

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.146 of 2007

Srikanta Rath Applicant
Versus
Union of India & Others. Respondents

Order dated: 22nd April, 2010

C O R A M

THE HON'BLE MR.B.V.RAO, MEMBER (JUDICIAL)

And

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

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The Applicant, in this Original Applicant under section 19 of the A.T. Act, 1985 challenges his supercession in promotion by his juniors to the post of Vice-Principal vide dated 06/08-09-2006 and the order of rejection of his representation made against such supercession vide order dated 18.12.2006.

2. Respondents filed their counter. In paragraph 9 of the counter it has been stated that DPC considered promotion of PGTs to the post of Vice-Principal in accordance with the Recruitment Rules. Further in paragraph 10 of the counter it has been stated that the DPC held on 21.7.2006 considered and recommended the PGTs who have attained the Bench mark 'Good' in the ACRs for the preceding five years for promotion to the post of Vice-Principal. The DPC held on 21.07.2006 did not recommend the case of applicant for promotion as he was deficient in the bench mark 'Good' in his preceding five years of ACRs. In view of the above, Respondents have prayed for dismissal of this OA.

3. Applicant has also filed rejoinder more or less reiterating the contentions raised in the Original Application. But no counter has been filed by the Respondents 6 to 23 in spite of notice duly being served on them.

4. Reiteration of the contentions raised in the respective pleadings of the parties having been heard, perused the materials placed on record. To

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buttress the claim relying on the the decisions of the Hon'ble Apex Court in the case of *Dev Dutt vs Union of India and others*, AIR 2008 SC 2513 = (2008) 2 SCC (L&S) 771 and the decision of the Tribunal in the case of *Ramesh Kumar Vs Union of India and others*, 2008 (2) CAT 12, it was contended by the Learned Counsel for the Applicant that the applicant ought not to have been debarred from promotion on the basis of the below bench mark in his ACR without prior communication in compliance of natural justice and further claimed that even if the rating of the ACRs of the applicant are below the bench mark 'Good' he ought not to have been superceded as per the instructions of the Government of India, Dept., of Per. & Trg., OM F.No. 35034/7/97-Estt.(D) dated 08-02-2002 and dated 16-02-2005 which are mutatis and mutandis applicable to the NVS. Accordingly, Learned Counsel for the Applicant submitted that direction be issued to the Respondents to reconsider the case of the applicant by convening review DPC for promotion when his juniors were promoted with all consequential service and financial benefits. By producing copy of letter dated 27th June, 2009, Learned Counsel for the Applicant has also brought to the notice of this Tribunal that meanwhile the adverse remarks made in the ACR for the year 2003-2004 has been expunged and he has been rated as 'good' for the year 2003-2004. This was vehemently opposed by Learned Senior Standing Counsel for the Respondents that when DPC assessed the applicant not fit, this Tribunal being not the appellate authority should not sit over the said decision of the DPC.

It reveals from the record that that the Applicant earned the following remarks in his CCRs in preceding five years:


2000-2001	Good
2001-2002	Very Good
2002-2003	Quite arrogant & Careless in duties;
2003-2004	Average
2004-2005	Good

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5. It is an admitted fact that subsequent to the DPC and promotion of the juniors of the applicant, the remarks 'average' given in the ACR of the applicant for the year 2003-2004 has been expunged and he has been rated as 'Good' for the year 2003-2004. But no record has been produced by the Respondents that although the remarks given in the ACR of the applicant for the year 2002-2003 amounts to adverse has ever been communicated to him prior to the consideration by the DPC. In the case of Dev Dutt vs Union of India and others and Ramesh Kumar Vs Union of India and others it has been made clear that debarring an employee for promotion on the basis of below bench mark in the ACRs without prior communication of the same amounts to violation of principles of natural justice. Relying on the aforesaid decisions, this Bench of the Tribunal has also taken the same view in the past.

6. In view of the above, we have no hesitation to quash the order of rejection of the representation of the Applicant under Annexure-A/5 dated 18.12.2006 and accordingly the same is quashed. Consequently, the Respondents 1 to 5 are hereby directed to reconsider the case of the applicant in the light of decision in the case of Dev Dutt (supra) and expunction of the CCRs of the applicant for the year 2003-2004 for promotion of the applicant to the post of Vice-Principal from the date Respondents 6 to 23 were promoted by convening a Review DPC within a period of 45 days from the date of receipt of this order. But in that event, the promotion of the applicant shall be only on notional basis without any back wages. However, he will be entitled to get the seniority.

7. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(B.V. RAO)
MEMBER(JUDL.)


(C.R. MOHAPATRA)
MEMBER(ADMN.)