

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA**

**O.A. NO. 201/2006**

Date of Order:

26<sup>th</sup> May, 2010

**C O R A M**

**Hon'ble Mr. Justice Anwar Ahmad, Member(Judicial)  
Hon'ble Mr. Sudhir Kumar, Member(Administrative)**

1. Ganpati Jha, Son of Late Jay Narayan Jha.
2. Rishi Kesh Kumar, Son of Sri Manishankar.
3. Narsingh Narayan Prasad, son of Late Gajadhar Prasad Singh.
4. Mohan Kant Jha, Son of Late Upendra lal Jha.
5. Dilip Kumar Sahu, Son of Late Ram Chandra Sahu.

..... Applicants.

- By Advocate - Shri A.N. Jha

-Versus-

1. The Union of India through the Secretary, Ministry of Human Resources Development Department, Govt. of India, New Delhi.
2. The Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi-110048.
3. The Director, Navodaya Vidyalaya Samiti, Indira Gandhi Stadium, I.O. Estate, New Delhi -110002.
4. The Deputy Director, Navodaya Vidyalaya Samiti, Indira Gandhi Stadium, I.P. Estate, New Delhi – 110002.
5. The Chairman, Navodaya Vidyalaya Samiti, Head Quarter, New Delhi, Indira Gandhi Stadium, I.P. Estate, New Delhi -110002.

..... Respondents.

By Advocate:- Shri G.K. Agrawal.

**O R D E R**

**Sudhir Kumar, Member [Administrative] :-** This application has been filed by 5 applicants with the prayer to join together in a single petition in this OA because the relief sought for is similar. The prayer is allowed as the cause of action in respect of 5 applicants is similar.

2. The applicants have prayed for appropriate direction to the respondents to allow their candidature to be considered in respect of the advertisement for the posts of Principals of Jawahar Navodaya Vidyalaya, Patna Region , in respect of which the applicants had applied and had been declared successful in the written test. But, before they could appear at the interview for which they had been called by impugned notification at Annexure A/8, the whole process of selection has been cancelled.

3. The applicants were appointed as Post Graduate Teachers [PGTs] in the Jawahar Navodaya Vidyalayas and were working in such capacity in different subjects and were posted at different districts in the Patna region. In the advertisement which appeared in the Employment News dated 23-29 August,2003 , 71 posts of Principals were notified for being filled up. Another advertisement appeared in the Employment News dated 6-12 September, 2003, inviting applications for the posts of Principals in Jawahar Navodaya Vidyalayas from general category in which 35 posts were notified to be filled up. The OA.

applicants applied in respect to the aforesaid advertisements, and the written test/screening test was conducted on 01.02.2004, at which the applicants appeared along with the other candidates. Thereafter, the result of that written test was published, and the applicants were declared successful. Interview letters were issued to the applicants fixing dates of interviews from 20.02.2004 onward, but suddenly interviews were postponed due to administrative reasons, and the applicants were intimated accordingly. Interviews were again scheduled to be held from 31.05.2004 to 16.06.2004, and call letters were again issued accordingly. These interviews were again postponed and candidates were intimated about the postponement vide letter dated 26.05.2004 (Annexure A/7). Suddenly, the notification dated 23-29 July,2005 (Annexure A/8) was issued, through which it was stated that due to administrative reasons, the screening test in respect of the previous Employment News notifications was cancelled, and a fresh notification to fill up these vacancies of Assistant Directors and Principals in Navodaya Vidyalaya Samiti had been published in the Employment News. It was further stated that " However applications of all the candidates received in response to above notification will be considered". Thus, the applicants were in no way debarred from appearing at the fresh process of selection notified and were not even required to apply for the same afresh.

4. The fresh notification which appeared in the Employment News dated 11-17 June, 2005 has been produced at Annexure A/9. The contention of the PL.

applicants is that vacancies which were notified through Annexure A/1 and A/2 should be filled up first, and then only the vacancies which occurred in between the issuance of the notification dated Annexure A/1 and A/2 in 2003 , and Annexure A/9 in June,2005, can be filled up through Annexure A/9 of June,2005. The applicants admitted that the written test was once again scheduled to be held on 21.02.2006, Admit Cards were issued to the applicants also, which have been produced at Annexure A/10, and they also appeared at the said examination. The grouse of the applicants is that several persons, who were earlier not eligible to apply for the posts of Principals under Annexure A/1 and A/2 had in the meanwhile become eligible by the time the notification at Annexure A/9 had been issued, and that they constituted a separate category of applicants, and both categories of applicants could not have been subjected to one test.

5. Another grouse of the applicants is that a perusal of Annexure A/10 discloses that in that new test the candidates were required to appear in an additional paper -V also, for writing an essay of 500 words in English only, in one hour duration, which paper was not included in the earlier written test (Annexure A/3), where the language of the written test was bilingual, meaning thereby that the candidates may have adopted either English or Hindi language for giving answers to the questions. Also, in the new test, for the first time, negative marking scheme had been included. The result of the new test was declared on 07.03.2006 on the Internet and the applicants were not selected, even though they

had been selected in the earlier written test and had then been called for interviews. The applicants have, therefore, assailed their having been asked to take a fresh test which was not bilingual in all papers, as the Essay paper was in English only, and also that the inclusion of the new paper was unjustified, and giving opportunity to freshers for competing against the earlier vacancies was also unjustified. Their further grouse was that upper age limit for applying for the posts of Principals of Jawahar Navodaya Vidyalaya is 45 years, and now all the applicants have already crossed the age limit for the selection to the posts of Principals. They have, therefore, taken the ground for relief that cancellation of the earlier screening test in which the applicants had been declared successful was wholly unjustified, illegal and without jurisdiction.

6. During the course of arguments, the learned counsel for the applicants relied upon the order of this Bench of the Tribunal dated 23.12.2009 in OA No. 661/2007 (Rakesh Kumar & Others Vs. Union of India & ors.) in which the repeated cancellations of the selection process by the office of EC Railway had been set aside. The learned counsel also relied upon the judgment delivered by Hon'ble Supreme Court in Dr. P.K. Jaiswal Vs. Debi Mukherjee and Others; II (1992) CSJ(SC) 148, in which the Hon'ble Supreme Court had discussed the right of a candidate to be considered for selection, and the right of appointment, and as to when it accrues.

7. In the written statement the respondents admitted that while

proceeding ahead with the previous appointment process as per their notifications of 2003, the respondents had conducted the written examination for appointments to the posts of Principals and short listed candidates were called for interviews, which interviews had to be postponed due to administrative reasons. Thereafter, at the Executive Committee meeting of the Samiti held on 13.04.2005, it was decided by the Executive Committee that the recruitment process for appointment to the posts of Principals initiated in the year 2003 may be cancelled, and a fresh action may be initiated in this regard. Accordingly, another advertisement was released on 10.06.2005 inviting applications for the posts of Principals and Assistant Directors . They emphasized the point that in this advertisement it was clearly mentioned that candidates who had applied earlier for appointment to the posts of Principals in response to the earlier notification need not apply afresh , and that their candidature would be considered on the basis of their applications already received.

8. They further submitted that all the candidates including the five applicants of the present OA had been called for written examination conducted on 22.01.2006, and all the 6 applicants of this OA had appeared in the examination and obtained some rank. It was further stated that the candidates who appeared at the second written examination were shortlisted for interviews on the basis of percentage of marks secured by them in the written examination, and the minimum cut off for general candidates was kept at 35% and for OBC 25% marks, and since all.

the applicants of the present OA fell below the cut off marks, they had not been called for interviews. It was further submitted that in a similar case filed by some other candidates before CAT, Principal Bench in OA No. 763/2006, vide order dated 05.04.2006 that OA had been disposed of by the Principal Bench of this Tribunal, and no relief had been granted to the applicants therein in so far as the merits of the case is concerned. They had produced the order of Hon'ble Principal Bench by way of Annexure R/1 in which Hon'ble Vice-Chairman had ordered as follows:-

“ Prima facie, the posts advertised vide the earlier advertisement seem to be included in the latter advertisement. In any case, in our considered view, this OA can be disposed of at this stage itself by directing the respondents to convey to the applicants the status of their candidature against the posts advertised by them vide earlier advertisement. They shall do so within a period of four weeks from the date of communication of these orders. Ordered accordingly.”

9. During the course of hearing and detailed arguments, the Bench asked the learned counsel for the respondents as to whether it fell within the powers of the Executive Committee of the Navodaya Vidyalaya Samiti to cancel any process of recruitment which had already been commenced, and the learned counsel for the respondents satisfied the Bench that it was within the powers of the Executive Committee of the NVS to have ordered for cancellation of previous process of selection, and for issuance of a fresh notification for a fresh process of selection. 

10. In the instant case, the applicants did not challenge the issuance of the fresh notification in the year 2005 at the time the notification was issued, and have further subjected themselves to the second process of selection initiated by the June, 2005 notification, and even appeared at the test conducted on 22.01.2006. They have approached this Tribunal only after they were declared unsuccessful at this fresh written examination which was conducted on 22.01.2006. In this respect, the following case laws can be cited in brief:-

[i] CAT, Patna Bench has held that "Having appeared in test, one cannot question its validity" [2002 (1) SLJ (CAT) 144].

[ii] CAT, Mumbai Bench has held that " Having availed chance before a Selection Board its proceedings cannot be challenged. [Vijaykumar Jonwal & Ors. Vs/ Union of India & ors.].

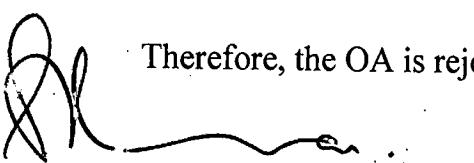
[iii] Hon'ble High Court of Delhi has held that " Having appeared in a selection , one cannot challenge it later [Shri R.P. Bhasin & ors. Vs. Shri D.K. Tyagi & Ors.; 2002 (2) SLJ 240].

[iv] Hon'ble Supreme Court has held that " One who appears in test and fails cannot challenge the test" [Chandra Prakash Tiwary & ors. Vs. Shakuntala Shukla & ors.].

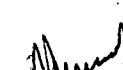
11. It is further observed that the applicants cannot get any relief from the order of this Tribunal dated 23.12.2009 in OA No. 661 of 2007 cited above, as it is not a case of a process of selection having been cancelled due to infirmities and illegalities in the process of selection. It was an administrative decision taken SL.

by the Executive Committee of the Navodaya Vidyalaya Samiti to which decision the applicants have willfully subjected themselves and have appeared at the examination. In the case of Dr. P.K. Jaiswal Vs. Debi Mukherjee and Others; II(1992) CSJ(SC) 148 (Supra), the case related to selection process initiated by the UPSC at the request of the Govt. of India, which request was later withdrawn. The facts of that case are also not similar to the facts of this case, as in this case the appointing authority itself was conducting the examination for selection, and the highest decision making body of the appointing authority itself had resolved to cancel the previous process of selection in order to adhere to the pattern of reservation of vacancies in accordance with Government's guidelines, and, had, therefore, cancelled the earlier process of selection, in order to undertake the process of selection afresh.

12. In the light of the foregoing decisions cited in paragraph 10 above, which have been relied upon by this Tribunal in several other cases also, the applicants cannot be now allowed to challenge the selection after having appeared in the test and having failed to qualify, and to come above the cut off limit prescribed.

13.  Therefore, the OA is rejected. No order as to costs.

[ Sudhir Kumar ]  
Member[A]

  
[ Anwar Ahmad ]  
Member[J]

srk.