

Central Administrative Tribunal  
Principal Bench  
New Delhi

R.A.No.23/2015  
in  
O.A.No.3889/2012

Order Reserved on: 18.11.2015  
Order pronounced on 27.11.2015

Hon'ble Shri V. Ajay Kumar, Member (J)  
Hon'ble Shri P. K. Basu, Member (A)

Sanjeev Kumar Saxena  
Aged 43 years  
S/o Late Sh. A.P.Saxena  
R/o H.No.7, Jawahar Navodaya Vidyalaya  
Sector-25 (W),  
Chandigarh-160 014. .. Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India  
Through Secretary  
Ministry of Human Resource Development  
Department of School Education & Literacy  
Govt. of India, North Block  
New Delhi.
2. Commissioner  
Navodaya Vidyalaya Samiti  
Department of School Education & Literacy  
Ministry of Human Resource Development  
Govt. of India.  
B-15, Institutional Area  
Sector 62, NOIDA 201 307(UP).

3. Shri Pradeep Kumar Singh
4. Rajiv Kumar Singh
5. Kanchan Joshi
6. Srinivasan V
7. Ranjan Kumar
8. Dinaesh N
9. Rajeev Ratan Shukla
10. Ramraj Singh
11. V Prasad
12. Gokul Nand Deolal
13. Uttam Kumar
14. Kamalesh Singh Beghel
15. Hoton Veetil Prameela ... Respondents

(By Advocate: Shri S.Rajappa)

### **ORDER**

#### **By V. Ajay Kumar, Member (J):**

The applicant in the OA filed the present RA under Section 22(3)(f) of the Administrative Tribunals Act, 1985 read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, seeking to review the order dated 20.01.2015, passed in the OA.

2. The issue decided by this Tribunal, in the OA, is that “whether the action of the respondents in fixing the qualifying marks at 45% for

interview there being no stipulation of such a condition/clause in the original Advertisement/ Notification (Annexure A12) for recruitment to the post of Assistant Commissioner (Administration) and Principals, in the Navodaya Vidyalaya Samithi (NVS) is valid”.

3. The respondents – NVS through its Annexure A12, Advertisement/Notification called for applications from the eligible persons for filling up of vacancies for the posts of Assistant Commissioners (Administration) and Principals on direct recruitment basis. In pursuance of the said Notification, the applicant submitted his application and participated in the written examination conducted thereto. On securing the required marks of 117 in the said written examination, he was called for the Interview. However, as the applicant secured only 15 marks which is less than the required marks in the Interview, the respondents have not selected the applicant and issued the impugned Annexure A1 dated 12.11.2012, i.e., the details of the candidates selected for appointment as Principals. This Tribunal, after hearing both sides, dismissed the OA by Order dated 20.01.2015.

4. Heard Shri Yogesh Sharma, the learned counsel for the applicant and Shri S.Rajappa, the learned counsel for the respondents, and carefully examined the pleadings on record.

5. The learned counsel for the applicant, in support of the review application, mainly raised the following grounds:

- i) Though the applicant made all the necessary and affected parties as party respondents No.3 to 15 to the OA, this Tribunal erred in holding that the OA is liable to be dismissed for non-joinder of necessary parties as none of the affected parties are made as parties.
- ii) This Tribunal in para 14 of the Judgement observed that the respondents fixed the 45% qualifying marks separately for written test as well as for the interview subsequent to the advertisement/notification by invoking the power reserved by them, and the applicant who has not questioned the said prescription of qualifying marks of 45% for the written test cannot question similar prescription for interview, but this Tribunal erred in not noticing that the cut of marks in the interview were prescribed after declaring the marks in the written examination and on the date of interview.
- iii) The Tribunal, erred in holding that the decisions cited on both sides need not be gone in detail as the said Judgements strongly support the view and stand point of the applicant.
- iv) The Tribunal failed to take note of the fact that the applicant secured highest marks in the written examination and was not selected due to the awarding of marks less than the cut of marks in the interview.

6. The post in question is Principal. Admittedly, the respondents in the Advertisement/Notification (Annexure A12) itself reserved their right to decide about the mode of selection and eligibility conditions for

interview. Accordingly, they fixed the qualifying marks at 45% separately in respect of the written test as well as the interview, and the applicant though secured 117 out of 200 marks in the written examination but since secured only 15 out of 40 marks in the interview, was not selected by the respondents. In respect of both the written test and interview there was no prescription of the qualifying marks in the advertisement. The respondents fixed up the qualifying marks of 45% separately in respect of the written test as well as the interview, subsequent to the advertisement by exercising the power reserved by them in the advertisement itself. The applicant who has not raised any objection about the fixing of the qualifying marks in respect of the written examination, since he secured more than the qualifying marks in the written examination but only objected in respect of the qualifying marks in the interview as he secured less than the qualifying marks prescribed for the interview. Hence, the aforesaid grounds referred to hereinbefore (in para 5 above) are untenable and unsustainable.

7. Since all the decisions on which the applicant placed reliance pertaining to the change of the rules of the game after the game is commenced and in none of the said decisions the respondents therein, reserved their right to fix the modalities about the mode of selection as was the case in the OA under review, the said decisions were not gone in detail. Even in the present RA, the applicant failed to show any decision wherein identical facts were considered.

8. It is true that the applicant made all the necessary and affected parties as respondents to the OA. The observation made at para 15 of the judgement to the effect that the OA is liable to be dismissed as necessary parties were not made as parties is an error and hence para 15 of the judgement dated 20.01.2015 is deleted. However, since the same does not change the final view of this Tribunal in the OA, which was arrived basing on the other merits of the case also, the RA cannot succeed on that said ground alone.

9. In the circumstances and in view of the aforesaid discussion, the review is partly allowed only to the extent of deleting para No.15 of the Judgement dated 20.01.2015 in OA No.3889/2012. No costs

(P. K. Basu)  
Member (A)

(V. Ajay Kumar)  
Member (J)

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