

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1823/2002

with

OA No.1828/2002 ✓

New Delhi this the 4<sup>th</sup> day of December, 2002.

HON'BLE MR. M.P. SINGH, MEMBER (ADMNV)

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

OA-1823/2002

1. Paras Ram,  
S/o Sh. Ami Chand,  
R/o Vill. Mandhawali, P.O. Tigaon,  
Faridabad-121101.

2. Ravinder Singh,  
S/o late Balbir Singh,  
R/o 184, Vill. & P.O. Maidan Garhi,  
New Delhi-68.

-Applicants

(By Advocate Shri Arun Bhardwaj)

-Versus-

1. Union of India through  
Secretary,  
Ministry of Human Resource Development,  
Shastri Bhawan, New Delhi.

2. National Council of Educational Research  
and Training, through  
its Secretary,  
Aurbindo Marg,  
New Delhi-6.

3. Prof Ved Prakash,  
former Head DEME NCERT,  
presently working as Advisor  
Education Planning Commission,  
Yojana Bhawan, New Delhi.

-Respondents

(By Advocate Shri Saurabh Chauhan)

OA-1828/2002

Kamal Rawat,  
S/o Sh. B.S. Rawat,  
R/o Type IV/26, NCERT Campus,  
Sri Aurbindo Marg,  
New Delhi-110016.

(By Advocate Shri V.S.R. Krishna)

-Versus-

1. The Secretary,  
National Council of Educational  
Research & Training,  
Shri Aurbindo Marg,  
New Delhi-110016.

2. Prof. R.R. Saxena,

Controller of Examination,  
NCERT, NCERT Campus,  
Sri Aurbindo Marg,  
New Delhi-110016.

3. The Secretary,  
Ministry of Human Resources & Development,  
Govt. of India, Shastri Bhawan,  
New Delhi. -Respondents

(By Advocate Shri Saurabh Chouhan)

O R D E R

By Mr. Shanker Raju, Member (J):

As these OAs involve common question of facts and law, they are being disposed of by this common order.

2. In OA-1823/2002, applicants who were working as LDC have assailed the selection held for the posts of Assistant in NCERT in pursuance of an advertisement dated 19.2.2001. In OA-1828/2002 applicant challenges the selection held in pursuance of a notification of NCERT for the posts of Assistant.

3. In both these OAs applicants seek direction to appoint them on the basis of their merit position.

4. NCERT published advertisement in the Employment News for the posts of Assistant. Applicants in response applied for the post. They have been issued admission cards and called for the written test. Written test was on all India basis where about 525 candidates appeared. On the basis of written test name of applicant in OA-1828/2002 appeared at the top of the merit list whereas names of applicants in OA-1823/2002 do not figure in the merit list.

5. Subsequently, respondents called the candidates for interview. Whereas 40 vacancies were available and the respondents had prepared a list of 56 candidates but they had called about 100 candidates for interview. Those who were not in the original merit list have figured in the interview. Apprehending appointment of ineligible persons applicants have approached this court and by an order dated 17.7.2002 appointments to be made to the posts of Assistant in pursuance of the advertisement have been made subject to the outcome of the present OAs.

6. Learned counsel of the applicants Sh. V.S.R. Krishna and Sh. Arun Bhardwaj states that on a complaint to Director and Controller of Examination regarding the manner of conducting written examination and interview and discrepancies and interpolation of totalling in marks and preparation of merit list an enquiry has been ordered which was conducted by Dr. Ved Prakash, former Professor and Head of NCERT. After examining the total, manner of awarding marks and preparation of merit list by his report it was concluded that the entire examination may be scrapped and re-scheduled afresh because nothing is dearer than the prestige of the organisation.

7. In this backdrop it is stated that a Writ Petition No.1852/98 was filed before the High Court of Delhi where the respondents have been restrained from declaring the result. A Parliament question was also asked regarding favouritism in the selection. Applicants further state that the action of the respondents is in contravention of Articles 14, 16 and 21 of the Constitution of India. The procedure adopted is illegal, unfair, which

renders the entire selection process and subsequent appointments as nugatory. Learned counsel stated that the initial advertisement did not provide for an interview and the selections were to be made on the basis of the marks obtained in the written test. Subsequently the interview was introduced and 50 candidates have been called in addition to the initial 56 against 46 vacancies with a view to favour their own men. The criteria was changed in between to make the ineligible eligible to be selected.

8. It is further stated that marks in descriptive papers have been altered whereas no minimum marks have been stipulated and those who do not figure in the select list after interview have not been appointed. It is stated that the appointing authority has either to accept or reject in totality the findings of the selection committee by correcting the irregularities. They cannot tinker with the findings particularly when the same have been by an expert body and observed to be tainted suffered from irregularities and scrapping of the selection process has been recommended.

9. On the other hand, respondents' counsel Shri Saurabh Chauhan denied the contentions of the applicants and stated that as per the notification of the respondents dated 19.5.86 the syllabus for written examination and marks are based on modified scheme. According to him Selection Committee has decided that personal interview should have been held to ascertain the knowledge of computer in word processing and data based management and after deliberations it has been decided that those who have secured marks as per the scheme of examination on normal

standard for general candidate and identified by controller of examination on the basis of written test conducted on 18.3.2001 be called for personal interview and verification of their documents, qualification, experience etc. It was decided that there will be 50 marks for personal interview and the final select list will be prepared on the basis of marks obtained in written examination and personal interview. It is stated that 55 candidates have been called which consist of 25 SC, one ST and 23 OBC candidates out of which 16 general candidates were SC and 7 OBC candidates have been recommended.

10. Sh. Chauhan further states that total marks for written expression were 100, for rules and regulation 150 and for general knowledge 50, out of which one has to secure 120 to pass. Although relaxation for SC/ST is restricted to 25% marks in each paper, 55 candidates have qualified the minimum criteria. The appointing authority while considering recommendations of the selection committee on receipt of the synonymous complaint where marks have been enhanced in the descriptive papers making them qualified as general candidate an enquiry was conducted. The name of those candidates whose marks have been enhanced have been enhanced have been brought who have been given grace marks. This has been rectified and names of five general, three OBC candidates, including applicant in OA-1828/2002, Kamal Rawat, were removed to ensure fairness in the selection.

11. It is stated that out of 18 selected candidates, 9 have joined as Assistants. However, it is stated that once the applicants have participated in the

selection and found unfit they are estopped from challenging the selection process which is not vitiated on account of arbitrariness or any illegality in the light of the decision of the Apex Court in Madan Lal v. State of J & K, 1995 SCC (L&S) 712. Learned counsel for the respondents further produced the relevant record for our perusal, which has been carefully perused by us.

12. We have carefully considered the rival contentions of the parties and perused the material on record. The Apex Court in a subsequent decision of larger Bench in Raj Kumar and others v. Shakti Raj and others, (1997) 9 SCC 527 observed as under:

"16. Yet another circumstance is that the Government had not taken out the posts from the purview of the Board, but after the examinations were conducted under the 1955 Rules and after the results were announced, it exercised the power under the proviso to para 6 of 1970 Notification and the posts were taken out from the purview thereof. Thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal v. State of J&K and other decision referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law."

13. Moreover the Apex Court in Union of India v. I.K. Singh & Others, 2002 (3) ATJ 185 (SC) held that if the enquiry reveals large scale of malpractices adopted in the process of selection and gross irregularities and illegalities cancellation of selection process does not suffer from any legal infirmity.

14. Although we know our constraints as to interference in the subjective assessment by an expert body but if the selection process is suffered from illegalities and irregularities and fairness which is expected even an administrative action is lacking in the selection process the same is to be interfered with to set the clock right. The objection that having participated in the selection without any objection and reservation on the basis of doctrine of estoppel and acquiescence applicants who have been declared failed have not right to assail the selection would have no application in such cases.

15. If one has regard to the aforesaid pronouncements where the law has been crystalised and applying the ratio to the facts and circumstances of the present case and in the light of various discrepancies and illegalities cropped up in the selection where grace marks have been given to few which was later on altered and other irregularities where ineligible have been made eligible and the fact that though no interview was stipulated in the advertisement the same was introduced by the selection committee to enlarge the eligibility zone and moreover on the synonymous complaint filed alleging malpractices in the selection the enquiry conducted by an independent authority, i.e., ex-Director of NCERT disclosing various

illegalities and irregularities in the selection conclusively points out towards the malpractices and illegalities in the selection. The recommendation to scrap the entire examination and re-schedule it without upkeeping the practice of the organisation should have been respected by the respondents. It appears that under the guise of rectifying their errors they have favoured those who have not even made to the select list on the basis of the descriptive test.

16. We have perused the analysis arrived at by the Fact Finding Committee and find that out of 26 candidates 21 have been pushed to qualifying score which includes 36% general, 17% OBC and 8% SC. We also find that 32 candidates called for interview out of 58 in general category three in OBC and two in SC were found to have been awarded minimum qualifying marks which has been found to be alarming as general and OBC categories have been bunched at a qualifying score of 40 which was improper.

17. We also find from the report that those who have secured more than 40% marks in descriptive paper some of them have got more than 45%, but evaluating these marks in relation to the paper of rules and regulation their corresponding marks are lower but they have been awarded 40 as marks in the descriptive paper after alteration and those having secured 40 as marks in the descriptive paper have secured more than 85 marks in the rules and regulation. This shows that candidates getting higher marks in rules and regulation have secured only qualifying marks in descriptive paper. In the light of these glaring irregularities which have been found on an independent

enquiry certainly makes the action of the respondents as malafide, arbitrary and the same suffers from glaring irregularities which cannot stand scrutiny of law.

18. In our considered view the Government, i.e., respondents in an administrative action should be fair and ensure that the selection does not suffer from the vice of any malafide or arbitrariness. Had this selection been scrapped those who have been selected and appointed would also be given an equal chance to participate afresh, but not acceding and following the report of the fact finding committee shows otherwise.

19. For the foregoing reasons we are of the considered view that the selection process adopted by the respondents for appointment to the posts of Assistant suffers from illegality and irregularity of procedure. Any appointment made in pursuance of the recommendation of such selection would not confer a legal right to be appointed to the post.

20. In the result, OAs are allowed and the advertisement dated 19.2.2001 and subsequent selection process, including appointments made to the posts of Assistant are declared illegal and set aside. Respondents are directed to hold the selection afresh on the basis of the results as per rules making appointment accordingly. It is, however, made clear that those who have already been appointed and the applicants and other similarly situated candidates shall be given an opportunity to participate in the selection, even if they have become over-aged. The

aforesaid directions shall be complied with, within a period of six months from the date of receipt of a copy of this order. No costs.

(Shanker Raju)  
Member (J)

'San..'

*M.P. Singh* (M.P. Singh)  
Member (A)

*B.K. Juneja*

B. K. JUNEJA  
Section/Court Officer  
Central / Administrative Tribunal  
Principal Bench, New Delhi  
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