

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA Nos. 217/2010 with MA 120/2010 and 285/2010 with MA 153/2010
Jodhpur this the 12th day of November, 2013.

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Jai Prakash Sharma S/o Sh. Chunni Lal, By caste Sharma, aged about 36 years, Resident of Village of Post Office Mahiyanwali, Tehsil and District Sri-Ganganagar.

Applicant in OA No. 217/2010 with MA 120/2010

Parmjeet Singh S/o Shri Avtar Singh, aged about 38 years, by caste Jat Sikh, Resident of Rattewala, V & PO Chunnawad, Tehsil Padampur, District Sri-Ganganagar.

Applicant in OA No. 285/2010 with MA 153/2010

(Through Adv. Mr B.S. Sandhu)

Versus

1. The Dy. Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Jaipur.
2. Jawahar Navodaya Vidyalaya Mahiyanwali, District Sri-Ganganagar Through its Principal.

..... Respondents

(Through Adv. Mr Avinash Acharya)

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

We are deciding both these OAs bearing Nos 217 & 285 of 2010 by a common order for the reason that the applicants in the both OAs have sought identical reliefs challenging the legality of the order Annex. A/1 by which interviews held on 22.06.2005 for

the post of Mess Helper were cancelled and fresh recruitment process has been ordered.

2. Before examining the case on merits, we find it expedient to dispose off the preliminary objections regarding limitation in maintainability of the OA. The counsel for the applicants has filed separate application assigning specific reasons for delay in filing the OA and respondents have also filed reply and did not dispute most of the reasons. It is a settled principle of law that condonation of delay always advances the cause of justice rather than defeats it and it is always desirable to decide such applications on merit to do the substantial justice. Therefore, we allow the MAs bearing No. 120 & 153 of 2010 for the reasons recorded in the MAs themselves.

3. The brief facts, as averred in the application, are that the applicants' names were sent to respondent No. 2 by Employment Exchange, Sriganganagar for recruitment to the post of Mess Helper. Subsequently applicants were called for interview on 22.06.2005 for the post of Mess Helper before Selection Committee in the office of respondent No 2 and interview for the post of Chowkidar was also undertaken by the Selection Committee on that very day. The applicants averred that they have not been provided any information regarding the outcome of the meeting of Selection Committee on 22.06.2005 for interview for

the post of Mess Helper, therefore, the applicants sought information under RTI and they were informed that selection process of 22.06.2005 had been cancelled. Subsequently, the applicants came to know that candidates who appeared alongside the applicants for interview on 22.06.2005 for the post of Chowkidar were subsequently appointed to the said post after cutting and pasting the date of recommendation of Selection Committee from 22.06.2005 to 25.07.2006. The applicants approached respondent no. 2 for seeking information regarding their fate but all in vain and they had to seek information under RTI. After obtaining information under RTI, the applicants filed representation before the respondent No. 1 but they were communicated that interview held on 22.06.2005 and panel recommended by the selection committee was cancelled due to procedure/irregularities committed by the Selection Committee in holding the selection process (Annex. A/1). Aggrieved by this the applicant in OA No. 217/2010 filed writ petition No. 2522/2007 before the Hon'ble Rajasthan High Court which was dismissed by the Single Judge, therefore, he preferred Special Appeal D.B. S.A.W. No. 538/2007 and the Division Bench of the Hon'ble Rajasthan High Court passed an interim order in favour of the applicant of OA No. 217/2010. The applicant in OA No. 285/2010, Shri Parmjeet Singh also filed writ petition in the Hon'ble Rajasthan High Court and subsequently, the applicants in both OAs withdrew the writ petition with liberty to file the present

OA before this Tribunal. Hence, these OAs have been filed for seeking following relief (s) :

- (i) It is therefore, most respectfully prayed that this original application may kindly be allowed and the entire record pertaining to the selection proceedings for the post of Mess Helper in dispute may kindly be called for and the same may be judicially review, and the cancellation of interview held on 22.06.2005 for selection to the post of mess helper may kindly be declared illegal and be set aside.
- (ii) That the order impugned dated 23.03.2007 (Annex. A/1) passed by the Deputy Commissioner, Navodaya Vidyalaya Smiti, Jaipur may kindly be declared illegal and the same may be quashed and set aside.
- (iii) That the respondents may further be directed to consider the candidature of the applicant and to give appointment to the applicant on the post of Mess Helper on regular basis in the Jawahar Navodaya Vidyalaya Mahiyanwali, Distt. Sri-Ganganagar on the basis of recommendations of the selection committee dated 22.06.2005.
- (iv) Any other appropriate writ or direction, which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, may kindly be passed in the favour of the applicant.
- (v) Cost of the writ petition may kindly be awarded to the applicant.

4. By way of reply, the respondents have averred that 40 names were sponsored by Employment Exchange against 02 vacant posts of Mess Helper to be filled up by General Category candidates and all candidates were called for interview on 22.06.2005 alongwith requisite documents before selection Committee and the upper age limit for the post was 35 years as on 01.10.2004 being cut off date. During the course of the verification of documents for determination of eligibility of candidates to appear before the Selection Committee for interview, 3 candidates viz. Shri Raj Kumar, Shri Rajendra Singh and Ms Madhu Bathla were not allowed to appear before the Selection Committee for interview as declared disqualified on account of upper age limit. However, requisition sent to the Employment Exchange (Annex. R-6) prescribed and indicated the upper age limit of eligibility of the said post which was 35 years as on 01.10.2004. The competent authority at Regional Level of the Samiti found that on the face of the record these candidates were eligible to be interviewed for the post of Mess Helper by Selection Committee but their candidature was not considered and respondent No. 2 did not provide any satisfactory justification for declaring these candidates disqualified on account of upper age limit. Looking to this fact that the candidature of 3 candidates sponsored by Employment Exchange was not considered by the Selection Committee on 22.06.2005, the competent authority at Regional Level of Samiti came to the

conclusion that the course of interview was illegal and cancelled the proceedings of the Selection Committee for the post of Mess Helper. The respondents further averred that requisition for the post of Chowkidar and Mess Helper was sent category wise to the Employment Exchange and the latter sent names of candidates for Chowkidar – for Reserved Category (OBC) – 20 candidates, Chowkidar – for General Category – 20 candidates and Mess Helper – for General Category – 40 candidates. The Selection Committee prepared a combine panel of the candidates from OBC and General Category for the post of Chowkidar and while scrutinizing the recommendation of the Committee at regional office of Navoday Vidyalaya Samiti, it was found that as per procedure panel should have been recommended separately for OBC and General Category candidates, therefore, respondent No. 2 was asked to prepare the same. Accordingly, the respondent No. 2 prepared the panel as asked for on the basis of marks obtained by the candidates in each category for the post of Chowkidar on 25.07.2006. Thus, the panel was only recasted categorywise on the basis of same selection, therefore, there was no element of any illegality in the selection procedure for the post of Chowkidar. On the said basis the respondents prayed to dismiss the OA.

5. Heard both parties and also perused the documents available on record.

6. Counsel for the applicant contended that the applicants secured highest marks in the interview and the names of both the applicant were recommended by the Selection Committee but competent authority at Regional level instead of accepting the recommendation ordered to cancel the interview process held on 22.06.2005 and directed to start fresh process although applicants were entitled to get the appointment, more so when no reason has been mentioned in the order Annex. A/1 for the cancellation of the interview process. Therefore, order Annex. A/1 is illegal and required to be set aside. He further contended that right of the applicants to be appointed on the post of Mess Helper in the respondent-department has been denied because without assigning any reason, process of recruitment cannot be cancelled and Annex. A/1 does not mention any reason for the same. He further contended that in the reply it has been averred that there was irregularity in holding the selection process for the post of Chowkidar also but the competent authority directed to prepare the new panel as per merit for the post of Chowkidar whereas selection process for the post of Helper Mess has been cancelled. Thus, the competent authority adopted different criteria by ordering the selection process afresh for recruitment to the post of Mess Helper.

7. Per contra counsel for the respondents vehemently defended the order Annex. A/1 while submitting that on the basis of irregularity and illegality committed by the Selection Committee

for recruitment to the post of Mess Helper, the Competent Authority ordered to start process of recruitment for the same afresh. He further contended that although the competent authority ordered to submit fresh categorywise panel for the post of Chowkidar but it was not possible for the post of Mess Helper as candidature of 3 candidates out of 40 names sponsored by the Employment Exchange could not be considered by the Selection Committee as being declared ineligible on account of prescribed upper age limit for appointment to the post of Mess Helper although they were found eligible so far as upper age limit for the post was concerned and there was no occasion for the competent authority at the regional level of the Samiti to direct Selection Committee to prepare fresh panel as 3 eligible persons were not interviewed by the Selection Committee as their candidature was not considered for the post of Mess Helper though were eligible for interview. Thus, Annex. A/1 is justified.

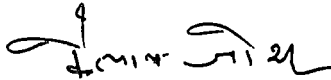
8. We have considered the rival contentions and also perused the relevant documents. As per reply it is clear that Selection Committee committed irregularity while disallowing Shri Raj Kumar, Shri Rajendra Singh and Ms Madhu Bathla on the ground of upper age limit, therefore, in our consider view the entire process of recruitment for the post of Mess Helper was rightly held illegal and on that basis the Competent Authority ordered to cancel the process of selection for the post of Mess Helper. However,

looking to the entire facts and circumstances of the case, in the interest of justice, we dispose off these OAs with certain directions.

9. Accordingly, OA is disposed off with directions that respondent-department may consider the candidature of the persons who were eligible on the relevant date i.e. 22.06.2005 in the first fresh recruitment process for the post of Mess Helper. The respondent-department shall consider the candidature of the applicants, if otherwise found fit, except cut off date for upper age limit as on 01.10.2004 shall remain the same for the applicants as was so in the earlier selection process.

10. There shall be no order as to costs.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

SS