

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 496 of 2010

Monday..., this the *08th* day of August, 2011.

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

N. Raveendran,
Vice Principal,
Jawahar Navodaya Vidyalaya,
Vadavathoor P.O., Kottayam

... Applicant.

(By Advocate Mr. Vishnu S. Chempazhanthiyil)

v e r s u s

1. The Deputy Commissioner,
Navodaya Vidyalaya Samiti,
(Hyderabad Region),
Department of School Education & Literacy,
Government of India,
1-1-10/3, Sardar Patel Road, Secunderabad.

2. The Joint Commissioner (Admn.),
The Navodaya Vidyalaya Samiti,
Department of School Education & Literacy,
Government of India, A-28, Kailash Colony,
New Delhi : 110048

... Respondents.

(By Advocate Mr. Vimal.J - M/s. M.K. Damodaran & Associates)

This application having been heard on 21.07.2011, the Tribunal
on *08-08-11*... delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A has been filed by the applicant for a direction to the
respondents to consider him for promotion as Principal with effect from the



date his juniors have been promoted as Principal and grant all consequential benefits to him.

2. The applicant, a Trained Graduate Teacher in Hindi, was promoted as Vice principal on 20.08.2002. While working as Vice Principal in the Jawahar Navodaya Vidyalaya, Vadavathoor P.O., Kottayam he was considered for promotion to the post of Principal in respect of the year 2009. He was not promoted owing to his below bench mark grading in the ACRs. He was superseded by his juniors. Aggrieved, he has filed this O.A.

3. The applicant submitted that he was not intimated about the adverse remarks in his ACRs. Uncommunicated adverse remarks should not have been relied upon to deny him promotion. The applicant is deprived of his promotion at the fag end of his career.

4. The respondents contested the O.A. In their reply statement, they submitted that the applicant did not have the bench mark grading in his annual confidential reports of the preceding 5 years, hence he was not found fit for promotion. The adverse remarks in the ACRs for the years 2005-06, 2006-07, 2007-08 and December, 2008 have already been conveyed to the applicant vide memorandum dated 21.10.2010. But he has not represented before the concerned authority with his grievance, if any, as directed. His juniors were promoted as they were found fit having attained the desired bench mark for promotion. In the light of the above, this O.A is liable to be dismissed.

5. In the rejoinder, the applicant submitted that it was only after the



applicant sought information under the Right to Information Act that the adverse remarks were communicated to him. From this, it is very clear that the uncommunicated adverse remarks in the ACRs were relied upon at the time of consideration for promotion. The belated communication of adverse remarks is of no consequence.

6. In the additional reply statement filed on behalf of the respondents, it was submitted that the applicant, in the rejoinder, had made certain allegations against the present Principal, but he has not chosen to make him a party to this O.A. Therefore, the O.A is liable to be dismissed for non-joinder of necessary parties.

7. In the additional rejoinder, the applicant submitted that the Principal, Jawahar Navodaya Vidyalaya, Kottayam, need not be arrayed as respondent as he had no role in the matter of promotion.

8. We have heard Mr. Vishnu S. Chempazhanthiyil, learned counsel for the applicant and Mr. Vimal J (for M/s Damodaran & Associates), learned counsel for the respondents and perused the records.

9. The law is well settled that any grading which is below the bench mark for promotion is an adverse entry. Non communication of adverse entries is arbitrary and denial of natural justice because it deprives the concerned employee from making a representation and praying for upgradation of the said entry.



10. In the case of *Dev Dutt vs. Union of India and Others*, 2008 (8) SCC 725, the Apex Court held as under:

"9. In the present case the bench mark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus in this situation the 'good' entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good' entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

10. Hence, in our opinion, the 'good' entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-94 should be upgraded from 'good' to 'very good'. Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the 'good' entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the 'good' entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the 'good' entry was arbitrary and hence illegal, and the decisions relied upon by the learned counsel for the respondent are distinguishable.

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17. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a 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 and conduct by his superiors, which would enable him to improve 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 11 Gandhi vs. Union of India* (supra) that arbitrariness violates Article 14 of the Constitution."

11. In *Abhijit Ghosh Dastidar vs. Union of India and Others*, Civil Appeal No. 6227/2008 decided on 22.10.2008, the Apex Court held that the 'good' entries given to the appellant which were below the bench mark should not at all have been taken into consideration for promotion to the higher grade.

12. The DoP&T O.M. No. 22011/3/88-Estt(D) dated 11.05.1990 (from Swamy's Complete Manual on Establishment and Administration, Tenth Edition, 2006 – pages 283-84) which deals with how the DPC should deal with adverse remarks in the ACRs, is reproduced as under :

"12.1. Where the DPC find that the adverse remarks in the confidential report of an officer have not been communicated to him but the adverse remarks are of sufficient gravity to influence their assessment of the officer concerned, then the Committee shall defer consideration of the case of the officer, provided these remarks have been recorded in any of the CRs pertaining to three years immediately preceding years prior to the year in which DPC is held and direct the cadre controlling authority to communicate the adverse remarks to the officer concerned so that he may have an opportunity to make a representation against the same. Where the uncommunicated adverse remarks pertain to a period earlier than the above or where the remarks are not considered of sufficient gravity to influence the assessment of the officer concerned, the DPC may ignore the remarks while making the assessment.

(emphasis supplied)



13. In the instant case, the gradings of the applicant were below the bench mark for promotion. Hence, they were adverse entries. These adverse entries in the ACRs for the years 2005-06, 2006-07, 2007-08 and December, 2008 were communicated to the applicant vide memo dated 21.10.2010. The DPC met on 17.11.2009 did not recommend the applicant for promotion because of his not having attained the desired bench mark in the grading. The adverse remarks in the 4 ACRs were communicated to the applicant in a bunch almost one year after meeting of the DPC and 4 ½ months after filing of the instant O.A. The communication of adverse entries in the ACRs was hopelessly belated. He was deprived of the opportunity to represent against the adverse entries and get his gradings upgraded in time. The belated communication of adverse entries and consideration of uncommunicated adverse entries to deny him promotion are arbitrary and violative of principles of natural justice and hence illegal. Therefore, the impugned orders are liable to be set aside.

14. In view of the above, we allow this O.A and set aside the Annexures A-8 and A-9 orders and the recommendation of the DPC held on 17.11.2009 to the extent it applies to the applicant. The respondents are directed to hold a review DPC meeting to consider the applicant for promotion based on his 5 ACRs immediately preceding 17.11.2009 which do not suffer the illegality of non communication or late communication of adverse entries and if found fit, grant him promotion with effect from the date his immediate junior was promoted with all consequential benefits other than arrears of pay and allowances, within a period of three months from the date of receipt of a copy of this order.



15. No order as to costs.

(Dated, the 08th August, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

CVT.