

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.332/10

Wednesday this the 16<sup>th</sup> day of March 2011

**C O R A M :**

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. Kendriya Vidyalaya Non Teaching Staff Association represented by its General Secretary C.S.Prem, S/o.late C.G.Stephen, residing at Chiramel House, Thoppumpady, Kochi – 682 005.
2. K.Nalan,  
S/o.late Damodaran,  
Upper Division Clerk,  
Kendriya Vidyalaya Shift No.I, Adoor.  
Residing at Nithya Nidhi, Vazhuvadi,  
Thazhakara P.O., Mavelikkara, Alleppey District. ...Applicants

(By Advocate Mr.T.C.Govindaswamy)

**V e r s u s**

1. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18 – Institutional Area, Shahid Jeet Singh Marg,  
New Delhi – 110 016.
2. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Regional Office, I.I.T.Campus,  
Chennai – 600 006. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 16<sup>th</sup> March 2011 this Tribunal on the same day delivered the following :-

**ORDER**

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**

The first Applicant herein is Kendriya Vidyalaya Non Teaching Staff Association recognised by the Kendriya Vidyalaya Sangathan representing the non teaching staff of the Kendriya Vidyalayas working all over India and the second Applicant is an aggrieved person.



2. The second Applicant was initially appointed as a Lower Division Clerk on 5.1.1985 and he was promoted as an Upper Division Clerk on 1.12.1993. He completed 24 years of service as on 4.1.2009 and thereby became eligible for consideration for the second financial upgradation under the ACP scheme issued by the Government of India vide Office Memorandum dated 9.8.1999 (Annexure A-4) and as adopted mutatis mutandis by the K.V.S vide Office Memorandum dated 21.3.2001 (Annexure A-5). When the second Applicant was not granted the benefits of the aforesaid ACP scheme, he made Annexure A-7 representation dated 7.9.2009 requesting the second respondent to grant him the ACP benefits which was due to him from January, 2009. Since there was no response from the aforesaid respondent, the first Applicant took up the matter with the respondents vide their Annexure A-8 representation dated 18.9.2009 followed by the Annexure A-10 representation dated 8.2.2010. The respondents, after consideration of the aforesaid Annexure A-8 representation informed the first Applicant that ACP benefits could not be granted to the Applicant as he did not have the requisite "bench mark". It was also stated in the said letter that 'average' being not an adverse remark it was not communicated to the second Applicant. The second respondent also vide Annexure A-2 letter dated 20.8.2009 informed the concerned Principal, Kendriya Vidyalayas that the Applicant was not granted the ACP for the reason that he did not secure the requisite bench mark.

3. Learned counsel for the Applicant, Shri.T.C.Govindaswamy, has submitted that the aforesaid action/decision of the respondents is absolutely arbitrary and illegal particularly in the face of the judgment of the



Apex Court in Devdutt Vs. Union of India [2008 (2) SCC (L&S) 771].

The counsel for the respondents, however, submitted that they were only following the guidelines prescribed by the DOPT in their Office Memorandum dated 14.5.2001. The relevant part of which is reproduced as under :-

Communication of Adverse Remarks in the Confidential Report :-

- (i) All adverse entries in the confidential report, both on performance as well as on basic qualities and potential should be communicated along with a mention of good points within a month of their being recorded. This communication should be in writing and a record to that effect should be kept in the CR Dossier of the officer reported upon. Only such of the adverse entries as are accepted by the countersigning authority, if any, need be communicated.
- (ii) "Average" may not be taken as adverse remark in respect of an officer, at the same time, it cannot be regarded as complimentary to the officer, as "Average" performance should be regarded as routine and undistinguished.
- (iii) Adverse remarks should be communicated by the reviewing officer or by the reporting officer in case there is no reviewing officer.
- (iv) Remarks about physical defects noted in the CR need not be communicated.
- (v) The grading of officers on the basis of the general remarks in the report should not be communicated, even if it is adverse.
- (vi) Care should be taken to ensure that the remarks are communicated in such a form that the identity of the officer making particular remarks is not disclosed.

4. We have considered the arguments of the learned counsel for the parties. In our considered opinion the case of the applicant is squarely covered by the judgment of the Apex Court in Devdutt's case (supra). The Apex Court in the said case held that it was wrong on the part of the respondent in not communicating the 'good' entry to the appellant since he



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was thereby deprived of the right to make a representation against it, which if allowed would have entitled him to be considered for promotion to the post of Superintending Engineer. The Apex Court has also observed that one may not have the right to promotion, but one has the right to be considered for promotion, and this right of the appellant was violated. The Apex Court has finally directed the respondents that the 'good' entry made in the ACR of the petitioner shall be communicated to him to enable him to make a representation and on consideration of the same, if he was selected, he should be given promotion retrospectively with arrears of pay and allowances and interest at the rate of 8% per annum till the date of payment.

5. We are bound to follow law laid down by the Apex Court in the aforesaid judgment. We, therefore, set aside the Annexure A-1 and Annexure A-2 letters of the second respondent as applicable to the Applicant. We further direct that the 'average' entry made in the relevant ACR of the Applicant shall be communicated to him within a period of two months from the date of receipt of a copy of this order. On being communicated, the Applicant may make a representation, if so chooses, against the said entry within two months thereafter and the said representation shall be disposed of by the respondents within two months further thereafter. If the aforesaid entry is withdrawn, the Applicant shall be considered for grant of ACP from the due date by the Screening Committee/DPC within a period of three months thereafter and if the Applicant is considered suitable for granting ACP the same shall be granted to him with retrospective effect with interest at the rate of 8% per annum till the date of payment. Since this OA has been filed by the first



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Applicant in its representative capacity the respondents shall also consider similar cases and take appropriate actions in those cases also. With the aforesaid directions this OA is allowed. There shall be no order as to costs.

(Dated this the 16<sup>th</sup> day of March 2011)

  
**K.NOORJEHAN**  
**ADMINISTRATIVE MEMBER**

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

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