

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. NO. 277/2007

This the 18<sup>th</sup> day of November, 2008

Hon'ble Sri M. Kanthaiah, Member (J)

Hon'ble Sri A.K. Mishra, Member (A)

Akhil Kumar Shukla aged about 54 years son of Shri Karuna Shankar Shukla resident of H-151, Sector I, Jankipuram Lucknow (presently posted as Assistant Commissioner, in Lucknow Region, Navodaya Vidyalaya Somiti, lucknow.)

Applicant.

By Advocate: Sri R. C. Singh

Versus

1. Union of India through the Secretary, Ministry of Human Resource Development (Department of Secondary and Higher Education) New Delhi .
2. Navodaya Vidyalaya Samiti , A-28, Kailash Colony, New Delhi-110048, through its Commissioner.
3. Commissioner, Navodaya Vidyalaya Samiti , A-28, Kailash Colony, New Delhi-110048.
4. Joint Commissioner (Administration) Navodaya Vidyalaya Samiti , A-28, Kailash Colony, New Delhi-110048
5. Joint Commissioner ( Personnel) Navodaya Vidyalaya Samiti , A-28, Kailash Colony, New Delhi-110048
6. Shri H.N.S.Rao, Deputy Commissioner (Academics), Navodaya Vidyalaya Samiti , A-28, Kailash Colony, New Delhi-110048
7. Mrs. Kiron Chandra Assistant Commissioner (Academics), Navodaya Vidyalaya Samiti , A-28, Kailash Colony, New Delhi-110048

Respondents.

By Advocate Sri Anil Kumar  
*Sri L. M. Joshi Bar & R.*

Order

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

The applicant has filed this O.A. with a prayer to set aside the impugned decision of the respondents No.1 to 5 for not recommending the applicant and superseding him in the matter of promotion to the next higher post of Dy. Commissioner and instead considering the candidature of the respondent No. 7 and recommending her for promotion to the post of Dy. Commissioner

against the vacancy which is going to occur on 31.7.2007 despite the fact that she is junior to the applicant in the cadre of Assistant Commissioner and also directing the respondents No. 1 to 5 to ignore the un-communicated unfavourable or adverse remarks/ grading below bench mark recorded in the Annual Confidential Reports for the year 2003-04 or any other year and to reconsider his candidature for promotion to the next higher post of Dy. Commissioner by holding a review DPC before actually giving actual promotion to the respondent No.7.

2. While challenging the decision of the respondents No.1 to 5, the applicant has taken the ground that he is fully eligible and qualified for promotion to the post of Dy. Commissioner but it is not open to the respondents No.1 to 5 to consider the un-communicated adverse remarks or grading below bench mark for promotion to the next higher post of Dy. Commissioner and for recommending respondent No. 7 who is junior to him in the cadre of Assistant Commissioner and she cannot be allowed to supersede the applicant in the matter of promotion to the post of Dy. Commissioner.

3. The respondents have filed detailed C.A. denying the claim of the applicant.

4. After completion of the pleadings of both sides, when the matter was taken up for final hearing, heard both sides.

5. It is the main case of the applicant that he has been working as Assistant Commissioner and his claim for promotion on the post of Dy. Commissioner which fell vacant on 30.7.2007 was not considered and superseded him and name of his junior who is respondent No. 7 has been recommended for such promotion. It is also the case of the applicant that at no point of time , any adverse remarks or any un-favourable entries in his ACR were communicated to him and thus questioned the validity of superseding him in the matter of promotion and also stated that every entry in ACR needs

to be communicated to the officer and in support of his claim, the learned counsel for the applicant has also relied on the decision of **2008 AIR SCW 3486 Dev Dutt Vs. UOI and India and others**. The learned counsel for the respondents admitted that in the instant case, the adverse remarks against the applicant have not been communicated while considering his claim for promotion to the post of Dy. Commissioner.

6. The Hon'ble Apex Court found fault for non communication of entries in the ACR of a public servant and issued direction to the authorities with the following observations:-

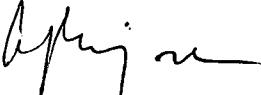
“40. We further hold that when the entry is communicated to him, the public servant should have a right to make a representation against the entry to the concerned authority and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conduness to public servant. The State must be a model employer and must act fairly towards its employees. Only then would good governance be possible.

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence such non communication would be arbitrarily and as such violative of Article 14 of the Constitution.”

7. In the instant case also, admittedly, the respondents have not communicated any adverse remarks in the ACR of the applicant and

further not considered his case for promotion on the post of Dy. Commissioner only on the ground of adverse entries in his ACRs. In view of the above circumstances, the applicant is justified in challenging the action of the respondents No.1 to 5 in not considering the applicant for his promotion on the post of Dy. Commissioner against the vacancy occurred on 31.07.2007 on the ground of adverse entries in his ACRs.

8. Under the above circumstances, the O.A. is disposed of with a directions to the respondents No.1 to 5 to communicate the adverse entries to the applicant within a period of one month from the date of receipt of copy of this order and on being communicated, applicant may make representation against such entry within one month thereafter and the said representation of the applicant should be decided within one month thereafter. If the entries of the applicant is upgraded, he shall be considered for promotion retrospectively by the DPC within two months thereafter. With these observations, O.A. is disposed of. No order as to costs.

  
(Dr. A.K. Mishra)

Member (A)

  
(M. Kanthaiah)

Member (J) 18.11.2008

HLS/-