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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 80 of 2008

Cuttack this the 09th day of February, 2011

Dr. Rabindrasnath Barik Applicant
-Versus-
Union of India & Ors. Respondents

FOR INSTRUCTION

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 80 of 2008

Cuttack this the 09th day of February, 2011

CORAM:

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

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Dr.Rabindranath Barik, aged about 57 years, son of Late Banchhanidhi Barik, a permanent resident of Village Padmapur, Po-Saragan, Via-Sunhat, Dist. Balasore, at present working as Post Graduate Teacher in Hindi, KV Balasore, Dist. Balasore.

.....Applicant

Legal Practitioner: M/s.D.P.Dhalsamanta,P.K.Bhera,Counsel.

-Versus-

1. Kendriya Vidyalaya Sangathan represented through its Commissioner, 18 Institutional Area, Shaheed Jit Singh Marg, New Delhi-110 602.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar, Mancheswar, Bhubaneswar, Dist. Khurda.
3. Assistant Commissioner (Admn. & Fin), 18 Institutional Area, Shaheed Jit Singh Marg, New Delhi-110 602.
4. The Principal, K.V., Balasore,Indiragandhi Marg, Balasore, PIN 756 001.
5. Shri P.K.Purohit, Vice-Principal, Kendriya Vidyalaya, Bhadrak.
6. Smt. Anita Dash, Vice-Principal, KV No.1, Bhubaneswar.

....Respondents

Legal Practitioner: M/s. H.Tripathy, P.K.Mohanty,P.Sahu, B.Panigrahi,Counsel

O R D E R

MR.C.R.MOHAPATRA, MEMBER (ADMN.):-

In this Original Application filed under section 19 of

the A.T. Act, 1985, the Applicant while challenging his

supersession in promotion to the post of Vice-Principal, by his juniors and the letter dated 29th January, 2008 communicating him the reason on the appeal preferred by the applicant for his non-promotion, seeks the following reliefs:

- (i) To quash the order No. F-7-8/2007-KVS (Estd)1/1364 dated 28.11.2007 promoting the juniors of the applicant to the post of Vice-Principal;
- (ii) To direct the Respondent –Department to reconsider the case of the applicant notwithstanding the Benchmark below Good in his CCRs, if any, for the same being written without giving him any opportunity;
- (iii) To direct the Respondent-Department to promote him to the post of Vice-Principal with all consequential service and financial benefits retrospectively i.e. from the date when his juniors were promoted to the said post;
- (iv) To pass any other order/orders as deemed fit and proper.”

2. The main stand of the Respondents is that case of the applicant, for promotion, to the post of Vice-Principal, was duly considered along with others, by the Departmental Promotion Committee held on 02.11.2007. The DPC did not recommend the case of the applicant for promotion as he did not get the bench mark provided in the Rules.

3. Heard the parties and perused the materials placed on record. We also perused the minutes of the DPC produced by the Respondents' Counsel.
4. Uncontroverted facts of this case are that for promotion to the post of Vice-Principal the Bench mark is "Good". In terms of the Kendriya Vidyalaya Sangathan (Appointment, Promotion and Seniority etc.)Rules, 1971 as amended from time to time, the post of Vice-Principal are filled up 100% by promotion on the basis of seniority cum merit from amongst the PGTs serving in the Kendriya Vidyalaya. Further as per the extant instructions of the Government, five years ACRs/CCRs are taken into for assessing the suitability of an employee for promotion to the post of Vice-Principal. Record reveals that the DPC graded the applicant unfit for promotion to the post of Vice-Principal as he did not meet the prescribed Bench mark "Good". The minutes of the DPC produced by the Respondents reveal that the applicant has earned one 'good' and four 'average' grading in his CCR for last preceding five years. This is the reason for which the DPC did not recommend the name of the applicant for promotion to the post of Vice-Principal. It is not out of place to mention that the

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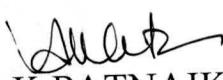
shortcomings/average grading in the CCRs/ACRs was never communicated to the applicant. Justification in eliminating an employee by taking into consideration the below bench mark grading in ACR/CCR without prior communication to the employee concerned, came up for consideration before the Hon'ble Apex Court in the case of **Abhijit Ghosh Dastidar vs Union of India and others, (2010) 1 SCC (L&S) 959**. Relevant portion of the decision of the Hon'ble Apex Court in the above case is extracted herein below:

“8. Coming to the second aspect, that though the benchmark “very good” is required for being considered for promotion, admittedly, the entry of “good” was not communicated to the appellant. The entry of “good” should have been communicated to him as he was having “very good” in the previous year. In those circumstances, in our opinion, non-communication of entries in the annual confidential report of a public servant whether he is in civil judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision (Dev Dutt case, SCC p.738 para 41) relied on by the appellant. Therefore, the entries “good”, if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.

10. Since the appellant had retired from service, we make it clear that he is not entitled to any pay or allowances for the period for which he had not worked in the Higher Administrative Grade Group A but his retrospective promotion from 28.8.2000 shall be considered for the benefit of refixaton of his pension and other retiral benefit as per rules.”

5. The case in hand is fully covered by the aforesaid decision of the Hon’ble Apex Court. Hence we direct the Respondents to ignore the below bench mark grading of the applicant and consider the case of the applicant for promotion to the post of Vice-Principal [if otherwise (vigilance clearance etc.) he is eligible] retrospectively from the date his immediate junior was promoted to the said grade but he would not be entitled to any pay or allowances for the period for which he had not worked in the promotional post but his pay would be fixed notionally till his actual promotion to the higher post which the Respondents shall do within a period of 60(sixty) days from the date of receipt of copy of this order.

6. With the aforesaid observation and direction this OA stands allowed. No costs.


(A.K.PATNAIK)
MEMBER (JUDL)


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