

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 397 of 2011

MONDAY, this the 26th day of November, 2012

CORAM:

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

Gopinathan Nair C.M,
S/o. Late C.P. Kunhambu Nair,
Trained Graduate Teacher (Social Science),
Kendriya Vidyalaya, Payyannur, Kannur District,
Residing at : 4 Quarters, K.V. Campus Post,
EDAT, Kannur District. ... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

The Kendriya Vidyalaya Sangathan,
Represented by the Commissioner,
Headquarters, 18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi – 110 016 ... Respondents.

(By Advocate M/s. Iyer and Iyer)

This application having been heard on 09.11.12, the Tribunal on 26.11.12 delivered the following :

O R D E R

HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant is a Trained Graduate Teacher (TGT) under the Kendriya Vidyalaya Sangathan (KVS) . He aspires for promotion to the post of Post Graduate Teacher (PGT), which is by selection. He was not promoted in the years 2006-07, 2007-08 and 2008-09 for not having attained the prescribed benchmark of 'good' in the relevant Annual Confidential Reports (ACRs). Aggrieved, he has filed this O.A for the following reliefs:



- (i) To issue a direction to the respondent to promote the applicant to the post of Post Graduate Teacher in Economics at the Kendriya Vidyalaya, Payyannur;
- (ii) To grant such other reliefs as this Hon'ble Tribunal deems fit and proper in the circumstances of the case;
- (iii) Award costs of and incidental to this application;
- (iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2. The applicant contended that denial of promotion to him based on uncommunicated adverse remarks is void and inoperative as per Court decisions. In one case, he has been communicated adverse remarks which were expunged on his representation. But non-communication of adverse remarks pertaining to other years is violative of Articles 14, 16, 19 and 21 of the Constitution of India.

3. Per contra, the respondents submitted that the benchmark for promotion to the post of PGT is 'good'. The Departmental Promotion Committee (DPC) in its meeting held on 31.05.2006, 19.02.2007 and 01.07.2008 / 02.07.2008 for the years 2006-07, 2007-08 and 2008-09 respectively found the applicant unfit for promotion to the post of PGT (Economics) as he did not meet the prescribed benchmark. The present case has no relevance with the ACR for the year 2009-10 where the adverse remarks had been communicated to him and were expunged and he had been upgraded. The DPC has considered the ACRs of the applicant of preceding relevant five years.

4. In the rejoinder statement, the applicant submitted that if at all there



were any adverse remarks in the ACRs of the applicant in respect of 2006-07, 2007-08 and 2008-09, the same were not communicated to him at all. An uncommunicated adverse remark is unsustainable.

5. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Vineet (M/s. Iyer and Iyer) appearing for the respondents and perused the records.

6. As per the minutes of the DPC meeting held on 31.05.2006 for promotion to the post of PGT, the applicant was graded unfit for promotion as he did not meet the prescribed bench mark of 'good'. There is nothing on record to show that the adverse remarks, if any, in the relevant ACRs considered by the DPC were ever communicated to him. The respondents have admitted that the adverse remarks in respect of ACRs for the year 2009-10 were communicated to the applicant and they were expunged and he was upgraded. When the prescribed benchmark is 'good' any remark below 'good' is to be treated as adverse. The ACR for the year ending March, 2006 shows that he has been graded as 'average'. For the years 2006-07, 2007-08, 2008-09, he has been graded as 'good'. The respondents have no case that the adverse remarks in the ACR of the applicant for the year ending March, 2006 have been communicated to him. In ***Dev Dutt vs. Union of India and Others***, (2008) 8 SCC 725, the Hon'ble Supreme Court held as under:

"17. In our opinion if the Office Memorandum dated 10/11.09.1987, is interpreted to mean that only adverse entries (i.e. 'poor' entry) need to be communicated and not 'fair', 'average' or 'good' entries, it would become arbitrary (and hence illegal) since it may adversely affect the

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incumbent's chances of promotion, or get some other benefit. For example, if the bench mark is that an incumbent must have 'very good' entries in the last five years, then if he has 'very good' (or even 'outstanding') entries for four years, a 'good' entry for only one year may yet make him ineligible for promotion. This 'good' entry may be due to the personal pique of his superior, or because the superior asked him to do something wrong which the incumbent refused, or because the incumbent refused to do sycophancy of his superior, or because of caste or communal prejudice, or for some other extraneous consideration.

18. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi vs. Union of India* (supra) that arbitrariness violates Article 14 of the Constitution.

19. Thus it is not only when there is a bench mark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder."

7. In view of the above settled legal position, non-communication of adverse entries in the ACRs of the applicant was arbitrary and hence illegal. The DPC should not have taken into consideration the adverse remarks entered in the ACRs of the applicant which had not been communicated to him. In the light of the above, this O.A. is allowed as under.

8. The respondents are directed to convene a review DPC meeting to consider the case of the applicant for promotion to the post of PGT (Economics) disregarding the uncommunicated adverse remarks in the



relevant ACRs of the applicant and if found fit for promotion, promote him as PGT (Economics) within a period of 4 months from the date of receipt of a copy of this order. No costs.

(Dated, the 26th November, 2012)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.