

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 95/2011
with MA No.69/2011

Jodhpur, this the 28th day of September, 2015

CORAM

Hon'ble Mr. Justice Harun-Ul-Rathid, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member

S.K.Thakur (Vice Principal) S/o Late Shri Gangadhar Thakur, aged about 48 years, At+Po-Jawahar Navodya Vidyalaya, Jaswantpura, Jalore, District Jalore (Presently posted as Vice Principal JNV Jaswantpura, Jalore.

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India, through the Secretary, Ministry of HRD, Department of Education, Govt. of India, Kailash Colony, New Delhi.
2. Joint Commissioner, Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi- 110 048.
3. Deputy Director, Navodaya Vidyalaya Samiti, Regional Office, A-12, Shastri Nagar, Jaipur.
4. Asst. Commissioner (Pers.), Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi-48.

.....Respondents

By Advocate : Mr. Avinash Acharya

ORDER

Per Justice Harun-Ul-Rashid

This Original Application is filed seeking following reliefs:-

- a) The respondents may kindly be directed to consider the case of applicant for grant of promotion since 2007 in accordance with the DPC held in the year 2006.
- b) The punishment order as Censure may kindly be declared illegal, unjust and expunge the adverse entry and suspension order may be declared illegal, unjust and improper in accordance with law and respondents may kindly be directed to review DPC for promotion to the applicant.

And for other consequential reliefs,

2. When the matter was taken up for final hearing today, the learned counsel for the applicant pressed for adjudication of relief (a) only and submits that he is not pressing relief (b).

3. Learned counsel for the applicant submits that it is mandatory that the adverse entry, if made, ought to have been communicated to the employee concerned with established fact along with supporting documents, because uncommunicated adverse remarks cannot be used to deny promotion or an adverse remark not communicated to the applicant, cannot be made the basis for denying promotion. It is also contended that the Departmental Promotion Committee committed a gross error in deciding the matter pertaining to promotion of the applicant by taking into consideration the suspension of the applicant. It is also pointed out that in assessing the suitability, the Departmental Promotion Committee should have taken into account the circumstances leading to general service record of the officer and

he should have been considered for promotion. According to the applicant, the Departmental Promotion Committee committed gross error in consideration for promotion of the applicant, the reason being that the punishment is no bar in assessing suitability for promotion.

4. The respondents filed a detailed reply denying the averments made in the OA. It is contended on behalf of the respondents that the applicant is complaining about promotion of his junior Shri A.C.Nigam, who was promoted in the year 2007 and disallowing promotion to the applicant in the year 2007 by the Departmental Promotion Committee on the ground that he did not fulfil the desired benchmark. It is also pointed out that a bare perusal of Ann.A/1 letter dated 17.08.2009 would show that the same is a communication to all the Vice Principals of Jawahar Navodaya Vidyalayas, All Regional Offices of Navodaya Vidyalaya Samitis and Private Secretary to the Commissioner for information. According to the respondents, the stale claim with reference to the alleged promotion in the year 2006/2007, raised by the applicant in the year 2011 is not sustainable in the eye of law.

5. The candidature of the applicant was considered for grant of promotion by the Departmental Promotion Committee held in the year 2006 and after assessing the suitability of the applicant along

with other eligible candidates, the Committee did not recommend the name of the applicant for promotion. The applicant in this Original Application is challenging Ann.A/1 communication dated 17th August, 2009 which is final seniority list of Vice Principals borne on the strength of Navodaya Vidyalaya Samiti as on 31.12.2008.

6. From the averments made in the OA, it is seen that the applicant is seeking relief for promotion w.e.f. the year 2007 with reference to the recommendations made by the Departmental Promotion Committee held in the year 2006. The Original Application is preferred with reference to the cause of action which dates back to the year 2006/2007. Therefore, the Original Application filed in the year 2011 is hopelessly barred by limitation.

7. In reply, the respondents have submitted that work and conduct of the applicant never remained satisfactory. It is pointed out that from the date of joining in the Navodaya Vidyalaya Samiti, the applicant had been in the habit of creating problems for the administration, quarrelling with staff members, giving corporal punishment to the students, using abusive language with students, neglecting his duties etc. It is also pointed out that the applicant was reprimanded verbally as well as in writing many a times. So many memos/warnings were issued to him. The applicant was

also placed under suspension and was imposed with a penalty of 'Censure'. However, the applicant failed to show material improvement in his behaviour. From the material on record, it is seen that the Departmental Promotion Committee not only considered the inquiry report in the case of the applicant but also considered the past record as well. The past record of the applicant has never remained satisfactory. He was issued memos, warnings etc. many a times and was advised to restrain from his anti-administration activities as well as he was advised to improve the results.

8. The Departmental Promotion Committee considered ACRs of the applicant for the period 2002-2003 and 2003-2004 which remained Average/Below Average respectively. The imposition of penalty of 'Censure' has become final and it is seen that the applicant did not file any statutory appeal against the punishment order. The findings of the Inquiry Officer and the Disciplinary Authority regarding his misconduct has become final.

9. The respondents in para-6 of their counter have averred that the applicant was communicated regarding his work and conduct through various Memos, warnings during the period 2002-2003 and 2003-2004 and he also remained under suspension during the period from 13.03.2004 to 20.10.2004. Ann.A/5 and A/6 are the

taken into account his ACRs for the year 2002-2003 and 2003-2004 which were 'Average' and 'Below Average'. It is further submitted that mandatory requirement of law has been followed while passing Ann.A/1 order and the DPC had duly taken into account the instructions issued by the Department of Personnel and Training. The DPC held in the year 2006 found that the performance of the applicant is not up to the mark and since he was not fulfilling the prescribed benchmark 'Good' in the five preceding years, therefore, his claim for promotion was not accepted. It is also submitted that his junior Shri A.C.Nigam, fulfilled the required benchmark, therefore, his case was considered and he was promoted.

10. After perusing the material on record and after hearing the counsel for both the parties, we find that the applicant has not made out a sustainable claim for interference by this Tribunal. We find that the applicant has raised unsustainable claim that too after a belated stage before this Tribunal. Therefore, the OA as well MA for condonation of delay being devoid of merit are dismissed with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE HARUN-UL-RASHID)
Judicial Member

Good
Study
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End. 10/10/15

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