

CENTRAL ADMINISTRATIVE TRIBUNAL
PRICIPAL BENCH

O.A.NO.1644 OF 2013

New Delhi, this the 4th day of February, 2016

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Mahesh Pratap Meena,
s/o Sh.Lakhmi Singh Meena,
R/o 77-A, Pocket-I,
Dilshad Garden,
Delhi 110095

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Applicant

(By Advocate: Shri M.K.Bhardwaj)

Vs.

Union of India through

1. The Secretary,
Ministry of HRD,
Shashtri Bhawan,
New Delhi
2. The Commissioner,
Navodaya Vidyalaya Samiti,
B-15, Sector 62, Noida,
G.B.Nagar, U.P.
3. The Dy.Commissioner,
Navodaya Vidyalaya Samiti,
Regional Office,
Sector 31A,
Chandigarh

4. Sandeep Kumar,
Lab Attendant,
JNV, Govindwal Sahib,
Distt.Tarn Taran,
Punjab
5. The Principal,
JNV, Govindwal Sahib,,
Distt. Tarn Taran,
Punjab
Respondents

(By Advocate: Shri S.Rajjappa)

ORDER

RAJ VIR SHARMA, MEMBER(J):

The applicant has filed the present O.A. seeking the following reliefs:

- “(i) To declare the action of respondents in not giving appointment to the applicant to the post of Lab Attendant on the basis of his merit position and selecting ineligible person by holding another selection as illegal and unjustified.
- (ii) To direct the respondents to appoint the applicant to the post of Lab Attendant on the basis of his merit prepared by the selection board on the basis of Trade Test held on 20.11.2009 with all consequential benefits including arrears of pay.
- (iii) To quash and set aside the subsequent selection process and appointment of respondent No.4 being illegal and unjustified.

(iv) To allow the OA with cost.

(v) to pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.”

2. The brief facts of the applicant's case are that he had worked as Laboratory Attendant on part-time basis at Jawahar Navodaya Vidyalaya, Trapaj (Bungalow), Bhavnagar (Gujarat) (hereinafter referred to as 'JNV, Bhavnagar') during the period from 20.12.2008 to 28.2.2009. He had also worked as Laboratory Attendant at Jawahar Navodaya Vidyalaya, Goindwal Sahib, Dist. Tarn Taran (Punjab) (hereinafter referred to as 'JNV, Tarn Taran'), on contract basis during the period from 17.8.2009 to 31.5.2010. With reference to his application for appointment to the post of Laboratory Attendant on regular basis at JNV, Tarn Taran, respondent no.5, vide letter dated 30.10.2009 (Annexure A/2), called him to appear for the trade test on 20.11.2009. By the said letter, respondent no.5 also required the applicant to bring original certificates of academic qualifications, date of birth, self bio data, and experience certificate, if any. Respondent no.5 also issued similar letters to other candidates, including respondent no.4, to appear for the trade test and to submit original certificates, etc. Accordingly, he and other candidates

appeared for the trade test on 20.11.2009. After verification of the original certificates, and holding of the test, a merit list was prepared by the Selection Committee. He was placed at sl.no.1 of the merit list. However, he was not informed of his merit position. He came to know that Respondent no.5, vide his letter dated 10.12.2009, sent the merit list to the competent authority for approval and issuance of appointment letter. The Assistant Commissioner, Navodaya Vidyalaya Samiti, Chandigarh (hereinafter referred to as 'NVS, Chandigarh Region'), vide his letter dated 19.4.2010 (Annexure A/3), asked respondent no.5 to clarify as to (i) what was the cut-off date for eligibility of age, (ii) on what grounds relaxation in age for three months and one day was given to the applicant. Respondent no.5, vide his letter dated 22.4.2010 (Annexure A/6), while clarifying the queries raised, sent a modified merit list to the Deputy Commissioner, NVS, Chandigarh Region. The applicant also came to know that respondent no.3 directed respondent no.5 to initiate a fresh selection process. On the direction of respondent no.3, the fresh selection was conducted on 7.1.2011, on the basis of which respondent no.4 was selected and appointed to the post of Laboratory Attendant. Being aggrieved thereby, the applicant made a representation dated 3.9.2012 (Annexure

A/1) requesting the Commissioner, NVS, Noida (UP) (respondent no.2) to look into the matter and issue appointment order in his favour. There being no response to his representation, the applicant filed the present O.A. seeking the reliefs, as aforesaid.

2.1 It is contended by the applicant that as per the instructions issued by the NVS, vide its order 29.3.2004 and letter dated 20.1.2005, he was entitled to age relaxation to the extent of the period of his working as Laboratory Attendant at JNV, Bhavnagar, and at JNV, Tarn Taran, on part-time and contract basis respectively, and, therefore, the NVS authorities ought not to have found him as overage by the cut-off date, i.e., 23.10.2009, and as ineligible for selection and appointment to the post of Laboratory Attendant. Thus, the NVS authorities have acted illegally and arbitrarily in rejecting the merit list prepared by the Selection Committee, wherein he was placed at Sl.no.1, and in conducting the fresh selection for appointing respondent no.4 who is their favoured man.

3. In their counter reply, verified by respondent no.3, i.e., the Deputy Commissioner, NVS, Chandigarh Region, it is stated by the respondents that the applicant had worked as Laboratory Attendant on part-time basis from 20.12.2008 to 28.2.2009 at JNV, Bhavnagar. He had also been engaged by

the Principal, JNV, Tarn Taran, to work as Laboratory Attendant on contractual basis from 17.8.2009 to 19.10.2009.

3.1 NVS, Chandigarh Region, vide its letter No.5235 dated 12.10.2009 (Annexure R/1), allotted roster point for the post of Laboratory Attendant at JNV, Tarn Taran, for 'unreserved category', and, therefore, in the light of the decision of the Tribunal in Shri Sandeep Kumar v. Union of India and others, OA No. 2596 of 2011, decided on 11.5.2012, the applicant was not entitled to age relaxation.

3.2 The Principal, JNV, Tarn Taran, vide his letter dated 19.10.2009 (Annexure R/2), requested the local Employment Exchange to sponsor, by 23.10.2009, eligible candidates for selection and appointment to the post of Laboratory Attendant at JNV, Tarn Taran.

3.3 Though the applicant was overage and was not entitled to age relaxation, the Principal, JNV, Tarn Taran, called and permitted him to appear for the test and interview for selection and appointment to the said post.

3.4 As per rules (Annexure R/4 and Annexure R/5), when the post is reserved for unreserved category (general), no relaxation in experience/qualification, etc., is given to the candidates of reserved categories. However, the candidates belonging to the reserved categories can compete for selection,

if they fulfill all the conditions as mentioned for general category candidates.

3.5 By the cut-off date, i.e., 23.10.2009, 33 applications were received. Out of 33, 25 candidates appeared in the trade test on 20.11.2009, which was only of qualifying nature. Thereafter, a Selection Sub-Appointment Committee was constituted at Vidyalaya level which scrutinized all the cases. The Principal, JNV, Tarn Taran, forwarded the proposal/merit list prepared by the Vidyalaya Sub-Appointment Committee showing the applicant at sl.no.1 in the merit list for approval and for his appointment to the post of Laboratory Attendant on direct recruitment basis. The proposal was scrutinized by the NVS, Chandigarh Region, in accordance with the instructions contained in the NVS's letters dated 7.5.2003 (Annexure R/6) and 20.1.2005 (Annexure R/5). It was found by the NVS, Chandigarh Region, that the Vidyalaya level Sub-Appointment Committee wrongly prepared the merit list in violation of the instructions conveyed by the NVS headquarters from time to time. Though the applicant was not eligible, as being overage, he was placed at sl.no.1 in the merit list. Though no personal interview was required to be conducted, and no marks were to be given to candidates for personal interview, personal interview was conducted and

marks were given to the candidates by the Selection Committee. The applicant was also wrongly given 3 marks towards experience for his having worked in Janta Inter College, Ahmedagarh, which was not a Government organization. Hence, the whole proposal was rejected, and the Principal, JNV, Tarn Taran, was directed to initiate a fresh process of selection.

3.6 It is also stated by the respondents that though qualifying the trade test by a candidate is a pre-requisite, but it does not entitle the candidate to be declared eligible. The merit is determined on the basis of marks obtained by a candidate in the 8th Class Examination. The applicant's date of birth being 18.7.1979, he was overage on 17.8.2009, i.e., the date of his engagement as Laboratory Attendant on contract basis at JNV, Tarn Taran. As the applicant had worked as Laboratory Attendant on part-time basis at JNV, Bhavnagar, from 20.12.2008 to 28.2.2009, i.e., for two months and eight days, and did not work anywhere until 17.8.2009, i.e., the date of his engagement as Laboratory Attendant on contract basis at JNV, Tarn Taran, the period of his working as Laboratory Attendant on part-time at JNV, Bhavnagar, from 20.12.1998 to 28.2.2009, could not have been taken into consideration for granting him age relaxation because of the

gap of 5 months and 16 days between the said two engagements.

3.7 In view of the above, the respondents have denied the allegation made by the applicant that as the Deputy Commissioner, NVS, Chandigarh Region, wanted to select and appoint his own man, the selection process and the merit list prepared by the Selection Committee were rejected, and fresh selection was ordered by the Regional Office.

3.8 Thus, it is pleaded by the respondents that the O.A. deserves to be dismissed.

4. The applicant has filed a rejoinder reply refuting the stand taken by the respondents.

5. We have perused the records, and have heard Shri M.K.Bhardwaj, the learned counsel appearing for the applicant, and Shri S.Rajappa, the learned counsel appearing for the respondents. We have also gone through the decision of the Tribunal in Shri Sandeep Kumar's case (supra).

6. Admittedly, the date of birth of the applicant was 18.7.1979. He had worked as Laboratory Attendant on part time basis from 20.12.2008 to 28.2.2009 at JNV, Bhavnagar. He had also worked as Laboratory Attendant on contract basis from 17.8.2009 to 31.5.2010 at JNV, Tarn Taran, with

absence from duty from 7.9.2009 to 17.9.2009 and from 1.1.2010 to 21.1.2010 and from 1.3.2010 to 21.5.2010.

6.1 In its order dated 29.3.2004, *ibid*, the NVS has laid down that all those LDCs, Store Keepers, Laboratory Attendants, and other Group 'D' employees, who were appointed on contract, or daily wage, or part-time, or *ad hoc* basis, and in whose cases the posts were also notified on contract basis may be allowed to compete along with other eligible candidates whose names are sponsored by the Employment Exchange for appointment to the respective posts. Such candidates will be allowed relaxation in age, and weightage for experience to the extent of length of service rendered in the Samiti.

6.1.1 In its letter dated 20.1.2005, *ibid*, the NVS has reiterated its instructions as contained in the order dated 29.3.2004, *ibid*.

6.2 In the present case, admittedly, 23.10.2009 was the cut-off date for determining the eligibility with regard to age, qualification, experience, etc., of the candidates for selection and appointment to the post of Laboratory Attendant at JNV, Tarn Taran, and the upper age limit for the candidates was 30 years as on the said cut-off date.

6.2.1 It is the contention of the NVS authorities that the applicant's date of birth being 18.7.1979, he was ineligible, as being overage by 3 months and 5 day as on the cut-off date, i.e., 23.10.2009, for selection, and that the applicant had already crossed the prescribed age limit, i.e., 30 years on the date when he was initially engaged as Laboratory Attendant on contractual basis on 17.8.2009 at JNV, Tarn Taran. Therefore, according to the respondents, the applicant was not entitled to any age relaxation.

6.3 After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions, we do not find any substance in the contentions of the respondent-NVS authorities. Had both the periods of engagement of the applicant as Laboratory Attendant on part-time basis at JNV, Bhavnagar, and on contractual basis at JNV, Tarn Taran, been taken into account, the applicant would have been entitled to more than 4 (four) months of age relaxation in accordance with the NVS's order dated 29.3.2004 (Annexure A/4) and letter dated 20.1.2005 (Annexure A/5), at the time of consideration of his candidature for selection and appointment to the post of Laboratory Attendant, JNV, Tarn Taran, on regular basis. It is found that the respondent-NVS authorities have not taken into account the period of

engagement of the applicant as Laboratory Attendant on part-time basis from 20.12.2008 to 28.2.2009 at JNV, Bhavnagar, prior to his working as Laboratory Attendant on contract basis from 17.8.2009 to 31.5.2010 at JNV, Tarn Taran, with absence from duty from 7.9.2009 to 17.9.2009 and from 1.1.2010 to 21.1.2010 and from 1.3.2010 to 21.5.2010. Only referring to the date of engagement of the applicant as Laboratory Attendant on contract basis at JNV, Tarn Taran, i.e., 17.8.2009, the respondent-NVS authorities have taken the stand that the applicant was overage on the date of his initial engagement as Laboratory Attendant on contract basis at JNV, Tarn Taran, on 17.8.2009, and, therefore, he was not entitled to age relaxation for selection and regular appointment to the post of Laboratory Attendant at JNV, Tarn Taran, at the time of consideration of his candidature for selection and appointment to the post of Laboratory Attendant, JNV, Tarn Taran, on regular basis. When, admittedly, the applicant had worked as Laboratory Attendant on part-time basis at JNV, Bhavnagar, during the period from 20.12.2008 to 28.2.2009, it would be unreasonable to say that he was not entitled to age relaxation at the time of his contractual engagement as Laboratory Attendant at JNV, Tarn Taran, on 17.8.2009, inasmuch as the NVS's order dated 29.3.2004 (Annexure A/4)

and letter dated 20.1.2005 (Annexure A/5) stipulate that the candidates, like the applicant, who were appointed as LDC, Store Keeper, Laboratory Attendant, etc., on part-time, or daily wage, or contract, or *ad hoc* basis, would be allowed relaxation in age, and weightage for experience, to the extent of length of service rendered by them in the Samiti, at the time of consideration of their candidatures for selection and appointment to the posts of LDC, Storekeeper, Laboratory Attendant, etc., on regular basis. Therefore, we do not find any substance in the contention of the respondent-NVS authorities that the applicant, whose date of birth was 18.7.1979, being overage and ineligible for contractual engagement as Laboratory Attendant on 17.8.2009, he was not at all entitled to age relaxation for the period of his working as Laboratory Attendant on part-time and contract basis, at the time of consideration of his candidature for selection and appointment to the post of Laboratory Attendant at JNV, Tarn Taran, on regular basis.

7. The NVS's order dated 29.3.2004 and letter dated 20.1.2005 (*ibid*) do not stipulate that if there was gap between the two periods of engagement of any part-time, or daily wage, or contract, or *ad hoc* employee, like the applicant in the present case, the initial period of his engagement would be

ignored by the NVS either at the time of his/her subsequent/further engagement on part-time, or daily wage, or contract, or *ad hoc* basis, or at the time of consideration of his/her candidature for selection and appointment to a post on regular basis. Therefore, we do not find any substance in the contention of the respondents that since there was gap of more than five months from the date disengagement of the applicant as part-time Laboratory Attendant at JNV, Bhavnagar, till the date of his engagement as Laboratory Attendant at JNV, Tarn Taran, the applicant was not entitled to age relaxation.

7. Furthermore, we have found from the merit list (Annexure A/8) that even if the marks awarded to the candidates, including the applicant and respondent no.4, in the interview, and for experience, are excluded, the applicant, having scored the highest marks in the qualifying examination than all other candidates, including respondent no.4, his position remains at Sl.no.1 in the merit list. The Selection Committee has awarded 7.68 marks to the applicant, and 5.24 marks to respondent no.4 under the heading 'Academics'. Therefore, the NVS, Chandigarh Region, instead of rejecting the entire selection process, ought to have considered the merit list for approval and appointment of the applicant, by

excluding the marks awarded to all the candidates by the Selection Committee in the interview and for experience. In the above view of the matter, we find that the decision of the NVS, Chandigarh Region, rejecting the entire selection process and ordering fresh selection process is unsustainable and liable to be interfered with.

8. In the light of our above discussions, we quash the decision of the NVS, Chandigarh Region, rejecting the merit list (wherein the applicant was placed at sl.no.1) and directing the Principal, JNV, Tarn Taran, to initiate fresh selection. Consequently, we also quash the fresh process of selection as well as selection and appointment of respondent no.4 to the post of Laboratory Attendant, JNV, Tarn Taran. The respondent-NVS authorities are directed to take appropriate decision on the merit list (in which the applicant was placed at sl.no.1) by granting him age relaxation to the extent of the period of his working as Laboratory Attendant on part time basis during the period from 20.12.2008 to 28.2.2009 at JNV, Bhavnagar, and his working as Laboratory Attendant on contract basis during the period from 17.8.2009 to 31.5.2009 at JNV, Tarn Taran, with absence from duty from 7.9.2009 to 17.9.2009 and from 1.1.2010 to 21.1.2010 and from 1.3.2010 to 21.5.2010, and also by excluding the marks awarded by the

Selection Committee to all the candidates in the interview. We also direct the respondents to give weightage to the applicant for experience of his working as Laboratory Attendant on part-time and contractual basis at JNV, Bhavnagar, and at JNV, Tarn Taran, while taking appropriate decision on the said merit list. This order shall be complied with by the respondents within three months from today.

9. In the result, the O.A. is allowed to the extent indicated above. No costs.

10. Besides communicating copies of this order to the learned counsel appearing for the parties, the Registry of the Tribunal shall send a copy of this order to the Commissioner, Navodaya Vidyalaya Samiti (respondent no.2) by Speed Post in course of the day.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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