

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 472 of 2012

Wednesday, this the 29th day of October, 2014

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member

Thomaskutty P.M., aged 48 years,
 S/o. P.T. Mathew,
 Trained Graduate Teacher (Hindi),
 Kendriya Vidyalaya, Rubber Board, Kottayam,
 Residing at : Ambanattu House,
 Ruby Nagar, Manganam PO,
 Kottayam – 686 009.

..... **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. The Commissioner,
 Kendriya Vidyalaya Sangathan,
 (Ministry of Union Resource Development,
 Department of School Education & Literacy),
 New Delhi – 110 602.
2. The Deputy Commissioner,
 Kendriya Vidyalaya Sangathan,
 Regional Office, IIT Campus,
 Chennai – 600 036.
3. The Assistant Commissioner,
 Kendriya Vidyalaya Sangathan,
 Regional Office, IIT Campus,
 Chennai – 600 036.
4. The Principal,
 Kendriya Vidyalaya, Rubber Board PO,
 Kottayam – 686 009.
5. Shri P. Asok, Principal,
 Kendriya Vidyalaya, Rubber Board PO,
 Kottayam – 686 009. **Respondents**

[By Advocate – Mr. K.I. Mayankutty Mather (R1-4)]

This Original Application having been heard on 10.10.2014, the Tribunal on 29-10-2014 delivered the following:

ORDER

Applicant is a Hindi Trained Graduate Teacher in the Kendriya Vidyalaya (KV) under Kendriya Vidyalaya Sangathan (KVS) working under the respondents. While working as such at K.V. Rubber Board, Kottayam his Annual Confidential Records (ACR) for the year 2009-2010 carried some entries made by the 5th respondent which remained unaltered in spite of his appeal preferred to the other respondents. He states that the 5th respondent had a reason to bear a grudge towards him as he had questioned the propriety of the latter's decision of not including the Hindi Trained Graduate Teacher as a Hindi expert in the selection of Guest Teachers. Therefore, the applicant alleges that the 5th respondent down graded his ACR in relation to several of his attributes in the ACR. He, therefore, has approached this Tribunal seeking the following reliefs:

- "(i) Call for the records leading to the issue of A1 and declare that the adverse remarks (Average) recorded by the Reporting Officer/Reviewing Officer are arbitrary, without application of mind and hence unconstitutional and direct the respondents to expunge the same;
- (ii) Call for the records leading to the issue of A2 and the appellate order if any passed by the 2nd respondent and quash the same;
- (iii) Award costs of and incidental to this Application;
- (iv) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. Respondents contested the claim of the applicant for better comments in the ACR. They took strong objection to the inclusion of respondent No. 5 in his individual capacity as a party in this OA. According to them was not a member of the panel for selection of teachers. The other claims of the



applicant for an improved remarks in his ACR by the reviewing authority and appellate authority are also disputed by the respondents. According to them the remarks relating to the applicant in the ACR are based on his actual performance, his quality and competence as a teacher. Besides, some complaints were received by the Principal against applicant's ill treatment of students. Disciplinary proceedings were initiated against him on 9.8.2010 which culminated in imposition of a penalty of reduction to a lower stage in the time scale of pay by one stage for a period of one year without cumulative effect. Respondents contend that the entries made in the ACR are perfectly justified in relation to the applicant and therefore, they pray for rejecting the OA with costs.

3. Heard Shri T.C. Govindaswamy learned counsel for the applicant and Mr. Vineeth Komalachandran representing Mr. K.I. Mayankutty Mather for the respondents.

4. Mr. Govindaswamy relied on *MMRDA Officers Association Kedarnath Rao Ghorpade v. Mumbai Metropolitan Regional Development Authority & Anr.* - 2005 SCC (L&S) 198, *Dev Dutt v. Union of India & Ors.* 2008 (8) SCC 725, *Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors.* - AIR 1978 SC 851 and *Sukhdev Singh v. Union of India* - 2013 (3) KLT 80 (SC).

5. Mr. Vineeth Komalachandran relied on (1974) 4 SCC 3, *Union of India & Ors. v. E.G. Nambudiri* - AIR 1991 SC 1216, 1990 (4) SCC 594,



2011(4) KLT SN 29 – *Rajendra Singh Verma v. Lt. Governor NCT, Delhi*,
State of M.P. v. U.D. Dubey – 1995 (Supp) 4 SCC 461, *E.P. Royappa v. State of Tamil Nadu & Another* – AIR 1974 SC 555, *G.C. Kaushal, IPS v. Presiding Officer, CAT & Ors.* -a decision of the Delhi High Court rendered on 22nd March, 2002, a decision of the Principal Bench of this Tribunal in OA No. 931 of 2005 (order dated 8.12.2006 – *Prakash Chandra v. Union of India*) and a decision of this Bench in *P.J. Antony v. Union of India* (order dated 9.3.2009 in OA No. 137 of 2008).

6. The case of the applicant is centered around his grievance that the adverse entries in his ACR has been made by respondent No. 5 in a *mala fide* manner. Respondent No. 5 kept himself out of this proceedings and has not controverted the allegations made against him. Nevertheless, on his behalf the official respondents have vehemently contested this matter and espoused the cause of respondent No. 5 too in the reply filed them.

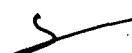
7. Annexure A1 is the impugned ACR for the year ending 31st March, 2010. The entries made by respondent No. 5 are at paragraphs 2 & 5 of the ACR. They read:

“(2)(i) Academic competence and class room organization and control	:	Average
(ii) Evaluation of Academic programmes	:	Good
(iii) Intelligence and understanding	:	Good
(iv) Zeal, Diligence, punctuality and sense of responsibility	:	Average
(v) Initiative and resourcefulness in organizing given activities	:	Average



(vi)	Relations with superiors, colleagues, students and parents	:	Good
(vii)	Planning and preparation of lessons and submission of teacher's diary	:	Average
(viii)	Effectiveness of class room teaching-learning and students' response	:	Average
(ix)	Popularity of the teacher among students, colleagues, parents and community	:	Average
(x)	Effectiveness of the role model of the teacher for personality development of students	:	Average
3.		
4.		
5.	Overall grading (Outstanding/ Very Good/Good/Average/Below Average)	:	Average"

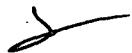
8. Applicant states that the entires 'average' have been made by respondent No. 5 out of malus and are contrary to the facts and his achievements in the school. He claims that he has conducted a food festival wherein the mothers of children also took part and that all who attended the festival appreciated the work done by the faculty member in sensitising the children and parents about the danger of consuming fast food. Applicant then refers to Annexure A3 series which consist of an appraisal of the applicant made by his own students of class IX as a part of the examination in the subject English. In that examination it appears that one of the questions was to write an appraisal of 'the best teacher in the school'. Annexure A3 series are copies of the answer scripts of some children who have written admiring remarks on the applicant as a Hindi Teacher and his style of pedagogy. According to applicant the copies of Annexure A3 answer scripts have been



given to him by one of his colleagues who have evaluated them.

9. However, respondents refute all these and state that the Annexure A3 answer scripts are relating to an examination which took place on 31.7.2010, a period obviously after the period of the impugned ACR i.e. up to 31st March, 2010. Respondents admit that the food fest was a well organized function conducted in the year 2009. Nevertheless they rely on a set of complaints against the applicant -Annexures R1(a) to R1(g) - by the parents of the children on the ill treatment of their wards by the applicant. Annexure R1(a) is a complaint relating to the incident of punishment imparted to a student on 12.11.2009. The endorsements on it shows that the Principal ie. respondent No. 5 had summoned the applicant and made him to realise the inappropriateness of his act. Annexure R1(b) is a complaint dated 25.7.2010 but there is no record as to what was the action taken on it. Annexure R1(c) is a complaint dated 18.9.2009. Annexure R1(d) is another complaint dated 30.3.2007 from a parent. In this complaint there are imputations regarding the rude treatment by both the Principal and the Hindi Teacher. Annexure R1(e) is yet another complaint dated 16.4.2010 causing physical harassment to a IVth standard student by the applicant. Annexure R1(f) is the records of disciplinary proceedings initiated against the applicant in relation to Annexure R1(e) complaint, imposing a penalty of reduction of pay by one stage.

10. Shri Govindaswamy learned counsel pointed out that many of the aforesaid R1 series complaints are not pertaining to the period of ACR under



challenge. Referring to Annexure R1(f) punishment he submitted that though the same was imposed on 1.11.2010 his Annual Performance Appraisal Report (APAR) for the year 2010-11 reflected an overall numerical grading of 6.36 which can be translated as 'very good'. Shri Govindaswamy produced copies of the APARs of the applicant for the subsequent years and submitted that they are above the bench mark.

11. Mr. Vineeth Komalachandran, learned proxy counsel argued that the entries in Annexure A1 ACR are not in any way affecting the career of the applicant because that is not going to be reckoned for his promotion which is not likely to occur within the next five years. He further argued that the entries in Annexure A1 had been duly communicated to the applicant and there was no violation of natural justice in the matter of communication of the adverse entries. He further argued that the respondents had complied with the law laid down by the Hon'ble Apex Court in *Dev Dutt's* case (*supra*). It was pointed out that the *Dev Dutt* decision was upheld by a Full Bench of the Apex Court in *Sukhdev Singh's* case (*supra*).

12. Mr. Govindaswamy submitted that the pleadings of respondents justifying the adverse entries in Annexure A1 have been brought out by the respondents only subsequent to the filing of this OA. He further argued that the Annexure A1 adverse remarks were not supported by any records or reasons and therefore a subsequent elaboration of the reasons for recording such remarks is not justifiable in the light of the Constitution Bench decision of the Apex Court in *Mohinder Singh Gill's* case (*supra*) wherein it was held:

"8.when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

13. In this connection Shri Vineeth Komalachandran referred to the decision in *E.G. Nambudiri's* case (*supra*) wherein it was held by the Court :

"6.

But every administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. But in the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide, it is always open to the authority concerned to place reasons before the Court which may have persuaded it to pass the orders. Such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained in the records. Reasons are not necessary to be communicated to the Government servant. If the statutory rules require communication of reasons, the same must be communicated but in the absence of any such provision absence of communication of reasons do not affect the validity of the order.

.....

9. There are however, many areas of administrative activity where no reasons are recorded or communicated, if such a decision is challenged before the Court for judicial review, the reasons for the decision may be placed before the court....."

(underlining supplied)

14. It appears from the arguments of Mr. Govindaswamy that non-communication of the reasons for adverse entries in Annexure A1 tantamounted to violation of principles of natural justice. He referred to *MMRDA Officers Association Kedarnath Rao Ghorpade's* case (*supra*) wherein His Lordship Pasayat J wrote :

"5. Even in respect of administrative orders Lord Denning, M.R. In Breen v. Amalgamated Engg. Union – (1971) 1 All ER 1148, observed: (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander machinery (Dudley) Ltd. v. Crabtree – 1974 ICR 120 (NIRC) it was observed:

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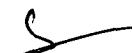
"Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at."

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance (Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar – (2003) 4 SCC 364".

15. It is desirable that every administrative order must contain the reasons.

But in the case of APAR it is not practicable to give elaborate reasons for the entries made on the different attributes of the employee, but it does not mean that the entries made therein are not supported by adequate records. It is trite that before making any adverse entry the reporting officer should have given the employee adequate opportunity to mend himself and improve his performance and only if he is unrelenting and continues with the undesirable conduct, the superior authority is justified in making adverse entries in the ACR. In this context it is worth quoting the observations of the Apex Court on the object of writing confidential reports. In *State of U.P. v. Yamuna Shanker Misra & Anr.* - AIR 1997 SC 3671 Apex Court held that writing of confidential reports of public servant is for achieving the constitutional objective envisaged in Article 51(A)(j). The Court observed :

"7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51A (j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted



with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports 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. It should be founded upon the facts or circumstances. Though sometimes, it may not be part of record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting/officers writing confidentials 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 part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite given giving such an opportunity, the officer fails to perform the duty, 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 so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standards of excellence in services constantly rises to higher levels and it becomes successful tool to manage the services with officers of integrity, honesty, efficiency and devotion."

16. Thus, one can see that ACR and for that matter APAR is a tool for personnel management in Government administration for improving the quality of public service and to make the best out of the government officials, rather than as a weapon of oppression.

17. In the instant case Annexure R1 series complaints lodged by the parents of pupils do certainly show that the applicant was having some temperamental problems in imparting punishments – which often led to corporal punishment. Records show that there had been some expressions of popularity of the applicant among the parents and amongst some of the pupils. But it appears that after Annexure R1(a) wherein he had been summoned by the Principal and after imposing penalty in respect of Annexure R1(e) complaint, some good sense had indeed dawned on the



applicant. The APARs of the subsequent years do reflect the improved qualities in him.

18. In view of the above, this Tribunal is of the view that entries in Annexure A1 were not totally unsupported by records, although some of the records relate to the events occurred after the period for which Annexure A1 was prepared. Therefore, taking into consideration of the totality of the circumstances, this Tribunal is of the view that the OA is only to be dismissed.

19. Accordingly, the Original Application is dismissed. Parties shall suffer their own costs.


(U. SARATHCHANDRAN)
JUDICIAL MEMBER

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