

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.799 of 1999

DATE OF JUDGMENT: 13th APRIL, 2000

BETWEEN:

B.N.VIDYASHANKARA.

.. APPLICANT

and

The Commissioner,
Kendriya Vidyalaya Sanghatan,
No.18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi 110 016.

.. RESPONDENT

COUNSEL FOR THE APPLICANT: Mr.P.PANDURANGA RAO

COUNSEL FOR THE RESPONDENTS: Mr.B.N.SARMA, Sr.CGSC

CORAM:

HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

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JUDGEMENT

ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.P.Bhaskar for Mr.P.Panduranga Rao, learned counsel for the applicant and Mr.M.C.Jacob for Mr.B.Narasimha Sarma, learned standing counsel for the respondents.

2. The applicant in this OA was promoted as Accounts-cum-Inspecting Officer in the year 1993 and posted to work under the respondents' organisation where he joined earlier as Superintendent of Accounts at Regional Office, Jammu in 1984. A notification dated 29.7.94 was issued for filling up the post of Administrative Officer for its regional office to be appointed against the direct recruitment quota. The said notification is enclosed at Annexure A-IV at page 12 to the OA. As per that notification, applications were invited for filling up four posts of Administrative Officers in the pay scale of Rs.2200-4000, reserving one post each for SC and ST respectively out of the said four posts. The applicant submits that he had reliably learnt that he was selected and kept in the panel for appointment as Administrative Officer. But no panel was issued and the posts advertised for OC were kept vacant. The applicant submits that he came to know of the same only in the month of June, 1998 and hence he approached the respondent-authorities by filing a representation on 29.6.98 followed by the representations dated 3.9.98, 14.10.98, 18.11.98, 5.2.99 and 11.3.99 for appointing him as Administrative Officer. Some representations are enclosed to the OA from Annexures VI onwards to the OA. It is stated that no reply was given to him. The Kendriya Vidyalaya Sanghatan Staff Association also made a representation on 15.6.98 requesting to appoint



the applicant herein since he is eligible for appointment to the post of Administrative Officer in the general category as he was 2nd candidate in the select panel. Even then there was no reply, submits the learned counsel for the applicant.

3. Meanwhile, one Mr. Suresh Bhanta was promoted in the feeder category for the post of Administrative Officer in the direct recruitment quota in the year 1996 and the applicant submits that the said post ought to have been offered to him. He also submits that Mr. Suresh Bhanta had retired in the year 1977 and the post is still vacant.

4. Aggrieved by the above position, the applicant has filed this OA to declare that he is entitled to be appointed against the vacancy filled with Mr. Suresh Bhanta in the year 1996 or in any vacancy of Administrative Officer earmarked for direct recruitment that arose subsequently and consequently direct the respondents to appoint the applicant in the post of Administrative Officer with effect from 31.5.96 with costs.

5. An interim order was passed in this OA on 31.5.99 whereby it was ordered that "any posting made to the post of Administrative Officer in the Regional Office at Kendriya Vidyalaya Sanghatan is subject to the outcome in this OA" and notice before admission was issued for filing reply quickly and the case was posted on 30.6.99. But no reply was filed when the case came up for hearing on 30.6.99. Hence the above said interim order was modified due to failure on the part of the respondents to file reply

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and it was further ordered that "if nobody is posted till today, the post will be kept unfilled until further orders" and with that modified interim order, the OA was admitted.

6. A reply has been filed in this OA. In the first 3 pages of the reply, the respondents have given a bird's eye view of the Kendriya Vidyalaya Sanghatan and the number of regional offices and the schools controlled by the said Sanghatan. The above facts are not very material to the present OA.

7. The respondents further submit that an Advertisement inviting applications for the vacancies of Administrative Officer for being filled by direct recruitment was issued in the year 1992. They themselves admit that subsequently the calculation of four vacancies of Administrative Officer for being filled up by direct recruitment was found erroneous as the total strength of Administrative Officers in the Kendriya Vidyalaya Sanghatan was 15 in February 1992 out of which 8 persons were already in the position as Administrative Officers and there were 7 vacancies. According to the Recruitment Rules then in force, 2/3rd of the aforesaid vacancies were required to be filled by promotion and 1/3rd by direct recruitment. As such only 2 vacancies of Administrative Officers were required to be filled by direct recruitment. However, in the notification, four vacancies were shown for direct recruitment and the recruitment to the post of Administrative Officer could not be made on the basis of the advertisement issued in February 1992. Hence another

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advertisement was issued in July 1994 with the same number of vacancies.

8. In response to the advertisement issued in July 1994, 628 applications were received and only 89 candidates were called to take the written test who were eligible. Out of 89 candidates called for the written test only 31 candidates appeared for the examination and out of those 31, 20 candidates (11 UR, 6 SC and 3 ST) were called for the interview. The applicant was also called for the interview which was held on 8.11.95.

9. A panel was drawn up in November 1995 and by that time the number of vacancies had gone upto 3 out of which one was meant for Unreserved and the remaining two for SC/ST candidates respectively. ~~Respondents submit~~ The respondents submit that even in the year 1994 when the advertisement was issued, only one UR vacancy was available to be filled up as other vacancies were reserved for SC/ST candidates. However, the select panel was prepared with 2 OC candidates and 2 reserved ^{Candidates} without due verification of the said position. The respondents appear to suggest that the life of the panel had been over according to rule 8(2) of the Kendriya Vidyalaya Sanghatan Service Rules enclosed as Annexure-I at page 10 to the reply and the respondents were competent not to appoint anybody after the expiry of the currency of the panel. Out of 3 vacancies which were to be filled up as stated above, one was earmarked for UR, one for SC and the other for ST and they were duly filled up as per the select panel made after conducting the interviews (copy enclosed as Annexure-2 to the reply).

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They further add that there was no deliberate attempt to suppress the second post in general category as alleged.

10. Mr.Suresh Banta whom the applicant states was appointed against direct recruitment quota was appointed against the departmental promotion quota on 7.5.96. Hence there is no irregularity committed by the respondents in appointing Mr.Suresh Banta.

11. In 1998, another advertisement was issued for filling up four vacancies of Administrative Officers in Kendriya Vidyalaya Sanghatan as the strength of Administrative Officers in Kendriya Vidyalaya Sanghatan was increased to 18. As per the post based roster to be maintained with effect from 2.7.97, 12 posts are to be held by promotees and the remaining 6 by direct recruits. Since 2 direct recruits (1 general and 1 ST) were in position, 4 vacancies were advertised for direct recruitment as per Annexure A-3 notification to the reply. As regards the ^{complaint of} ~~not~~ replying to the representation of the applicant, the respondents submit that when they were considering his representation for reply, the applicant had approached this Tribunal and hence they could not reply to him.

12. The respondents rely on the Civil WP No.3151/96 filed by Mr.Ram Pal Singh Shivrain v. KVS, wherein the High Court of Rajasthan has held that there is no vested right for a candidate for appointment and on that basis the present case also is liable to be dismissed. The said judgment is enclosed as Annexure IV at page 21 to the reply.



13. We heard both the parties. The main point for consideration in this OA is whether the applicant is eligible for appointment against the 4 vacancies notified by the notification dated 29.7.94 enclosed as Annexure A-IV to the OA. All the other issues are not relevant to the present case. The respondents admit that even in 1992 they have^d issued the advertisement for filling up the four posts of Administrative Officers. But that calculation of the number of posts for direct recruitment as Administrative Officers was found to be erroneous. The fact that the respondents have issued the notification in 1994 for filling up the four posts of Administrative Officers against the direct recruitment quota, itself shows that the respondents are not very careful in assessing the vacancies for direct recruitment ^{quota} in accordance with the recruitment rules. Hence it has to be held that the respondents had unnecessarily given hope to the applicant by notifying the four posts of Administrative Officers by direct recruitment. Even admitting that it is an inadvertant error, the respondents could have easily corrected the same by issuing a corrigendum even after the written test ^{was} ~~is~~ over and before calling the applicants, who passed the written test, for viva-voce. The calculation of the number of posts to be filled by direct recruitment is a very simple calculation as the number of Administrative Officer posts in Kendriya Vidyalaya Sanghatan is only 15 when the notifications in 1992 and 1994 were issued. It is beyond our ^{Comp.} ~~app.~~ prehension to come to the conclusion that error could have been crept in calculating the number of posts to be filled by direct recruitment against 1/3rd quota. The

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submission that it was erroneously calculated, in our opinion, cannot be taken at the face value and some motives have to be attributed for issuing the notification reserving four posts of Administrative Officers for filling up by direct recruitment.

14. As stated earlier, no corrigendum was issued for correcting the error. If only two or three posts are to be filled up, then the number of posts earmarked for SCs/STs will definitely vary as only 50% reservation is permitted in which case the number of reserved candidates to be appointed may be less than two. The respondents have ~~been~~ filled the two posts by the reserved community candidates against the 1994 notification and one UR candidate. That would mean that the reservation rules were not followed correctly. Hence, the respondents have failed not only in issuing the corrigendum but also erred in calculation of the reservation points. The case of the OC candidate who applied in response to the notification of 1994 is thereby prejudiced. Such action of the respondents cannot be upheld.

15. The respondents also failed to issue the panel if there ^{was} ~~is~~ change in the number of vacancies to be filled by direct recruitment. As stated earlier, no corrigendum was issued. The number of vacancies earmarked for the reserved candidates, in our opinion, ^{was} ~~is~~ also not in accordance with law. Considering all these facts, the respondents failed completely in finalising the notification dated 29.7.94 in accordance with the rules and regulations. If that be the case, the contention that the panel is not in existence now as the life of the panel is over, is not a

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proper contention in this OA. The failure of the respondents cannot be allowed to go un-noticed. The respondents have also failed to reply the representation of the applicant which was submitted to them wayback in September, 1998. Had they looked into this representation in time, probably they would have realised the mistake and would have corrected the mistake then itself. But they did not do ^{so} ~~it~~ and now submit that because of the institution of the case, they could not reply. The case was instituted on 26.4.99, about 8 to 9 months after his first representation dated 3.9.98. 9 months period is a very long period for the respondents to reply the representation. Having failed to do so, they take refuge in not replying his representation due to the institution of this case. This submission, in our opinion, is untenable. This also leads to suspicion that the respondents had acted in rejecting the case of the applicant due to some motive or another which cannot be explained.

16. The respondents contend that mere inclusion of the name of the applicant in the panel does not create a vested right for appointing the applicant. For that, as stated earlier, they rely on the judgement of the Rajasthan High Court enclosed as Annexure R-IV at page 21 to the reply. We have gone through the judgement. The facts of that case are entirely different from the facts of this case. In that case, initially 46 vacancies were notified and all the 46 persons were appointed. Subsequently, a fresh notification was issued for filling up 49 vacancies which arose subsequent to the filling up of the earlier 46 vacancies. The petitioner before the High Court of



Rajasthan contended that as he was kept in the reserved list, he should be appointed against the future 49 vacancies and that issue of the notification for filling up the 49 vacancies in June, 1996 was irrelevant. In that context, it was held by the High Court of Rajasthan that the reserved list cannot be kept for unlimited period for appointment on future vacancies under Articles 14 and 16 of the Constitution. It also ~~depricated~~^{de} the practice of making appointments for future vacancies ^{from the reserved list.} The facts of the present case are entirely different. ~~xxx~~ 4 vacancies were notified and those 4 vacancies were not filled up as it is alleged that the number of vacancies ^d have not been correctly assessed. In that context, the applicant was not appointed, as submitted by the respondents. From the above facts, it is evident that the judgement of the High Court of Rajasthan does not help the respondents in sustaining their case.


17. As the respondents consistently failed in discharging their duties, we are of the opinion that the applicant has to be given the relief. No doubt, the applicant cannot be promoted on the basis of his empanelment in pursuance of the notification dated 29.7.94 against the promotion quota. He can be promoted only against the direct recruitment quota. As per the interim order dated 30.6.99, one post is to be kept vacant if it is unfilled as on that date. If such a post is available and earmarked for the direct recruitment, then the applicant should be posted against that post. If that post is not available, then the applicant should be posted against the direct recruitment quota of post available now or arising


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in future, if he has been empanelled as an OC candidate in the panel issued in pursuance of the notification dated 29.7.94 in the first or second place.

18. The OA is ordered accordingly. No order as to costs.


(B.S. JAI PARAESHWAR)
MEMBER (JUDL)
13.4.00


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 13th APRIL, 2000



vsn

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH. HYDERABAD

1ST AND 2ND COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

COPY TO:

1. HON'BLE
2. HRRN (ADMN) MEMBER
3. HBSJA (JUDL) MEMBER
4. D.R. (ADMN)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE-CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR
MEMBER (JUDL)

DATE OF ORDER

13/4/2000

MA/RA/CP.NO.

IN

DA.NO.

799/99

(Supis)

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

द. न. प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH

27 APR 2000

Despatch

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द. न. प्रशासनिक अधिकरण
Central Administrative Tribunal
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HYDERABAD BENCH