

**Central Administrative Tribunal
Principal Bench**

OA No.4165/2012

New Delhi, this the 8th day of September, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Uday Kumar Varma, Member (A)**

Tripurari Prasad Singh S/o Brahmdev Singh,
R/o 2, Jawahar Navodaya Vidyalaya,
Mukgeshpur, P.O. Bawana,
Delhi-110039.

... Applicant

(By Mr. Yogesh Sharma, Advocate)

Versus

1. Union of India through Secretary,
Ministry of Human Resources Development,
Department of School Education & Literacy,
Government of India, North Block,
New Delhi.
2. Commissioner,
Novodaya Vidyalaya Samiti,
Department of School Education & Literacy,
Ministry of Human Resources Development,
Government of India, B-15 Institutional Area,
Sector-62, Noida-201307 (UP).
3. 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. Kamlesh Singh Baghel
15. Hoton Veeti Prameela

The private respondents No.3 to 15 be served through respondent No.2. ... Respondents

(By Mr. S. Rajappa, Advocate)

O R D E R

Justice Permod Kohli, Chairman :

This Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:

- “(1) To set aside the present impugned merit list Dt. 12.11.12 and direct the respondents to redraw the merit list without applying any minimum marks for interview.
- (2) Direct the respondents to consider and appoint the applicant to the post of Principal, as having scored the fifth highest marks in the written examination.
- (3) Direct the respondents to be bound by the criteria fixed for selection as per the Advertisement i.e. on the basis of merit in the written examination.
- (4) Direct the Respondents to produce the certified copy of the noting sheets indicating the criteria fixed for giving weightage for interview and written test.

- (5) Direct the respondents to produce the marks obtained by the applicant and final selected candidates with its break up and the certified copy of the notings of the interview.
- (6) Any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case may also be granted.
- (7) Cost of the proceedings may also be awarded in favour of the applicant."

2. Brief facts emerging from the pleadings of the parties are that the applicant having the qualification of B.A. (Hons.) in Geography, M.A. in Geography, B.Ed and M.Ed., joined the Navodaya Vidyalaya Samiti as TGT (Social Science) at JNV Lohardaga, Jharkhand on 16.08.1991. He was promoted as PGT (Geography) on 29.04.1997. He served at various places in that capacity. It is stated that the applicant worked as House Master and Associate House Master. He was awarded certificates and appreciation letters from higher authorities for giving excellent results of students in board examinations. He also worked as co-curricular in-charge, admission in-charge, time table in-charge, eco-club in-charge, examination in-charge and was also associated with the in-service training course, mess management, games and sports activities as also school discipline during his service spreading over 21 years. On 28.06.2012, the respondents advertised vacancies for the post of Assistant Commissioner (Administration) and Principal in

Employment News inviting applications from General/OBC/SC/ST/PH candidates for selection on direct recruitment basis. In-service candidates were also eligible to apply. The essential qualifications prescribed in the advertisement included the academic qualification and experience. There were some qualifications listed as desirable. As many as 10 vacancies, out of 29, were notified under the general category. The age required for applying was between 25 and 35 years. The advertisement *inter alia* provided the selection to be made by written test comprising 200 marks. In the advertisement Annexure A-3 under the caption "Mode of Selection" it is mentioned as under:

1. The Written Examination for the recruitment to the above post will be held at Delhi on August 05, 2012.
3. The applicant appeared in the written examination held by the respondents for which minimum 45% marks were prescribed for the general and OBC candidates, as is the admitted case of the parties. The written examination was held as per the scheduled date. The applicant appeared in the said examination and secured 104 marks out of 200. The respondents also conducted interview of the candidates, in which the applicant also participated. A list of candidates who qualified the written test was notified on 08.10.2012. The name of the applicant figured at serial number 5 of the aforesaid

list securing 104 marks under the general category. On the basis of the combined criteria a final select list was declared on 12.11.2012 for the post of Principal. The name of the applicant did not figure in the said list. According to the averments made by the applicant, though he had secured fifth highest marks in the written examination, but he was awarded only 17 marks in the interview and thus the total marks secured by him were 121, whereas the last selectee had secured 91 marks in the written examination but was awarded 29 marks in the interview, and despite the fact that the total marks secured by the last selectee were only 120, he has been selected and the applicant with more marks than the last selectee has been denied the place in the select list and consequently the appointment, causing injustice to him. The applicant has accordingly filed this Application seeking the relief referred to hereinabove on the basis of his combined merit which is higher than the last selectee.

4. Counter-affidavit has been filed on behalf of the Joint Commissioner (Administration) in Navodaya Vidyalaya Samiti. While admitting that the applicant was a candidate for the post of Principal and he was called for interview on 30.12.2012, it is stated that he could not be finally selected as he could not qualify in the interview. The merit of the applicant has been disclosed, which is as under:

	Total marks	Marks secured by the applicant	%age of marks
Written Test	200	104	52%
Interview	40	17	42.5%
Total	240		

It is stated that the Navodaya Vidyalaya Samiti kept the qualifying marks at 45% separately in respect of written test as well as the interview. The applicant having secured more than 45% marks in written test was called for interview, wherein he secured 17 marks out of 40, which comes to 42.5% and thus he could not be selected having secured less than 45% marks in the interview. The respondents have further stated that in another OA No.3889/2012 in case of *S. K. Saxena v Union of India*, detailed reply has been filed.

5. The applicant has filed a detailed rejoinder primarily reiterating the averments made in the OA. It is further stated that while publishing the result of the written examination on 08.10.2012, it was disclosed that the criteria for qualifying the written examination had been decided, i.e., 45% marks in the written test for general category candidates. It is stated that even on the said date, no criteria was fixed for qualifying marks in the interview. The interview was conducted on 30.10.2012 and 31.10.2012 whereupon a final result was published on 12.11.2012. It is stated that the criteria

for securing 45% marks in the interview was disclosed only in the RTI reply.

6. We have heard the learned counsel appearing for parties at length.

7. From the entire advertisement, we find that the selection was required to be made only on the basis of the written test. No minimum criteria was fixed even for the written test. There was no mention of the interview, but the fact remains that the interview was conducted for those candidates who secured minimum 45% marks in the written test. The applicant successfully qualified in the written test securing more than minimum prescribed marks and was called for interview. It was only on account of allegedly securing less than 45% marks in the interview that the applicant has not been selected. His combined marks in the written test and interview are 121, which are more than the marks obtained by the last selectee, i.e., 120. The respondents have referred to OA No.3889/2012 titled *S. K. Saxena v Union of India*. The said OA and review petition thereagainst were dismissed by the Tribunal vide orders dated 20.01.2015 and 27.11.2015 respectively. The applicant S. K. Saxena in the said OA filed WP(C) No.953/2016 before the Hon'ble High Court of Delhi. The said writ petition was allowed vide judgment dated 01.03.2017.

The Hon'ble High Court called the record of the selection and found that vide noting dated 26.10.2012, the marks for interview were fixed at 45% for general candidates and 40% for SC/ST candidates. On the basis of the aforesaid noting, the Hon'ble High Court observed as under:

“15. This, according to us, is a case wherein rules of the game were changed after the selection process had commenced. The prescription of minimum qualifying marks in the interview was not postulated or stated in the advertisement/notification quoted above. A new condition was imposed for the first time just before the interview was to be conducted, requiring the candidates to secure the minimum cut-off marks in the interview. Thus, notwithstanding the aggregate marks secured, i.e. the cumulative or total marks secured in the written examination and the interview, the candidate would not be selected unless he had scored and was awarded 45% or more marks in the interview. The aforesaid interdict of the respondents, is contrary to law and falls foul of the decision of the Supreme Court in *Hemani Malhotra versus High Court of Delhi*, (2008) 7 SCC 11....”

The Hon'ble High Court further noticed as under:

“18. The aggregate marks secured by the petitioner and other candidates, who were called for the interview, are on record. The petitioner, who had secured 117 marks out of 200 in the written examination, and 15 marks out of 40 in the interview, had 132 marks in total or aggregate. 132 marks were the highest combined or aggregate marks secured by any candidate. Two other candidates, namely, Pradeep Kumar Singh and Dr. Rajiv Kumar Singh had secured identical aggregate/total marks and were selected. However, the petitioner was disqualified and not selected, as he had not secured minimum qualifying

marks in the interview. This is clearly mentioned in the remark column of the consolidated list of marks provided to the petitioner in response to the RTI application filed by him. This being the undisputed position, the petitioner must succeed and the stand of the respondents being contrary to law has to be rejected.

19. The selected candidates have been impleaded as respondent Nos. 3 to 15 in the present writ petition. However, the selected candidates have not entered appearance or contested the writ petition. It is also learnt that some of the successful candidates did not join or have resigned. In other words, there are vacant posts of Principal. In any case and in light of the given facts, we would have required the respondents to create a supernumerary post or asked the last selected candidate to vacate/leave.

20. Lastly, we have to deal with the question of seniority and back wages. We would not direct payment of back wages (the petitioner is working), but the petitioner must be given his seniority, i.e., the first position and notional appointment from the date the next lower successful candidate was appointed. The petitioner's pay would be accordingly fixed by giving benefit of increments due to him from the date of notional appointment. The date of notional appointment would be also counted for the purpose of all other benefits, like pension (if applicable) and years of service as Principal for further promotion, etc."

8. At the time of issuing notice in the present OA vide order dated 11.12.2012, one post in general category was kept vacant. The selectees are also parties to this petition. They have chosen not to appear.

9. Present case is squarely covered by the judgments of the Hon'ble Supreme Court in *Himani Malhotra v High Court of Delhi*

[(2008) 7 SCC 11], and the Hon'ble High Court of Delhi dated 01.03.2017 passed in case of *S. K. Saxena* (*supra*). This OA is accordingly allowed. The applicant shall be entitled to the same relief as granted to S. K. Saxena by the Hon'ble High Court. Respondents are directed to issue appointment order to the applicant within one month from the date of receipt of copy of this order.

(Uday Kumar Varma)
Member (A)

(Permod Kohli)
Chairman

/as/