

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. No. 249/2006

This, the ^{18th} day of September, 2008:

Hon'ble Mr. M. Kanthaiah, Member(J)
Hon'ble Dr. A. K. Mishra, Member (A)

Yugul Kishore Mall aged about 54 years son of Sri Ram Parsed Mall R/o Gram Bardiha Nathmal Post Taikua, District Deoria presently residing at H.N. B-172/3, R.D.S.O. Colony, Manaknagar, Lucknow working as Post Graduate Teacher (Maths) in Kendriya Vidyalaya, SGPPI, Lucknow.

Applicant.

By Advocate: Sri A.Moin

Versus

1. Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shahidjit Singh Marg, New Delhi-16, through its Commissioner.
2. Joint Commissioner, (Administration) Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shahidjit Singh Marg, New Delhi-16,
3. Deputy Commissioner (Administration) Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shahidjit Singh Marg, New Delhi-16.
4. Assistant Commissioner, Kendriya Vidyalaya Sangathan Lucknow Region Sector J, Aliganj, Lucknow.
5. Principal, Kendriya Vidyalaya, SGPPI, Rae Bareilly Road, Lucknow.

Respondents.

By Advocate : Sri Surendran P.

ORDER

By Hon'ble Shri M. Kanthaiah, Member (J)

The applicant has filed the Original Application with a prayer to quash the impugned order dated 30.9.2005 (Annexure No. 1) passed by respondent No. 3 and direct the respondents to promote the applicant to the post of Vice Principal grade Rs. 7500-12000/- with effect from the date when the applicant's juniors were promoted i.e. 2.9.2005 with all consequential benefits including arrears of pay on the following grounds:-

- i) No reasons have been assigned in the impugned order dated 30.9.2005 for not promoting the applicant to the post of Vice Principal.
- ii) The impugned order dated 30.9.2005 is patently arbitrary, illegal and malafide.

iii) Junior of the applicant namely Mrs. Santosh Narang whose name finds place at Sl.No. 298 amongst the PGTs (English) in the Seniority list as on 1.1.2004 and appointed in 1987 has been promoted by means of promotion order whereas the applicant who is 1984 appointee has not been found fit for promotion.

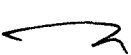
2. The respondents have filed detailed counter reply denying the claim of the applicant stating that the Departmental Promotion Committee has not found fit the case of the applicant for his promotion as Vice Principal as he did not meet the prescribed benchmark performance 'Good'.

3. The applicant has filed Rejoinder denying the stand taken by the respondents and reiterated the pleas taken in the Original Application.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for relief as prayed for.

6. The admitted facts of the case are that the applicant was initially appointed as Post Graduate Teacher (PGT) (Mathematics) on 22.9.1984 in the respondents Vidyalya Sangathan. He was given the senior scale of pay w.e.f. 22.9.1996 by means of order date 7.6.2004 in the scale of Rs. 7500-12000/- (Annexure A-2) and he was also sent on deputation as Principal in the Navodaya Vidyalaya Samiti Shillong Region at Jawahar Navodaya Vidyalaya Chura Chandpur, Manipur and Jawahar Navodaya Vidyalaya, Lakhimpur Asam from 17.10.96 to 31.5.2000. It is also not in dispute that the applicant became due for promotion to the post Vice Principal in the grade of Rs. 7500-12000/- in the Kendriya Vidyalaya Sangathan for the year 2005-06. The post of Vice Principal in the K.V.S. is filled 100% by promotion on the basis of seniority -cum-merit from amongst the PGTs serving in the KVS possessing the required qualifications, which the applicant satisfied. The respondents have also issued seniority list a on 1.1.2004 in which the name of the applicant finds places at Sl. No. 130 as the Mathematics teacher whereas the names of Sri S. Singh, R.B. Singh and M.C.Tewari are at Sl. No. 131 to 133 respectively and Annexure 3 is the said seniority list. The respondent No.2

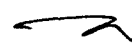


have issued an order dated 2.9.2005 (Annexure 4) in respect of promotions of 46 persons to the post of Vice Principal for the year 2005-06 in the grade 7500-12000, in which the name of applicant's junior Sri Surendra Singh, Sri R.B.Singh and Sri M.C.Tewari find place.

7. Aggrieved of the said selection, the applicant made representation on 20.9.2005 (Annexure 5) to the respondents indicating that no adverse entry at any stage of time has ever been communicated to him and he cannot understood as to on what basis he was superceded by his juniors for the post of Vice Principal but the same was rejected vide order dated 30.9.2005 (Annexure-1) that he has not been found suitable for promotion as Vice Principal for the year 2005-06 but no reasons have been assigned in the said order, which is under challenge in this O.A.

8. Thereafter, the applicant also made an application under RTI Act, demanding to know the criteria that was adopted by the D.P.C. while considering the claim of the applicant for promotion to the post of Vice Principal and also for being given 5 years confidential record but the authorities informed by order dated 23.11.2005 (Annexure -6) that he cannot be given the copies of the ACRs and he was informed the criteria for promotion to the post of Vice Principal. It is also not in dispute that respondents have further issued an order dated 12.1.2006 (Annexure -9) by which junior of the applicant have been promoted on the post of Vice Principal, more particularly, C.S. Gupta, whose name finds place in the Sl.No.1 of the promotion order dated 12.1.2006.

9. Article 56 of Education Code of K.V.S. provides the method for promotion to posts of Group 'C', Group 'B' and Group 'A' posts below the level of Rs. 12,000-16,500. Further, Article 56.1(c), provides a bench mark of "Good" for the said post and the preparation of the select list shall be from amongst those who are graded as 'Fit' to be included in the select panel in order of inter se seniority in the feeder grade subject to availability of vacancies. The said Article 56 (1) (b) also provides that the DPC shall take

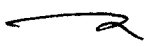


suitable note of non-communication of any adverse remark in the CRs. Annexure 11 is the relevant extracts of Article 56 of Education Code of KVS.

10. It is the main case of the applicant that his juniors have been selected for the post of Vice Principal and he has not been selected and at no point of time, he was communicated an adverse remarks in respect of his performance. In spite of his representation, the respondents have not furnished the ACRs for the period of 5 years for which the DPC has considered. The respondents though did not mention any thing in the impugned order dated 30.9.2005 (Annexure No.1) by way of counter, they have stated that the Departmental Promotion Committee has not found fit the case of the applicant for his promotion as he did not meet the prescribed bench mark performance "Good" and which is the reason for his non selection for promotion. In view of such rival contention of the parties, the following are the main points which requires consideration for deciding the claim of the applicant:-

- I) Whether the applicant did not meet the prescribed bench mark performance "Good" for not selecting him for his promotion on the post of Vice Principal.
- II) Whether communication of the below bench mark performance to the applicant is required.
- III) Whether the respondents have communicated the below bench mark performance to the applicant which adversely affect his promotion to the post of Vice Principal.

11. Admittedly, the criteria for promotion on the post of Vice Principal is purely based on seniority-cum-merit. It is also admitted case of the parties that the applicant was not selected for promotion on the post of Vice Principal for the year 2005-06, whereas some of his juniors have been selected. The reasons given by the respondents for non selection for promotion of the applicant was that he did not meet the prescribed bench mark performance "Good". Except this they have not assigned any other reason. We have also summoned the ACRs of the applicant for the five years, out of which, 2



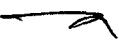
entries show below bench mark, which adversely affected the promotion of the applicant. Admittedly, such entries of ACRs with below bench mark performance is not within the knowledge of the applicant and admittedly the respondent authorities never communicated or intimated to the applicant. The authorities have not communicated such below bench mark to the applicant which is going to adversely affect the applicant for making his representation and for improving his performance.

12. The employer, who was aware of such below bench mark of the applicant, which also adversely affect his promotion did not communicate the same to him and without any such communication placed such records before the DPC and basing on such below bench mark entries, DPC did not consider the name of the applicant for selection for promotion to the post of Vice Principal.

13. It is the case of the learned counsel for the applicant that not only adverse entries but every entries be communicated to the employee in respect of ACRs and non communication of such remarks will naturally cause prejudice to the office and it is against the Principle of Natural justice and in support of it, he relied on the following recent decisions of the Apex Court in the case of **2008 AIR SCW 3486 Dev Dutt Vs. Union of India and Others.**

14. In the case of Dev Dutt Vs. Union of India and others, bench mark laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'Very Good' entry for the last five years but the appellant had one 'Good' entry in one of the years and on that ground he was refused promotion. The good entry was not communicated thus denying him an opportunity to make representation for upgradation of entry. On which the Hon'ble Apex court found fault with the respondent authorities and also directed that Good entry be communicated to the applicant within a period of two months.

15. In the instant case also, the bench mark laid down by the authorities for promotion to the post of Vice Principal was 'Good' entry for the five years whereas the applicant had two entries of below bench mark and on that ground



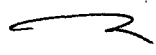
he was refused promotion and admittedly the bench mark entries were not communicated to the applicant by the respondent authorities which was the cause of refusal for promotion. Thus the above citation clearly applies to the facts of this case and supporting the case of the applicant for challenging the impugned order dated 30.9.2005 (Annexure No.1) under which he was not found fit for promotion as Vice Principal.

16. Learned counsel for the respondents have relied on the following decisions in support of his contention but in view of the latest decision of the Apex Court in Dev Dutt (Supra) , they are not much helpful to support the stand taken by him.

1. (2008) 1 Supreme Court Cases (L&S) 409 , M.V. Thimmaiah and others Vs. Union Public Service Commission and others.
2. (2006) SCC (L&S) page 1599 Satyanarayan Shukla Vs. Union of India and others.
3. O.A. No. 41 of 2007 on the file of CAT, Lucknow Bench (Parmatma Sharan Shukla Vs. UOI and others)

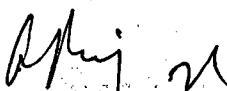
17. In view of the above discussion, the claim of the applicant in challenging the impugned order ,under which he was denied promotion on the ground of below bench mark performance of entries of his ACRs for the two years which have not been communicated and consequently the name of the applicant was not recommended by the DPC is not without force and thus the applicant is justified in challenging the impugned order dated 30.9.2005.

19. In the result, impugned order dated 30.9.2005 (Annexure -1) is set aside with a direction to the respondents to communicate the below bench mark entries to the applicant within one month from the date of receipt of copy of this order and on being communicated, the applicant may make representation against to the said entries within one month and thereafter, the respondents are directed to decide the same within 45 days and if the entries in respect of below bench mark are upgraded, the applicant shall be considered for




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promotion to the post of Vice Principal for 2005-06, by conducting review DPC within 45 days with all consequential benefits.


(Dr. A.K. Mishra)
Member (A)

HLS/-


(M. Kanthaiah)
Member (J)
18-09-08