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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 638 OF 1999

Cuttack, this the 15th day of May, 2001

Sri Sukanta Kumar Bal ...

Applicant

Vrs.

Union of India and others ...

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not *Yes*
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? *No*

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)

VICE-CHAIRMAN

15.5.2001

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Sri Sukanta Kumar Bal,
aged about 30 years, son of Subash Chandra Bal,
C-47, Baba Electricals, Saheed Nagar Market Building,
Bhubaneswar, District-Khurda...Applicant

Advocates for applicant-M/s R.C.Mohanty

R.K.Mohanty

D.K.Mohanty

N.Behuria

P.K.Rath

A.P.Bose

V.Narasingham

Vrs.

1. Union of India, represented through the Secretary to Government, Ministry of Human Resources Development, Central Secretariat, New Delhi.
2. Kendriya Vidyalaya Sangathan, represented through its Commissioner, 18-Institutional Area, Saheed Jeet Singh Marg, New Delhi-110 016.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, HP-7, B.D.A.Housing Locality, Laxmisagar, Bhubaneswar
4. Deputy Commissioner (Personnel), Kendriya Vidyalaya Sangathan, 18-Institutional Area, Saheed Jeet Singh Marg, New Delhi-110 016....Respondents

Advocates for respondents - M/s Ashok Mohanty, T.Rath

S.Natia

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S. Som
In this application the petitioner has prayed for a direction to the respondents to issue posting order in favour of the applicant in pursuance of the appointment order given to him at Annexure-4 as a Music Teacher. The respondents have filed counter opposing the prayer of the applicant, and the applicant has filed rejoinder.

2. The admitted position is that Kendriya Vidyalaya Sangathan (hereinafter referred to as "KVS") issued an employment notice advertising and calling for applications for filling up 80 posts of Music Teacher. In the Employment Notice itself it was mentioned that in Bhubaneswar Region there are three vacancies of Music Teacher. Admittedly, the petitioner applied for the post, went through the selection process and came out successful. The respondents have stated that out of three posts of Music Teacher in Bhubaneswar Region, two posts were in General Category and one in OBC category. In the final merit list, which is at Annexure-A, one Ajit Kumar Padhi occupied the first position amongst the General Category candidates and no second position was assigned for the second post of Music Teacher in the General Category. The applicant who belongs to OBC category, came out first in merit amongst OBC candidates. It is necessary to note that the applicant was called to an interview on 30.8.1997 in the letter dated 8.8.1997 at Annexure-2. The merit list enclosed by the respondents at Annexure-A is dated 29.10.1997. But no appointment order was issued to the applicant and ultimately in January 1999 in the letter at Annexure-4 he was informed that he has been selected for the post of Music Teacher. But posting could not be given to him for want of vacancy as no vacancy is available for OBC category in the Region because some of the vacancies in the post of Music Teacher have been filled up by inter-regional transfer. The applicant was informed that whenever vacancy would arise, his case would be considered positively. As the applicant did not get any further intimation, he has approached the Tribunal in this OA with the prayer referred to earlier.

3. Respondents have stated that the vacancy position on all-India basis as also the Regional break-up of the same was published in the Employment Notice at Annexure-1 and a candidate is free to apply for any Region as has been mentioned in the Employment Notice. The respondents have taken the stand that in the Employment Notice itself under clause (iv) of special instructions it was mentioned that the number of vacancies of such post is liable to change and KVS reserves the right not to fill up any of the vacancies. It is further stated by the respondents that the guidelines for filling up various posts in KVS provided for following priorities:

- i) Posting on promotion to the existing teachers;
- ii) Inter/intra-regional transfers;
- iii) Posting against the select panel prepared for direct recruitment quota.

Even though the respondents have stated that the applicant occupied the first position in the merit list for OBC category Music Teachers, they have curiously averred in page 3 of the counter as follows:

"However, it is categorically denied that the applicant was duly selected for the post."

It is further stated by the respondents that out of three posts, two posts were filled up by intra-regional transfer and the remaining post was filled up by Ajit Kumar Padhi who stood first among the General Category candidates and because of this appointment order could not be issued to the applicant. The respondents have admitted that the applicant filed representations, but posting order could not be given. They have also stated that the validity of the panel prepared on 29.7.1997 expired after one year as per the circular dated 17.6.1999 at Annexure-C. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has pointed out that the averment of the respondents in their counter that the post was filled up by inter-regional transfer vide order dated 7.7.1997 at Annexure-B is misleading because in the letter dated 13.1.1999 at Annexure-4 the respondents have indicated to the applicant that appointment order will be issued whenever vacancy arises. The applicant has further stated that as a matter of fact vacancy is available and in February 1999 another vacancy circular has been issued for the post of Music Teacher and the applicant has stated that written examination and viva voce have also been concluded. On the above grounds, the applicant has reiterated his prayer in the rejoinder.

5. We have heard the learned counsel for the parties. Before we took up hearing of the matter, in order dated 29.6.2000 we had directed the respondents to file an affidavit on the following points:

- (i) The break-up of the Regionwise vacancies in terms of OC, SC, ST and OBC categories; and
- (ii) The number of vacancies which have been filled up by inter-regional transfer categorywise for OC, ST, SC and OBC candidates.

After five adjournments, an additional counter was filed, after serving copy on the other side, in which categorywise break-up of Music Teachers regionwise was given for 71 of the 80 vacancies. This break-up was enclosed at Annexure-E to the additional counter. The difference of 9 between 80 posts advertised and 71 for which the break-up

has been given at Annexure-E to the additional counter, has been explained by stating that for Delhi and Gauhati where there are four and five vacancies respectively of Music Teacher, no recruitment was held. It is necessary to note that according to Annexure-E in Calcutta, Dehradun and Jammu Regions there were no vacancies. Thus, out of 19 Regions, in Annexure-E vacancies were available in fourteen Regions. By way of inter-regional transfer some posts have been filled up in nine Regions leaving out Gauhati and Delhi Regions, the list of which has been given in Annexure-F. On a careful comparison of these two lists, we find that the respondents have adopted a purely arbitrary method in filling up the advertised vacancies in different Regions by way of inter-regional transfers. To give an example, in Ahmedabad, Bangalore, Chandigarh, Gwalior, Jammu and Mumbai the vacancies advertised were 5, 3, 1, 1, 8 and 3 respectively. But in these Regions, not a single post was filled up by inter-regional transfer. In Bhopal, where six vacancies were advertised, only one vacancy was filled up by inter-regional transfer. In Chandigarh, though one vacancy was advertised in the Employment Notice, in Annexure-E against Chandigarh Region four vacancies have been shown and none of these has been filled up by inter-regional transfer. From the above it is clear that the respondents have adopted an arbitrary pick and choose policy by filling up the advertised vacancies in certain Regions by inter-regional transfer and allowing other Regions to make local recruitment to the full extent of advertised vacancies and even more as in the case

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of Chandigarh. Such an approach is not legally sustainable in the face of the fact that the applicant before us is a selected candidate occupying the first position in his category of OBC Music Teacher. The respondents have stated in the counter and it is also mentioned in the Employment Notice that a person is free to apply for a vacancy in any Region. This would mean that the vacancies will be filled up regionwise. It is no doubt true that in the Employment Notice it has been mentioned that KVS reserves the right not to fill up all the vacancies through direct recruitment. But while doing so, some system should be followed so that the reduction is shared equitably by all Regions. In the case of Bhubaneswar Region, out of the advertised vacancies, 66 and 2/3rd% has been filled up by inter-regional transfer whereas, as mentioned earlier, in case of Ahmedabad Region 100% of larger number of vacancies has been presumably filled up by direct recruitment. In view of this, we hold that on this ground the respondents cannot deny appointment to the applicant.

6. The second point urged by the learned counsel for the respondents is that the select list having been brought out in October 1997, the validity of the select list has expired by October 1998 after passage of one year. The first thing to note in this connection is that even going by the circular relied upon by the respondents at Annexure-C the validity of the select list can be extended by one more year. Moreover, the applicant has been informed in writing in letter dated 13.1.1999 (Annexure-4) that as soon as a vacancy is available, he will be given

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posting order. In view of this, it is not possible to accept the contention of the respondents that the validity of the select list has expired.

7. In consideration of all the above, the Original Application is allowed and we direct the respondents to issue appointment and posting order to the applicant within a period of 30 (thirty) days from the date of receipt of copy of this order. No costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
S.S. 2001

AN/PS