

Central Administrative Tribunal, Lucknow Bench, Lucknow

ORIGINAL APPLICATION No.360/2007

This the 24th day of December, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A.K. Mishra, Member-A

Sanjay Kumar, Aged about 26 years, S/o Shri Ashok Kumar, Resident of 276, Chandra Shekhar Azad Nagar-Scooters India Limited Colony, Daroga Khera, Kanpur Road, Lucknow.

.....Applicant

By Advocate: Sri P.S. Pandey.

Versus

1. The Deputy Director, Navodaya Vidyalaya Samiti, Lekhraj Panna, Sector-2, Vikas Nagar, Lucknow.
2. The Principal, Jawahar Navodaya Vidyalaya, Kolara Kala, District Agra.

.....Respondents

By Advocate: None.

ORDER

By Ms. Sadhna Srivastava, Member-J

The applicant is seeking appointment on the post of Storekeeper.

2. The facts are that in the year 2001, a post of Storekeeper had fallen vacant at Jawahar Navodaya Vidyalaya, Kolara kala, District Agra. The applicant's name having been forwarded by the Employment Exchange, he participated in the selection process. The Selection Committee found the applicant suitable for the post and therefore forwarded his name for approval to Respondent No.1. However, the competent authority found that the selection process had not taken place in fair manner. Before the competent authority could communicate its decision that the selection process was not fair, Navodaya Vidyalaya Samiti, Headquarter, New Delhi changed the mode of appointment of non-teaching staff in Jawahar Navodaya

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Vidyalayas. An order to this effect was issued and the relevant part of the said order dt.13.6.2001 reads as under

I. "All appoints to the post of Driver, LDC/Store Keeper, Cook, Electrician-cum-Plumber, Lab. Attendant, Chowkidar, Chowkidar cum Sweeper and Mess Helper of JNVs are to be filled hence forthwith, up on contract basis only by following the prevailing selection procedures already in vogue, initially for one year which can be extended year to year basis by the JD (Admn.) of NVS (HQrs) on recommendation of RO, concerned.

II. All recruitments for which the recruitment process has already been started at Vidyalaya level or at pending at Regional Office for want of approval of otherwise shall also be made/filled up on contractual basis."

3. Keeping in view the above decision taken by the Headquarters, it was decided that the applicant namely Sanjay Kumar be made to appear in Type Test on 24.8.2001 at 11.00 AM on a clear understanding that the appointment will be a contractual appointment. The applicant does not deny having received the communication. However, he did not appear.

4. Heard the counsel for applicant and gone through the written argument filed on behalf of respondent.

4. The question, therefore, before us is what relief, if any, can be granted to the applicant under the above circumstances.

5. In the case of **Aryavrant Gramin Bank Vs. Vijay Shankar Shukla, (2008) 2 SCC (L&S) 489** it has been observed as follows:-

"It is now a trite law that only because a person has been selected and his name finds place in the select list, the same by itself does not confer any legal right on him to be appointed. It is also trite that ordinarily a superior court in exercise of its power of judicial review would not interfere with the right to make appointment by an employer unless its action or inaction is found to be wholly arbitrary so as to offend Article 14 of the Constitution"

6. In the case of **S.S. Babu & Another vs. State of Kerala & Others, (2009) 2 SCC 479**, it has been laid down in para-12 as follows:-

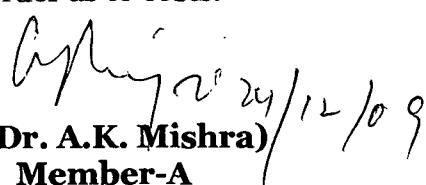


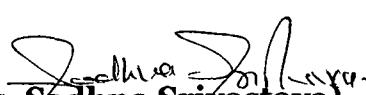
"There is another aspect of the matter which cannot also be lost sight of. A person does not acquire a legal right to be appointed only because his name appears in the select list. (See *Pitta Naveen Kumar v. Raja Narasaiah Zangiti*.) The State as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the candidate concerned will have no legal right for obtaining a writ of or in the nature of mandamus. (See *Batiarani Gramiya Bank v. Pallab Kumar*.) In *Shankarsan Dash v. Union of India* a Constitution Bench of this Court held: (SCC pp.50-51, para 7)

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

7. We have not been able to lay hand on any thing which points out to arbitrariness or malafides on the part of the respondents in not providing appointment to the applicant. Therefore, we do not find any violation of the right of the applicant. It was also a policy decision on the part of the authorities to provide only contractual appointment to the non-teaching staff. Possibly, it did not suit the applicant. Therefore, he did not appear in the typing test.

8. Resultantly, this OA has no merit. It is dismissed without any order as to costs.


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


 (Ms. Sadhna Srivastava)
 Member-J