

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 13.03.2003

CP No.74/02 (OA No.104/2002)

Rajesh Kumar Tiwari s/o Shri B.K.Tiwari r/o 4-LA-26,  
Jawahar Nagar, Jaipur at present working as Accounts  
Officer, Navodaya Vidyalaya Samiti, Regional Office,  
Shastri Nagar, Jaipur.

.. Applicant

VERSUS

1. Mr. Sant Kumar Tripathi, Secretary, Department of  
Education, Ministry of Human Resource  
Development, Shastri Bhawan, New Delhi.
2. Navodaya Vidyalaya Samiti through its  
Commissioner Shri Dilip Kumar Kotia,  
Administrative Block, Indira Gandhi Stadium, IP  
Estate, New Delhi.
3. Shri Dilip Kumar Kotia, Commissioner, Navodaya  
Vidyalaya Samiti, Administrative Block, Indira  
Gandhi Stadium, IP Estate, New Delhi - 110 002.
4. Shri V.K.Sharma, Dy. Director (P&E), Navodaya  
Vidyalaya Samiti, Administrative Block, Indira  
Gandhi Stadium, IP Estate, New Delhi.
5. Shri H.N.S.Rao, Dy. Director, Navodaya  
Vidyalaya Samiti, Regional Officer, A-12, Shastri  
Nagar, Jaipur

.. Respondent-contemners

Mr. R.D.Rastogi, counsel for the applicant

Mr. V.S.Gurjar, counsel for the respondent-contemner Nos.  
1 to 4

Mr. A.K.Sharma, counsel for respondent-contemner No.5

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CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

This Contempt Petition has been filed for the alleged non-compliance of the order dated 24th May, 02 passed by the Tribunal in OA No.104/02. The operative portion of the said order is as under:-

"8. Therefore, for the reasons recorded above and following the ratio of the judgments of the Patna High Court (supra), the present OA is allowed and the impugned order dated 21.1.2002 is quashed and set-aside. Interim order dated 26.2.2002 is merged with this order. Respondents are directed to consider permanent absorption of the applicant in NVS in terms of notification dated 21.6.2002 (supra) and take a decision accordingly, within a period of three months from the date of receipt of a copy of this order with intimation to the applicant. Till then, the applicant shall not be repatriated."

2. In reply to the Contempt Petition, briefly stated, the respondent-contemners have submitted that:-

2.1 In compliance to the direction issued by the Hon'ble Tribunal, the case of the applicant was considered and the order dated 29.7.02 (Ann.A5) was passed. It has been also submitted that once an order is passed by the competent authority in view of the directions issued by the Court/Tribunal, there arises a fresh cause of action for the aggrieved party. If the applicant is still feeling

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aggrieved by the order dated 29th July, 02 passed in compliance to the directions issued by the Hon'ble Tribunal, then he can avail the remedy by way of an Original Application as held by the Hon'ble Apex Court in J.S.Parihar v. Ganpat Duggar [(1996) 6 SCC 291 at page 293]. They have also submitted that since the order has been complied with, the Contempt Petition is not maintainable as has been held by the Hon'ble Apex Court in Chhotu Ram v. Urvashi Gulati [(2001) 7 SCC 530 at page 534].

2.2 As seen from the ordersheet dated 23.10.02, the learned counsel for the applicant submitted that the respondents have considered the case of the applicant as per notification of 1995 instead of considering the case as per notification of 2001 as ordered by the Tribunal. He also submitted that it is a glaring case of wilful disobedience of the order of the Tribunal. He further submitted that the respondents are repatriating the applicant which they can not do since the order of repatriation had been quashed by the Tribunal's order. The learned counsel for the respondent-contemners assured the Tribunal that keeping in view the order of the Tribunal, a fresh order shall be passed by the competent authority within 4 weeks. He also assured the Tribunal that notwithstanding the fact that the order of repatriation of the applicant has been issued, the applicant shall not be relieved from his present posting during the pendency of this contempt petition.

2.3 In the fresh affidavit filed by the respondent-contemners, they have submitted that the matter has been considered afresh keeping in view the ordersheet dated 23.10.02. A Selection Committee was constituted to

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consider the case of the applicant in accordance with the order dated 24.5.02 passed in the OA and the ordersheet and based on the recommendations of the Selection Committee, a fresh order dated 4.12.02 (Ann.R1) has been passed. Thus, the directions issued by the Tribunal vide judgment dated 24.5.02 have been complied with in letter and spirit. If the applicant is still aggrieved by the order dated 29th July, 02 or the order dated 4.12.02, he can avail the remedy by way of filing OA, as has been held by the Hon'ble Apex Court in the cases of J.S.Parihar (supra) and Chhotu Ram (supra).

3. In the rejoinder, it has been submitted by the applicant that:-

3.1 The respondents have wilfully and deliberately flouted the judgment dated 24.5.02 passed by the Tribunal. The respondent-contemners have not obeyed the judgment of the Tribunal dated 24.5.02 and as per ordersheet dated 23.10.02, in letter and spirit. The case of the applicant has not been considered objectively which will be very much clear from the order dated 4.12.02 rejecting the request of the applicant for absorption. Therefore, it is clear that they have committed contempt of this Tribunal.

3.2. The respondent vide order dated 29.7.02 had rejected the case of the applicant for absorption in the light of the rules of 1995 as borne out from their order itself whereas the Tribunal had given specific direction for considering the case of the applicant in the light of notification dated 21.6.02. Thereafter, based on the ordersheet dated 23.10.02, the respondents considered the matter afresh as per notification dated 21.6.01, but again only empty formality has been done with a view to reject

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the case of the applicant for absorption. The applicant has not at all been considered objectively which is very much clear from perusal of the order dated 4.12.02.

3.3 The order is a totally non-speaking order which clearly shows non-application of mind and has been passed only to escape from the contempt of the court. While rejecting the case of the applicant afresh, they have stated that the applicant was not found suitable whereas earlier they have rejected the case of the applicant on the ground that there is no provision in the rules of 1995. It is also important to note that the case of the applicant is not rejected for not being found suitable, as the order dated 4.12.02 rejecting the claim of the applicant does not contain any reason whatsoever for his being found unsuitable for absorption.

4. Heard the learned counsel for the parties and perused the record.

4.1 As seen from the proceedings of the Selection Committee produced before us, the case of the applicant for absorption has been rejected since the Committee rated his overall performance as 'Good' based on his ACRs for the period 1994-95 to 2001-2002 which was below the benchmark of 'Very Good' decided by the Selection Committee, keeping in view the nature of job of the post and also for the reason of sitting over several Audit reports of Jawahar Navodaya Vidyalaya's, conducted during the period August, 1997 to September, 2001 as per report submitted by the Deputy Director, Jaipur vide his letter dated 20.11.02, and therefore, his absorption was not recommended.

4.2 The learned counsel for the applicant submitted that the benchmark for promotion to such posts as per



Government orders is only 'Good' and not 'Very Good'. The respondents have intentionally kept the benchmark as 'Very Good' to defeat the case of the applicant for permanent absorption. He further submitted that, as is evident from the observation of the Tribunal in the judgment dated 24.5.02, the case of the applicant was recommended by the Navodaya Vidyalaya Samiti itself and, thereafter, the subsequent letter issued by the Deputy Director regarding applicant's performance is designed to defeat the case. He also submitted that in 1991 in similar cases of absorption for ~~Selection~~<sup>Sr.</sup> Officer and Sr. PA, the benchmark was kept as 'Good' as also admittedly the benchmark for promotion to this post is only 'Good'.

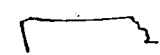
4.3 We have considered the rival contentions of the parties. Although the respondents initially did not decide the case as per the order of the Tribunal, but during the pendency of this petition, they have considered the case of the applicant as per directions of the Tribunal and passed the order dated 4.12.02. We have also perused the ACRs of the applicant. The overall grading 'Good' as assessed by the Selection Committee cannot be said to be arbitrary. Further, the benchmark 'Good' is for promotion to the post of Accounts Officer. No rule has been shown whereby in case of absorption also, the same benchmark is required to be adopted. The respondents have decided to keep the benchmark for this post as 'Very Good' keeping in view the nature of the post. Be that as it may, there is no wilful disobedience of the order of the Tribunal. If the applicant is still aggrieved of the respondents order dated 4.12.02, he agitate his grievance before the appropriate judicial forum.

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5. In view of above discussions, this Contempt  
Petition is dismissed. Noticees are discharged.

  
(M.L. CHAUHAN)

Member (J)

  
(H.O. GUPTA)

Member (A)