

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Judgment delivered on: May 27, 2015

% **1. W.P.(C) No. 2267/2005**

COMMISSIONER, NAVODAYA VIDYALAYA SAMITI Petitioner

Through: Mr. S. Rajappa, Dr. Puran Chand,
Advocates.

versus

D.C. VERMA & ORS.

.....Respondents

Through: Mr. Anil Srivastava, Advocate for
respondent No. 1 to 4.

AND

2. W.P.(C) No. 16486/2004

SH. S.B SHARMA Petitioner

Through: Mr. Galib Kabir, Advocate.

versus

D.C. VERMA & ORS.

.....Respondents

Through: Mr. S. Rajappa, Dr. Puran Chand,
Advocates for respondent No. 5 (NVS)

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The petitioners i.e. Commissioner, Navodaya Vidyalaya Samiti and Shri S. B. Sharma preferred two separate Writ Petitions i.e. WP (C) No. 2267/2005 and WP (C) No. 16486/2004 respectively under Articles 226 and 227 of the Constitution of India against the common order dated 19.08.2004 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 2287/2003.
2. The brief facts stated are that the petitioner i.e. Commissioner, Navodaya Vidyalaya Samiti, was having three streams of Section Officers i.e. 1) Section Officer, 2) Section Officer (Finance), and 3) Section Officer (Computer). The aforementioned three posts had identical pay scales i.e. the erstwhile Rs. 2000-3500 now revised to Rs. 6500-10500.
3. The petitioner in W.P. (C) No. 16486/2004 i.e. Sh. S.B. Sharma was recruited as Section Officer (Computer) as a direct recruit w.e.f. 17.06.1991. The post of Section Officer formed the feeder cadre for the post of Assistant Director (Administration) and Section Officer (Finance) formed the feeder cadre for the post of Assistant Director (Finance). However, the post of Section Officer (Computer) was to be filled by direct recruitment and there was no feeder cadre or promotional prospects for the said post of Section Officer (Computer). This created inequality amongst the three cadre posts i.e. 1) Section Officer, 2) Section Officer (Finance) and 3) Section Officer (Computer).

4. Consequently, a conscious decision was taken in the year 2002 whereby the post of Section Officer (Computer) was also merged with the Section Officers on the same analogy as was done in 1995, when the posts of Section Officer and Section Officer (Finance) were merged into a single cadre of Section Officers.
5. The petitioner, Sh. S.B. Sharma was appointed to the post of Section Officer (Computer) as a direct recruit on 17.06.1991 in the erstwhile pay-scale of Rs. 2000-3500, now revised to Rs. 6500-10000. Respondent No. 1 in the present Writ-Petition i.e. Sh. D.C. Verma became Section Officer on 09/04/1994, respondent No. 2, Sh. B.C. Panda became a Section Officer on 19.05.1999, respondent No. 3, Sh. Sandeep Dutta became Section Officer on 07.12.1995, and respondent No. 4, Sh. P. Chaudhuri became Section Officer on 17.08.1998 in the same pay-scale as that of the petitioner, Sh. S.B. Sharma, was drawing on 17.06.1991, apparently showing Sh. S.B. Sharma to be the senior most person.
6. Navodaya Vidyalaya Samiti, re-designated the post of Junior System Analyst as Section Officer w.e.f. 07.06.1991 (i.e. the date on which Recruitment Rules, 1991 came into force) vide order dated 22.03.2002 and in consequence to the order passed by the learned Tribunal in O.A. No. 973/2002, prepared the seniority list on 18.07.2003. Aggrieved from the said seniority list and re-designation of the post of Junior System Analyst as Section Officer, the respondents i.e. Sh. D.C.

Verma, Sh. B.C. Panda, Sh. Sandeep Dutta and Sh. P. Chaudhuri preferred to file an O.A. No. 2287/2003 before the learned Central Administrative Tribunal, Principal Bench, New Delhi and the learned Tribunal passed an impugned order by setting aside the order of Navodaya Vidyalaya Samiti dated 22.03.2002 and quashed the seniority list dated 18.07.2003, hence, giving rise to the present two separate Writ-Petitions from the common order.

7. The petitioner i.e. Commissioner, Navodaya Vidyalaya Samiti, has taken the plea in the Writ Petition No. 2267/2005 that the order of the learned Central Administrative Tribunal, Principal Bench, New Delhi erred in coming to conclusion in Para 13 of its judgment that no Order has been issued relaxing the rigour of the recruitment rules and in the absence of any relaxation, the plea of Respondents No. 1 to 4 i.e. Sh. D.C. Verma, Sh. B.C. Panda, Sh. Sandeep Dutta and Sh. P. Chaudhuri, would succeed, namely, that the merger of the cadre would be permissible, subject to the officer fulfilling the basic requirements, but if retrospective effect was to be given, the concerned person must be fulfilling the educational qualification. Further, the quashing of seniority list ipso-facto is wrong. Respondents No. 1 to 4, have no right to challenge the action of the petitioner i.e. Commissioner, Navodaya Vidyalaya Samiti which was taken at the highest levels after due deliberation and consultation.

8. We have heard the learned counsel of the parties. The learned counsel of the petitioner, Commissioner Navodaya Vidyalaya Samiti and petitioner, Sh. S B Sharma has drawn our attention towards the pleas raised in the petition that the impugned order dated 19.08.2004 is perverse, arbitrary, illegal and violative of the recruitment rules and seniority rules which resulted in miscarriage of justice and relied upon the judgments rendered in the cases titled as *S. P. Shivprasad Pipal vs. Union of India, (1998) 4 SCC 598* and *S.B. Mathur vs. Chief Justice of Delhi High Court, 1989 Supp (1) SCC 34*.
9. The learned counsel for the respondents, Mr. Anil Shrivastav has submitted that the petitioner i.e. Commissioner, Navodaya Vidyalaya Samiti, exceeded in his jurisdiction in supporting and promoting arbitrarily Sh. S.B. Sharma by ignoring the rightful cause of the respondents i.e. Sh. D.C. Verma, Sh. B.C. Panda, Sh. Sandeep Dutta, and Sh. P. Chaudhuri.
10. The learned counsel for the respondents has further drawn our attention to the fact that the learned Tribunal in its earlier order dated 11.02.2003 has set-aside the seniority list in O.A. No. 973/2002 and pointed out that the learned Tribunal was right in setting aside the seniority list.
11. The claim of the petitioner, Sh. S.B. Sharma, that he has been appointed by the Navodaya Vidyalaya Samiti, as Section Officer

(Computer) in the erstwhile pay scale of Rs. 2000-3500 w.e.f. 17.06.91 as a direct appointee is supported by his appointment letter.

In pursuance of the limited direction given in O.A. No. 973/2002, the petitioner i.e. Commissioner, Navodaya Vidyalaya Samiti, re-designated the post of Junior System Analyst as Section Officer (Computer) vide notification dated 22.03.2002 and prepared the seniority list dated 18.07.2003. The aforesaid appointment letter dated 14.06.1991, notification dated 22.03.2002, the seniority list dated 18.07.2003 and the promotion order dated 23.07.2003 are reproduced hereinunder:

*NAVODAYA VIDYALAYA SAMITI
Department of Education
Ministry of Human Resource Development*

F.No. 2-6/91-Admn.

Dated: 14.06.91

MEMORANDUM

Sub: Appointment for the post of Section Officer (Computer) in the Navodaya Vidyalaya Samiti in the pay scale of Rs. 2000-3500 – Offer of Appointment.

With reference to this application dated 21.03.91, Shri S.B. Sharma is hereby offered the post Section Officer (Computer) in the Navodaya Vidyalaya Samiti on purely temporary basis. The post carries the pay scale of Rs. 2000-3500 plus other usual allowances as admissible under the rules.

2. The terms and conditions of service will be governed in accordance with the prevailing rules and regulations of the Samiti.

3. He will be on probation for a period of two years. His regularisation in the Samiti will be considered only after competition of probation period successfully.

4. His present Headquarters will be at New Delhi. However, he can be posted anywhere in India at any time during his service in the Samiti.

5. In case Sh. S.B. Sharma is willing to accept the offer of appointment on the terms and conditions mentioned above, he is requested to report for duty immediately but not later than

29.06.91 failing which it will be presumed that he is not will to accept the offer and this offer will automatically stand cancelled.

s/d
Deputy Director (P&A)

NAVODAYA VIDYALAYA SAMITI
PF.No. S – 36/88-NVS (Admn.) Dated: 22.03.2002

NOTIFICATION

In supersession of this office order of even number dated 05.10.1995, the post of Junior System Analyst is hereby re-designated as Section Officer w.e.f. 07.06.1991.

The seniority of the incumbent will be fixed in the cadre of Section Officers as per rules. However, it will not affect the Section Officers who have already been promoted as Assistant Directors.

It issues with the approval of competent authority.

S/d
(V.K. Sharma)
DY. DIRECTOR (P&E)

NAVODAYA VIDYALAYA SAMITI
Indira Gandhi Stadium, I.P. Estate, New Delhi – 110002
Final Seniority List in the cadre of Section Officers borne on the strength of Navodaya Vidyalaya Samiti as on 31.12.2002

S.No.	Name S/Shri	Date of Birth	Category	Qualifications	Date of Regular Appointment to the grade	Remarks
1	A.K. SINGHAL	07.11.1949	Gen.	B.A.	01.05.91	Promoted as A.D.
2.	K.K. SHARMA	04.02.1955	Gen	B.Com, P.G. Diploma in Business Admn.	01.05. 91	Promoted as A.D.
3.	P.K. SHARMA	12.10.1956	Gen.	B.Com, B.Ed.	23.11.93	Promoted as A.D.
4	V. SUDEVAN	10.08.1944	Gen.	B.Com, B.Ed.	23.11. 93	Retired w.e.f. 31.07.2000
5.	KIRPALSINGH	15.07.40	Gen.	Matric	23.11. 93	Retired w.e.f. 31.07.2000
6	S.B. SHARMA	25.07.1965	Gen.	B.Com	17.06.91	
7.	D.C. VERMA	01.07.55	OBC	M.A.	09.05. 94	
8.	SAMUEL GEORGE	20.09.51	Gen.	M.A. (Eco)	28.07.95	
9.	S.K. MUND	10.04.61	Gen.	M.Com	26.12.95	
10.	SANDEEP DATTA	20.08.67	Gen.	B.Com, P.G. Diploma in Business Admn.	07.12.95	
11.	MADAN PAL	01.12.57	SC	B.Com, LL.B.	25.01.96	

12.	MATHEW THOMAS	11.07.61	Gen.	M.com	03.08.98	L.D.E. - 1997
13.	N.K. PAHWA	20.06.61	Gen.	B.Com	04.08.98	L.D.E. - 1997
14.	N.R. NAIDU	09.08.59	Gen.	M.Com	03.08.98	L.D.E. - 1997
15.	P. CHAUDHURI	04.01.57	Gen.	M.Com, B.Ed.	17.08.98	L.D.E. - 1997
16.	RAMJEET	30.04.61	SC	B.Com	05.08.98	
17.	S.C. BHATT	10.01.62	Gen.	M.Com	04.08.98	
18.	S.K. NAYAK	15.01.53	Gen.	B.Com, Part-I	31.07.98 (AN)	
19.	N. VIJAYAN	05.05.55	Gen.	M.Com	14.09.98	
20.	RAKESH KHANNA	30.06.63	Gen.	B.Com	04.08.98	
21.	S.S. MISHRA	02.02.42	Gen.	B.A., LL.B.	04.08.98	Retd w.e.f. 31.1.2002
22.	B.C. PANDA	10.04.59	Gen.	B.Com (Hons)	19.05.99	L.D.E. - 1998
23.	R.S. MEENA	10.09.64	ST	M.Com	04.04.2000	L.D.E. - 1999
24.	K. SUBHASH	15.05.62	Gen.	M.A., B.Ed., LLB	09.01.2002	L.D.E. - 2001
25.	SUBE SINGH SHARMA	07.04.58	Gen.	B.A.	06.02.2002	
26.	KAILASH MAHESHWARI	26.01.63	Gen.	M.Com, ICWA	08.02.2002	
27.	SHASHI SHARMA	30.03.51	Gen.	M.A. (Eco.)	07.02.2002	
28.	D. SATHYAN	26.05.61	Gen.	B.A., B.L.	17.10.2002	L.D.E. - 2002
29.	RAM SINGH	08.08.50	SC	B.A.	25.09.2002	L.D.E. - 2002

NAVODAYA VIDYALAYA SAMITI

F.No. 2 – 29/2001-NVS (Admn.) 23rd July, 2003

OFFICE ORDER

On the recommendation of the Departmental Promotion Committee, Sh. S.B. Sharma, Section Officer, NVS, HQrs. is promoted to the post of Assistant Director (Fin.) in the pay scale of Rs. 10000-325-15200/- and posted to NVS HQrs., New Delhi. The promotion will take effect from the date from which he takes over the charge of the post of Assistant Director.

Sh. S.B. Sharma will be on probation for a period of two years from the date of joining to the post of Assistant Director which can be extended at the discretion of the Competent Authority.

S/d

(M.S. KHANNA)

DEPUTY DIRECTOR (ADMN.)

12. The whole question hinges around whether the action of the petitioner, Commissioner, Navodaya Vidyalaya Samiti, of merging the post of Junior System Analyst with the post of Section Officer retrospectively i.e. w.e.f. 07.06.1991 is permissible under the law?

The answer is no.

13. The Navodaya Vidyalaya Samiti, which was registered in the year 1986, framed its first recruitment rules, in the year 1991. Before revising the rules i.e. prior to 1995, there were three stream of Section Officers i.e. Section Officer, Section Officer (Finance), and Section Officer (Computer). The petitioner, Sh. S.B. Sharma was appointed as Section Officer (Computer) as a direct appointee on fulfilling the required qualification for the said post in the year 1991 vide the appointment letter No.(F.No. 2-6/91-Admn.) dated 14.06.1991 (*Supra*) as per the Recruitment Rules, 1991, which came into force w.e.f 07.06.1991.
14. The three stream of Section Officers i.e. Section Officer, Section Officer (Finance) and Section Officer (Computer) remained functional till the new Recruitment Rules 1995, came into existence. In the year 1995, two cadres i.e. Section Officer and Section Officer (Finance) were merged into a single cadre of Section Officers and the post of Section Officer (Computer) was re-designated as Junior System Analyst, having no feeder cadre as the Junior System Analysts was a direct recruitment post. The post of Section Officer and Section Officer (Finance) were promotional

posts which were to be filled 50% by promotion from amongst all Assistant and Audit Assistant, with 6 years of regular service and 50% by limited departmental exam.

15. As per the Recruitment Rules, 1991, Section Officer was the feeder cadre for the post of Assistant Director (Admn.) and Section Officer (Finance) was the feeder cadre for the post of Assistant Director (Finance) whereas Section Officer (Computer) did not have any promotional avenues.

The petitioner, Navodaya Vidyalaya Samiti, registered itself in the year 1986 and notified its Recruitment Rules, 1991, vide notification dated 07.06.1991 and thereafter, started facing administrative difficulties due to lack of experience and found itself in a waterloo, in its operation, as the rules framed did not facilitate smooth functioning of the institution. It is here, that the Navodaya Vidyalaya Samiti, found that the institution is facing rigidity at the cost of administrative efficiency rather than smooth functioning of the three Section Officers i.e. Section Officer, Section Officer (Finance) and Section Officer (Computer). Consequently, the Navodaya Vidyalaya Samiti, took the first step to merge the cadre of Section Officer and Section Officer (Finance) into a single cadre of Section Officers in the year 1995, and accordingly, the rules were amended in the year 1995.

16. However, the post of Section Officer (Computer) was re-designated as Junior System Analyst which still did not have any promotional avenues.

17. It is not out of place to mention here that in the year 1995, when the Recruitment Rules of 1991 were amended, at that point of time, the petitioner, Sh. S.B. Sharma was having only four years experience on the post of Section Officer (Computer). As per the Recruitment Rules, 1991, the experience of six years of regular service as Section Officer was required for the promotion to the post of Assistant Director and the petitioner, Sh. S.B. Sharma was ineligible for promotion to the post of Assistant Director. Consequently, it went unnoticed by the Navodaya Vidyalaya Samiti that there were no promotional avenues for the post of Section Officer (Computer).

It is, because of this reason that the anomaly between the Section Officer and Section Officer (Computer) remained unsolved in the Departmental structure when the post of Section Officer (Computer) was re-designated as Junior System Analyst in the year 1995, neither did he raise any objection regarding the merger of the two posts i.e. Section Officer and Section Officer (Finance) into a single cadre of Section Officers nor for re-designating the post of Section Officer (Computer) to Junior System Analyst.

18. Consequently, the petitioner, Sh. S B Sharma remained on the same post on which he was initially appointed in the year 1991 as a direct appointee. After the amendment in the year 1995, there remained two cadres:

- i. Section Officer which was a promotional post and the feeder cadre for promotion to the post of Assistant Director (Admn./Fin.)
; and
- ii. Junior System Analyst which was an isolated post having no feeder cadre and no promotional avenue.

19. The respondents i.e. Respondent No. 1, Sh. D.C. Verma became Section Officer on 09.05.1994, Respondent No. 2, Sh. B.C. Panda became Section Officer on 19.05.1999, Respondent No. 3, Sh. Sandeep Dutta became Section Officer on 07.12.1995 and Respondent No. 4, Sh. P. Chaudhuri became Section Officer on 17.08.1998.

20. The Navodaya Vidyalaya Samiti, after looking into the representations made by the petitioner, Sh. S.B. Sharma, realized that institutional structure required further restructuring to remove the prevailing anomaly and therefore, merged the post of Junior System Analyst with Section Officers to promote Junior System Analyst to the post of Assistant Director for the first time ignoring the promotional right which already existed/accrued in favour of the respondents i.e. Sh. D.C. Verma, Sh. B.C. Panda, Sh. Sanjeev Dutta and Sh. P. Chaudhuri.

Consequently, the post of Junior System Analyst was merged into a single cadre of Section Officers vide order dated 17.05.2002 which is reproduced as under:

NAVODAYA VIDYALAYA SAMITI
NEW DELHI

The proposal to merge the cadre of Junior System Analyst (JSA) with that of Section Officers w.e.f. 7.6.1991 and to consider it a feeder cadre for promotion as Asstt. Director (Admn./Fin.) after completion of 8 years of service has been approved by the Hon'ble HRD Minister/Chairman, NVS vide order passed at np/96 of F.No. S-36/88-NVS (Admn.). It has a bearing on the provisions of existing Recruitment Rules notified vide No. F. 2-29/94-NVS (Admn.) dated 22nd June '95. A photocopy of the relevant note sheet is placed below for your kind perusal (Flag 'A').

Article-34 of Memorandum of Association of NVS provides as under:-

"Any urgent business which it may be necessary for the Committee to perform may be carried out by circulation of the draft resolution among all its members, and any resolution so circulated and approved by the majority of the members by affixing their signature thereon shall be as effectual and binding as if such a resolution had been passed at a meeting of the Committee: provided that at least (sic) five members of the Committee had recorded their views on the resolution."

As per the rules any proposal approved by the Chairman, NVS is to be got rectified by the Executive Committee. Since the meeting of the Executive Committee may take to convene, it is, therefore, proposed that as per the Article -34 of the Memorandum of Association of NVS, the following resolution is placed before the members of the Executive Committee by circulation:-

"It is resolved and approved that the post of Junior System Analyst is merged with the cadre of Section Officers w.e.f. 7.6.1991, notification date of first recruitment rules of the Samiti, and the post of Junior System Analyst is now be a feeder cadre for the post of Asstt. Director (Admn./Fin), after completion of 8 years of service." (Emphasis Supplied)

Submitted for approval by circulation, please.

s/d
(S.P. Gaur)
Commissioner, NVS

21. The merging of the post of Junior System Analyst with Section Officers into a single cadre of Section Officers with retrospective effect can only be permitted where it does not discriminate or violate a constitutional right or a vested right. Reliance may be placed on the judgment rendered by the Hon'ble Supreme Court in the case titled as **K. Narayanan vs. State of Karnataka, 1994 Supp (1) SCC 44**, where the Apex Court made the following observation:

"7. Rules operate prospectively. Retrospectively is an exception. Even when the statute permits framing of rules with retrospective effect, the exercise of power must not operate discriminately or in violation of any constitutional right so as to affect vested right."

22. It is an admitted case of the petitioners i.e. Navodaya Vidyalaya Samiti and Sh. S.B. Sharma that respondents i.e. Respondent No. 1, Sh. D.C. Verma became Section Officer on 09.05.1994, Respondent No. 2, Sh. B.C. Panda became Section Officer on 19.05.1999, Respondent No. 3, Sh. Sandeep Dutta became Section Officer on 07.12.1995 and Respondent No. 4, Sh. P. Chaudhuri became Section Officer on 17.08.1998. All these aforesaid respondents had a vested promotional right to the post of Assistant Director which had existed/accrued in their favour.

23. The plea of cadre-restructuring put forth by the petitioner, Commissioner, Navodaya Vidyalaya Samiti, would have been understandable, only if the same had been done prospectively. In the instant case, the Recruitment Rules were amended with retrospective effect i.e. w.e.f. 07.06.1991 on which date the Recruitment Rules, 1991

came into force. Petitioner, S.B. Sharma was appointed under the Recruitment Rules, 1991. In the year 1991, the post of Section Officer (Computer) was a direct recruitment post and S.B. Sharma knowing fully well that the post of Section Officer (Computer) is an isolated post having no promotion prospects consented to join the same under the said rules. When the petitioner, Commissioner, Navodaya Vidyalaya Samiti amended the recruitment rules of 1991 in the year 1995, Sh. S.B. Sharma, did not make any representation against the said amendment and did not even file any application against the Rules amended in the year 1995.

24. The petitioner, Commissioner Navodaya Vidyalaya Samiti, subsequently, went ahead with further amendment under the garb of restructuring and gave benefit to the petitioner, Sh. S.B. Sharma by re-designating the post of Junior System Analyst as Section Officer with retrospective effect is not permissible under the rules as the act of the petitioner, Commissioner Navodaya Vidyalaya Samiti is violative of the right of promotion accrued in favour of the respondents i.e. Sh. D.C. Verma, Sh. B.C. Panda, Sh. Sanjeev Dutta and Sh. P. Chaudhuri.

25. Consequently, there will not be a common seniority between the petitioner and the respondents as they are having different cadres in the Navodaya Vidyalaya Samiti.

26. As discussed above, we uphold the findings given by the learned Central Administrative Tribunal in O.A. No. 2287/2003 dated 19.08.2004.

Consequently, both the Writ Petitions i.e. WP (C) No. 2267/2005 and WP (C) No. 16486/2004 are dismissed.

No order as to cost. One copy of this judgment be placed on the W.P. (C) File No. 16486/2004.

**I.S.MEHTA,
(JUDGE)**

**KAILASH GAMBHIR,
(JUDGE)**

MAY 27, 2015

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