

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 85 OF 2007

Wednesday this, the 5th day of March, 2008.

CORAM :

**HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

T.I.Sheelaa

**Assistant Superintendent
Kendriya Vidyalaya No.1
Cochin - 4**

: Applicant

(By Advocate Mr. S.Radhakrishnan)

vs.

1. **The Administrative Officer, KVS
Regional Office, IIT Campus
Chennai**
2. **The Director of Grievances
KVS (Head Quarters)
New Delhi**
3. **The Regional Grievance Officer
KVS (Regional Office), IIT Campus
Chennai**
4. **The Assistant Commissioner
KVS, IIT Campus, Chennai - 36**
5. **C.C.Kuriakose Varkey
The Principal, KV No.1
Naval Base, Kochi - 4**
6. **The Educational Officer, KVS
Regional Office, Chennai Region,
IIT Campus, Chennai - 600 036**

: Respondents

(By Advocate M/s Iyer & Iyer)

**The application having been heard on 28.02.2008, the Tribunal
on 5.03.2008 delivered the following :**

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER


**The applicant in this case is aggrieved on account of denial of
ACP benefits to which she is entitled with effect from 31.03.2004.**

Denial of the benefits, according to the respondents vide Annexure A-1 impugned order dated 20.12.2006 is that the DPC could not clear her case due to adverse entries in the ACR for the year 2004.

2. Briefly stated, the applicant joined the respondents' organisation in March 1982 as Upper Division Clerk. Later on she was selected and appointed as Head Clerk. According to the applicant, she was eligible for the benefit under ACP Scheme for 2nd Financial Upgradation from 31.03.2004 for which the Principal had forwarded the proposal alongwith others on 07.07.2004. It was by 12.07.2004 that the applicant received a communication regarding adverse remarks and the same is as under :-

Item No.	Subject	Remarks made by the Reporting Officer
Part 3 (11)	Has the officer been reprimanded for indifferent work or for other causes during the period under report ? If so, please give brief particulars	Not keen in following up the work regularly

3. The applicant has made a representation vide Annexure A-4 against the aforesaid adverse remarks. She has also penned a representation to the Regional Grievance Officer (EO) Kendriya Vidyalaya Sangathan vide Annexure A-5.

4. As applicant felt that she has been harassed in the hands of 5th respondent, she had itemized such alleged victimization and ill treatment to the Assistant Commissioner vide Annexure A-10 representation dated 10.07.2004. According to the applicant, the representation against the adverse remarks has not so far been disposed of but the respondents have taken into account the adverse remarks to deny the applicant the benefit of ACP.



5. The applicant has therefore prayed for the following :-

- b, declare that the adverse remarks mentioned in Annexure A-3 was inspired by malice, on the part of the 5th respondent and it is incorrect and unfounded ;
- c, declare that the applicant is entitled to get the adverse remark mentioned in Annexure A-3 expunged.
- d, direct the 4th respondent to expunge the adverse remarks in Annexure A-3
- e, direct the 1st respondent to grant her the 2nd financial upgradation under the ACP scheme with effect from 31.03.2004. "

6. Respondents have contested the OA. They have denied the allegations of malice or malafide. According to them the applicant availed of promotion As Assistant Superintendent with effect from 10.05.1989 and as such she is entitled to 2nd Financial Upgradation (24 years of service reckoned from 31.03.1981). It has also been contended by the respondents that non disposal of the representation against adverse remarks does not stand in the way of the respondents to deny the benefit under ACP as the time-limit prescribed in this regard is not mandatory but only directory.

7. The applicant has filed her rejoinder with which she has annexed an order dated 15.02.2007 issued by Kendriya Vidyalaya Sangathan in respect of time schedule calendared for filling up of ACR, communication of adverse remarks, submission of reply for expunction and decision of the Appellate Authority. Other contentions of the respondents have been denied by the applicant in her rejoinder.

8. Counsel for applicant referred to the nature of adverse remarks and contended that whereas under Column 3.11 the subject was whether the Officer has been reprimanded for indifferent work or for other causes and if so to give brief particulars, remarks made by the



Reporting Officer was "not keen in following up the work regularly". The above remarks, contends the counsel, are not answer to the subject matter. Obviously there has been no occasion when the applicant was reprimanded either for indifferent work or for other causes. The remarks column as extracted above cannot therefore be treated as adverse remarks and as such the same is liable to be ignored. As regards rejection of the applicant's case for Financial Upgradation the applicant's counsel contended that the adverse remarks should not be taken to have become final during the pendency of the representation against such adverse remarks. Reliance was placed upon the decision of the Apex Court in the case of State of Madhya Pradesh v. Bani Singh & anr. (AIR 1990 SC 108).

9. Counsel for respondents submitted that as long as the adverse remarks are not expunged the benefit of 2nd Financial Upgradation is not available to the applicant.

10. Arguments were heard and documents perused. The eligibility of the applicant for 2nd Financial Upgradation after 24 years of initial service of 31.03.1981 is admitted. (Para 5 of the counter refers). Subject to DPC clearing of the case of the applicant, she was entitled to the 2nd Financial Upgradation. DPC would clear the case for such Financial Upgradation by following the same norms as for normal promotion. For normal promotion, one of the requirements is that there shall be no adverse remarks and the gradings in the ACR shall be not below the bench-mark. In the instant case the adverse remarks read, "not keen in following up the work regularly." This remarks has been made against column 3 (11) which relates to any reprimanding for indifferent work or other causes. Patently, the remarks reflected against this

column have no link at all with the subject of that column. Further absence of any affirmation to reply to part 3 (11) would show that the applicant has not been reprimanded for indifferent work or for other causes during the period under report. The remarks reflected against Part 3 (11) are thoroughly irrelevant and cannot be treated as adverse. Thus the applicant's plea for expunction of the adverse remarks is fully justified. The remarks made by the Reporting Officer against Part 3 (11) vide Annexure A-3 are therefore quashed and set aside.

11. Coming to the question of grant of ACP, the so called adverse remarks having now been quashed and set aside the applicant is entitled to be considered for the grant of ACP without taking into account the said adverse remarks. In fact, even if this Bench had not quashed the said remarks, then again, during the pendency of the representation, the adverse remarks cannot be taken into account. Decision in Bani Singh's case applies squarely in respect of this issue.

12. Thus, considering from any angle, denial of 2nd Financial Upgradation under the ACP Scheme is illegal. OA is therefore allowed. Respondents are directed to consider the case of the applicant for grant of 2nd Financial Upgradation by considering her records and in respect of ACR for the year ending 31.03.2004. The same shall not be taken as adverse, in view of quashing of the adverse remarks.

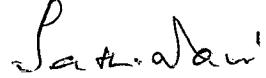
13. If the DPC finds fit, the applicant shall be afforded the necessary 2nd Financial Upgradation with effect from the date of completion of 24 years service from 31.03.1981. The arrears arising out of such financial benefits shall also be made available to the applicant.



14. The above drill shall be completed within a period of 10 weeks from the date of communication of this order. In the above circumstances, there shall be no order as to costs.

Dated, the 5th March, 2008.


K.B.S.RAJAN
JUDICIAL MEMBER


SATHINAIR
VICE CHAIRMAN

vs