

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 573 of 2009

Wednesday, this the 27th day of July, 2011.

CORAM:

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

P. Prasannakumar,
U.D.C., Jawahar Navodaya Vidyalaya,
Kulamavu P.O., Idukki District.

... **Applicant.**

(By Advocate Mr. Vishnu S. Chempazhanthiyil)

v e r s u s

1. The Deputy Commissioner,
Navodaya Vidyalaya Samiti
(Hyderabad Region),
Department of Education & Literacy,
Government of India,
1-1-10/3, Sardar Patel Road,
Secunderabad.
2. The Navodaya Vidyalaya Samiti,
Department of School Education and Literacy,
Government of India, A-28, Kailash Colony,
New Delhi – 110 048
3. Union of India, represented by its
Secretary, Ministry of Human Resource
Department, New Delhi. ... **Respondents.**

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

This application having been heard on 23.06.11, the Tribunal on 20.07.11 delivered the following:



ORDER

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

This O.A has been filed by the applicant for the following reliefs :

- "(i) Call for the records leading to Annexure A-13 and A-16 and set aside Annexure A-13 and A-16;
- (ii) Direct the respondents to consider the applicant for promotion after opening the sealed cover in which the recommendation of the DPC held on 19.04.2005 is kept.;
- (iii) Declare that the applicant is eligible to be considered for promotion as Office Superintendent as on the date of convening of DPC on 19.04.2005 and direct the respondents to extend all consequential benefits to the applicant;
- (iv) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice;
- (v) Award the cost of these proceedings."

2. The applicant had completed 10 years in the cadre of UDC as on 31.12.2004 and was eligible for consideration for promotion to the post of Office Superintendent. The case of the applicant for promotion was kept in a sealed cover by the DPC which met on 19.04.2005 as an enquiry was pending against him. The enquiry resulted in imposition of a penalty of 'censure' on the applicant on 08.02.2006. Another enquiry in which the charge sheet was issued on 05.07.2005 against the applicant, resulted in imposition of penalty of barring one increment for a period of six months on 24.05.2007 which was set aside by the appellate authority on 19.06.2008. The claim for promotion of the applicant was rejected subsequently on the ground that a criminal case is under investigation against him. The said criminal investigation was in an offence registered as Crime No. 349/05 on 21.10.2005. His further representation for promotion as Office Superintendent and for granting ACP



was rejected as a vigilance case is contemplated against him by the Government of Kerala and also on the ground that the ACP Scheme is yet to be implemented by the Samiti. Hence the O.A.

3. The applicant submitted that he was denied promotion on the ground of a pending enquiry. The charge sheet against him was issued on 03.04.2003. He had submitted a reply on 22.05.2003. The penalty of 'censure' was imposed on him on 08.02.2006. As 'censure' is not a bar being promoted, it is only just and fair that the applicant be promoted as Office Superintendent with effect from the eligible date after opening the sealed cover. The 2nd charge sheet was issued on 05.07.2005. But the punishment in respect of the same was set aside by the Appellate Authority on 19.06.2008. The applicant's suspension in connection with Crime No. 349/05 was on 25.10.2005. As on the date of DPC, the applicant was not facing any other disqualification than the pendency of charge sheet dated 03.04.2003. The Crime No. 349/2005 was registered on 21.10.2005 with the Palode Police Station on the basis of the information given by the Additional Tahsildar, Nedumangad. The applicant's name was not in the FIR. At the time when the DPC met and kept the recommendation in respect of the applicant in sealed cover, there was no criminal/Vigilance case pending against the applicant. Subsequent events cannot be relied upon as a reason to deny promotion to the applicant. A perusal of the FIR would show that the applicant is in no way connected with the alleged cutting and removal of trees from the School compound. Denying promotion on the ground that a criminal case is pending against the applicant is illegal and arbitrary. The respondents ought to have granted the benefits of ACP to the applicant in the cadre of UDC.



4. In the reply statement filed on behalf of the respondents, it was submitted that the competent authority had decided that as a vigilance case is contemplated at the level of Government of Kerala, the applicant's request for promotion cannot be considered. The recommendation of the DPC which was kept in a sealed cover is not opened owing to the subsequent disciplinary proceedings. The DPC which met on 10.07.2009 had recommended the applicant for promotion to the post of Office Superintendent on ad hoc basis pending finalisation of the criminal proceedings in a Court of law. The applicant was promoted on ad hoc basis and posted to Jawahar Navodaya Vidyalaya, Chickmangalore vide order dated 28.07.2009 and he has joined the post on 22.08.2009. For the above reason, the applicant is not entitled to any of the reliefs as prayed for in the O.A.

5. In the rejoinder, the applicant denied that he was involved in a criminal case as there is no mention of the applicant in the charge sheet nor any report against him. Although he was suspended, he was reinstated on 11.01.2007 with back wages. No charge sheet has been filed in any Court of law in which the applicant has been made as an accused and no cognizance has been taken by any Court of law in respect of any crime against the applicant. The recommendation of the DPC held on 19.04.2005 which is kept in a sealed cover, is not to be opened due to subsequent disciplinary proceedings, is totally untenable ground. The respondents have adopted the MACP Scheme as per Office Order dated 18/22.03.2011 (Annexure A-20).

6. We have heard Mr. Vishnu S. Chempazhanthiyil, learned counsel for



the applicant and Mr. Vimal J for M/s. M.K. Damodaran Associates, learned counsel appearing for the respondents and perused the records.

7. The applicant was considered for promotion to the post of Office Superintendent by the DPC which met on 19.04.2005. As he was facing disciplinary proceedings initiated by charge sheet dated 03.04.2003 at that time, the DPC rightly kept its recommendation in a sealed cover. The disciplinary proceedings culminated in awarding the penalty of 'censure' vide order dated 08.02.2006. Meanwhile, another charge sheet dated 05.07.2005 was issued against the applicant. Disciplinary proceedings were concluded on 24.05.2007 with the imposition of minor penalty of withholding of an increment for a period of six months. However, the Appellate Authority set aside the penalty imposed on the applicant vide order dated 19.06.2008. Therefore, the aforesaid disciplinary proceedings do not stand in the way of granting promotion to the applicant.

8. The Tahsildar, Nedumangad had filed a criminal complaint with the Palode Police Station which was registered as Crime No. 349/2005 on 21.10.2005 for cutting and removal of trees from the compound of the Navodaya Vidyalaya, Pathanamthitta, where the applicant was working. He had no role in the matter. The work of removal of dense growth surrounding the School was being supervised by the Parent Teachers Association and also by the School authorities. This submission made by the applicant is not refuted by the respondents. If the applicant was involved in cutting and removal of trees from the School compound violating any rule, the respondents would have already taken appropriate disciplinary action against

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the applicant. That they did not do so is indicative of the non-involvement of the applicant in the matter under investigation by the police. Even, the applicant was detained in the Police Station in connection with the criminal case for a period of exceeding 48 hours and he was deemed to have been suspended with effect from the date of detention, i.e. 25.10.2005. In fact, as a model employer, the respondents should have come to the rescue of the applicant, who, in the facts and circumstances tree cutting, is totally unininvolved in it. The criminal complaint No. 349/2005 is not against anyone in particular and no progress has been made in the investigation since the registration of the crime in 2005. The applicant is not named in the FIR. A perusal of the FIR would show that the applicant is in no way connected with the alleged cutting and removal of tress from the School compound. Even as on date, there is no report against the applicant. Although he was suspended, he was reinstated with wages. There is no justification whatsoever in the facts and circumstances of Crime No. 349/2005 in denying promotion to the applicant. In our considered view, the denial of promotion to the applicant on the basis of registration of a criminal case on illegal tree cutting in which the applicant's name does not figure and about which no cognizance is taken by the Court or on the basis of the contemplated vigilance case by the Government of Kerala in the same matter of the tree cutting is arbitrary and illegal. Therefore, Annexure A-13 dated 21.01.2009 and Annexure A-16 dated 26.05.2009 are liable to be set aside. It is accordingly ordered as under.

9. Annexure A-13 dated 21.01.2009 and Annexure A-16 dated 26.05.2009 both denying promotion to the applicant as Office Superintendent on the basis of investigation in Crime No. 349/2005 and on the basis of the vigilance case

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contemplated against the applicant by the Government of Kerala in the matter of tree cutting are quashed and set aside. The respondents are directed to consider the case of the applicant for promotion/grant of ACP in accordance with the rule within a period of two months from the date of receipt of a copy of this order.

10. The O.A. allowed as above with no order as to costs.

(Dated, the 27th July, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.