

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 955 OF 1999.

ALLAHABAD THIS THE 8th DAY OF Jan. 2008.

Hon'ble Mr. Justice Khem Karan, V.C.

Hon'ble Mr. K.S. Menon, A.M

Pramod Kumar Singh son of Ram Sagar Singh, resident of Mohalla Bechupura Subhash Nagar, Mughal Sarai, District Chandauli.

.....Applicant

(By Advocate: Shri V. Singh)

Versus

1. Union of India through Secretary, Human Resources Development, New Delhi.
2. Commissioner, Kendriya Vidyalay Sangathan, 18, Institutional Area, Shahidjeet Singh Marg near Kutub Hotel, New Delhi.
3. Assistant Commissioner, Kendriya Vidyalay Sangathan, Regional Officer, Sector-J, Aliganj, Lucknow.

.....Respondents

(By Advocate: Shri N.P. Singh)

O R D E R

By Justice Khem Karan, V.C.

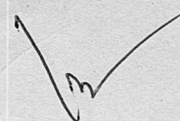
Applicant, Pramod Kumar Singh, placed at Sl. NO. ²³3,
in the select list/panel of general candidates,
(published in July 1995), for appointed as Primary
Teacher in Kendriya Vidyalay Sangathan (for short K.V.S),
has filed this O.A., not only for quashing the order
dated 29.4.1999, rejecting his claim for appointment, but
also for commanding the respondents to give him
appointment in any region of K.V.S. He alleges though
there were vacancies in Lucknow Region in 1995, but 21
persons only of the said panel were given appointment and
remaining ^{vacancies} were filled in by transferring teachers from

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other Regions. He goes on to state that 26 vacancies again occurred in 1996, in Lucknow Region but the same were also filled in by transferring teachers from other regions. According to him, except in Lucknow Region, selected candidates of other Regions were given appointment. He says his request for appointment could not have been rejected, on the ground that there were no vacancies in Lucknow Region, during the one year life of panel. The contention is firstly, the advertisement itself provided that appointment could be made in any Region and secondly according to O.M dated 22011/2/(9.Estt (D) dated 8.2.1982 issued by Government of India and circular dated 10.3.1988, issued by K.V.S, select list/panel has no life and each and every candidates has to be offered appointment (see supplementary affidavit and its Annexures 1 and 2). In his second supplementary affidavit filed in November, 2003, he has cited case of Smt. Malti Tiwari TGT (Hindi) of Jabalpur Region, who was given appointment after more than two years of the issuance of panel, so as to say that in K.V.S, panel of selected candidates has no specified life, but it remains operative till last candidate is offered appointment.

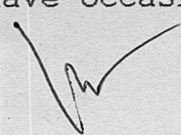
2. In their reply and supplementary replies, the respondents have attempted to defend their action by saying that as circular dated 10.3.1988, so relied on by the applicant, was in contravention of Rule 8 (2) of



K.V.S (Appointment, Promotion and Seniority etc) Rules, 1971, so was withdrawn by order dated 17.6.1999. They say according to Rule 8 (2) of the Rules of 1971, the life of select panel is one year, extendable by one year more in exceptional circumstances. They have annexed the copy of this letter dated 17.6.1999 to their supplementary reply filed in October 2004. As regards the case of Smt. Malti Tiwari, they say in para 14 of the same reply, that due to change in her address, appointment letter could not be sent to her in time and in proof of it S.C.A 2 and 3 have been filed. According to them, none of the junior to the applicant in the panel in question, was given appointment, nor any appointment has been made from any panel after expiry of period of one year, after K.V.S letter dated 17.6.1999.

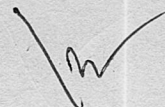
3. Both the parties have filed written arguments. We have gone through the same and also through the entire material on record.

4. In their written arguments, the respondents have taken two preliminary objections. One is that the OA is time barred and other is that it is bade for non-joinder of Joint Commissioner of K.V.S. We cannot entertain these objection, for the simple reason that the same have not been taken in pleadings of the respondents. The purpose of pleadings is to put the adversary on notice, of the points of attack or defence, so that it may have occasion



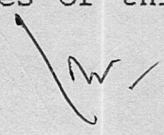
to meet the pleas so taken. A decision of Court or Tribunal, cannot proceed on a point, which has not been taken in pleadings or in affidavit or counter affidavit. So we refuse to entertain both the preliminary objection, so taken in written arguments.

5. What ^{is} remarkable ~~is~~ that the applicant does not dispute that Rule 8 (2) of K.V.S (Appointment, Promotion and Seniority etc) Rules 1971, provides that life of select panel shall be one year, extendable by one year more. Earlier circular dated 10.3.1988 of K.V.S providing for currency of the panel till the appointment of last candidate, being in contravention of above Rule 8(2) of the Rules of 1971, has been withdrawn vide order dated 17.6.1999. So, the respondents are absolutely correct in saying that panel of July 1995, in which the applicant figured at Sl. No. 23, came to an end in July 1996. Even if the vacancies arose thereafter in Lucknow Region or in other Regions, applicant had no valid claim for appointment against those future vacancies. If Smt. Malti Tiwari or others were appointed in other Regions, even after two or more years of the dates of panel, the same will not advance the case of the applicant, as those appointments might have been made keeping in view erroneous circular dated 10.3.1988. We do not think a candidate can claim such appointment, after the life of panel is over. Learned counsel for the applicant has relied on V. Charulata and others Vs. S. Guhalan



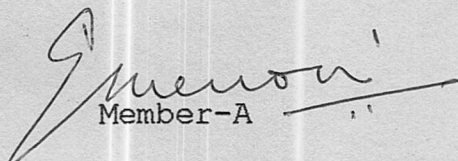
Chairman, Railway Recruitment Board, Madras JT 1995 (3) SC 557 for saying that selected candidates have to be appointed even by creating vacancies. We think the said pronouncement cannot be cited, as a law on the point that selected candidates must be given appointment. There the facts were totally different.

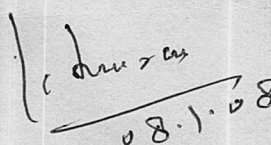
6. Assertion of the applicant that certain vacancies of Lucknow Region, were filled in by transferring teachers from other Regions, has not been refuted by the respondents. In other words, had those vacancies in the year 1995-1996, not been filled in by way of transfer from other reasons, the applicant and other candidates of the panel of July 1995, could have got chance of appointment, during one year life of panel. The question arises as to, whether a selected candidate gets absolute right to get appointment so as to prevent employer from filling in the vacancies by way of transfer or by way of deputation etc. or from keeping the vacancies unfilled. It is well settled (see S. Dash Vs. Union of India, AIR 1991 SC 1612 and Pramod Kumar Rai Vs. Life Insurance Corp. AIR 2000 (39) page 155 that selected candidate has no indefeasible right to get appointment on the post. Shri N.P. Singh has cited two decisions of this Tribunal, one dated 9.11.2004 in O.A. No.1489 of 1999 Rajeev Rajput Vs. Union of India and another dated 25.2.2004 in O.A. NO. 578 of 2000. Sushil Kumar Singh Vs. Union of India and others, where two different Division Benches of this



Tribunal, have found no fault in filling in the vacancies by way of transfer. Those were also the cases, relating to KVS. We see no reason to take a different view. Had the applicant put his claim during currency of the panel of July 1995, the Tribunal could have issued some directions, but the writ petition in High Court and O.A. in his Tribunal were filed much later, in 1999. Order dated 29.4.1999, rejecting his claim for appointment on the ground that life of the panel is over, cannot be interfered with, especially when circular dated 10.3.1988 has been withdrawn vide order dated 17.6.1999. We are sorry, we are unable to help the applicant by commanding the respondents to give the appointment.

7. The O.A. is dismissed but with no order as to costs.


Member-A


Vice-Chairman.

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