

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

CIVIL MISC. REVIEW APPLICATION NO.108 OF 2004.

ARISING OUT OF ORDER DATED 9.11.2004 PASSED IN
ORIGINAL APPLICATION NO. 1489 OF 1999.

ALONGWITH

CIVIL MISC. REVIEW APPLICATION NO. 109 OF 2004.

ARISING OUT OF ORDER DATED 9.11.2004 PASSED IN
ORIGINAL APPLICATION NO. 1490 OF 1999.

ALLAHABAD THIS THE 5th DAY OF January 2007.

HON'BLE MR. JUSTICE KHEM KARAN, V.C
HON'BLE MR. P.K. CHATTERJI, A.M

Rajeev Rajput son of Sri Satish Kumar Singh,
Resident of Vishnupuri, New Madho Nagar.
Saharanpur, District Saharanpur.

.....Applicant in Review Application NO.108/04

(By Advocate: Sri R.K. Singh/Sri R.C. Srivastava)

Versus.

1. Union of India through Kendriya Vidayala Sangathan, 18, Institutional Area Saheed Jeet Singh Marg, New Delhi, through its Commissioner.
2. Assistant Commissioner, Kendriya Vidayala Sangathan, Lucknow Region, Lucknow.

.....Respondents in Review Application NO.108/04

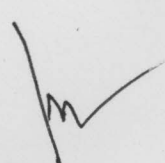
ALONGWITH

Ashok Kumar Tripathi son of Sri Daya Ram Tripathi,
Resident of C-6,L-Road, Mahanagar Bistar, Lucknow.

.....Applicant in Review Application NO.109/04

(By Advocate: Sri R.K. Singh/Sri R.C. Srivastava)

Versus.



1. Union of India through Kendriya Vidyalaya Sangathan, 18, Institutional Area Saheed Jeet Singh Marg, New Delhi, through its Commissioner.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Lucknow Region, Lucknow.

.....Respondents in Review Application NO.109/04

(By Advocate: Sri D.P. Singh)

O R D E R

BY MR. JUSTICE KHEM KARAN, V.C

Vide order dated 9.11.2004 passed in O.A. NO.1489/99, a Division Bench comprising of Hon'ble Mr. Justice S.R. Singh, the then Vice-Chairman and Hon'ble Mrs. Roli Srivastava, Member-A dismissed that O.A. mainly on the ground that mere empanelment in a panel prepared in July 1995 for appointment on the post of Lower Division Clerk (L.D.C.) did not confer any indefeasible right to get appointment on the said post and moreover life of panel being one year was over. On the basis of same judgment, connected O.A. NO.1490/99, A.K. Tripathi Vs. Union of India and others was also dismissed by a separate order passed therein. Both the applicants in the abovementioned O.As. have moved these separate review petitions for re-considering order dated 9.11.2004. They say that the Tribunal erred in taking the view that the applicant had no right to get the appointment especially when the panel had already been acted upon by giving appointments to 31 candidates. They have also tried to say that the authorities had no justification to make discrimination in offering appointment to the candidates of that panel. According to them, in view of circular dated 10.9.1988, a panel is not to exhaust until and unless all the selected candidates are given appointment and so from this angle as well, the Tribunal fell in error by observing that the life of panel stood exhausted, after expiry of one year. They have also referred to certain portions of pleadings

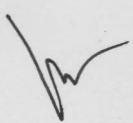


in the O.A so as to say that even after expiry of one year, appointments were made on the post of L.D.C.

2. The respondents have filed objections against these two applications for review of the order dated 9.11.2004. According to them, the two applications do not disclose good grounds for review and whatever is being said in the context of order dated 9.11.2004, appears to have been said as if this Tribunal is an appellate forum. They say that the Tribunal will not sit in appeal over its own orders in the garb of review. The respondents have also tried to explain the position as regards the life of panel, by referring to letter dated 17.6.1999 issued by Kendriya Vidyalaya Sangthan, New Delhi and to Rules 8 (ii) of Kendriya Vidyalaya Sangthan (Appointment, promotion and seniority etc.) Rules 1971. They say that according to these Rules, life of a panel is one year, extendable by one year. The respondents have also annexed to their supplementary objection, the letter dated 5.5.1997 issued by Kendriya Vidyalaya Sangthan, Gwalior Region to Lucknow Region, informing about the non-availability of vacancies.

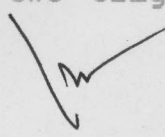
3. We have heard Sri Virendra Singh and Sri R.C. Srivastava appearing for the respective applicants and Sri D.P. Singh, appearing for the respondents.

4. There is no dispute that in 1993, Lucknow Region of Kendriya Vidyalaya Sangthan (K.V.S) advertised 33 vacancies of Lower Division Clerk (L.D.C.) and 18 vacancies in the cadre of Upper Division Clerk (U.D.C.). Two applicants before us also applied for appointment on the post of L.D.C. After necessary examination, a panel of 35 candidates (27 from General, 3 from Backward Class and 5 from Scheduled Caste) was published in May 1995, wherein applicants Sri Rajeev RAjput and Sri A.K. Tripathi (both from General category) figured at Sl. No. 25 and 27



respectively. There is further no dispute that out of this panel of 35 candidates, 21 (14 from General, three from Backward Class and 4 from Scheduled Caste) were offered appointment by Lucknow Region in 1995 itself. In 1996, three more (2 from General, 1 from Scheduled Caste) were given appointment by Lucknow Region itself. Now there remained 11 candidates of abovementioned panel to be given appointment. It appears that in 1996, there came into existence separate Gwalior Region. Assistant Commissioner, Lucknow Region sent a proposal to K.V.S Headquarter New Delhi to send 11 names of candidates, for appointment Gwalior Region. The Central body accepted this proposal and in consequence Lucknow Region sent the names of those 11 person of said panel to Gwalior Region together with their applications. It is admitted that Gwalior Region offered appointment to seven candidates out of 11. Thus, only 4 candidates of the said panel could not be offered appointment either by Lucknow or by Gwalior Region of K.V.S. Amongst these four, two were the applicants before us. These two filed original applications as mentioned above before this Bench taking several pleas including one that inspite of fact that there were about 13 vacancies in Gwalior Region itself, appointments were not offered to them. The respondents contested the claim by saying that in absence of vacancies, the applicants could not be offered appointment. The applicants also tried to say in their original applications that several persons were given appointment in 1996-1997 and if there was any shortage in the vacancies then how those persons were given appointment.


5. After hearing the respective counsels, both the Original Applications were dismissed vide order dated 9.11.2004. Dismissal order dated 9.11.2004 passed in original application No.1490/99 is based on order dated 9.11.2004 passed in original application no. 1489/99. In other words, the reasons for dismissing the two original



applications are the same and so we are disposing of both these review petitions by this common order.

6. Learned counsel for the applicants have contended that view taken in the order dated 9.11.2004 that life of panel of 1995 was one year and so stood exhausted before filing of original applications, is not correct, in view of circular dated 10.3.1988 (R.A.-1). They say that had this circular dated 10.3.1988 been in the notice of Bench passing order dated 9.11.2004, it would not have taken that view that life of panel was over. They say that the Tribunal was not right in observing that mere selection did not confer a right to get appointment, especially when, most of the candidates had been offered appointments and these two applicants could have been easily accommodated. They have tried to support their arguments by referring to Ram Dutt Vs. State of U.P (H.C) 2002 (2) ESC (Alld) 263 and V. Charulata Vs. S. Gunalan, Chairman Railway Recruitment Board, 1995 (3) SC page 557.

7. On the other hand, Sri D.P. Singh, the learned counsel for the respondents has contended that firstly the view of the Tribunal that the life of panel was one year, was inconsonance with Rule 8 (ii) of K.V.S. (appointment, promotion, seniority etc) Rules 1971 and secondly circular dated 10.3.1988 relied on by the applicants was no more in existence in view of letter dated 17.6.1999 of the Central Body. Sri D.P. Singh has also contended that Circular would not supersede the Rule, referred to above and so from that angle, the view taken by the Bench on the point of life of panel was absolutely correct. He says, whether the view that mere selection does not confer absolute right to get appointment, is correct or not, cannot be examined in review, in view of the limited scope of review as pointed out by the Apex Court in Union of India and others Vs. Tarit Ranjan Das [(2004) 1 UPLBEC 131]. He says

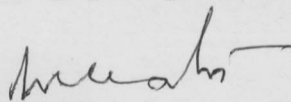


that the view of the Tribunal on the point is based on Shanker Sen Das Vs. Union of India, AIR 1991 SC 1612.

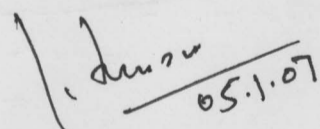
8. We are not supposed to examine as to whether one view or other, or one conclusion or the other, recorded in order dated 9.11.2004 is legally sound or unsound. That exercise could be undergone only in the Superior Forum. The view of the Tribunal that mere selection or mere empanelment does not confer indefeasible right to get appointment, ^{appears} to be based on Shanker Sen Das Vs. Union of India, A.I.R. 1991 Supreme Court page 1612. As regards the life of panel, there is Rule 8 of the Rules of 1971 to support the view of the Tribunal. It is not shown as to how the above mentioned view of the Tribunal, can be brought within the ambit of mistake apparent on the face of record. We will be exceeding our jurisdiction if we enter into the question as to whether life of panel was one year or one specified in circular dated 10.3.1988 or whether a selected candidate has indefeasible right to get appointment.

9. Undoubtedly these two applicants ^{appeared} to be unfortunate, as in spite of being in the panel, could not get appointment. By now, they must have crossed the upper age limit, for getting Govt. job. Sitting in review, we can do nothing to help them, except to sympathise.

10. These Review Petitions NO. 108/04 and 109/04 are accordingly rejected but with no order as to costs.



Member-A



Vice-Chairman.

Manish/-