

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1435/2016

Reserved on 13.03.2019
Pronounced on 20.03.2019

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)**

Gajendra Kumar, Aged-42 years,(Appointment)
S/o Sh. Roormal Yadav,
R/o JNV Campus, Karira (Kanina),
Distt. Mohindergarh (Haryana).

... Applicant

(By Advocate: Mr. Ajesh Luthra)

VERSUS

1. Kendriya Vidyalaya Sangathan,
Through its' Commissioner,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi.
2. Sh. Om Prakash
Roll No. 411030575
Through the Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi.
3. Sh. Pravez Hussain,
Roll No. 411040236
Through the Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi.
4. Sh. V.Kalyanaraman,
Roll No. 411030682
Through the Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg, New Delhi. Respondents

(By Advocate: Mr. S.Rajappa for R-1 and Mr. L.R.Khatana
for R-2 and 3)

ORDER**Hon'ble Mr. S.N.Terdal, Member (J):**

We have heard Mr.Ajesh Luthra, counsel for applicant and Mr. S.Rajappa and Mr. L.R.Khatana, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- "(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the select list dated 23.12.2015 (Annex.A/1) only in respect of private respondents and consequently pass an order directing the respondents to adjust Sh. Rajesh Kumar, Sh. Roopinder Singh and Sh. Anil Yadav three OBC candidates against the unreserved posts and consequently pass an order directing the respondents to consider and to include the name of three next available OBC candidates including the applicant against the resultant vacancy of OB Category with all consequential benefits including appointment and fixation of seniority, pay etc. from the date of appointment of similarly situated persons.
- (ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.

3. The relevant facts of the case are that in response to the advertisement no. 09 of 2015 issued by the respondent-Kendriya Vidyalaya Sangathan, New Delhi for the recruitment to the post of Principal for the years 2014-2015 and 2015-2016, the applicant being eligible applied in the OBC category on 20.12.2014. The applicant participated in the written test as well as interview and secured 64.50 marks and was placed at serial no.113 in the merit list. The respondents issued cut off marks before calling for interview on the basis of marks obtained in the written test in part-II and part-III of the examination, as per Annexure R-1. The counsel for the applicant vehemently and strenuously contended that three candidates, namely, Rajesh Kumar,

Rupinder Singh and Shri Anil Yadav who had applied under OBC category should have been considered under the general category and in case they were considered under the general category in that event the cut off marks for OBC category would have gone down and in that event he had every chance of getting into merit list in the OBC category and in support of his contention, the counsel for the applicant relied upon the judgment of Hon'ble Punjab and Haryana High Court in the case of **Paramveer Singh and Others Vs Punjab Public Service Commission** (CWP No. 1023/2011 and others). But, however, the said judgment of Punjab and Haryana High Court in the case of Paramveer Singh (supra) is based on the provisions of Punjab and Haryana Rules.

4. The respondents in their counter affidavit specifically stated that they have strictly followed the DoP&T OM of 01.07.1998 under which only such SC/ST/OBC candidates who are selected on the same standard as applicable to general candidates shall be adjusted against the general category and as the said three candidates were not selected on the same standards as applied to general candidates, they could not be considered in the general category. The counsel for the respondents further submitted that having participated in the selection process they are now estopped from challenging the said selection process. The relevant averments made in the counter affidavit are extracted below:-

"9. As regards paragraph 1 it is submitted that the final merit list of selected candidates has been prepared as per DoPT OM dated 01.07.1998 where it is clearly 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 qualifications, 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. In general category, candidates who had obtained 99 or more marks (as per Annexure R-1) in the written test was called for interview. All three candidates i.e. Sh. Rajesh Kumar, Sh. Roopinder Singh and Sh. Anil Yadav who were empanelled under OBC category have obtained less than 99 marks in the written test. As such their name could not be empanelled in UR category and were empanelled in their own category only. Hence the contention of the applicant in this regard is bereft of merit.

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13. As regards paragraph 4.5 it is submitted that the final merit list of selected candidates has been prepared as per DOPT OM dated 01.07.1998, where it is clearly 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 qualifications, 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.....
14. As regards paragraph 4.6 it is submitted that the names of Sh. Rajesh Kumar, Sh. Roopinder Singh and Shri Anil Yadav who were empanelled under OBC category have obtained less than 99 marks in the written test. While under general category, who were called for interview have obtained 99 or more marks (as per Annexure R-1)...."

In support of their contention, the respondents relied upon the law laid down by the Hon'ble Supreme Court in the case of **Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and Others** (2011) 1 SCC 150) and **Deepa E.V. Vs. Union of India and Others** (2017) 12 SCC 680).

5. In view of the facts and circumstances narrated above and in view of the respondents having followed the applicable OM of 01.07.1998 and in view of the law laid down by the Hon'ble Supreme Court referred to by the counsel for respondents, there is no ground for interfering with the selection process of the respondents. Also in view of the facts and circumstances narrated above and also in view of the reasonable and standard procedure enumerated in the OM of DoP&T dated 1.07.1998, having been followed, this OA OA is filed on frivolous grounds as such to discourage such frivolous litigation, this OA is dismissed with exemplary cost of Rs.30,000/- to be paid to the CAT Bar Association (Library) Fund.

6. Accordingly, OA is dismissed.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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