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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

CIRCUIT SITTING AT (UTTRAKHAND) NAINITAL

Original Application No.1206 of 2006

This the 20th day of November, 2008.

Hon'ble Mr. Ashok S. Karamadi, Member-J
Hon'ble Mrs. Manjulika Gautam, Member-A

Amleshwar Prasad Bijalwan,
S/o Shri Pitamber Dutt Bijalwan,
R/o Village and Post Office, Kotiyal
Goan, District Uttarkashi.

.....Applicant.

By Advocate : Shri M. Kumar
Shri N.K. Sharma

Versus

1. Deputy Director, Novodaya Vidyalaya Samiti,
Regional Office : B-10, Sector -C, Aliganj,
Lucknow.
2. Jawahar Novodaya Vidyalaya Dhungir (Purola),
Uttarkashi, through it's Principal.

....Respondents.


By Advocate : Shri N.P. Singh

O R D E R

Delivered By : Hon'ble Mr. Ashok S. Karamadi, J.M. :


This application is filed to quash the order dated 17.4.2001 passed by respondent No.1 and for consequential benefits.

2. The brief facts of the case are that the applicant is having Driver License and studied trade test, in the office of respondent No.2 a post of Driver was lying vacant and the applicant was

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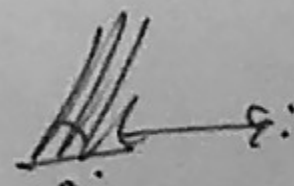
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appointed as Driver on daily wages on 13.6.2000. He worked continuously till 18.7.2001. The respondent No.2 written a letter to the Employment Exchange Uttarkashi to forward the name of the candidates for appointment for the post of Driver, in pursuance of the said letter Employment Officer has sent few names including the applicant, on receipt of the same, the respondent No.2 called upon the applicant for interview and accordingly he appeared on 27.2.2001 in the office of respondent No.2 for interview before Selection Committee constituted by three Members and a Chairman, and after interview the applicant was selected for the post of Driver as shown in the minutes of the Committee dated 27.2.2001 and the same was forwarded for approval to the respondent No.1. The applicant ~~was~~ awaited for his order of appointment, as he has not ^{received} ~~issued~~ any communication from the respondents, he has filed Civil Misc. Writ Petition No.4824/2001 seeking a direction of his selection and appointment. The respondents appeared and filed counter affidavit and stated that on 17.4.2001 a Deputy Director, Navodaya Vidyalaya Simiti, Lucknow passed an order by which he intimated the Principal, Jawahar Navodaya Vidyalaya Uttarkashi that the process done for selection of Driver in Vidyalaya level is cancelled on the ground that the Selection Committee was not having a technical expert as a member, therefore, the proposal sent for approval was rejected. The applicant filed an amendment

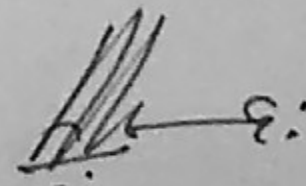
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application to challenge the order dated 17.4.2001, the same was allowed but the Writ Petition was dismissed on 29.8.2006 as the applicant is having a alternative remedy to approach the Central Administrative Tribunal. The applicant states that as he worked as a Driver on daily wages in the respondents' institution more than one year he is fully qualified ^{to be} appointed as a Driver, refusal of the appointment to the applicant on the ground of Selection Committee is defective without giving any show cause notice or opportunity of hearing is arbitrary and illegal on the part of the respondents, as there is no fault on the part of the applicant, the respondents have committed illegality, hence prayed for the relief.

3. On notice the respondents appeared and filed the counter affidavit and submitted that after going through the documents and procedure adopted by the respondent No.2 it was found that the Selection Committee constituted for selection for the post of Driver by the respondent No.2 was not having a technical expert as member, therefore the whole selection process was found illegal and against the recruitment rules. Therefore, vide letter dated 17.4.2001, the Deputy Director, Regional Office Lucknow has passed the orders and rejected the entire selection proceedings which was not as per the recruitment rules framed by the Samiti. The



respondents further submitted that the present original application is liable to be dismissed on this ground alone that there is no substantive vacancy is available in Jawahar Navodaya Vidyalaya, Dhungir (Purola) Uttarkashi due to joining of a regular incumbent Shri Mohan Singh Kandari who take-over the charge on the said Institution on 19th July'2001 in forenoon on the same date, the applicant was removed from his service after joining of the regular incumbent as his services was automatically came to an end. Therefore, on this ground alone, the present original application is liable to be dismissed, the respondents also submitted that the selection proceedings which was initiated by the respondent No.2 i.e. Principal Jawahar Navodaya Vidyalaya, Dhungir (Purola) Uttarkashi was not in accordance with recruitment rules prescribed by the Samiti, hence the competent authority has not accorded the approval in pursuance of the selection made by the Selection Committee. It is pertinent to mention here that the constitution of the selection committee was not formed as per recruitment rules of the Samiti. Therefore, the respondent No.1 has rightly rejected the appointment made by the respondent No.2. Learned counsel for the respondents further stated that the applicant has alternative remedy of filing the representation/appeal before the Competent Authority i.e. Commissioner, Navodaya Vidyalaya Samiti, Headquarter, New Delhi which has not been done by the



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applicant before filing the Original Application and steps taken by the respondents is one to rectify the defects in selection process, there is no illegality committed by the respondents and sought for dismissal of the OA.

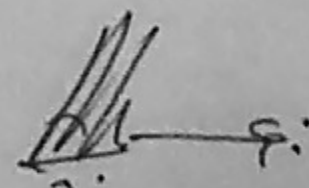
4. The applicant has filed the rejoinder affidavit and reiterated the contention taken in the OA and prayed for the reliefs.

5. We have heard the learned counsel for the applicant and perused the pleadings available on record.

6. Learned counsel for the applicant based on the pleadings submits that the proposal sent by the Selection Committee for approval of the applicant as Driver was rejected illegally, arbitrary, against the Principal of natural justice. There is no dispute with regard to the selection held by the respondents, but the respondents contents that the composition of the sub appointment of the Committee is not in accordance with the rules of Samiti. Learned counsel for the respondents has furnished the copy of the rules. The relevant portion is as under :-

Sub: Composition of Selection Committees for appointment of Group 'C' and 'D' Vidyalaya Staff-Clarification.

All Group 'C' posts of Navodayala Vidyalayas except O.S. G.D.C., Staff Nurse and catering Asstt, are to be



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recruited by the concerned principals by getting the names sponsored from the Central Employment Exchange and the selection process shall be completed at Vidyalaya level with the assistance of sub-appointment of the committee as per the following composition :

- a. Principal of the concerned Vidyalaya -Chairman
- b. Distt. Education Officer or his nominee- Member
- c. One-local Educationist (Preferably
a principal of a residential School -Member
- d. Principal of Neighbouring Navodaya
Vidyalaya -Member

A representative from SC/ST/Minority may be associated provided no members as per above composition belongs to these categories.

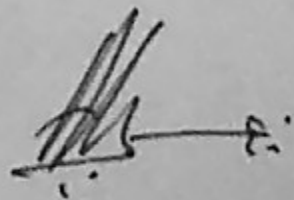
Also, if considered necessary by the principal an expert member from RTO or I.T.I. may be associated for recruitment to the posts of Drivers and Electrician-Cum-Plumbers.

The proceedings of the above committee will be forwarded to the concerned Regional Office for its onward consideration at Regional Office by the Selection Committee, as, defined in Revised Recruitment Rules comprising of the following members :-

- a. Dy. Director of the Regional concerned -Chairman
- b. Asstt. Director of the Regional dealing
With the Admn. Estt. Matters -Member
- c. A principal of the Navodaya Vidyalaya
(by rotation) -Member

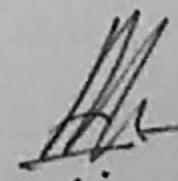
Upon the recommendation of the above selection Committee the Regional Dy. Director shall convey his approval/this approval as the case may be, to the concerned Principal for taking further necessary action for making appointment. Under no circumstances, the Principal will make any appointment or issue offer appointment till a final approval of the Regional Dy. Director is obtained.

7. In view of the above rule, it is clear that in the case of appointment of Driver an expert Member of RTO may be associated for recruitment. Since the Selection Committee constituted as contended by the respondents does not have technical expert as a Member, therefore, the whole selection process was



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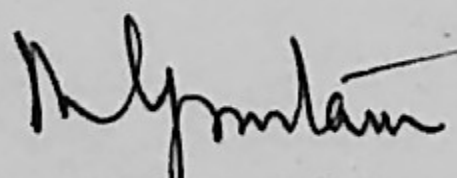
found illegal and against the recruitment rules. This contention of the respondents is supported by the rules, which is stated above and, therefore, the action of the respondents in passing the impugned order rejecting the proposal sent by the second respondent cannot be said as illegal or arbitrary. On the other hand, in the case of selection of Driver it is with the object of having the expert Member from RTO is only to select proper person as a Driver and as such in the absence of an expert in the sub appointment Committee which has selected the applicant for the post of Driver and sent for approval cannot in our considered view is in accordance with the rules or procedure for the selection of Driver. Therefore, the contention of the applicant that the respondents have acted illegal and arbitrary without giving any opportunity against the Principal of natural justice cannot be accepted, as the right of the applicant are not vested unless and until they have considered and finalized the selection of process in accordance with law and the rules prescribed by the acceptable procedure adopted by the Selection Committee. In the instant case, we do not find any such thing is forthcoming and as such the selection process is not in accordance with the rules and as such the contentions of the applicant are rejected accepting the contention of the respondents. Learned counsel for the applicant has relied upon the decision in support of his contention, which are as follows :

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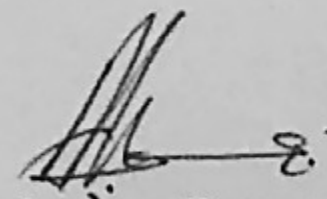
1. Bhavga Srivastava and ors Vs. State of U.P. and others {(2001) 2 UPLBEC 1705}.
2. Indra Narain Tripathi Vs. Union of India and ors {(2006) 1 UPLBEC 1012}.
3. Raj Kumar Vs. Shakti Raj 1997-AIR (SC) O-2110.

On perusal of the above decisions, we do not find they are applicable to the present case, and as such the contention of the applicant are not acceptable. As having found from the materials on record, the applicant was selected, and sent for approval of the same, as such unless and until it is approved, it is under the process of finalization of selection, and therefore, the contention of the applicant that the respondents acted illegally cannot be acceptable.

8. In view of the foregoing reasons, the OA is dismissed. No order as to costs.



(Manjulika Gautam)
Member (A)



(Ashok S. Karamadi)
Member (J)

RKM/