

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 04 of 2004

Wednesday, this the 21st day of March, 2007

C O R A M :

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

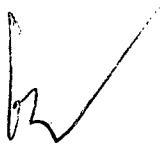
A.M. Annakutty,
W/o. Sri George Joseph,
Trained Graduate Teacher (Hindi),
Jawahar Navodaya Vidyalaya,
Vechoochira, Pathanamtitta,
Residing at Quarter No. Type III (15),
JNV, Vechoochira P.O.,
Mannadisala, Pathanamtitta.

... Applicant.

(By Advocate Mr. Shafik M.A.)

v e r s u s

1. Union of India,
Represented by its Secretary,
Ministry of Human Resource Development,
New Delhi.
2. Navodaya Vidyalaya Samithi,
Represented by its Director,
Admn. Block, IG STDM, IP Estate,
New Delhi - 110 002.
3. The Deputy Director,
Navodaya Vidyalaya Samiti,
Hyderabad Region,
House No. 1-1-10/3, Plot No. 79,
Behind MCH Swimming Pool,
Secunderabad : 500 003



4. T.C.S. Naidu,
Deputy Director,
Navodaya Vidyalaya Samiti,
Hyderabad Region, House No. 1-1-10/3,
Plot No. 79, Behind MCH Swimming Pool,
Secunderabad : 500 003

... Respondents.

(By Advocate Mr. Sunil Jose for R-1 and Mr. M.K. Damodaran, Sr. with
Ms. Reshma G. Nair for R2 to R4)

ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Adverse Report in the ACR for 2001-2002 communicated to the applicant, vide Annexure A-1 order dated 09-12-2002 is the challenge in this O.A.

2. Brief Facts: The applicant has been functioning as TGT in Hindi in the Navodaya Vidyalaya since February, 1991. On her being transferred from Kerala to Karnataka in 2002, the applicant had challenged her transfer vide OA No. 257/02, which was, by Annexure A-2 order dated 04-10-2002, disposed of with a direction to the applicant to prefer a comprehensive representation and a direction to the respondents to consider the same sympathetically. The OA was not decided on merit. The applicant preferred a representation vide Annexure A-3 communication dated 14-10-2002 and Annexure A-4 order dated 30-11-2002 was the response to the same from the respondents, wherein, in a tabular column, comments as recorded in the ACRs for the period from 1995 to 2002 had been itemized. Save the last



entry i.e. as for 2002 (vide impugned order at Annexure A-1), for no other years, according to the applicant, adverse remarks were communicated. The applicant has furnished her representation dated 13-01-2003 (Annexure A-5) in response to the two communication dated 30-11-2002 (Annexure A 4) as well as 09-12-2002 (Annexure A-1) and requested for expunging the adverse remarks recorded in the ACRs of 1996 to 1999 and 2001-2002. This was followed by a reminder vide Annexure A-6 letter dated 04-04-2003 as no communication was received by her in response to her earlier communication. Alleging certain mala fide, the applicant has impleaded the then Dy. Director, Hyderabad Region by name, as Respondent No. 4, while the Dy. Director, Hyderabad Region has been arrayed as Respondent No. 3.

3. The following are the grounds adduced to substantiate the case of the applicant:-

(a) The object of writing ACR and making entries in them is to give an opportunity to a public servant to improve one's performance. The Principal of the concerned School is the authority to write the ACR. The second respondent being the highest authority in the Samithi, the reviewing officer necessarily have to be the third respondent as otherwise, the employee loses his valuable right of appeal. In this case, it is seen that the third respondent (who is impleaded in his personal capacity as the IVth respondent) himself has written the ACR for the year 2001-02. It follows that no review of the remarks were ever carried out. Such a situation is highly detrimental to the employees of the Samithi.



(b) Before forming an opinion to make adverse remarks, the reporting/ reviewing officer should share the information, which is not part of the record with the officer concerned. This amounts to an opportunity given to the erring official to correct the errors of judgement, conduct, behaviour, integrity etc. In the case of State of UP vs. Yamuna Shanker Mishra and Others, (1997) 4 SCC 7, it has been held that in case the official does not mend his/her ways then the same has to be recorded in the ACR and a copy of the same is to be supplied to the concerned official so that he will have an opportunity to know the remarks made against him.

(c) The adverse comments contained in Annexure A1 are without any basis and ill advised. The applicant came to know about the purported adverse remarks in her ACR for the period from 1995 to 1999 only from Annexure A1. The applicant cannot be subjected to any injury on the basis of the uncommunicated adverse remarks for the years from 1995 till 1999 and the same are liable to be deleted from her ACR as vitiated by malafide intentions and oblique motives.

4. The applicant has sought for the following main reliefs:-

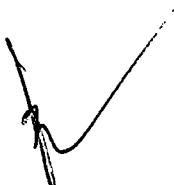
- (i) To declare that the adverse remarks communicated in Annexure A/1 is illegal;
- (ii) To direct the respondents No. 2 and 3 to expunge the adverse remarks entered in the ACR of the applicant for the year 1995, 1996, 1997, 1998, 1999 and 2001-2002.
- (iii) To direct the respondents to grant the applicant first financial upgradation under the ACP Scheme to the applicant, with effect

from 12.2.2002, the date the applicant completed 12 years of service under the Samithi, and to pay and continue to pay to the applicant such higher pay, as also the arrears of pay and other allowances with interest at the rate deemed appropriate by the Tribunal.

5. Respondents have contested the OA and their contentions are as under:-

(a) Annual Confidential Report of the applicant for the years 1995, 1996, 1997, 1998 and 1999 were written by the Principal of the Jawahar Navodaya Vidyalaya, Kottayam. The adverse remarks were of not serious nature, never acted upon against the applicant and the Reviewing Authority reviewed the same and entered overall performance of the applicant as 'Satisfactory'. That is the reason why the adverse remarks were not communicated to the applicant. On the other hand, the adverse remarks for the year 2001-02 as noted in Annexure A1 are serious and the Reviewing Authority has communicated the same to the applicant and called upon her remarks.

(b) Annexure A5 representation of the applicant to the adverse remarks communicated under Annexure A1, were forwarded to the remarks of the Principal, who entered the adverse remarks with specific direction to substantiate his remarks with documentary evidence. It is in the better interest of the applicant that the Reporting Officer was called upon to substantiate his remarks with documentary evidence. Annexure A5 explanation of the applicant was examined in the light of the remarks obtained from the Principal. It was found that

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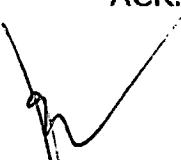
there is no justifiable cause to interfere with the adverse remarks entered by the Principal in the ACR of the applicant for the years 2001-02.

(c) The allegations of harassment of the applicant by the Principal, Jawahar Navodaya Vidyalaya, Kottayam or by any of the officers of the Samithi are without any factual basis. The O.A. being devoid of any merit is liable to be dismissed.

6. The applicant has filed the rejoinder stating the remarks shown against Column 9(d) 1 & 2 and 9(e), Column 10, 12 14, 15(a), 19, 25 and 26(a) are absolutely without any basis and remarks against Column No. 13 is cryptic and ambiguous and beyond one's comprehension. So is the case with remarks shown against column 16. Remarks under column 26 manifests extreme bias.

7. Respondents have filed their additional Reply statement and added a few more documents [Annexure R2(b) to R2(k)]. R2(b) is the inquiry report on the allegations against the Principal, made by the applicant. Annexure R2 (k) is a report by the Principal addressed to the Dy. Director written on 05.12.1996. It has been stated in the additional reply that the applicant was sanctioned first ACP affording her senior scale w.e.f. 01-04-2002 and it has been stated that the Samiti had never acted upon the adverse reports of the

ACR.



8. Counsel for the applicant submitted that right from the beginning, the applicant has been harassed and the authorities have been looking at her through coloured glass. None of the adverse remarks were communicated, save that of 2001-2002 which is under challenge. Bias has been alleged against the authorities.

9. Counsel for the respondents submitted that the applicant has already been granted ACP and the same goes to prove that the adverse remarks were not considered. In so far as the performance of the applicant is concerned, it has been stated that the ACR dossiers which have been furnished would give a clear picture as to the nature of the applicant and the performance during various years of the past. Counsel pleaded that the OA is liable to be dismissed.

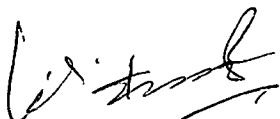
10. Arguments were heard and documents perused. ACRs were also seen. The reports consistently are one of average and the same has been maintained till recently, though in the recent past there has been improvements. If the reports for the year 2001-2002 were such that reports anterior and posterior were comfortable but only of 2001-2002 the report was diluted one, the Tribunal would have considered the act of bias etc., Since, however, all through, the reports were not all that good, no fault could be found on the part of the respondents. However, the respondents have ignored such reports when they considered the grant of ACP to the applicant.



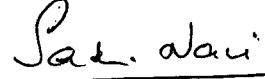
The same treatment, if shown, while considering the case of the applicant for promotion, perhaps, there would be no grievance to the applicant. Since the yardstick for consideration for grant of ACP as well as of promotion is identical, it is fairly expected that the respondents shall, as done while considering grant of ACP, ~~would~~ likewise ignore the adverse remarks as and when they consider the case of the applicant for promotion in the near future. A note to that effect should also be placed in the dossier so that the DPC as and when meets would be in a position to follow the same. There is no need to go deep into the merit of the case in the view of the above observation.

11. With the above observation, the OA is disposed of. No costs.

(Dated, the 21st March, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



Sathi Nair
MRS. SATHI NAIR
VICE CHAIRMAN

cvr.