may be granted only as an exception where facts and circumstances so warrant and in any case only upto a maximum of six months from the date of issue of the original offer of a appointment. An offer of appointment would lapse automatically after the expiry of six month from the date of issue of original offer of appointment".*

Therefore request of Ms. Meenakshi Arora vide dated 02/02/2017 was considered & rejected by the Competent Authority and she was intimated vide memorandum No. DE. 02/DRC/E-IV/Extension

(Lib.)/2016/2458 dated 07/07/2017 and her appointment orders dated 02/09/2016 and 06/09/2016 were cancelled (copy enclosed).

- 5) *It is further mentioned that in response of request of Ms. Meenakshi Arora dated 29/01/2018, her case has been examined sympathetically by the Competent Authority and DSSSB has been requested to provide their views in this matter vide letter No. DE. 02/DRC/E-IV/Ext. (Lib.)/2016/2143 dated 14/03/2018 as per DOPT OM dated 6th June, 1978 point No. iv (Copy enclosed).*

This is for your information please.

Yours faithfully,

Encl. As above.

*(R.S. Krishnan)
Assistant Director (E-IV)"*

4. Directorate of Education vide letter dated 25.05.2018 and 15.06.2018 requested DSSSB to expedite their views and DSSSB were impleaded as respondent no. 2 on 28.06.2018 and a hearing was scheduled on 04.09.2018. Vide letter dated 25.07.2018, Directorate of Education informed that views of DSSSB had been received vide its letter dated 21.06.2018 and as per their advice, clarification/expert advice of Services Department, Govt. of NCT of Delhi has been sought vide their letter dated 23.07.2018. Further action would be taken after receiving the clarification/expert advice. As per the letter dated 21.06.2018 of DSSSB, final acceptance/rejection of a candidate is the prerogative of the appointing authority. As such, decision may be taken on the basis of Court Order(s) vide WP (C) 267/2013, CM APPL.555/2013, CAT Order vide OA No. 611/2014 & DoPT OM dated 09.08.2017 & 06.06.1978 and opinion of Service Department and Law Department may be taken, if required. Inviting reference to MHA's OM No 9/23/71-Estt. (D) dated 6th June, 1978, DoPT vide their OM No. 35016/2/93-Estt. (D) dated 9th Aug. 1995 has conveyed that the said instructions provide that the offer of appointment could lapse if the

candidate could not join within a specified period and lapse automatically after the expiry of 6 months from the date of issue of original offer of appointment. DoPT has advised all the Ministries and Departments to ensure strict compliance of the said instructions.

5. During the hearing on 04.09.2018, the complainant reiterated her written submissions and added that she could not resign from the post in Navodaya Vidyalaya without handing over the charge of the library, which has approximately 100000 books in addition to text books. She was also under the impression that the extension would be granted upto nine months as indicated in DOE's letter.

6. The representative of the Directorate of Education submitted that nine months extension was permissible as per the MHA's OM No. 9/23/71-Estt(D) dated 06.06.1978 which was reduced to 6 month in 1995.

7. It was observed that a large number of posts of Librarian in the Directorate of Education and the post in the School where the complainant was posted were still vacant. Therefore, revival of appointment in respect of the complainant might also serve the purpose of the Department. As DSSSB has advised Directorate of Education to take final decision in consultation with Services Department, it was recommended that Secretary (Services) may give a personal hearing to the complainant and convey the opinion of Services Department to Directorate of Education at the earliest and the matter to scheduled for hearing on 2.09.2018.

8. The complainant, who deposed on telephone on 28.09.2018, informed that she was given a personal hearing by Secretary (Services) who assured her to do the needful. She also vide email dated 01.10.2018 submitted that in one of the orders cited, DSSSB's letter

does not relate to her case as that case was not the service matter. In other matter of Ajay Kumar Vs. Union of India W.P.(C) No. 267/2013, the Hon'ble High Court of Delhi dismissed his petition as the Hon'ble Court did not find any element of public interest and was not an exceptional case. She also submitted that OA no. 1786/2011 before the Central Administrative Tribunal pertains to fixation of seniority and the applicant's appointment in that case was revived and he was permitted to join beyond the extended time. He got extension up to 22.02.2006 and finally he joined duty on 28.11.2006. As per the complainant, her case is exceptional on the following grounds:

- (i) Genuineness of her case is proved by the fact that she has decided to leave the job of Librarian with higher Grade Pay of There are 9000 vacant teaching posts and the Hon'ble High Court of Delhi has directed DSSSB to fill those posts.
- (ii) The post of the Librarian in that school where the complainant was posted, is still vacant. Therefore her appointment as Librarian in that school will benefit it.
- (iii) Selection of a candidate involves lot of time and expenditure. Revival of her appointment will save time and money and benefit the school as she is well qualified for the post and also having teaching experience of about 16 years.
- (iv) No training after appointment is involved in her case as in the case of the petitioner in W.P. (C) No. 267/2013.
- (v) She is a person with 90% locomotor disability and wheel chair user and therefore her case is exceptional one.

- (vi) `4800 to join the post of Librarian in Govt. of NCT of Delhi with lower Grade Pay of `4600 after 16 years of service in Navodya Vidayalya.

9. Chronology of events of selection process in respect of the complainant as Librarian in Directorate of Education is as under:

(i) The complainant was offered the post of Librarian by the Department of Education on 14.04.2016.

(ii) The appointment letter for her selection in Hari Nagar Block-L (Co-Ed) School was issued on 02.09.2016 and she was asked to join on or before 10.10.2016.

(iii) The complainant requested for extension of upto 13.01.2017 on the ground that her mother was suffering from blood cancer and kidney ailment and was under treatment, which was granted.

(iv) She asked for further extension upto April 2017, but extension was given upto 06.02.2017. She was also informed that the maximum permissible period of extension of nine months had expired on 11.01.2017. She was however, given one more opportunity to join by 06.02.2017.

(v) Finally the offer of appointment was cancelled on 07.07.2017.

10. It is observed that it is a case of revival of the offer of appointment which has lapsed. Under para (iv) of MHA OM no. 9/23/71-Estt.(D) dated 06.06.1978, if the Appointing Authority finds the circumstances exceptional and on ground of public interest, revival of the offer of appointment is to be done after consulting DSSSB in this case and the

seniority of the complainant would be fixed in accordance with sub para (v) of the said OM. The reason for reducing nine month period to six months month for the direct recruits to join, was that a longer period delayed preparation and issue of select/seniority lists, which affects the interests of the existing appointees as also determination of the vacancies for recruitment/ promotion as has been explained in the order dated 16.01.2013 of Hon'ble High Court of Delhi in W.P. (C) 267/2013, CM APPL.555/2013.

11. The Appointing Authority in this case, therefore needs to be convinced whether circumstances of the complainant were exceptional due to which she could not join within the specified period of six months/nine months and whether revival of offer of appointment would serve public interest and not adversely affect the interest of any existing Librarian. This essentially needs to be decided by the Appointing Authority and in my view no expert opinion is required as DoPT's instructions do envisage revival of a lapsed offer of appointment in exceptional circumstances and on ground of public interest. The complainant in her email dated 01.10.2018 has fairly brought out the distinction between her case and the other two cases that have been cited and therefore there is no need to repeat the same. In my view, her circumstances were exceptional as her mother was suffering from a terminal illness (Blood Cancer). Her physical condition due to her disability has forced her to take a decision to move from a higher post for 14 years (in 2016) to a lower post. As a large number of teaching posts including the post of Librarian in the school where she was originally posted, are stated to be vacant, revival of her offer of appointment would serve the interest of the Department and hence public interest. Revival of offer of the appointment of the complainant would also not affect the interest of any existing employee as the posts of Librarian are to be filled by direct recruitment. The complainant is

aware and clear about the fact that if her offer of appointment is revived, her seniority would be fixed in accordance with para 5 of MHA's OM dated 06.06.1978.

12. In light of the above, it is recommended that Directorate of Education may take a positive view in the matter at the earliest, in any case within 3 months from the date of receipt of this order and intimate this Court and the complainant as required under Section 81 of the Act.

13. The complaint is disposed off accordingly.

14. Given under my hand and the seal of the Court this 08th day of October, 2018.

(T.D. Dhariyal)
State Commissioner for Persons with Disabilities