

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

21

O.A. NO.1084 of 2004

New Delhi, this the 3rd day of March, 2005

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.K. MALHOTRA, MEMBER (A)**

Ms. Piya Thakur,
Education Officer,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
New Delhi-16.

....Applicant.

(By Advocate : Shri S.K. Sinha)

VERSUS

1. Union of India
through the Secretary,
Ministry of Home Resource Development,
Govt. of India,
New Delhi.

2. The Commissioner
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi0110016.

3. Additional Commissioner
(Personnel)
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi0110016.

....Respondents.

(By Advocate : Shri S. Rajappa)

O R D E R

SHRI SHANKER RAJU, MEMBER (J) :

Applicant impugns Departmental Promotion Committee meetings held in June, 2002 and February, 2004 and her non-promotion to the post of Assistant Commissioner, Kendriya Vidyalaya Sangathan (hereinafter referred to as 'KVS') with a further direction to promote the applicant by holding a review DPC and to quash any grading given below the benchmark .

2. Applicant was directly recruited to the post of Education Officer on selection on 29.11.1995. Her name is in the select list at Serial No.4 whereas name of one Dr. V. Vijay Lakshmi was at Serial No.5. As Dr. V. Vijay Lakshmi was promoted in 2002 and further juniors were promoted in February, 2004, applicant has made a representation which has not been responded to by the respondents giving rise to the present OA.

3. Learned counsel of the applicant Shri S.K. Sinha by referring to provisions of Article 55 of the Education Code of Kendriya Vidyalaya Sangathan to contend that in a matter of selection to Group 'A' post, the assessment of officers has to be fair, just and non-discriminatory while the DPC shall make its own assessment as per Chapter IX Article 86 of the Code ibid. Clause X of the Code ibid provides that it shall be ensured that no employee can be adversely affected by prejudicial reports recorded without proper consideration.

4. In the above backdrop, it is contended that whereas benchmark is 'very good' any grading given in the ACR of the applicant below the benchmark is to be necessarily communicated with an opportunity to improve upon. As this has not been done, the same has to be ignored for the purpose of promotion.

5. Learned counsel has relied upon the decision of the Apex Court in the case of Divisional Personal Officer, SR Vs. T.R. Chellappan, 1976 (3) SCC 190, to contend that consideration of all aspects, following decisions have been relied upon to state that grading below benchmark is prejudicial and is to be communicated - J.S. Garg Vs. UOI, 2002 (VIII) AD (Delhi) 809; and U.P. Jal Nigam Vs. Prabhat Chandra Jain, 1996 (2) SCC 363. It is also contended that as per Education Code and on adverse grading notice for improving is a condition precedent as held by the Apex Court in M.A.



Raja Shekhar Vs. State of Karnataka, JT 1996 (7) SC 708 as well as State of U.P. Vs. Yamuna Shankar Mishra, 1997 (4) SCC 7.

6. On the other hand respondents' counsel Shri S. Rajappa vehemently opposed the contentions and produced the records of two DPC meetings held on 31.1.2002 and 1.3.2004 with folder of confidential reports of the applicant. According to Shri Rajappa, in the matter of promotion to the post of Assistant Commissioner prescribed Benchmark is 'very good'. As the Departmental Promotion Committees have considered the case of the applicant. As the applicant has not been able to secure the benchmark, persons having higher benchmark in the same panel have been promoted, which does not suffer from any legal infirmity. Shri Rajappa, further stated that in the ACR even if the comments are not written by the reporting officer, as per CSOM dated 20.5.1972 reviewing officer is competent to exercise independent judgment on the remarks which would be justifiable. It is also stated that no bias has been alleged against either reporting officer or reviewing officer. Having been considered in accordance with law, this Tribunal is precluded as to sit over as an appellate authority to assess the DPCs recommendations.

7. We have considered the rival contentions of the parties and perused the material available on record.

8. Following are the year-wise ACRs grading given to the applicant:-

Year	Grading by reporting officer	Grading by reviewing officer
1995-1996	Good	Good
1996-1997	No report	No report
1997-1998	Good	Good
1998-1999	No report	Good
1999-2000	No grading	Good
2000-2001	No grading	Good
2001-2002	Outstanding	Very Good
2002-2003	Outstanding	Outstanding



9. The contention of the applicant's counsel that Chapter IX of ACR in KVS Code, which provides that no employee is adversely affected by prejudicial reports would mean that it should not be done without proper consideration. The paramount and legitimate consideration of that proposition shows that while recording ACR, one should not be adversely affected, but, in an event, once his ACR is treated as adverse, the same is to be communicated. This would not apply to a situation where the grading of 'Good' given by reporting officer and also affirmed by the reviewing officer, it does not mean that it has adversely affected the employee concerned.

10. As regards J.S. Garg's case (supra) is concerned, Rule 9 of the CPWD Manual clearly envisages as an obligation to communicate ACR when there is a fall in standard. In absence of any such provision in Education Code of KVS, the decision is distinguishable.

11. The Full Bench of this Tribunal in A.K. Dawar vs. Union of India in OA No.555/2001 decided on 16.4.2004 on the basis of the decisions of Full Bench of the Hon'ble High Court of Delhi and Hon'ble High Court of Punjab and Haryana, answered the reference as under :-

"If there is no downgrading of the concerned person in the Annual Confidential Report, in that event, the grading of 'Good' given to the Government employee irrespective of the benchmark for the next promotion being 'Very Good' need not be communicated to be treated as adverse".

12. The aforesaid decision has been considered in OA No.1648/2003 in the case of Shri Prasant Gupta vs. Union of India and Others decided on 21.9.2004 wherein the following observations have been made:-

"48. Accordingly this decision of the High Court is mainly based on an influence of Rule 9 where fall in standard are to be communicated. Accordingly, the aforesaid does not lay down a general proposition of law and from the reading of the entire order the ratio decidendi discernible cannot be that the down grading or fall in standard is to be communicated. With this we must



emphasize on the concept of down grading as explained earlier down grading is reduction in rank or fall in standard. Whether this down grading is steep or not to take the shape of an adverse remark is the bone of contention.

49. The High Court at Mumbai Bench in Vinay Gupta's case (*supra*) has dealt with a situation where in the year 1994-95 though the reporting officer has given him the grading of 'very good' the reviewing officer changed it to 'good' and in the next two years applicant was assessed as 'good' but this entry was not communicated. In our considered view in Binoy Gupta's case the proposition laid down is on the basis that the reviewing officer in a particular year changed the grading from 'very good' to 'good'. This brings us to another controversy as if in the ACR of a particular year there is one step down grading would it not be mutatis mutandis applied on the same standard to down grading of ACR from year to year.

50. The aforesaid has to be answered with reference to aduerseness in the remark."

13. If one has regard to the above, the law shall not be construed to be interpreted in a manner that if any grading given in the ACR falls short of benchmark, the same should be a down-fall in the standard and as such the same is to be necessarily communicated. From the perusal of the ACRs of the applicant, we find that consistently, she had been given 'Good' and subsequently as 'Very Good' and 'Outstanding', this would not attract the ratio decidendi of **J.S. Garg's decision** (*supra*), as the only remarks, which are to be communicated when there is a steep fall in the standard. Previous grading are 'Good' without preceded by any higher grading, it cannot be held that the applicant has been down-graded in the ACR. Accordingly, the decisions cited by the applicant (*supra*) would not apply to the facts and circumstances of the present case, as the applicant has been considered in two occasions and has not been found fit and more meritorious candidates with higher grading, who have satisfied the benchmark, have been promoted. The Tribunal would not act as an appellate authority to assess the conclusion of the DPCs to substantiate its own view. The DPCs have

been conducted in accordance with rules without any malafide. We do not find any illegality in the holding of DPCs.

14. In the result, for the foregoing reasons, the present OA, being bereft of any merit, is dismissed. No costs.

Malhotra
(S.K. MALHOTRA)

MEMBER (A)

S. Raju
(SHANKER RAJU)

MEMBER (J)

3/3/2005

/ravi/