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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.

Original Application No. 235/2002.

380 Of December, two thousand three

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. G.R. Patwardhan, Administrative Member.

K.P. Bhaskar,
S/o Shri Phooli Singh,
R/o Staff Quarters,
Jawahar Navodaya Vidyalaya,
Kalandri,
Sirohi Dist. (Rajasthan) : Applicant.

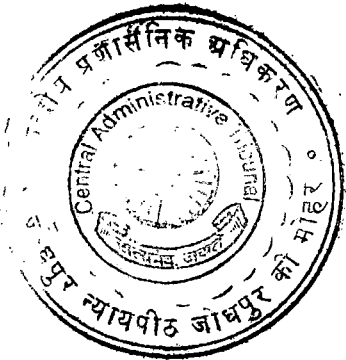
Mr. S.K. Malik, : Counsel for the applicant.

Versus.

1. The Commissioner,
Navodaya Vidyalaya Samiti,
Head Quarter Administrative Block,
I.G.I. Stadium
I.P. Estate, Near ITO,
New Delhi. 110 002.
2. The Deputy Director (Pers)
Navodaya Vidyalaya Samiti,
I.G.I. Stadium,
Near ITO, New Delhi.
3. Shri M.D.M. Shaikh, Vice Principal,
Jawahar Navodaya Vidyalaya,
Parbhani (Maharashtra)
4. Shri C. Ramakrishnan, Vice Principal,
Jawahar Navodaya Vidyalaya,
Kallan (Kerala)

: Respondents.

Mr. V.S. Gurjar : Counsel for respondents 1 & 2.



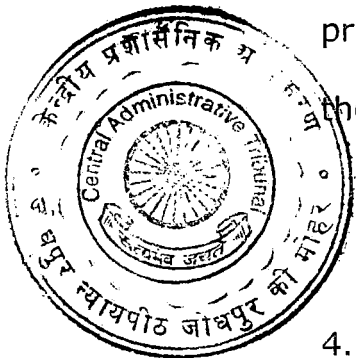
ORDER

Per Mr. J.K. Kaushik, Judicial Member.

Shri K.P. Bhaskar, has assailed the order dated 12.08.2002, Annex. A.1, and sought for a direction to the respondents to consider his case for promotion to the post of Vice Principal from the date his next junior has been promoted along with all other consequential benefits.

2. With the consent of the parties, the case was taken up for final disposal at the admission stage. We have heard the arguments advanced by the learned counsel and carefully perused pleadings and documents of this case.

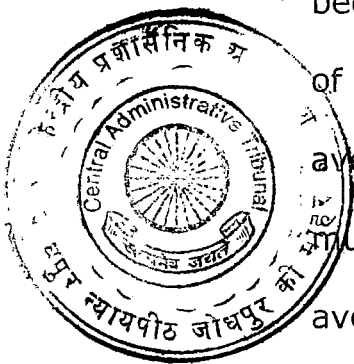
3. The brief facts, necessary for resolving the controversy involved in the instant case, are that the applicant was appointed as Post Graduate Teacher in Geography with effect from 16.08.91, at Jawahar Navodaya Vidyalaya, Pabra, Distt. Hissar (Haryana). He earned appreciation letters in the year 1994 and 1995 for his excellent performance. A seniority list was published on 10.03.95, wherein his name finds a place at Sl. No. 582 and the name of the private respondents at Sl. Nos. 597 and 598 respectively, i.e. below the applicant.



4. The applicant was communicated certain adverse remarks for the period ending 30.06.96. A representation was made against the

same and the same was rejected. He was issued further appreciation certificates in the years 2001 and 2002. He also looked after the work of Principal in the absence of regular Principal from time to time and his record is excellent. Vide the impugned order dated 12.08.2002, certain juniors to the applicant have been promoted to the post of Vice Principal ignoring claim of the applicant. The post of Vice Principal/ Head Master has been classified as Group 'B' in the pay scale of Rs. 2000-3500 and is a selection post. The method of recruitment is by promotion failing which by transfer on deputation. The criteria is Post Graduate Teacher with five years regular service in the grade. The applicant fulfilled the requisite conditions and was eligible for promotion but his case has not been considered and he has been subjected to hostile discrimination. The impugned order has been assailed on diverse grounds mentioned in the O.A. Violation of Article 14 and 16 of the Constitution of India has been complained of.

5. The official respondents have filed a detailed reply to the O.A. and have taken preliminary objection regarding the maintainability of the O.A on the ground of non-joinder of necessary parties. It has been averred that there is nothing on record to show that the record of the applicant has been outstanding or excellent and the averments made are contrary to the materials placed on record in as much as the applicant was communicated adverse remarks. It is averred that the instructions issued by the Government of India, laying down the criteria for promotion is selection-cum-seniority and selection by merit and that was made applicable to the Navodaya

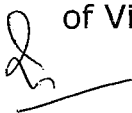


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Vidyalaya Samiti. The case of the applicant was duly considered by the DPC and he was not recommended for the post of Vice Principal since he failed to obtain the minimum bench mark prescribed for the post in question. The post of Vice Principal is classified as Group 'B' and the criteria for promotion is on the basis of selection as per the rules. The mere eligibility does not confer any right on a person for promotion at the most the person concerned would be eligible for consideration by the DPC for promotion. The case of the applicant was considered by the DPC along with other eligible candidates but his case was not recommended by the DPC for want of minimum Bench Mark. The grounds raised in the O.A have generally been denied and it has been averred that the applicant has failed to make out any case worth the name for interference by this Tribunal and there is no violation of Article 14 or 16 of the Constitution of India. It is prayed the O.A deserves to be dismissed.

6. A short rejoinder has also been filed along with a complaint made by the Director, National Commission for SCs & STs, Jaipur to the Director Navodaya Vidyalaya Samiti, New Delhi, regarding the promotion given to one Sukbhir Singh as Vice Principal.

7. Both the learned counsel have reiterated their pleadings. The learned counsel for the respondents has produced a letter dated 09.05.2003, by which the applicant has been promoted to the post of Vice Principal, subsequently.



8. We have considered the rival contentions raised on behalf of the parties. There is absolutely no quarrel on the material fact that the promotion to the post of Vice Principal is to be done by selection and it is also admitted that respondents 3 & 4 are junior to the applicant and have been promoted to the post of Vice Principal before the promotion of the applicant as Vice Principal. The respondents have made a categorical statement that the case of the applicant was duly considered along with private respondents 3 & 4 and the DPC did not find him fit since the applicant had not obtained the minimum Bench Mark for the post. It is not the case of the applicant that any extraneous matter has been taken into consideration or the relevant material has not been taken into consideration while considering the case of the applicant for promotion as Vice Principal. There is no allegation of mala fide against any member of the DPC. As per the settled position of law, merely possessing the eligibility conditions would not confer any right for selection and promotion. One has a fundamental right under Art. 16 of the Constitution to the extent of consideration for promotion and not promotion itself. In the instant case, the applicant's case has been duly considered and the scope of judicial review over the findings of DPC is very limited, in as much as Courts cannot sit as an appellate authority over the findings of the DPC. In the instant case, we have absolutely no ground for interference or carrying out judicial review regarding the controversy in question. Thus there is no fault in the action of the respondents.



9. We would like to refer the following judgements cited by the learned counsel for the applicant in support of his contention. In

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Union of India and others vs. Chetan S. Naik [1999 SCC (L&S)

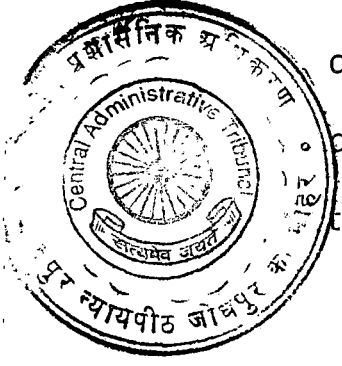
1148], their Lordships of the Supreme Court have examined the rules relating to promotion, wherein three expression viz. 'selection', 'promotion-cum-fitness' and 'promotion' and it was held that promotion criteria could not be given the same meaning as selection criteria. There could no second thought regarding the law laid down by the Supreme Court in the above case. But in the instant case, the promotion was to be made on the basis of 'selection', as indicated in para 9 of the reply, which has not been disputed by the applicant in the rejoinder. The instant case is distinguishable on facts from the one relied upon by the learned counsel for the applicant and it does not support the contention of the learned counsel for the applicant. The learned counsel for the applicant also relied on decision of the Apex Court in the case of

Government of Andhra Pradesh and another vs. Dr. R. Murali

Babu Rao and another [1988 (7) ATC 316] wherein under Rule 9

(2) an Assistant Professor with the requisite five years teaching experience after obtaining his second postgraduate degree in DM (Cardiology) would have preferential claim over those having qualification mentioned in clause(b) of Col. 5 in serial No. 17 of Annex. II to the rules i.e. MD/MRCP in medicine with two years training in Cardiology, the State Government was entitled to ignore the claims of the latter class altogether. The facts involved in the present case are quite different and distinguishable from the facts of the case cited above and therefore the law laid down therein has no application to the instant case.






10. In the premise, we are of the considered view that the OA is devoid of any merit and substance and the same fails and stands dismissed accordingly. In the facts and circumstances of this case, the parties shall bear their own costs.



(G.R. PATWARDHAN)
Administrative Member



(J.K. KAUSHIK)
Judicial Member.

Jsv.

Copy
(Dated)
9/12/03
R/c

Copy recd.
Hawa Singh
12/12/03

Part II and III destroyed
in my presence on 17/10/13
under the supervision of
section officer (I) as per
order dated 03/10/2013

D.B. Ghosh
Section officer (Record) 17.10.2013