

Central Administrative Tribunal, Lucknow Bench,

Lucknow

Original Application No. 348/2007

This the 8th day of April, 2010

Hon'ble Mr. M. Kanthaiah, Member (J)

Hon'ble Dr. A.K. Mishra, Member(A)

Govardhan Prasad Mishra, Aged about 46 years, S/o Sri Raja Ram Mishra, Permanent resident of Patel Nagar, Bachhrawan, Raebareili (presently working as PGT (Economics) in Jawahar Navodaya Vidyalaya, Mau).

.....Applicant

By Advocate: Sri R.C. Singh

Versus

1. Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi 110048 through its Commissioner.
2. Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi 110048.
3. Joint Commissioner (Administration), Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi 110048.
4. Joint Commissioner (Personnel), Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi 110048.

.....Respondents

By Advocate: Sri Anurag Srivastava

ORDER

Delivered by Dr. A.K. Mishra, Member-A

Aggrieved by non-selection to the post of Principal, Navodaya Vidyalaya, the applicant has prayed for an order quashing the selection made by the Navodaya Vidyalaya Samiti (NVS) in respect of 63 general category posts notified in June, 2005 for which selection was finalized during March, 2006.



2. He has filed this Application on 20.8.2007 with delay of a few months beyond limitation period and has requested for condonation of delay. His main grievance is that out of total 250 marks, 100 marks (constituting 40%) were set apart for the interview. This, according to the applicant, is against the law laid down by Supreme Court in the case of **Vikram Singh Vs. Subordinate Service Selection Board, Haryana & Others reported at AIR 1991 SCC 1011** where, in the matter of recruitment to subordinate service, allocation of 28.5% of total marks for interview was considered to be excessive. At the time of hearing, the learned counsel for the applicant submits that the process of selection itself has been challenged as illegal, not being inconformity with the law laid down by the Supreme Court; therefore, there was no need for the applicant to implead other selected candidates as necessary parties. According to him, since the applicant does not have any grievance against any specific selected candidate, it was not necessary for him to array all the selected candidates, or some of them in representative character in this Application. The Application was made only when through Right to Information process, the applicant could come to know that he had secured higher marks in the written papers as against the last selected general category candidate, but could not ultimately make the grade because of comparatively lower marks in the interview. If the respondent-authorities had adopted a different method assigning the lower marks to the interview, the result should have been different. In view of the submission, the prayer for condonation of delay is allowed.

3. The learned counsel for the applicant placed reliance on Supreme Court's decision in the case of **A. Janardhan Vs. Union of India & Others reported at 1983 (3) SCC 610** in which a view was taken that failure to implead other candidates would not jeopardize the Application in which relief is claimed against Union of India. Applying this ratio, it was argued that the applicant has claimed relief by challenging the policy decision of respondent-authorities and, therefore, non-joinder of other selected candidates should not vitiate this Application.

4. The learned counsel for the respondents argues by placing reliance on the case of **Prabodh Verma Vs. State of U.P. & Others 1984 (4) SCC 251** decided by Three Member Bench to support his

contention that the selected candidates are vitally concerned with the outcome of this Application and they are necessary parties. Non-joinder of necessary parties would render the application non-maintainable. If it was not possible to implead all the candidates as parties, atleast some of them more particularly the junior most general category candidate whose selection has been specifically impugned should have been made a party in representative capacity. The observations made by the Supreme Court at paragraph 28 of the judgment are extracted below:

" 28. xxxxxxxxxxxx Those who were vitally concerned, namely, the reserve pool teachers, were not made parties –not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or atleast by some of them being before it as respondents in a representative capacity if their number is too large and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or atleast some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."

Perusal of paragraph 36 of A. Janardhan's case (supra) reveals that although all the candidates who were to be affected in the petition were not impleaded, yet some of them were represented by a counsel and their submissions were heard before adjudicating the matter.

5. Coming to the merits of the case, he placed reliance on a number of judgments of the Supreme Court in which the act of the competent authorities assigning even 50% of marks towards interview has been upheld. Some of the judgments cited are indicated below:

- (i) **K.A. Nagamani Vs. Indian Airlines & Others reported at (2009) 5 SCC 515** in which allocation of 50% of marks towards interview for selection of higher post of Deputy Manager (Maintenance/System) was upheld.
- (ii) **C.P. Kaira Vs. Air India through its Managing Director, Bombay & Others reported at 1994**

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Suppl(1) SCC 454 in which it was observed that no hard and fast rule could be applied in this regard as much would depend on the job requirement for each post and level of the post. The following extract from para 7 of the judgment makes the position clear.

"7. xxxxxx The High Court has dealt with this submission and has pointed out that no hard and fast rule can be evolved in this behalf because much would depend on the job requirement for each post and the level of the post. A whole line of decisions were brought to our notice beginning from Ajay Hasia case but it would be sufficient for us to refer to the latest decision in the case Indian Airlines Corpn. Vs. Capt. K.C. Shukla. In that case this Court after referring to the decisions in Ajay Hasia Lila Dhar, Ashok Kumar Yadav and Rafiquddin observed that a distinction appears to have been drawn in interviews held for competitive examinations or admission in educational institutions and selection for higher posts. Efforts have been made to limit the scope of arbitrariness in the former by narrowing down the proportion as various factors are likely to creep in, but the same standard cannot be applied for higher selections and this is clearly brought out in Lia Dhar case. It is, therefore, clear that this Court was also of the view that no hard and fast rule can be laid down in these matters because much would depend on the level of the post and the nature of the performance expected from the incumbent. In that case, the method of evaluation was based 50 percent on ACRs and 50 percent on interviews and this Court upheld the said method notwithstanding the fact that the weightage for interview performance was as high as 50 percent. We are, therefore, of the view that the contention that because in the instant case the weightage for the viva voce test is 40 percent, it is per se excessive and hence arbitrary, cannot be accepted."

- (iii) **Anzar Ahmad Vs. State of Bihar reported at (1994) 1 SCC 150** in which a view was taken that in those cases where the recruitment was to be made from persons of mature personality interview test will be the way. The extracts from paragraphs 10 and 12 of this judgment are reproduced below:

"10. xxxxxxxxxxxx If both written examination and interview test are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, grater



weight has per force to be given to performance in the written examination. The importance to be attached to the interview test must be minimal. That was what was decided by this Court in Peeiakaruppan V. State of T.N. Ajay Hasia V. Khalid Mujib Sehravardi and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made only way subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from it being an act of cruelty to those persons."

12. *xxxxxxxxxxxxxxxxxxx While a written examination has certain distinct advantage over the interview test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment ability to make decisions, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview test, much depending on the constitution of the interview Board."*

6. The learned counsel for the applicant tries to distinguish these cases by stating that most of them related to selection by way of promotion in which 50% of total marks has been given to performance in the interview and remaining 50% to the assessment of their service records. Whereas, the applicant's case is different, here direct recruitment was being made to the post of Principal. The learned counsel for the applicant placed reliance on the judgment of Lucknow Bench of the Tribunal in O.A. no. 330 of 2002 in support of his argument that higher marks to the interview could be allocated in the matter of promotion to the post carrying higher responsibility. But in so far as the direct recruitment is concerned, it is his contention that interview marks should not be unreasonably high. This judgment has discussed the available case laws in considerable details. The main drift of the logic of the judgment in this case is clear. It follows the ratio of Supreme Court judgments that in matters relating to admission to educational institutions junior entry level appointments greater weightage has to be given to written examination as compared to viva-voce, but in the case of appointment to higher level posts, where recruitment is made

from amongst candidates with long experience and mature personality higher weightage given to interview performance is not unjustified. Similarly, his reliance on the decision of Supreme Court in Vikaram Singh's case does not lend any support to his argument when examined in the context of the factual matrix of the present case. He has cited the judgment of Lucknow Bench in O.A. no. 635 of 2002 to support his contention that if any policy is contrary to the rules or the law, such a decision could not be sustained. It may be noted that the recruitment rules are silent about the procedure to be adopted in selection of candidates. While dealing with a similar situation the Supreme Court observed **in Dhananjay Mallik & Others Vs. State of Uttranchal and Others reported at (2008) 4 SCC 171** that certain gaps in statutory rules could be filled up by administrative instructions, if they are not inconsistent. Paragraph 14 of the judgment which is relevant for our purpose is extracted below:

"14. A Constitution Bench of this Court in Sant Ram Sharma Vs. State of Rajasthan has pointed out at AIR p.1914 that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

Thus, it is clear that the policy decision to allocate 100 marks out of 250 marks is not expressly violative of any recruitment rules. Neither does it fall foul of the case law laid down by the Supreme Court. On careful consideration of the rival submissions we find that the ratio of Apex Court's judgments unequivocally establishes that if the selection is to be made from amongst candidates of mature personality, higher allocation of marks for interview test was justified. It is through such interview that qualities of leadership, alertness, resourcefulness, dependability, capacity for clear and logical presentation, effectiveness in discussion and many such qualities of the candidates could be better assessed. Therefore, we find that allocation of 40% of the total marks towards interview in the selection to the post of Principal was not unjustified. It is the principal who remains in over all charge of a School and is the prime mover in maintaining discipline, efficiency, higher standard of educational management in the Institution. Therefore, on merits,


we find that there was no infirmity in allocating 100 marks to the interview out of the total 200.

7. The applicant no-where has alleged malafides against the members of the interview Board for recruitment to the post of Principal. The selection committee consists of Director, Navodaya Vidyalaya Samiti (NVS), Joint Director/IFA-CAO, NVS, three academic personalities to be nominated by the Director, NVS, out of which two should be non-official, Deputy Director (Personnel), NVS. In the case of K.A. Nagamani (supra) the Supreme Court has reiterated their own observations in the case **of Shakuntala Shukla & Others reported at (1992) 6 SCC 127** that suitability of the candidates assessed in the interview before the expert committee should not be interfered with and the Tribunal should not sit in appeal over the assessment made by the selection Board and substitutes its own opinion for that of the Board.

8. The learned counsel for the respondents placed reliance on the decision of Supreme Court in a bunch of cases reported **at 2008 (4) SCC 619** in which a view was taken that non-joinder of selected candidates atleast in the representative capacity amounted to denial of appropriate opportunity to them. Paragraph 63 of this judgment is extracted below:

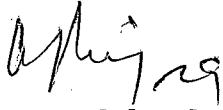
"63. Similarly we are not satisfied with the course taken in inviting the objections of the selected candidates who were never bothered to be made parties to the Writ petitions. This Court in All India SC & ST Employees Assn. V. A. Arthur Jeen has stressed the necessity of joining the selected candidates as a party in paras 13 & 14 of its judgment, referring to the reported decisions in Prabodh Verma V. State of U.P. and A.M.S. Sushmanth V. M. Sujatha. In these cases this Court has stressed the necessity of the selected candidates being joined as a party atleast in the representative capacity. XXXXXXXXXXXXXXXX All this, in our opinion, amounted to denial of an appropriate opportunity to the selected candidates. XXXXXXXXXXXXXXXX."

We have earlier referred to the judgment of Supreme Court in Prabodh Verma (supra) in which a similar view was taken that if candidates who are vitally concerned (in this case the selected candidates) have not been made parties, in a such situation, the



Application is liable to be dismissed for non-joinder of necessary parties.

9. On both counts, we find little justification to sustain this Application, which is accordingly dismissed. No costs.



(Dr. A.K. Mishra)
Member-A

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(M. Kanthaiah)
Member-J

08.04.10