

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.386/2001

Thursday, this the 4th day of July, 2002.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Leelamma Thomas,
Trained Graduate Teacher(Mathematics),
Kendriya Vidyalaya,
Ernakulam. - Applicant

By Advocate Mr KP Dandapani

Vs

1. The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016.
2. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi-110 016.
3. The Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office,
Chennai-600 014. - Respondents

By Advocate Mr Thottathil B Radhakrishnan

The application having been heard on 4.7.2002 the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant, a Trained Graduate Teacher(Mathematics), Kendriya Vidyalaya, Ernakulam, has filed this application aggrieved by the fact that while persons

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junior to her have been granted the Selection Scale, the same has been denied to her. Finding that by order dated 8.10.99 Selection Scale had been given to many persons who are junior to her in the seniority list, the applicant made a representation to the 2nd respondent. On consideration of the representation, the 2nd respondent has, by the impugned order A-4 dated nil, informed the applicant that she was not granted the Selection Scale as the DPC in its meeting held on 31.7.97 did not recommend her case for grant of Selection Scale on the basis of her service records. Aggrieved by this, the applicant has filed this application for setting aside the impugned order A-4 and for a direction to the respondents 1&2 to grant Selection Scale to the applicant with effect from 1.4.96 with all consequential benefits, inserting her name also in between Sl.No.80 and 81. It is alleged in the application that since the applicant has got an unblemished service and as no adverse entry has ever been communicated to her, there is absolutely no justification for not granting her Selection Scale while the Selection Scale have been granted to persons who are juniors to the applicant in the seniority list.

2. Although the respondents were given several adjournments, they did not file a reply statement and consequently, their right to file a reply statement was forfeited. However, learned counsel for the respondents made for our perusal the minutes of the meeting of the DPC which was held on 31.7.99 for considering grant of Selection Scale to Trained Graduate Teachers. He also made available for our

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perusal the ACRs of the applicant which was considered by the DPC. On the basis of the instructions, learned counsel for the respondents stated that the placement was made in the Selection Scale of Teachers who were completed 12 years of service in the Senior Scale and on the basis of a screening by a duly constituted DPC on the satisfactory performance of the Teachers. The denial of Selection Scale to the applicant while it was granted to the Teachers who are juniors to her is sought to be justified on the ground that in the process of selection, the applicant with lesser merit could not be placed on account of the fact that only 20% of the Teachers were to be given the Selection Scale and that the seniority was not the only criteria. In support of this contention, the learned counsel of the respondents referred to us the ruling of the Apex Court in Central Council for Research in Ayurveda & Siddha and another Vs Dr.K.Santhakumar, (2001) 5 SCC, 60 wherein the Apex Court held that promotion to selection post and selection grade is not merely dependent seniority alone, but on merit-cum-seniority. The dictum of the ruling under citation has no application to the facts of this case. The Apex Court was considering a case of promotion by selection. In this case, we are concerned with placement in the selection grade on completion of 12 years of service in Senior Scale. The requirement is only satisfactory performance of the Teacher as seen by a Screening Committee.

3. We have perused the ACR of the applicant for the relevant period which was considered by the respondents. For first 3 years, the applicant has got an overall grading of

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'good' whereas for the next 2 years, the grading is 'average'. If the 'average' is considered to be unsatisfactory, then it should have been communicated to the applicant. From the file produced, it is not seen that the adverse entries in the ACR have ever been communicated to the applicant. The averment in the application that no adverse entry has been communicated to the applicant, has not been refuted by the respondents by filing a reply statement. It is well settled by now that the uncommunicated adverse entries in the ACR should not be taken into account in deciding the suitability for promotion. Recently, a Full Bench of the Tribunal, in O.A.1304/2000, of the Ernakulam Bench, declared the position as follows:

"When promotion is based on seniority-cum-fitness, the incumbent is entitled to be reconsidered for promotion when adverse entries in the ACRs have not been communicated to him for the relevant period ignoring the finding of the DPC that the incumbent is "Not yet fit" on the basis of ACRs."

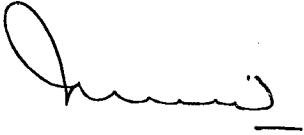
In this case, as the entries for the 2 years as 'average' have not been communicated to the applicant, we are of the considered view that the case of the applicant has got to be reconsidered by the DPC without taking into account these two entries.

4. In the light of what is stated above, we dispose of the application directing the respondents to have a review DPC constituted and to have the case of the applicant considered

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for placement in the Selection Scale with effect from 1.4.96 without taking into account the entries(adverse) in the ACR for the years June 1995 and June 1996. The above exercise shall be gone into and resultant orders issued as expeditiously as possible at any rate, within six weeks from the date of receipt of copy of this order. There is no order as to costs.

Dated, the 4th July, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. A-1 : True copy of Office Order F.No.12-11/96-KVS(RP-I) dated 8.10.1999 of the 2nd respondent.
2. A-2 : True copy of covering letter No.F.11-5/KVE/2000-2001/375 dated 11.8.2000 of the Principal, Kendriya Vidyalaya, Ernakulam, to the 3rd respondent.
3. A-3 : True copy of representation submitted by the applicant before 2nd respondent on 17.1.2001.
4. A-4 : Photocopy of communication No.12-3/2001-KVS(RP-I) dated 12.3.2001 issued by the 2nd respondent.

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