

(Reserved on 08.03.2013)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 14 day of March, 2013

ORIGINAL APPLICATION NO. 34 of 2006

**HON'BLE MS. BIDISHA BANERJEE, MEMBER- J
HON'BLE MRS. RAJWANT SANDHU, MEMBER-A**

Prem Chand Nishad, aged about 45 years, Son of Shri Chhatthoo Ram, Resident of Miyanpur, Post Office – Jaunpur Kutchery, District – Jaunpur. Presently working on the post of Upper Division Clerk (U.D.C for short), at Jawahar Navodaya Vidyalaya, Jaunpur.

.....Applicant.

V E R S U S

1. The Union of India through the Secretary, Ministry of Human Resources Development, Department of Education, Government of India, New Delhi.
2. The Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi.
3. The Deputy Commissioner, Navodaya Vidyalaya Samiti, Lucknow Region, Regional Office, Lekhraj Panna, IIIrd Floor, Sector-2, Vikas Nagar, Lucknow – 226022- U.P.
4. The Principal, Jawahar Navodaya Vidyalaya, Madiyahun, Jaunpur – U.P.

..... Respondents

Present for the Applicant: Sri Shyamal Narain
Present for the Respondents: Sri N.P. Singh

O R D E R

By Hon'ble Ms. Bidisha Banerjee, JM

This Original Application is filed seeking the following reliefs: -

“8.(i).to quash and set aside the impugned communication / order dated 8/21.12.2004,



received by the applicant on 3.1.2005 (Annexure No. 1 to Compilation No. I);

- (ii). to issue a suitable order or direction commanding the Respondents to consider the applicant's claim for promotion to the post of Office Superintendent by convening a Review D.P.C, if necessary, and without relying upon any adverse entry or grading for the relevant period which has not been communicated to the applicant;
- (iii). to issue a suitable order or direction commanding the respondents to promote the applicant to the post of Office Superintendent with effect from the date his next junior in service was so promoted, namely, 15.07.2004, alongwith all consequential benefits including seniority and payment of arrears of salary and other emoluments etc;
- (iv). to issue such other and further orders/ directions as the applicant might be found entitled to in the facts and circumstances of the case."

2. The order impugned as Annexure A-1 reads as follows: -

"To

Shri Premchand Nishad
UDC

Jawahar Navodaya Vidyalaya,
Jaunpur.

Sub: Appeal against super session for promotion to
the post of Office Superintendent.



Sir,

I am to refer your representation dated 13.10.2004 on the subject cited above, and to say that your case for promotion to the post of OS was placed before DPC. The DPC has not recommended your case for promotion to the post of OS as you could not attain the desired bench mark as prescribed for promotion to the post of OS.

Yours faithfully

Sd/

(Dr. P.S. Salaria)

Deputy Director

3. It is contended by the respondents that the desired bench mark is said to be "Good" and the applicant's candidature was within the zone of consideration and the Departmental Promotion Committee duly considered the records and ACR of the applicant for the year 1998-99 to 2002-03 and then in consonance with the instructions contained in O.M dated 08.02.2002, assessed the suitability of the officers based on the prescribed bench mark "Good" and then graded the employee as 'Fit' and 'Unfit'. The recommendation of the Departmental Promotion Committee after assessment and taking into account the suitability of officers within the zone of consideration, has been done according to the revised guidelines for promotion. The respondents further admitted that the Departmental Promotion Committee has considered the ACRs for the year 1998-99 to 2002-2003 in which 4 ACRs were found to be "Average", which were for the period prior to issue of instruction contained in the circular dated 14.11.2002. However, the "Average" grading in the ACRs were not considered to be adverse entries and on the basis of those entries and other



service record of the employee, the Departmental Promotion Committee has assessed the applicant 'unfit'.

4. The learned counsel for the applicant has vociferously argued that law of Natural Justice demands an opportunity to improve before spoiling the ACR to the disadvantage of the employee. He drew our attention to an in-house mechanism of N.V.S with regard to writing and maintenance of ACRs of the Vidyalaya Staff. It reads : -

" This is with reference to the Samiti's letter No. 2-1/95-NVS (Estt.) dated 28th April'99 on the above noted subject. Additional Secretary (Education) has desired to review the timely completion of ACRs of officers at various level in respect of the teaching and non-teaching staff of the Vidyalayas and any laxity in writing the ACRs at the appropriate period shall be viewed very seriously.

It is observed that in few cases the ACRs written by the Reporting and Reviewing Officers for the Reported Officer are inconsistent, for the period under reference, and the average and lower gradings have not been supported with specific Office Orders, Memos, Warnings etc. As you are aware the average grading of the Reported Officer debar him from the promotion, hence the competent authority should inform the Reported Officer about his average performance during the year to give an opportunity to represent against the average grading. In the absence of the above procedure, the ACRs of the Reported Officer may not be considered fair and as such, they are not maintainable in the law of Court. It has also been viewed that the Reported Officers are not being provided with any opportunity to improve in the areas where Reporting/



Reviewing Officer felt that the performance was not at the desirable level. Whenever, the performance of the SC/ST candidate is rated as poor, then they should be given opportunity to improve their skill and knowledge by imparting training to them. On scrutiny of some of the ACRs it has been gathered that the Reporting Officer grading have been enhanced / lowered down by the Reviewing Officer without justification while writing the ACRs.

It is, therefore, requested that urgent necessary action may please be taken to update the ACRs folders of all the teaching and non-teaching staff of the Vidyalayas duly reported and re-viewed by the appropriate Reporting Officer as well as Reviewing Officers, if not yet done by your office. Also necessary steps may please be taken to communicate the adverse remarks, if any, made by the Reporting as well as Reviewing Officers in the ACRs by inviting representation from the individual concerned and the said representation must be disposed off with reasoned orders as early as possible. Any deviation from the set procedure of writing and reviewing of ACRs will reflect on the performance of officer concerned.

It is further requested that the exercise of updating the ACR till 1998-99 is completed for all categories of employees in your region and a compliance report certifying the updating of ACRs, category-wise sent to Hqrs. positively by the end of Oct' 1999."

5. The applicant submits that the respondents had fallen foul of their own Circular dated 24.09.1999 issued on the subject of writing and maintenance of ACRs.



6. Heard learned counsel for the parties, considered their rival contentions.

7. In State of **U.P. Vs. Yamuna Shankar Mishra - (1997) 4 SCC 7**, the Hon'ble Apex Court while ^{counting} rejecting the object of writing ACRs ruled : -

"The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential report objectively, fairly and dispassionately, while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer Before forming an opinion to be adverse, the reporting officers writing confidential reports should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it a part of the record If the officer fails to correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer If he feels aggrieved it is open to him to have it corrected by appropriate representation."

8. In **U.P. Jal Nigam Vs. Prabhat Chandra Jain - (1996) 2 SCC 363**, the question was ^{ls} of downgrading in ACR, i.e. "good" from "very good" needed to be communicated. It was held that although it is not an adverse report per se the same had nevertheless an adverse effect. It is therefore, necessary to communicate such downgrading in the form of an advice so that the officer could improve upon. In the celebrated judgment of

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Dev Dutt Vs. Union of India - (2008) 8 SCC 725 relying on *Maneka Gandhi Vs. Union of India*, the Supreme Court held that a public servant has use of every entry in an Annual Character Rolls and withholding the information has a prejudicial effect upon him and therefore, withholding some of them from him on the ground that these are not per se adverse is arbitrary and therefore illegal. The Court viewed ;


*"In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) had the entry been communicated to him he would know about the assessment of his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi Vs. Union of India* that arbitrariness violates Article 14 of the Constitution."*

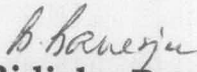
9. We feel that the respondents cannot be oblivious of their own circular. Inasmuch as it is admitted the entries in ACR for relevant year was 'average' and it was not communicated, but it led to supercession of the applicant, in view of the law laid down in the catena of judicial pronouncements the respondents are directed to communicate the entries and seek reply to the same within one month, on receipt of reply of the applicant the result be communicated within one month thereafter. If the competent



authority decides to expunge the remarks the case of the applicant shall be placed before Review D.P.C in accordance with law , for appropriate benefits, within three months thereafter.

10. Accordingly, O.A is disposed of. No costs.


(Mrs. Rajwant Sandhu)
Member-A


(Ms. Bidisha Banerjee)
Member-J

Anand....