

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.1763/2011

Order Reserved on: 17.08.2015
Order pronounced on: 31.08.2015

**Hon'ble Shri A.K. Bhardwaj, Member (J)
Hon'ble Shri K.N. Shrivastava, Member (A)**

Shri Balram Dev
S/o Sh. Jitu Dey Dalal
R/o GH-8/485, Paschim Vihar,
New Delhi. ... Applicant

(By Advocate: Shri Ajesh Luthra)

Versus

1. Kendriya Vidyalaya Sangathan
through its Commissioner
18 Institutional area
Shaheedjeet Singh Marg
New Delhi 1100602
2. Assistant Commissioner (Admn.)
Through its Commissioner
18 Institutional area
Shaheedjeet Singh Marg
New Delhi 110062. ... Respondents

(By Advocate: Shri S. Rajappa)

ORDER

By Hon'ble Shir K.N. Shrivastava, M(A)

This OA has been filed under Section 19 of AT Act, 1985 seeking the following relief(s):-

" (a) quash and set aside the impugned action of the respondent and

(b) direct the respondents to fill up the backlog vacancies of OBC vacancies and consequentially issue offer of appointment to the applicant to the post of Principal on the basis of his 42 position in the merit list

- (c) award costs of the proceedings and
- (d) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

2. The brief facts of the case as stated by the applicant in the OA are as under:-

The respondents vide their notification dated 31.8.2009, *inter alia* had advertised 50 posts of Principal in Kendriya Vidyalaya Sangathan (KVS). The applicant had applied for the said post under the OBC category. The written test for the post was conducted on 06.12.2009. After qualifying the written test, the applicant was called for interview on 06.5.2010. Under the category of OBC candidates, he was placed at Sl. No.42. Since the number of vacancies reserved in OBC category was only 17 out of the total number of vacancies being 50, he could not be selected.

3. In response to the notice issued, the respondents entered appearance and filed their reply by way of an affidavit.

4. The case came up for final hearing on 17.08.2015. Shri Ajesh Luthra learned counsel for the applicant and Shri S.Rajappa, learned counsel for the respondents argued the case.

5. Shri Luthra, learned counsel for the applicant stated that as per the information gathered initially by the applicant, all the 50 posts of Principal were to be filled up from amongst the OBC candidates with a view to fill up the back log vacancies of OBC. Later these posts were allocated to various categories as 25-UR, 17-OBC, 6-SC and 2-ST and

accordingly advertised by the respondents on 31.08.2009. The applicant tried to gather authentic information from the respondents in this regard but failed to get that. He then resorted to RTI Act. The respondents in response to the RTI application, vide their letter No.F.11011/1/2010-KVS-H(D-I)/1364-65 dated 03.2.2011, have replied as under:-

" The information required by you under point, 1,3,4 & 5 are as under:-

S.N.	Information Required	Answer
1.	Please tell that how many vacancies of Principal Grade-1 are available at present ? and how many Principal are working under the category of Schedule Cast, Schedule Tribe and other backward class?	913 vacancies of Principal have approved. On the direct recruitment for the post of Principal, the reservation is for Schedule Caste, Schedule Tribe & OBC are 15%, 7-1/2% & 27% respectively.
3.	Provide the list of selected Principal for the year 2009-2010 with their names, place of posting?	The list of selected Principal in the year 2009-10 with their names & place of posting is annexed in Annexure-I
4.	Whether the policy of Post-Based Reservation have been adopted during the course of recruitment of Principal? Provide complete detail with explanation.	Yes.
5.	In the year 2009-2010 50 vacancies (for the post of Principal) were advertised only for OBC Candidates but why thereafter the same has been changed as 25 for general category, 17 OBC and remaining for S.C. & S.T.?	In the year 2009-2010 50 vacancies of Principal were advertised (General 25, OBC 17, SC 6 & ST 2) under the Law because the reservation can not be exceed of 50%

6. Shri Luthra contended that from the above information furnished by the respondents under the RTI Act, it is quite clear that all the 50 posts were meant for OBC category. He vehemently contended that it is the constitutional obligation of the Govt. to see that all the posts reserved for OBC, including the backlog vacancies, are filled up. He placed reliance on a judgment of the Hon'ble Supreme Court in the case of **M.Nagaraj & Others Vs. Union Of India & Ors.** [2006(8) SCC 212] in which the Hon'ble Apex Court has held as under:-

"123. However, in this case, as stated, the main issue concerns the "extent of reservation". In this regard the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely."

He stated that the cadre strength of Principal in KVS is 913; out of which 27% i.e. 246 posts are to be filled up from amongst the OBC candidates. The actual number of occupants of the posts of Principal from OBC category is not even 100. Concluding his arguments, he pleaded that this Tribunal may be pleased to issue a direction to the respondents to fill up the backlog vacancies of OBC and that the

applicant be considered for the post of Principal by virtue of his position at Sl.No.42 in the merit list.

7. Per contra, Shri S.Rajappa, learned counsel for the respondents submitted that the advertisement dated 31.8.2009 brought out by KVS clearly indicated that the 50 vacancies to the post of Principal are going to be filled up, category-wise, as under:

“25-UR, 17-OBC, 6-SC and 2-ST”

These are not backlog vacancies for OBC as claimed by the applicant. He stated that respondents have only reiterated the legal position with regard to reservation of posts for different categories in KVS in the reply to the RTI query vide their letter No. F.11011/1/2010-KVS-H(D-I)/1364-65 dated 3.2.2011. (pg. 27 A). From the said reply it cannot be construed that all the 50 posts of Principal as advertised in the Employment News August- September 2009, were meant to be filled up from OBC candidates only.

7. We have heard the arguments of learned counsel for both the parties, gone through the pleadings of the two sides and have also perused the records annexed to them. From a plain reading of the employment, notification published by the respondents, it is quite clear that all the 50 posts of Principal, as per advertised, were not meant exclusively for the OBC category. The advertisement clearly indicates the quota for various categories for the said post. As such we do not accept the arguments of learned counsel for the applicant that these posts were meant to be filled up towards backlog vacancies of OBC category. We are conscious of the notification issued by DOPT O.M.No.36033/1/2008-Estt dated 15.07.2008 which allows to carry forward the unfilled vacancies of OBCs as is done in the case vacancies

meant for SC/STs. The issue of filling up of backlog vacancies of OBCs for the post of Principal in KVS is a separate issue. Nothing would prevent the present applicant as well as other similarly situated candidates belonging to OBC category in approaching KVS authorities for filling up of the OBC backlog vacancies in the cadre of Principal.

8. In view of the above, we hold that the selection made by the respondents to the vacancies in the post of Principal with reference to the advertisement in the Employment News August-September, 2009 is in order. We do not find any ground, more so any legitimate ground to interfere with the selection done.

9. In view of the above, the OA is liable to be dismissed and is done so accordingly. The applicant, however, would be at liberty to approach the KVS authorities and seek filling up of the OBC backlog vacancies to the posts of Principal in the KVS. No costs.

(K.N.Shrivastava)
Member(A)

(A.K.Bhardwaj)
Member(J)

/rb/