

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No. 1547 of 2013**

**Reserved on: 09.04.2019**

**Pronounced on: 26.04.2019**

Between:

Dr. Reema Stella Jayachandran,  
D/o. D. Jayachandra Hermon, aged 39 years,  
Occ: Post Graduate Teacher,  
O/o. The Principal, Kendriya Vidyalaya, Bolarum,  
JJ Nagar, Allenby Lines, Secunderabad – 87.

... Applicant

And

1. Union of India, Rep. by  
The Chairman, Kendriya Vidyalaya Sangathan,  
Minister for HRD, Government of India,  
Sastry Bhawan, New Delhi – 110 001.
2. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area, Shaheed Jeet Singh Marg,  
New Delhi – 110602.
3. The Deputy Commissioner (Admn.),  
Kendriya Vidyalaya Sangathan (HQ),  
18, Institutional Area, Shaheed Jeet Singh Marg,  
New Delhi – 110016.
4. Rashmi Shukla, Occ: Assistant Education Officer,  
Kendriya Vidyalaya (HQ),  
18, Institutional Area, Shaheed Jeet Singh Marg,  
New Delhi – 16.
5. Gaurav Kumar Dwivedi, Occ: Vice Principal,  
Kendriya Vidyalaya No.1,  
Air Force Station, Agra.
6. Mohit Gupta, Occ: Vice Principal,  
The Kendriya Vidyalaya No.2,  
Jammu Cantt., Jammu.
7. Balram Mohanty,  
Occ: Vice Principal, Kendriya Vidyalaya,  
Digapahandi, Old Khemmundi College,  
PIN 761 012, Orissa.
8. Anosh Samson, Occ: Vice Principal,

Kendriya Vidyalaya No.1,  
Vasco, Varunapuri, Mangoo Hill,  
Vaso-da-gama, Goa-403802.

9. Y.N. Ram, Occ: Vice Principal,  
Kendriya Vidyalaya Unnao,  
Dahi Chowki, Unnao,  
Utter Pradesh – 209 801.
10. Raj Kumar Katariya, Occ: Vice Principal,  
Kendriya Vidyalaya, Happy Valley,  
Shillong – 793 007, Meghalaya.
11. P.S. Meena, Occ: Vice Principal,  
Mathura Cantonment,  
Near Golf Ground Army Area,  
Mathura – 281 002.
12. Amit Kumar Baidya, Occ: Vice Principal,  
Kendriya Vidyalaya, Tarapur Silchar,  
Silchar Chandmari Road, Opp. T.V. Centre,  
Tarapur, Silchar, Assam – 788 003.
13. Prem Narayan, Occ: Principal Grade II,  
Kendriya Vidyalaya, Harda, Vriddhashram,  
Near District Panchayat Office,  
Harda, Madhya Pradesh – 461 331.
14. Basanti Champa, Occ: Vice Principal,  
Kendriya Vidyalaya No.1,  
Udhampur, PO Garhi, Udhampur (J&K).

... Respondents

Counsel for the Applicant	...	Mr. KRKV Prasad
Counsel for the Respondents	...	Mr. M.C. Jacob, Advocate for Mr. B.N. Sharma, SC for KVS

**CORAM:**

***Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)***

***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

**ORDER**

***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

2. Challenge in this OA is against the decision of the respondents in utter violation of rules and law on reservation, not selecting the applicant for the post of Vice Principal

3. Brief facts of the case are that the applicant was one of the aspirants for the post of Vice Principal, and in response to a notification for filling up the posts of Vice Principal by Limited Departmental Examination for the years 2010-11 and 2011-12 on 10.8.2011 she participated in the examination. When offer of appointments to the selected candidates was issued on 12.4.2013 and 16.4.2013 respectively and marks along with the communal break up were published on 26.4.2013, and the name of the applicant did not figure in the list of selected candidates, the applicant made a representation on 01-11-2013 as according to the applicant, she had fared well and secured 91 marks for the year 2011-12. Respondents, in response, have informed that though applicant secured the cut of mark there being a tie with another candidate who got the same mark, she had to be considered, based on higher in age. Aggrieved, the present OA is filed.

4. The Contentions of the applicant included that selections were made on the basis of communal break up, whereas the notifications issued for the promotion to the post of Vice Principal in 2010-11 and 2011-12 did not contain the number of vacancies to be filled up or the communal break up, and as such, the selection is vitiated. The law laid down regarding reservation in promotion has not been followed. Though there are vacancies due to non joining of some successful candidates or vacancies having been caused due to promotion of Vice Principals as Principals, respondents ought to have considered the case of the applicant and thus omission to consider the applicant for promotion is unfair. The applicant also alleged that candidates at serial 5,6,7,8 as Vice principals do not fulfil the eligibility criteria. Further the selection of the 4<sup>th</sup> respondent is irregular being junior in the feeder cadre and selection based on the principle of date of birth is not supported by any recruitment rule. Field verification of

candidates selected was done before the select list was published, thereby giving a clue as to who has been selected leading to an uproar amongst the competing candidates.

5. Respondents admitted the factual aspects as submitted by the applicant and stated that the prescribed qualifying marks for General Category and Reserved Category (SC/ST) were respectively 40% and 35% and the cut off marks as per the panel of selected candidates are as under:-

Year	General Cat.	S.C. Cat	S.T. Cat
2010-11	92	82	66
2011-12	91	81	62

In case of tie in the marks, the senior in age would be placed in the panel. Applicant got the same cut of mark of 91 as was obtained by the 4<sup>th</sup> respondent and there being a tie in respect of marks obtained, the 4<sup>th</sup> respondent being older was selected. Besides, in regard to selection of the 5<sup>th</sup> respondent he was a Post Graduate Teacher who was regularly appointed on 2.2.2005 and having scored 94 marks was selected for 2011-12 rect. year under general category. Respondents 6 &7 have been offered appointment as Vice Principals subject to field verification. In respect of 8<sup>th</sup> respondent as she belongs to ST category and having got 78 marks, which is above the cut off mark, was selected. The select panel was prepared based on the vacancy position. In respect of respondents 9 to 14 they were placed in the category wise select panel as per cut off marks and vacancy position. As the selection was done as per rules, the interim order of the Tribunal dated 20.12.2013 is liable to be vacated.

6. Heard both the counsel and went through the documents as well the material papers in detail.

7. I) The KVS has published a notification for the recruitment years 2010-11 and 2011-12 on 10.8.2011. In the notification the number of vacancies and the communal break up have not been indicated. Applicant contends that without furnishing the vacancies and communal break up in the notification selecting candidates on the said basis is irregular. Applicant argues that the selection has to be as per the notification. Non notification of vacancies is not fatal to the very selection. It is only when there is variation in the total number of vacancies that have been notified and that have been selected that the issue may arise for consideration. If there be a conscious decision not to reflect the number of vacancies for justifiable reasons, the same cannot vitiate the selection. Support could be had from the decision of the Apex Court in the case of Mahesh Chandra Sharma vs State of Jharkhand (2012) 11 SCC 656 refers. Therein, the notification did not reflect the number of vacancies and the same was said to be a conscious decision. The same has not been criticised by the Apex Court.

Therefore in the instant case the notification does not get vitiated by not indicating the number of vacancies as per the Hon'ble Supreme Court observation cited above. Without the number of vacancies not being notified the question of providing details regarding communal break up does not arise.

II) Now let us come to the second aspect that selection was done on prescribing the qualifying percentage 40% for general category employees and 35 percent for SC/ST employees though not indicated in the notification. Ld counsel for the respondents has argued that this is a practice being followed in the respondents organisation and that the employee community is fully aware of

this norm. There is some force in the argument of the Ld. respondent counsel. A practice followed is as good as a rule. Practices in vogue over the years get transformed into rules. Only difference is in the label of terming the practice as informal and rule as formal. The following decisions of the Apex Court support the case of the respondents:-

(a) *Bimlesh Tanwar v. State of Haryana*, (2003) 5 SCC 604, wherein the Apex Court has observed as under:-

52. In this case also, although there does not exist any statutory rule but the practice of determining inter se seniority on the basis of the merit list has been evolved on interpretation of the rules. A select list is prepared keeping in view the respective merit of the candidates.

(b) *State of W.B. v. Manas Kumar Chakraborty*, (2003) 2 SCC 604 wherein the Apex Court has observed as under:- :

As to whether a person not holding the substantive rank of DGP could be posted as DG&IGP, the question appears to have been admitted, either as a matter of rule or practice, that in the Karnataka cadre an officer not holding the substantive post was ineligible to the post as DG&IGP.

(c) *K.C. Gupta v. Lt. Governor of Delhi*, 1994 Supp (3) SCC 408 wherein the Apex Court has observed as under:-,

The TGTs (Middle) who were in the lower grade/scale of pay till 27-5-1970 became unreasonably ambitious to be reckoned as equals to the TGTs in higher grade from the date of their initial appointment which within no stretch of any rule or practice can be said to be justified.

(d) *U.P. Public Service Commission, U.P. v. Alpana*, (1994) 2 SCC 723 wherein the Apex Court has observed as under:- :

No rule or practice is shown to have existed which permitted entertainment of her application.

(e) *N. Suresh Nathan &Anr. vs. UOI &Ors.* [(1992) Supp. (1) SCC 584], wherein, while considering the question of promotion to the post of Assistant Engineer in the Public Works Department, the Apex Court had

occasion to consider the construction of the service rules in consonance with the long-standing practice in the concerned department and it was held that such long standing practice was to be preferred. (This case was cited and applied in the case of State of UP vs Santosh Kumar Mishra SLP (C) No. 20558 decided on 3<sup>rd</sup> August 2010)

(f) In *Shailendra Dania & Ors. vs. S.P. Dubey & Ors.* [(2007) 5 SCC 535], the Apex Court had also the occasion to consider the possibility of two views being taken while interpreting a particular set of service rules. In such a situation, the Apex Court held that the rules should be interpreted in consonance with the practice followed by the department for a long time. In fact, while arriving at such a conclusion, this Court had also the occasion to consider the earlier case of *N. Suresh Nathan* (supra).

In so far as non indication of qualifying marks in the notification is concerned, the same again cannot be fatal to selection. Fixation of Qualifying marks is primarily and principally meant to have a short list of the candidates. It is from out of that short list that the meritorious persons are selected. Thus, it is upto the cut off marks that selection would be made and this cut off mark is certainly higher than the qualifying marks.

In so far as relaxation of the standard, there is a general rule in respect of reserved candidates. Without compromising the efficiency and keeping in view the provisions of Art. 335 of the Constitution of India, such relaxation is given and as such, there is again no need to indicate them in the notification. Besides the applicant being from the general category should not have any anxiety on this count. The ld. counsel has also submitted that as a general rule the qualifying mark is adopted by the respondents organisation. The rule is applied uniformly without any discrimination.

III) Turning our attention to the aspect of following the principle of considering those senior in age in case of a tie in regard to marks obtained while selecting candidates, this is also a well established general practice prevalent across the entire span of central and state Govt depts. Therefore , contention of the applicant that deciding a tie in the absence of a recruitment rule backing the decision of the respondents is untenable since a practice followed unchallenged over the years in respondent environment substitutes the functions of a rule as has been elaborated in the Supreme Court observation cited supra.

IV) The applicant did point out that the 6<sup>th</sup> and the 7<sup>th</sup> respondents do not have the requisite educational qualifications but they were selected. Respondents have not clearly answered this averment by stating as to whether they have the requisite qualification and if so, requisite documents to substantiate the same. A general assertion that they have followed the rule will not do. Hence this aspect need to be verified by the 2<sup>nd</sup> respondent and an appropriate decision has to be taken.

V) Further respondent organisation being an instrumentality of the State they have to follow the orders of a court. Though the respondent organisation is an autonomous body with certain administrative leeway but it has to adhere to the decisions of the Court as was pointed by the Hon'ble Supreme Court in Anil Kumar Vs. Union of India and Ors [Civil Appeal No. 888 of 2019 arising out of SLP(C) 32073 of 2016]:

“CSIR by reason of its autonomy may have certain administrative privileges. No authority can, however, claim a privilege not to comply with a judgment of this Court. Once the law was enunciated in Dev Dutt's case (supra), all instrumentalities of the State were bound to follow the principles laid down by this Court. CSIR was no exception”

Being bound by the judgments of the Courts, respondents in regard to the aspect of providing reservation in promotion, have violated the law laid down by the Hon'ble Supreme Court in M.Nagraj v UOI (2006) 8 SCC 212, K. Manorama v U.O.I (2006) 2 SCC (L&S) 803, Suraj Bhan Meena v State of Rajasthan (2011) 1 SCC 467, U.P. Power Corporation Ltd vs Rajesh Kumar (2012) 7 SCC 1, Salauddin Ahmed V Samta Andolan (2012) 10 SCC 252, State of Rajasthan v Bajrang Lal Sharma (2012) 10 SCC 255 and Urban Improvement Trust, Bikaner vs Mohan Lal (2010) 1 SCC 512. The preconditions laid down in Nagraj case read with the change in Indra Sawhney case have to be complied with before ordering reservation in promotion. Nevertheless, as recently as on 15-04-2019, Hon'ble Supreme Court in SLP (C) No.30621/2011 & batch, has held that status quo be maintained in respect of reservation on promotion till further orders.

VI) The SC/ST employees' promotion effected as per the notification has to be necessarily reviewed by the respondents based on the outcome in SLP (C) No.30621/2011 & batch. Till that time status quo has to be maintained. Fresh promotions based on the concept of reservation in promotion can be undertaken by the respondents in any cadre, only after the issue is decided by the Hon'ble Supreme Court in the SLP referred to. In the meanwhile, if any vacant posts are to be manned for administrative reasons, in-charge arrangements which do not qualify for any benefits, can be made, as observed by Hon'ble High Court of Judicature at Hyderabad in a similar matter in WP No. 39158/2013 & batch, pronounced on 29.4.2015.

VII) Reverting to the case of applicant, she has obtained the cut off mark of 91 marks. As per information given by the Respondents under RTI on 12.9.2013, 6 of those who have been promoted as Vice Principals have not

joined and as on 1.8.2013 there were 12 vacancies *per se* in the grade of Vice Principal. After the selection was completed on 12.4.2013 there were thus 18 vacancies available in the grade of Vice Principal. It is not explained in the reply statement as to why the applicant was not considered to be promoted as Vice Principal even when vacancies were available. More so, when she got the cut off marks required and being the senior most in the feeder cadre. This Tribunal has also directed the respondents to keep one post vacant vide interim order dt 20.12.2013. The tie having been decided in favour of the 4<sup>th</sup> respondent the applicant could have been adjusted against any of the 18 vacancies said to be available as per reply of respondents to an RTI query.

VIII) Therefore based on the aforesaid facts the applicant has made out a case which succeeds. Hence the respondents are directed to consider as under:

- i) To promote the applicant w.e.f 16.4.2013 as Vice Principal against notification dated 10.8.2011 on a notional basis in the post kept vacant as per the interim order of this Tribunal on 20.12.2013 with consequential benefits thereof.
- ii) Pay and allowances of the promoted post to be paid from the date of taking over charge. No back wages need to be paid.
- iii) Selection of the 6<sup>th</sup> and 7<sup>th</sup> respondents need to be verified by the 2<sup>nd</sup> respondent and an appropriate decision be taken based on extant rules prevalent in the respondents organisation
- iv) Respondents to review the promotion of SC/ST employees against the notification dated 10.8.2011 based on the outcome of SLP (C) No.30621/2011 & batch.

- v) Time granted to implement the judgment is 3 months from the date of receipt of this order in regard to directions at (i), (ii) and (iii) above.
- vi) With the above directions, the OA is allowed.
- vii) No order as to costs.

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)**  
**MEMBER (JUDL.)**

Dated, the 26<sup>TH</sup> day of April, 2019

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