

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.459 OF 2002

ALLAHABAD THIS THE 30th DAY OF SEPTEMBER, 2004

HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

HON'BLE MR. D. R. TIWARI, MEMBER-A

1.  
Pusupendra Singh,  
Son of Sri Raj Veer Singh,  
R/o Village & Post- Kaulara Kalan,  
District-Agra.

2.  
Latoori Singh,  
Son of Sri Nihal Singh,  
R/o Village & Post. Kaulara Kalan,  
District-Agra.

. . . . . Applicants

( By Advocate Sri I.S. Singh )

Versus

1. Union of India,  
through Ministry of Human Resources,  
Development of India (Department of  
Education).
2. Dy. Director,  
Navodaya Vidyalaya Committee,  
B-10, Section-'C', Aliganj,  
Lucknow.
3. Principal,  
Jawahar Navodaya Vidyalaya,

*[Signature]*



Kaulara Kalan, Agra.

. . . . . Respondents

( By Advocate Shri V. Swaroop )

HON'BLE MR. D. R. TIWARI, MEMBER-A

By this O.A. filed under section 19 of the Administrative Tribunals Act 1985, the applicants have prayed for the following reliefs:-

"(i) to issue a writ order and direction in the nature of certiorari for quashing the orders (a) Ref. No. F/PF/Pushpendra Singh/JNVK/2001/880 dated 18.8.2001, (b) F/PF/Laturi Singh/JNVK/2001/878 dated 18.8.2001 (c) Ref No. F.4-6/JNVK/2002/1954 dated 21.01.2002 & (d) Ref No. F-4-6/JNVK/2001/1952 dated 21.01.2002; respectively.

(ii) to direct the the respondents to appoint the applicants on regular post of Chowkidar in the pay scale of Rs.2550-55-2660-60-3200 as per Advertisement published for the appointment on the post of Chowkidar."

2. The facts, in brief, as per the pleadings of the applicants are that in view of the advertisement issued by respondent no.3 in January 2001 by which some posts of Class-IV Employees i.e. Chowkidar etc. were lying vacant in Jawahar Navodaya Vidyalaya, Kaulara Kalan, Agra. The posts advertised carried the pay scale of Rs.2550-55-2660-60-3200. Applicants being fully qualified for appointment on the post of Chowkidar applied for the post. They were also registered in the office of District Employment Exchange Agra. They participated in the direct interview held on 20.01.2001 by the respondent authorities and they were declared successful. They

*H. S. Swaroop*



were issued the offer of appointment dated 18.08.2001 and the offer of appointment provided that the applicants would be paid a fix salary of Rs.2500/- and their appointment was for only one year on contract basis (Annexure 7 & 8).

3. Aggrieved by the terms and conditions of the offer of appointment, the applicants made a representation claiming therein for regular appointment on the post of Chowkidar in regular pay scale which was advertised by respondent authority (Annexure 9 & 10). In reply to the representation dated 19.12.2001, the respondents had informed them that the Deputy Director Navodaya Vidyalaya Samiti Lucknow has directed that they should be appointed on contract basis (Annexure-4). They have submitted that they are not in possession of the advertisement in pursuance of which they participated in the interview and they have also submitted that the respondents be directed to produce the above said advertisement. Their main ground for challenge of the offer of appointment is that it is against the provisions contained in the advertisement. Secondly, they have submitted that they could not be appointed on a fix salary because they have appeared in the interview for the post of which carries a regular pay scale. The present appointment is illegal and void in the eyes of law. They have also submitted that they have been cheated by the impugned appointment letter and the posts are available in the respondent's establishment.

*Deewan*



4. The respondents on the other hand have opposed the contention of the applicants and have submitted that they have not issued any advertisement whatsoever and the requirement of the school was through a notice pasted on the notice board of Jawahar Navodaya Vidyalaya, Agaa (Annexure CA.1). It has been stated that the offer of appointment were issued to the applicants on ~~xxx~~ contract basis on consolidated salary of Rs.2500/- per month but the applicants did not ~~xx~~ accept the offer of appointment and, therefore, they were never appointed as Chowkidar. As per the terms of the offer of appointment contained in Class (iv), the offer stood withdrawn by not reporting for joining duty within 10.09.2001. It has been submitted that Navodaya Vidyalaya Sangathan is an autonomous ofganisation fully controlled and finalised by Government of India and they are having their own Service Rules and Regulations for their employees.

5. The respondents have argued that by circular dated 13.06.2001 it has been decided as policy matter that all appointments to the posts of Driver, LDC, Storekeeper, Chowkidar, Sweepers are to be filled henceforth with on contract basis only. In view of the above circulars (CA-2), representations of the applicants have been disposed of by the competent authority. They have further submitted that in view of the policy decision taken the question of their regularisation does not arise and the D.A. deserves

*D.A.*



to be rejected.

6. We have heard very carefully counsel appearing from either side and perused the records.

7. The counsel for the applicant, during the course of argument, submitted that by an executive order. The respondents cannot change the nature of appointment and the pay scales, so notified earlier. Their main contention is that executive instructions cannot be given retrospective effect. The counsel for the respondents, however, resisted their claim and have submitted that it was not only the executive instructions but the action taken was in accordance with the policy decision taken by the Government and they have taken a conscious decision to fill up all the class IV posts on the contract basis only.

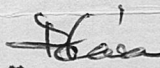
8. The question which arises for consideration is whether the action of the respondents is justified or not. It may be observed that there was no advertisement for the post as claimed by the applicants and they have not been able to produce a copy of the advertisement and have rather dependent on the respondents to supply the same. The respondents have very emphatically denied the existence of any advertisement and have placed a copy of the notice pasted on the notice board of the school. Hence the contention of the applicant that the respondents


*Hewa*



cannot back out from their advertisement is negatived. The second question is about giving the retrospective effect to the executive instructions, it may be stated that it was not a mere executive instructions as has been submitted by the counsel by the respondents. This instruction contained the policy decision of the Government. It is well settled by a series of decision of the Apex Court that mere selection in an interview, does not give any right for appointment. It is equally settled proposition of law that act of abolishing different posts or category of posts their nomenclature, fitment and pay scales or variation in the percentage of one group to another in promotion or equation of posts or classification/re-classification of posts are all matters of exclusive jurisdiction of executive policy. In this they are arbitrary or there is invidious discrimination the court's cannot interfere with them. In the fact situation of the case in hand, <sup>are</sup> we are sure that the Tribunal has no justification to interfere with the policy matter enunciated by the Executive Branch of the Government.

9. In view of the discussion made above, the D.A. fails and is accordingly dismissed with no order as to costs.

  
Member-A

  
Member-B

/ns/