CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No-3260/2014

Order Reserved on 03.07.2015
Order Pronounced on: 07.10.2015

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Hansraj
S/o Shri Tirth Ram
R/o H. No. 1033, Sector-5,
R.K. Puram, New Delhi. -Applicant

(By Advocate: Shri Deepender Hooda)

Versus

1. Kendriya Vidyalaya Sangathan (KVS)
Through Commissioner
KVS (HQS). 18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi-110016.

2. Kendriya Vidyalaya Sangathan (KVS)
Through Joint Commissioner
KVS (HQS). 18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi-110016.

3. Kendriya Vidyalaya Sangathan (KVS)
Through its Deputy Commissioner (Admn.)
KVS (HQS). 18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi-110016.

-Respondents

(By Advocate: Shri K.M. Singh)

O R D E R

Per Sudhir Kumar, Member (A):

The applicant of this OA was a candidate for the recruitment for the Teaching and Miscellaneous Teaching Posts advertised by the Respondents No.1 & 2 through their Advertisement No.07 (Annexure

A-1). Considering himself to be qualified for the consideration of his case, the applicant had applied against the said advertisement for the post of Primary Teacher through Annexure A-2.

2. The applicant is aggrieved that the respondents did not conduct his interview properly, since the interview lasted only for 2-3 minutes, and the questions put to him had no relevance to test his aptitude, general awareness/knowledge or intelligence. He has, therefore, approached this Tribunal, praying for the following reliefs:-

> "a) Call for the records of the entire selection process, i.e., the scores of the candidates (in written examination and interview) and final selection list to the post of Primary Teacher (PRT).
>
> b) pass an order of setting aside or quashing of the interview proceedings of the respondents and subsequent selection/appointment made by the respondents to the post of Primary Teacher (PRT).
>
> c) Declare the selection process of the respondents to the post of Primary Teacher, which gives weightage of 30% marks to interview in the selection process, as null and void".

3. The case of the applicant lies in a very narrow compass. Part-I Written Examination was qualifying in nature, with objective type questions, and Part-II Written Examination was to be conducted in respect of only those candidates who had qualified the Part-I examination, and that the applicant did. The Part-II Examination Carried 120 marks, and the marks scored by a candidate at this examination alone were to be considered for preparation of the final merit list, along with the marks of the viva voce test/interview, and the basis of merit list preparation was to be the combined performance,

with weightage for the Part II Written Examination and the Interview to be 70:30 respectively.

4. In the Part-II Written Examination, the applicant scored 99 marks out of 120, as per the result declared by the respondents through Annexure A-3. He was duly called for the Interview, and he appeared for that on 03.05.2014, when, as the applicant has stated, only three questions were put to him by the Members of the Interview Board, in the interview which lasted only for 2-3 minutes, which were duly answered by him. The applicant has stated that since he had obtained a very high rank in the Part II Written Examination, and had answered all questions of the Interview Board satisfactorily, he was optimistic that he would secure appointment to the post in question. He has also alleged that during the course of his interview one of the Members of the Interview Board was busy meddling with his Mobile phone, and could have hardly had any knowledge of the questions put to him, and the answers given by him. He has, therefore, alleged that there has been a high degree of discretion in manipulating and awarding of marks, as per the whims and fancies of the Members of the Interview Board.

5. When the final result for the appointment to the post in question was declared by the respondents on 25.08.2014, the applicant could not find his name included therein. He met Respondent No.2, who immediately called for the entire record of the selection process, and from Respondent No.2 the applicant could learn that while he had scored 99 marks out of 120, the highest scored marks were 105 out of

120. After perusal of the marks awarded to him in the interview, according to the applicant even Respondent No.2 could not believe that he had been awarded only 10 marks out of 60 in the interview. Being shocked to see the manipulation, discrimination, nepotism, bias and malafide on the part of the Interview Board in awarding marks to the candidates, the applicant has filed this OA, on the ground that the Interview Board of the respondents had artificially inflated the scores of candidates, who were otherwise lower in the merit list. He has alleged that even a candidate who had only 82 marks in the written test was awarded 52 marks out of 60 in the interview, in order to help him to be included in the final selection/merit list, while the applicant who was almost on the top of the merit list, was awarded barely 10 marks out of 60. The applicant submitted a representation to the respondents through a letter dated 05.09.2014 (Annexure A-8), and was given an assurance that the matter would be looked into, but when he found no redressal of his grievances, he had to file the present O.A.

6. The applicant has taken the ground that there has been discriminatory attitude and highhandedness and bias during the interview process, and the selection on the basis of the final merit list as prepared by the respondents, is ex-facie illegal, vitiated with discrimination and bias, and is, thus, liable to be quashed. He has further taken the ground that the respondents had never mentioned the factors to be considered by the Interview Board, nor had laid down any criteria to be considered by the Interview Board, which ambiguity had armed the Members of the Interview Board with the power to

exercise a very high level of discrimination, manipulation and bias, as per the whims and fancies of the Members, thereby vitiating the process of selection, which was liable to be set aside.

7. The applicant has further taken the ground that the viva-voce/interview was highly subjective, and it is not possible to judge the capacity and calibre of a candidate in 2-3 minutes, particularly when one of the Members of the Board was busy meddling with his Mobile phone, and that the weightage of 30% marks for the interview for the final selection of the candidates is in itself bad in law, and contrary to the guidelines of the Supreme Court, as this practice removes fairness of the selection process, and selections are ultimately made at the whims and fancies of the Interview Board, as has happened in this case. Finally, the applicant had taken the ground that the respondents have, through their actions, violated his Fundamental Rights under Articles 14, 19 & 21 of the Constitution of India.

8. The respondents filed their counter reply on 07.01.2015. They had taken a preliminary objection that though the applicant had named three respondents, but through all of them the Kendriya Vidyalaya Sangathan (KVS, in short) has been made a party, and the applicant has challenged the selection list as prepared and notified, without any of the selected persons having been included as necessary opposite party-respondents in his OA, and the OA, thus, deserves to be dismissed on the ground of non-joinder of necessary parties. They had taken a further preliminary objection that the applicant had

participated in the entire selection process, and after he was unsuccessful, he has challenged the whole selection process, which is against the law, and the OA, therefore, deserves to be dismissed.

9. In regard to the Selection Committees/Interview Boards, the respondents submitted that they had constituted 10 Selection Committees/Interview Boards, comprising of eminent educationists from different Institutions, who were given a free hand to award the marks in interviews based on the performance of the candidate. It was also submitted that if a candidate secures good marks in written examination, it does not mean that he can perform well in interview also. It was submitted that the Selection Committees/Interview Boards had awarded the marks in interviews after judging the performance of the candidates, and not on the basis of the marks obtained by the candidates in the written examination, as those Selection Committees/Interview Boards did not have any information about the marks obtained by the candidates in the written examination at the time they conducted the interviews. Thus, the allegations of any manipulation of marks were denied.

10. It was further submitted that the applicant did not report the matter regarding use of Mobile phone by one of the Members of the Interview Board to the officers of the respondents' organization-KVS who were supervising the whole process of interviews. It was further submitted that the Members of the ten Interview Boards were highly qualified and eminent educationists. It was submitted that there has

been no manipulation of marks, discrimination etc. as alleged by the applicant while awarding the marks in the interviews, and all the 10 Interview Boards had awarded the marks after properly judging the candidates. It was further submitted that the criteria for interviewing the candidates was provided to the Interview Boards/Selection Committees at the time of the interviews, and it was not required to be disclosed to the candidates. Though the applicant has alleged that his interview lasted only for 2-3 minutes, it was stated that the applicant does not know as to how many candidates were interviewed, and thus any allegations made by him questioning the ability of the Members of the Selection Committees/Interview Boards were denied.

11. It was submitted that from the fact that the applicant had secured only 10 marks in the interview, it appears that he could not perform well in the interview. The respondents further submitted that the grounds taken by the applicant are baseless, and just because he could not perform well in the interview, he secured less marks, as per his performance in the interview. Had he been empanelled in the select panel, he would not have made such allegations, as made in the present OA.

12. It was further submitted that it is not for the candidates to judge the calibre and capacity of the Interview Board/Selection Committee, and the time they would take to understand the calibre of the concerned candidates. It was further submitted that laying down the Scheme of the Examination is a prerogative of the respondents, and the applicant has no right to question the respective weightages as

given to the written examination and interview by the respondents, which was notified in advance, and, thus, the recruitment process was fair and transparent. It was denied that there has been any violation of any Rule, or of any of the Fundamental Rights of the applicant, and, therefore, it was prayed that the OA may be dismissed with costs.

13. The applicant filed his rejoinder on 18.05.2015 more or less reiterating his contentions as raised in the OA. It was further denied that the OA suffers from non-joinder of necessary parties, as the applicant submitted that he had challenged the selection process itself as being against the Constitutional mandate. It was further submitted that awarding very low marks in the interview to the candidates who had secured higher rank in the written test itself shows that the marks of the candidates had been manipulated, and it was denied that the Interview Boards did not have any information about the marks obtained by the candidates in the written examination. It was alleged that the Interview Boards had before them the complete records, along with the marks obtained in the written test by each candidate being interviewed.

14. It was submitted that if the applicant had reported the incident of one of the Members of the Interview Board meddling with his mobile, he would certainly have had to face annoyance of the Interview Board Members, and would have definitely not made it to the final list. It was submitted that he was not judging the calibre and capacity of the Members of the Interview Boards but merely stating the state of affairs

inside the interview room, just to show that marks were not awarded to the candidates on the basis of their performance in the interview.

15. It was submitted that when the interview process involved such a large number of candidates who had to be interviewed, the Interview Boards obviously could not have spared more than 2-3 minutes for each of the candidates, and in those 2-3 minutes, the Boards could not have judged the capability, ability and personality of a candidate, and, thus, the interview process undertaken by the respondents was just an eyewash. It was further submitted that merely providing of criteria to the Interview Boards for interviewing the candidates is not sufficient, but that criteria needed to be followed strictly by the Interview Boards, which has not been done in his case. It was submitted that prescribing the Scheme of Examination may be the prerogative of the respondents; however, the discretion in allocating the marks for the interview has to be exercised in a fair and balanced manner, and must not be un-Constitutional. It was, therefore, prayed that the OA may be allowed.

16. Heard. During the course of arguments both the learned counsel took us through their pleadings in quite detail. The learned counsel for the applicant, in particular, relied upon judgment of the Constitution Bench of the Supreme Court in **Ajay Hasia vs. Khauid Mujib Sehravardi 1981 (1) SCC 722: 1981 AIR (SC) 487,** and read out the Paragraphs-4,5,17,18 & 19 of that judgment extensively. He submitted that at the end of Paragraph-19, the Supreme Court had

laid down the law that under the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable, and would be liable to be struck down as Constitutionally invalid.

17. On the other hand, learned counsel for the respondents submitted that in view of the prayers at Para-8 (b) & (c) of the OA, as already reproduced above, the case of the applicant cannot derive any benefit from the above cited case of **Ajay Hasia** (supra) at all, which related only to the admission procedures for educational institutions, and not to the process of selections for recruitment. The learned counsel for the respondents submitted that, rather, in this case the Supreme Court's judgment in **Chandra Prakash Tiwari and Others vs. Shakuntala Shukla and Others (2002) 6 SCC 127,** a copy of which he produced, would be applicable, and he relied, in particular, upon Paragraphs 33 & 34 of that judgment in which it has been held as follows:-

> "33. Subsequently, the decision in Om Prakash stands followed by a later decision of this Court in **Madan Lal and Ors. v. State of J & K and Ors.,** [1995] 3 SCC 486, wherein this Court stated as below:
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> > "9 Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves selected to have emerged successful as a

result of their combined performance both at written test and oral interview, they have filed this petition. **It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.** In the case of **Om Prakash Shukla v. Akhilesh Kumar Shukla,** [1986] Supp SCC 285 it has been clearly laid down by a Bench of three learned Judges of this Court that **when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such petitioner.**

10. **Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.** It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, **the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.**"

34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but **the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process".**

(Emphasis supplied)

18. It was once again explained that ten different Interview Boards were constituted for conducting the oral interviews, and that the

written marks of the candidates were not made known to the Interview Boards, in order to be able to avoid any kind of favouritism, as has been alleged by the applicant in the present OA. It was further submitted that it is not necessary that performance in written test would be the same at interview also, and that the applicant could not be allowed to assail the process of interviews conducted, when no allegations of bias or malafide have been made.

19. In his reply arguments, learned counsel for the applicant submitted that though no private respondents have been named as opposite party-respondents in the present OA, but in the prayer for interim order, it had been prayed that the respondents may be restrained from issuing the appointment letters to the candidates mentioned in the Annexure A-7, pending final outcome of the present petition. It was further explained that the applicant could not have made a complaint immediately after the interview, for apprehension of his non-selection.

20. We have given our anxious consideration to the facts of this case. The Supreme Court's judgment in the case of **Ajay Hasia** (supra) had been delivered by the Constitution Bench on 13.11.1980 in the context of the percentage of marks to be allocated for viva voce examination for admissions to professional colleges, after the ability of the candidates had been tested through a written test initially. Therefore, we find substance in the contention of the learned counsel for respondents that the percentage of 15% of the total marks, as prescribed by the Constitution Bench of the Supreme Court at the end

of Para-19 of the judgment in **Ajay Hasia** (supra), would not *ipso facto* automatically apply to the cases of recruitments also.

21. Coming to the cases of recruitments, we find that in the cited case of **Chandra Prakash Tiwari & Others** (supra), the Supreme Court has, on 09.05.2002, in its judgment not only laid down the law as the above cited paragraphs-33 & 34, which were relied upon by the learned counsel for respondents, but has also laid down the law in regard to the concept of "estoppel by conduct" in Paragraphs 31 & 32, by stating as follows:-

> "31. This Court in **Tata Iron and Steel Co. Ltd. v. Union of India and Ors.,** [2001] 2 SCC 41 dealt with the issue of estoppel by conduct rather exhaustively and one of us (Banerjee, J) in paragraphs 20 and 21 stated the law pertaining thereto as below:-
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> > "20. Estoppel by conduct in modern times stands elucidated with the decisions of the English Court in Pickard v. Sears (1837:6Ad. & E1.469) and its gradual elaboration until placement of its true principles by the Privy Council in the case of Sarat Chunder Dey v. Gopal Chunder Laha, (1891-92)19 I.A.203) whereas earlier Lord Esher in the case of Seton, Laing Co. v. Lafone, (1887: 19QBD 68 evolved three basic elements of the doctrine of Estoppel to wit:
> >
> > > "Firstly, where a man makes a fraudulent misrepresentation and another man acts upon it to its true detriment: Secondly, another may be where a man makes a false statement negligently though without fraud and another person acts upon it: And thirdly, there may be circumstances under which, where a misrepresentation is made without fraud and without negligence, there may be an estoppel."
> >
> > Lord Shand, however, was pleased to add one further element to the effect that there may be statements made, which have induced other party to do that from which otherwise he would have abstained and which cannot properly be characterised as misrepresentation. In this context, reference may be made to the decisions of the High Court of Australia in the case of Craine v. Colonial Mutual Fire Insurance Co. Ltd. (1920: 28 C.L.R. 305)

Dixon, J. in his judgment in Grundt. v. Great Boulder Gold Mines Pvt. Ltd., (1939 : 59 C.L.R. 641) stated that:

> "In measuring the detriment, or demonstrating its existence, one does not compare the position of the representee, before and after acting upon the representation, upon the assumption that the representation is to be regarded as true, the question of estoppel does not arise. It is only when the representor wished to disavow the assumption contained in his representation that an estoppel arises, and the question of detriment is considered, accordingly, in the light of the position which the representee would be in if the representor were allowed to disavow the truth of the representation."

(In this context see Spencer Bower and Turner: Estoppel by Representation 3rd Edn.)

Lord Denning also in the case of Central Newbury Car Auctions Ltd. v. Unity Finance Ltd., (1956) 3 All ER 905) appears to have subscribed to the view of Lord Dixon, J. pertaining to the test of detriment' to the effect as to whether it appears unjust or unequitable that the representator should now be allowed to resile from his representation, having regard to what the representee has done or refrained from doing in reliance on the representation, in short, the party asserting the estoppel, must have been induced to act to his detriment. So long as the assumption is adhered to, the party who altered the situation upon the faith of it cannot complain. His complaint is that when afterward the other party makes a different state of affairs, the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment. [vide Grundts: High Court of Australia (1939 (59) CLR 641)]

21. Phipson on Evidence (Fourteenth Edn.) has the following to state as regards estoppels by conduct.

> "Estoppels by conduct, or, as they are still sometimes called, estoppels by matter in pais, were anciently act of notoriety not less solemn and formal than the execution of a deed, such as livery of seisin, entry, acceptance of an estate and the like; and whether a party had or had not concurred in an act of this sort was deemed a matter which there could be no difficulty in ascertaining, and then the legal consequences followed. [Lyon v. Reed, (1844) 13M & W.285, 309] The doctrine has however, in modern times, been extended so as to embrance practically any act or statement by a party which it would be unconscionable to permit him to deny. The rule

> has been authoritatively stated as follows: "Where one by his words or conduct willfully causes another to believe the existence of a certain state of things and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the later a different state of things as existing at the same time." [Pickard v. Sears (1837) 6Ad. & El. 469, 474] And whatever a man's real intention may be, he is deemed to act willfully "if he so conducts himself that a reasonable man would take the representation to be true and believe that it was meant that he should act upon it. (Freeman v. Cooke: 1848 (2) Exch. 654, 663).

Where the conduct is negligent or consists wholly of omission, there must be a duty to the person misled. **Mercantile Bank v. Central Bank** (1938) AC 287, 304 and National Westminster Bank v. Barelays Bank International, (1975 Q.B. 654) This principle sits oddly with the rest of the law of estoppel, but it appears to have been reaffirmed, at least by implication, by the House of Lords comparatively recently. Moorgate Mercantile Co. Ltd. v. Twitching. (1977) AC 890 (H.L.)] The explanation is no doubt that this aspect of estoppel is properly to be considered a part of the law relating to negligent representations, rather than estoppel properly so-called. If two people with the same source of information assert the same truth or agree to assert the same falsehood at the same time, neither can be estopped as against the other from asserting differently at another time. [Square v. Square (1935) P. 120]"

32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status - the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhawan pertaining the doctrine of Estoppel by conduct. **It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred** and it is in this perspective in Om Parkash Shukla **(Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors.,** [1986] Supp. SCC 285) a Three Judge Bench of this Court laid down in no uncertain terms that **when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of**

entertaining a Petition challenging the said examination would not arise".

22. As was observed by the Supreme Court, while the doctrine of "estoppel by conduct" may not have a direct application for a case like in the case before the Supreme Court, **but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection, and that when a candidate appears at the examination without protest, and is subsequently found to be not successful in the said examination, the question of entertaining a Petition challenging the said examination would not arise.** Thereafter only the Supreme Court had gone on to notice the other judgments in the **Madan Lal's** case (supra) and **Om Prakash's** case (supra).

23. There is a plethora of other judgments also, in which it has been repeatedly held that after taking process in the examination/process of selection, the candidate concerned cannot lay a challenge to that process itself:-

"i) **Dhananjay Malik & Ors. vs. State of Uttaranchal & Ors.: AIR 2008 SC 1913: (2008) 4 SCC 171;**

ii) **National Institute of Mental Health & Neuro Sciences vs. Dr. K.Kalyana Raman & Ors. AIR 1992 SC 1806;**

iii) **Osmania University Represented by its Registrar, Hyderabad, Andhra Pradesh vs. Abdul Rayees Khan: (1997) 3 SCC 124;**

iv) **K.H. Siraj vs. High Court of Kerala & Ors. (2006) 6 SCC 395;**

v) **University of Cochin Rep., by its Registrar vs. N. S. Kanjoonjamma and Others, AIR 1997 SC 2083;**

vi) **K.A. Nagamani vs. Indian Airlines & Ors., (2009) 5 SCC 515;**

vii) **Amlan Jyoti Borooah vs. State of Assam & Ors., (2009) 3 SCC 227;**

viii) **Manish Kumar Shashi vs. State of Bihar & Ors. (2010) 12 SCC 576;**

ix) **Union of India & Another vs. N. Chandrasekharan & Ors. (1998) 3 SCC 694.**

24. Therefore, in view of the preponderance of the case law against the applicant's case on this subject, and since we find no substance in the vague allegations made by the applicant in his O.A. regarding the Interview Boards, we find that the applicant herein does not merit any relief being provided to him. The OA is, therefore, rejected, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.