

\$~

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

Reserved on: 31st October, 2019

Decided on: 8th November 2019

+ **W.P.(C) 4590/2016**

SANDEEP KUMAR

..... Petitioner

Through: Mr. L. R. Khatana, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vaibhav Pratap Singh, Advocate
for Mr.R.V. Sinha, Advocate for R-1.
Mr.M. K. Bhardwaj and Mr.Shubham
Gairola, Advocates for R-5.
Mr S. Rajappa, Advocate for R-2 to
R-4.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. The challenge in this petition is to an order dated 4th February, 2016 passed by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi allowing OA No.1644/2013 filed by Respondent No.5 and quashing the decision of the Navodaya Vidyalaya Samiti (NVS) (represented by Respondent Nos. 2 and 3 herein) to appoint the Petitioner as Lab Attendant at the Jawahar Navodaya Vidyalaya (JNV), Tarn Taran and directing the Principal JNV at Tarn Taran i.e. Respondent No.4 herein to initiate a fresh selection. The NVS was directed to take an appropriate decision on the merit

list by granting Respondent No.5 age relaxation to the extent of his working as Lab Attendant on part time basis at JNV, Bhavnagar and on contract basis at JNV Tarn Taran and also excluding the marks awarded by the Selection Committee to all the candidates in the interview.

2. Notice was issued in the petition on 3rd August, 2016. As far as the application for stay was concerned, on 4th December, 2017 on the basis of a statement made on behalf of the Petitioner that he was not pressing any interim relief, the said application was disposed of. In the order dated 22nd November, 2018 the Court noted that the Respondent Nos.2 to 4 were supporting the Petitioner.

3. On 28th November, 2018 the following order was passed:

“During the course of hearing, it has transpired that the respondent NVS sought to take a decision as reflected in the letter dated 18.11.2010 to start the recruitment process afresh in respect of the post of Lab Attendant. However, it is not clear whether the process in which respondent No.5 was shown at Serial No.1 on the merit list was formally scrapped under intimation to all concerned.

According to the petitioner the fresh process was started in January, 2011. The document by which the fresh process was started and applications were called from the Employment Exchange and from the departmental candidates is also not on record.

We direct the NVS to file a short affidavit on these aspects within 10 days. The original record shall also be kept available.

List on 10.12.2018.

Dasti.”

4. Pursuant thereto, a short affidavit has been filed by the NVS explaining that the process of recruitment of Lab Attendant in JNV, Tarn Taran in Punjab was initiated by the Principal by issuing a notification dated 19th October, 2009 by sending letters to the Local Employment Exchange and to 44 different JNVs situated in Punjab, Himachal Pradesh and Jammu and Kashmir, which fell within the Chandigarh region. A list of the Local Employment Exchange dated 22nd October, 2009 sponsoring 20 candidates, 9 by JNVs and 3 from District Tarn Taran was received. In the trade test held on 20th November, 2009 33 candidates appeared. 8 of them passed the trade test, and this included the Petitioner and Respondent No.5. Respondent No.5 was placed at Sl.No.1 in the merit list and the Petitioner at Sl.No.3.

5. When the proposal for appointment of Respondent No.5 as Lab Attendant was scrutinised at the Regional Office, two queries were raised:

- i) What was the cut off date for eligibility of age? and
- ii) On what ground relaxation of age for 3 months had been given to Respondent No.5?

6. On 22nd April, 2010 the Principal JNV, Tarn Taran forwarded to the Deputy Commissioner, NVS Regional Office, Chandigarh a fresh merit list. This time Respondent No.5 was excluded and the Petitioner was shown selected.

7. On 18th November, 2010 the Regional Office returned the proposal to start the recruitment process afresh on the following grounds:

“(i) The age relaxation given in respect of Sh. Mahesh Partap Meena is not in conformity with the Recruitment Rules.

(ii) The recasting of merit list for the second time is not acceptable, as it is a unilateral decision of one of the members of the Appointment Sub-Committee, there is no consensus/unanimous decision of the Appointment Sub-committee of the Vidyalaya”

8. Thereafter, on 23rd November, 2010, again applications were invited from the JNVs under the Chandigarh Region. 20 candidates were sponsored by the Employment Exchange, 9 from the JNV, 3 from the District. A trade test was conducted on 7th January, 2011 in which 19 candidates reported. Only 3 candidates were declared as having passed. The Petitioner was placed at Sl.No.1 in the merit list.

9. The proposal of the appointment committee for appointment of a Lab Attendant on regular basis was sent to the Regional Office, Chandigarh on 15th January, 2011. The Regional Office by a letter dated 11th February, 2011 conveyed its approval for the appointment of the Petitioner for the regular post of Lab Attendant.

10. The policy regarding appointment of various non-teaching posts in the JNVs was crystallised by an order dated 29th March, 2004 issued by the NVS. Admittedly, the post of Lab Attendant was governed by the decision as stated in Sl. No. 4 of the said order, which reads as under:

4.	Regularization of all those LDCs/Store Keepers and	Such all those LDCs/Store Keepers, Lab Attendants and other Group
----	--	---

	Group 'D' employees who were appointed on contract basis and in whose cases the posts were also notified on contract basis	'D' employees who were appointed on contract basis and in whose cases the posts were also notified on contract basis may be allowed to complete along with other eligible candidates whose names are sponsored by the employment exchange for appointment to the respective posts. Such candidates will be allowed relaxation in age and weightage for experience to the extent of length of service rendered in the Samiti. The weightage for experience will be the same as notified for regular appointment vide Samiti's Instructions dated 7.5.2003 referred to above. The cases of employees of above category appointed on daily wages, part-time or ad-hoc basis against regular sanctioned posts may also be processed accordingly.
--	--	--

11. This was again communicated by the NVSs to the Regional Office by a letter dated 20th January, 2005. Relevant to the issue of Lab Attendants, it was stated as under:

6	Whether Lab Attendant is to be appointed by Vidyalaya or by Regional Office?	Lab Attendant is a group 'D' post for which appointment is made at Vidyalaya level. Regional Office will, however, ensure due compliance with the provisions of Rules and Samiti's Instructions in the matter of appointment to the post of Lab Attendant.
7	Clarification in respect of the criteria and the mode of trade	Keeping in view the job requirement of Lab Attendant and

	test to be conducted in respect of Lab Attendant and Electrician cum Plumber at Govt. ITI or Polytechnic as the case may be, provided.	Electrician-cum-Plumber, appropriate trade test to test their skills may be conducted at ITI/Polytechnic.
8	Whether such group of employees appointed on daily wages, part time against regular sanctioned posts may be allowed relaxation in age and weightage for experience to the extent of length of service rendered in Samiti.	It is clearly provided in the Samiti Instructions dated 29.3.2004 that LDCs and group 'D' employees appointed on daily wages/part time basis may be allowed relaxation in age and weightage for experience to the extent of services rendered in the Samiti in accordance with the criteria circulated vide Samiti's instructions dated 7.5.2003.

12. The admitted position is that the date of birth of the Respondent No.5 was 18th July, 1979. The cut off date was 23rd October, 2009. The maximum age was 30 years. Consequently, as on 23rd October, 2009 Respondent No.5 was overage by over three months.

13. The case of Respondent No.5 is that he should have been granted age relaxation corresponding to the service rendered by him as Lab Attendant on contractual basis. According to the Petitioner, the phrase in the order dated 29th March, 2004 that "such candidate would be allowed relaxation in age, and weightage for experience to the extent of length of service rendered in the Samiti" has to be understood as giving weightage to the service rendered as far as "experience is concerned" and not for the purposes of relaxation of age.

14. The CAT took note of the work performed by Respondent No.5 on a

part-time basis at JNV Bhavnagar between 20th December, 2008 and 28th February 2009, followed by his working on contract basis at JNV Tarn Taran from 17th August, 2009 to 31st May, 2010, excluding the period of absences from such duty for 10 days in September, 2009, 20 days in January, 2010 and again for 80 days between 1st March and 21st May, 2010. The CAT interpreted the order dated 29th March, 2004 and letter dated 20th January, 2005 as entitling Respondent No.5 to age relaxation “for the period of his working” as Lab Attendant on a part-time and contract basis.

15. If one goes by a strict interpretation of the order dated 29th March, 2004 the weightage for experience is given for “length of service rendered in the Samiti”. In other words, where a particular post requires a minimum period of past experience, such service will be counted for that purpose. A plain understanding of the above Order is that the length of the service rendered in the Samiti in a contractual capacity is to be counted towards experience. It cannot be counted towards ‘age relaxation’.

16. Even if one were to go by a liberal interpretation that such previous service will also count for age relaxation then it only talks of the appointment on ‘contract basis’. The fact of the matter is that even when Respondent No.5 was appointed on contract basis he had crossed the maximum age. The dates of his contractual appointment at Tarn Taran were 17th August, 2009 to 31st May, 2010 by which time he was already over 30 years. Even if the period when he worked as Lab Attendant on part time basis at JNV Bhavnagar between 20th December, 2008 to 28th February, 2009, which is approximately two months is counted for the purpose of age

relaxation, Respondent No.5 would still be overage. In terms of the fresh advertisement also, with there being a fresh cut off date, Respondent No.5 would be overage.

17. In that view of the matter, the impugned order dated 4th February, 2016 of the CAT is hereby set aside. The consequential orders will now be issued by the Respondent Nos. 2 to 4 within eight weeks from today in accordance with law, restoring the appointment of the Petitioner as Lab Attendant in terms of the orders which were challenged before the CAT.

18. While the Petitioner would not be entitled to arrears of wages for the period he was out of service, but for all other purposes the gap between the date of his ceasing to be as Lab Attendant, pursuant to the impugned order of the CAT, and the date of his reinstatement, pursuant to the present order, will be treated as period spent on duty.

19. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 08, 2019
mw