

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.4037/2012
O.A.No.1400/2013
O.A.No.1408/2013
O.A.No.1409/2013
O.A.No.1410/2013
O.A.No.1411/2013
O.A.No.1414/2013
O.A.No.1835/2013
O.A.No.2230/2013

Wednesday, this the 23rd day of September, 2015

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. A.K. Bhardwaj, Member (J)**

O.A.No.4037/2012

Mr. Virendra Kumar (PGT)
s/o Mr. Harikesh Singh
working as PGT in
Jawahar Navodaya Vidyalaya Samiti
Vill. & PO Naichana, Rewari (Haryana)

..Applicant

(Mr. A.K. Behera, Advocate and Mr. T.N. Tripathi, Advocate)

Versus

1. Kendriya Vidyalaya Sangathan
18, Institutional Area
Shaheed Jeet Singh, New Delhi
2. Mr. Suchitra Kumar Saxena
Principal, ONGC, Srikona
3. Mr. Raj Guru Singh
Principal, Berhampur
4. Mrs. Sangeet Yadav
Principal, Chanderpur
5. Mr. Mukesh Kumar
Principal, Godda
6. Jyoti Mohan N.V.
Principal
Kendriya Vidyalaya Kodagu
District Health Training centre Building
Near K M Kariappa Circle, Madikeri

Distt. KOTAGU (Karnataka)
Pin 571201

7. Arvind Kumar Rai
Principal,
K.V. No.2, Akhnoor
Tanki No.4, Tanda Complex, Akhnoor
Distt. Jammu (J&K)
Pin 181201
8. Mrs. Deepika Sandhu
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Kendriya Vidyalaya, Dharmshala Cantt
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PO Batwara, Shrinagar (J&K)
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11. Nem Singh
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12. Rajesh Kantharia
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KV sAFS Chabua

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 Pin 741101

..Respondents

(Mr. R.N. Singh, Mr. K.M. Singh and Mr. Amit Sinha, Advocates for official respondent – Mr. Mehul Sharma, Advocate for private respondents, except respondent No.21 –
 Nemo for private respondent No.21)

O.A.No.1400/2013

Biplab Sarkar (PGT Hindi)
 s/o Mr. Barada Kanta Sarkar
 Jawahar Navodaya Vidyalaya
 Unnao, UP

..Applicant

(Mr. A.K. Behera, Advocate and Mr. T.N. Tripathi, Advocate)

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 Nemo for private respondent No.17)

O.A.No.1408/2013

Neeraj Babu (PGT)
 s/o Mr. Ram Gulam
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O.A.1409/2013

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Nemo for private respondent No.17)

O.A.No.1835/2013

Jakkula Prasad s/o Mr. Jakkula Gangaram
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O.A.No.2230/2013

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O R D E R (ORAL)

Mr. A.K. Bhardwaj:

These Original Applications (O.A. Nos. 4037/2012, 1400/2013, 1408/2013, 1409/2013, 1410/2013, 1411/2013, 1414/2013, 1835/2013 and 2230/2013) raise common issues of facts and law, thus are taken up together for disposal in terms of single order.

2. The short issue involved arise to be determined in these Original Applications is “whether the reserved category candidates (OBC), who could secure general merit (the same merit as secured by the last UR category candidate), should be adjusted against the vacancies in UR category”. Mr. A.K. Behera, learned counsel for applicants submitted that in view of the judgment of Hon’ble Supreme Court in **R.K. Sabharwal & others v. State of Punjab & others**, (1995) 2 SCC 745, the OBC category candidates, who could secure general merits in direct recruitment to the post of Principal, should be adjusted against un-reserved vacancies and the

further OBC candidates should be given benefit of reservation in appointment to the post, with relaxed standard.

3. On the other hand, Mr. R.N. Singh, learned counsel for official respondent relied upon the judgment of Hon'ble Supreme Court in **Union of India & others v. Dalbir Singh & another**, (2009) 7 SCC 251 and submitted that a candidate, who applied for a post in reserved category, cannot subsequently change his category to new one. He also placed reliance upon the Office Memorandum No.36011/1/98-Estt. (SCT) dated 1.7.1998 (Annexure A-6 (colly.)) to espouse that if an OBC category candidates has availed relaxation indicated in the Office Memorandum, he cannot seek adjustment against UR vacancy. The Office Memorandum reads thus:-

“The undersigned is directed to refer to this Department's O.M. No.36012/13/88-Estt. (SCT) dated May 22, 1989 and to clarify that the instructions contained in the O.M. apply in all types of direct recruitment whether by written test alone or written test followed by interview or by interview alone.

2. O.M. dated May 22, 1989 referred to above and the O.M. No.36012/2/96-ESTT (RES) dated July 2, 1997 provide that in cases of direct recruitment, the SC/ST/OBC candidates who are selected on their own merit will not be adjusted against reserved vacancies.

3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age limit, experience qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.”

4. Re-joining the submissions, learned counsel for applicants submitted that the judgment of Hon'ble Supreme Court in **Dalbir Singh's** case (supra) is in distinct facts and not relevant to the issue.

5. We agree with the submissions put forth by learned counsel for applicants, as in the said case when the candidate, who had initially applied in OBC category, was found to be in possession of false caste certificate, the Tribunal could give a direction that he should be considered against the UR vacancy. In the facts, Hon'ble Supreme Court could take a view that having appeared for a post in a particular category, a candidate could not subsequently change his category. Paragraph 13 of the judgment reads thus:-

“13. From the pleadings it appears to us that the appellants had prepared two sets of lists. The first one being the list of those candidates who had staked their claim in the general merit and the second list contains those candidates who had opted for consideration of their case under OBC category. The respondent at no point of time had taken exception to the procedure adopted by the appellants in preparing the select list. In our opinion, having opted to consider his case only under OBC category, he cannot thereafter claim that his case requires to be considered in the general merit, only because he has scored better percentage of marks than the last selected candidate in the general merit.”

6. Learned counsel for all the private respondents, except Mrs. Sunita Gupta, Principal K.V. Bina, submitted that the private respondents herein are posted at a distant place and in different parts of the country and have already been confirmed on the post of Principal, to which they were appointed on the basis of selection, which is made subject matter of the present Original Applications. According to him, the Original Applications are liable to be dismissed being time barred.

7. We find that the select list in question in the present cases was prepared on 1.10.2012 and the Original Applications were filed within the prescribed period of limitation. In the wake, the objection that the Original Applications are not maintainable on the ground of being filed belatedly cannot be accepted.

8. As far as the judgment in **Dalbir Singh's** case (supra) is concerned, it is well settled law that judicial precedent cannot be followed as a statute and need to be applied with reference to the facts of the case in which precedent is laid. In **Collector of Central Excise, Calcutta v. M/s Alnoori Tobacco Products & another**, 2004 (6) SCALE 232, it has been held thus:

"12. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

13. In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act

of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

14. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become *locus classicus*:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

The law regarding adjustment of reserved category candidates against general vacancies has been settled in **R.K. Sabharwal's** case (*supra*).

9. In the circumstances, the Original Applications are disposed of with direction to the respondent – Kendriya Vidyalaya Sangathan to reexamine the issue of preparation of select list for the post of Principal, keeping in view the law declared by the Apex Court in **R.K. Sabharwal's** case (*supra*) and Office Memorandum No.36011/1/98-Estt. (SCT) dated 1.7.1998 (Annexure A-6 (colly.)) (*ibid*), within a period of three months from the date of receipt of a copy of this Order. It is made clear that anyone of the SC/ST/OBC categories, who have availed any relaxation, viz. age limit, experience qualification, permitted number of chances in written examination, extended zone of consideration, etc., would not be adjusted

against UR vacancies. Before taking final decision in the matter, the Official respondent would give an opportunity of hearing to all private respondents also. No costs.

A copy of this Order be kept in each case file.

(A.K. Bhardwaj)
Member (J)

(Sudhir Kumar)
Member (A)

September 23, 2015
/sunil/