

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 9 FEB 1989

APPLICATION NO (S) 1010 & 1756 / 88(F)

W.P. NO (S)

Applicant (s)

Respondent (s)

Shri M.S. Venugopal
To

V/s

Vice Chief of Army Staff, Army Headquarters,
New Delhi & 2 Ors

1. Shri M.S. Venugopal
Assistant Master in English
Bangalore Military School
2500, Richmond Town
Hosur Road
Bangalore - 560 025
2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009
3. The Vice Chief of Army Staff
General Staff Branch
Army Headquarters
DHQ P.O.
New Delhi - 110 011

4. Shri V.N. Purohit
Master (Gazetted)
Military School
Dholpur
5. Shri A.K. Awasthi
Master (Gazetted)
Military School
Chail - 173 218
Simla Hills
Himachal Pradesh
6. Shri M.S. Padmarajaiah
Central Govt. Sng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAY~~/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 7-2-89.

Encl : As above

R.V. Venugopal
DEPUTY REGISTRAR
(JUDICIAL)

Issued
K.V. Lin
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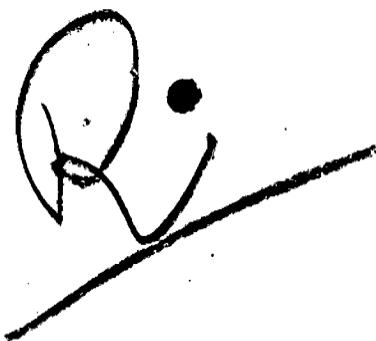
16. The applicants had accepted these promotions unconditionally and without any reservation. The preference expressed by them for posting at Bangalore does not affect their unconditional acceptance of regular promotions given to them in the Order dated 16-10-1982.

17. On the unconditional acceptance by the applicants, the promotions granted on 16-10-1982 had become final and effective from that very date itself. So long as those promotions have not been undone, we must necessarily ^{give to} effect to them from 16-10-1982. On this conclusion itself, we must ignore all the later contrary orders, if any made against the applicants and we do so.

18. We find that Regina had been reverted on 20-4-1988 on a total misunderstanding of the earlier regular promotion given to her on 16-10-1982. In the order dated 20-4-1988 and the reply, respondents 1 to 3 have not set out any justifiable circumstances to her reversion. Even the records placed before us do not establish any justifiable circumstances for her reversion. On this, we must necessarily take exception to her reversion.

19. But, our earlier conclusion does not mean that we should interfere with the posting of respondent-4, who has secured her promotion against examinee quota. Every one of the circumstances pleaded by the respondents justified the posting of respondent-4 to Bangalore. We must, therefore, decline to interfere with her posting.

20. On our earlier conclusions Regina has now to be given a posting as an UDC. She has filed a memo expressing her preferences for posting at Bangalore, Madras and Hyderabad. We need hardly say that Regina has to be posted by the Administration only and not by us and in so doing the Administration is free to accommodate her ⁱⁿ preferably at the places of her choice, if there are vacancies at those places or at such other place as is found necessary in public


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated the 7th day of February, 1989.

Present

THE HON'BLE MR.JUSTICE K.S.PUTTASWAMY VICE CHAIRMAN
THE HON'BLE MR. L.H.A. REGO .. MEMBER(A)

APPLICATIONS NOS.1010 & 1756 OF 1988(F)

Sri M.S.Venugopal
44 years,
Assistant Master in English,
Bangalore Military School,
2500, Richmond Town,
Hosur Road, Bangalore-25. .. Applicant in both
the applications.

(By Dr.M.S.Nagareja, Advocate for the applicant)

-vs.-

1. Union of India
by its Vice Chief of Army Staff
General Staff Branch
Army Headquarters,
New Delhi-110 011.

2. Shri V.N.Purohit,
Master(Gazetted)
Military School,
Dholpur.

3. Sri A.K.Awasthi,
Master(Gazetted)
Military School,
Chail.

.. Respondents.

(By Shri M.S.Padmarajaiah, Senior Standing Counsel
Central Government, for respondents.)





These applications coming on for hearing, the HON'BLE MR.L.H.A.REGO, MEMBER(A), made the following:

O_r_d_e_r

In these two applications, the applicant who is one and the same, has prayed for two distinct and separate reliefs namely, to quash the orders dated 5-5-1988 and 20-5-1988 (Ann.A3 and A4, respectively) promoting his juniors viz., Respondents (R) 2 and 3 respectively, as Masters (Gazetted) in English [MG(E)], in preference to him and to direct R-1 to promote him as MG(E), from the dates, his above juniors were promoted and to grant him other appropriate relief.

2. The following is a profile of this case. The applicant was appointed as Assistant Master in English [AM(E)], on a temporary basis, with effect from 27-12-1971, in the Military School at Bangalore, which is one among the chain of five schools, under the control and supervision, of the Defence Ministry of the Government of India. The other four schools are situated at Chail, Ajmer, Dholpur and Belgaum. He has been working as AM(E) since then. He states, that though he was senior to R-2, the latter was promoted as MG(E), with effect from 17-8-1982, superseding him, on account of which, he filed Writ Petition No.806 of 1984, in the High Court of Judicature,

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Karnataka, for redress. The same came to be transferred to this Tribunal, under Sec.29 of the Administrative Tribunals Act, 1985 and was registered as Application No.1393 of 1986.

3. The said application was disposed of by this very Bench of the Tribunal, on 26-10-1987, by an Order, which reads as under:

"33. In the light of our above discussion, we make the following orders and directions:

1) We declare that the applicant and R2 had been appointed on a regular basis as AMs in English in the vacancies which occurred in the Ajmer and Bangalore Schools from 27-9-1973 and 24-10-1973 respectively;

2) We declare that the applicant is senior to R-2 in the cadre of AMs in English. We direct R-1 to assign rank No.3 to the applicant and rank No.4 to R2, as against rank Nos.3 and 4 assigned to them respectively in the seniority list drawn up as 03-1-1982;

3) We quash the promotion of R2 and the proceedings of the DPC which met on 17-8-1982 in so far as the same relate to selection to the post of MG in English only and direct R1 to re-determine the case of the applicant and R2 for promotion to the post of MG as on 17.8.1982 afresh with the assistance of a DPC and then make a fresh selection to the vacant post of MG in English only between them, in accordance with law and the observations made in this order, with all

such



8. Aggrieved, he has come before this Tribunal for redress.

9. R-1 has filed his reply, resisting the application.

10. R2 has sent a copy of his letter dated 6-2-1988, addressed to the Principal, Military School, Bangalore, to this Tribunal, stating the Review DPC at its meeting held on 24-3-1988, has duly complied with the order and directions issued by this Tribunal on 26-10-1987 in Application No. 1393 of 1986 and therefore, the applicant can have no cause to be aggrieved.

11. R-3 has filed a written reply countering the application.

12. Neither R-2 nor R-3 were present, at the time of the hearing nor were they represented by Counsel.

13. The spearhead of the attack of Dr.M.S. Nagaraja, learned Counsel for the applicant, was, that the DPC was not objective in its assessment of the ACRs, of his client. According to him, the service record of his client, for the quinquennium immediately preceding the date namely, 17-8-1982, which was the datum for the Review DPC, at its meeting held on 24-3-1988, to reconsider the case of his client

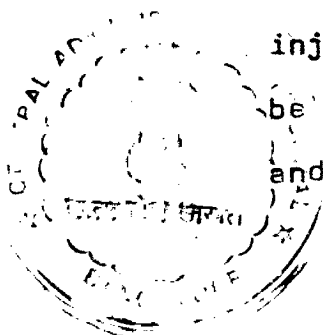
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as on that date, in compliance with the directions of the Tribunal, was distinctly superior to that of R-2 and therefore, the latter could not have superseded his client, for promotion as MG(E), specially, when he was senior to him. Dr. Nagaraja made this submission, on our giving him an opportunity to examine the relevant ACRs, of both the applicant as well as R-2. Explicating the service record of his client for the said quinquennium, year by year, Dr. Nagaraja sedulously argued, that his service record was uniformly good, throughout. He asserted, that for the Assessment year 1978, his client ought to have been graded overall, as "Very Good", in the context of the individual entries in his ACR but the Principal of his School, had erroneously and unfairly, graded him as just "Good". He stressed, that no person of reason or sanity, could have arrived at such an assessment, to the detriment of the service career of his client and therefore, he pleaded, that this was a fit case where the Tribunal should step in and intervene, to render justice to his hapless client, by exercising its power of judicial review, in all its plenitude.

14. Dr. Nagaraja argued trenchantly, that the injustice caused to his client was flagrant, as would be evident, from minute scrutiny of the ACRs of R-2 and his client, for the relevant period. Developing

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his argument with finesse, he pointed out, that there was a clear adverse remark against R-2, by the Reporting Officer, for the Assessment Year 1977, in regard to lack of control on his temper, which he said, was endorsed ^{by the} by Reviewing Officer and even communicated to R2, on 11-3-1978, advising him to control his temper. The overall grading of R2 for the Assessment Year 1981, was just "Above Average", he submitted, which was below the grading, "Good". Assessing the service record in its entirety, for the above quinquennium, Dr. Nagaraja canvassed with vigour, that his client had a more meritorious record than that of R-2 and therefore submitted, that the Review DPC grossly erred, in grading his client merely as "Good", as compared to "Very Good", in respect of R-2, at its meeting held on 24-3-1988. This he said, was totally at variance with the evidence on record in the relevant ACRs, and such a grading, could not have been arrived at by a person, of sanity and reason and therefore urged, that this Tribunal should intervene, in exercise of its power of judicial review of administrative action, to correct this travesty of justice. In any case, he argued, that on account of the above blemish, R-2 could by no stretch of imagination be graded overall, as "Very Good". If in that event, he was graded as

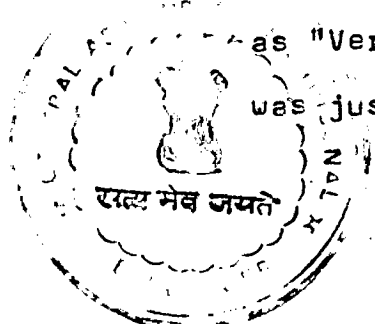
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just "Good", he asserted, that on the principle of ceteris paribus, his client by virtue of seniority, should be rightfully promoted as MG(E), in preference to R-2,

15. The sheet anchor of the counter of Shri Padmarajaiah, to the above submission of Dr. Nagaraja was, that the Review DPC, at its meeting held on 24-3-1988, had objectively assessed the performance and merit of the applicant and the others concerned, afresh, on the basis of their ACRs, to consider their promotion as MG(E), as on 17-8-1982, and had graded them accordingly. It found no justifiable reason ^{he said,} ~~to alter~~ the grading assigned by the DPC, to the applicant and R-2 earlier, at its meeting held on 17-8-1982 viz., "Good" and "Very Good", respectively. He emphasised, that this grading was based on their relative assessment, with due regard to the material evidence, that was available in their ACRs, to substantiate, which, he gave an exposition of the comparative remarks, in regard to both the applicant as well as R-2, on the relevant items of their ACRs, for the quinquennium, immediately preceding 17-8-1982. He pertinaciously urged thereon, that the overall merit of R-2, for the said quinquennium, was distinctly superior to that of the applicant, so as to justify his grading as "Very Good", as compared to that of the applicant, which was just "Good". In this background, Shri Padmarajaiah

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vehemently, refuted the contention of Dr. Nageraja, that the assessment and grading of his client vis-a-vis R-2, by the Review DPC, was such, that no person of reason and sanity, could have arrived at the same. He pleaded, that in the context of the above facts, it would not be proper for the Tribunal, to probe into the matter with an eagle's eye, for mathematical precision and nicety, to ascertain the correctness of the grading, as such acme of perfection was scarcely feasible. What was material and important, he asserted, was, as to whether the overall relative assessment was objective and rational, on the basis of the evidence on record. The Review DPC he stressed, was duly guided by these considerations and was fair and objective, in assessing the performance and merit of the applicant, vis-a-vis R2 and in grading them accordingly. The matter therefore, did not come within the sphere of judicial review by this Tribunal, he urged and submitted, that the application was meritless.

16. We have heard both sides at length and have carefully examined the material placed before us and in particular, the proceedings of the Review DPC and the ACR dossiers of the applicant and R-2, for the relevant period.

17. Before we turn to the merits of the case, it is but proper, that we deal with question of the nature and extent of the power of this Tribunal, in



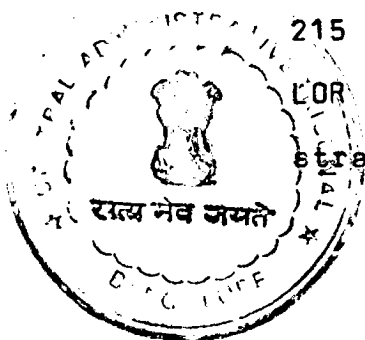
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regard to judicial review of administrative action, taking due note of the assiduous submission of Shri Padmarejaiah, that the case before us does not call for our scrutiny of the assessment and grading of the applicant, vis-a-vis R-2, determined by the Review DPC, objectively, on the basis of their ACRs, at its meeting held on 24-3-1988.

18. We have discussed comprehensively, in Application No.1653/1986(T) (corresponding to W.P. No.11714 of 1985) [S.K.SRINIVASAN v. DIRECTOR GENERAL, EMPLOYEES' STATE INSURANCE CORPORATION & ORS] decided by this very Bench on 30-1-1987, the matter relating to exercise of the power of judicial review by this Tribunal over administrative action, Paras 8 to 13 of that decision, highlight the salient aspects. In SAMPAT KUMAR's case, the Supreme Court held, that the Administrative Tribunal was a substitute for the High Court, not only in form and de jure but also in content and de facto and that consequently, it was equally competent, to exercise the power of judicial review, as the High Court, acting under Articles 226 and 227 of the Indian Constitution.

19. As observed by the Supreme Court in AIR 1954 SC 215 (WARYAM v. AMAR) and in AIR 1954 SC 217 (VICE CHANCELLOR v. GHOSH), the object of judicial review of administrative action, is to keep the administrative authorities

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within the bounds of their powers under the law (emphasis added). In all modes of judicial review, the jurisdiction of this Tribunal, is merely to set aside the unlawful order and not substitute its own decision, for that of the statutory authority, for that would be exercising a power of appeal, where none exists, - vide (1954) 3 All ER 449(453) CA (HEALEY v. MINISTRY OF HEALTH). This implies, that its supervisory jurisdiction, over the administrative decision, cannot enter into the question, whether such decision is wrong on its merits, even on a question of law (except, where that is apparent, on the face of the record) as enunciated by the Supreme Court in A.1967 SC 908(915-16) [LAKHANPAL v. U.O.I.]

20. The Supreme Court has further clarified, that a Court or Tribunal, cannot examine the material as if an appeal lay to it, ^{to} form the subjective decision of the competent authority, but that it can examine the material, only for seeing, as to whether the decision is so patently unreasonable, that no reasonable person properly instructed in law, could have arrived at it [vide (1980)5 SCC 321 (BALDEV RAJ v. U.O.I)] or whether, any irrelevant material, has influenced the decision or some relevant material, has been ignored, before taking that decision - in either case, where the material, thus wrongly taken into account or wrongly ignored, was not insignificant but was of substantial importance [(1977)4 SCC 345 - STATE OF U.P. v. CHANDRA MOHAN].

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21. With this prologue, we shall now proceed to examine the various contentions urged before us by both sides. The fate of the applicant primarily hinges, on his ACRs for the relevant period, as they have been the basis, on which his performance has been assessed and he has been graded by the Review DPC. While, Dr. Nageraja trenchantly contends, that the Review DPC has not objectively and factually analysed, the ACRs of his client for the said period and has determined his overall grading, as just "Good", on that basis, as against "Very Good", and that a man of reason and sanity, would not have so graded his client, on that material, Shri Padmarejaiah forcefully argues to the contrary.

22. In such circumstances, we deem it proper, ex debito justitiae, to exercise our power of judicial review, over administrative action, bearing in mind the nature and extent of that power, in the light of what we have explained earlier, in paras 18 to 20 above, to help ascertain, as to whether the decision taken by the authorities concerned, in this case, was patently unreasonable.


23. For this purpose, it is necessary for us, to examine the ACRs of the applicant and R-2, for the quinquennium, immediately preceding the date viz., 17-8-1982, when the DPC first met, to consider their cases for promotion

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promotion to the grade of MG-E. We have duly examined these ACRs and cull out below, in the form of a tabular statement, the quintessence of the remarks therein, both by the Reporting Officer as well as the Reviewing Authority, for each year of the quinquennium, which had a crucial bearing on their overall grading:

Year	Assessment of the Applicant by			Rational Grading.	Assessment of R-3 by			Rational Grading.	
	RO	RA			RO	RA			
1	2	3	4	5	6	7			
1977	<u>I. Character assessment</u>				<u>I.Character assess- ment</u>				
	<u>P</u> A	<u>TA</u> -	<u>I</u> AA	<u>K&E</u> A		<u>P</u> A	<u>TA</u> -	<u>I</u> AA	<u>K&E</u> Keen & energetic.
	<u>II. General assessment</u>				<u>II General assessment:</u>				
	Has developed into a good teacher of English. Initiative, tact and judgment fair. Dependable, sincere in work. Polished and suave. A quiet worker. Interested in extra-curricular activities, particularly English Dramatics. A useful member of the staff.			Agrees with the AO and adds:"Quite a sincere worker - O.M. nil."	Good	Agrees & adds: "A good and devoted teacher.Did a good job in his charge of Dramatics. <u>Certainly needs to control his anger, O.M. nil."</u>			"Good", with a minor aberration.
						NB: Adverse remarks communicated to the applicant, on 11-3-1978.			
						Has initiative and organising ability. A dependable and good teacher. Has very good knowledge of the subject. Takes interest in sports. Relationship with colleagues good.He is disciplined and honest. <u>He is advised to control his temper.</u> Otherwise a fine young man, with pleasing manner.			

1	2	3	4	5	6	7																
1978	<u>I. Character Assessment</u> <table border="1"> <thead> <tr> <th>P</th> <th>TA</th> <th>I</th> <th>KE</th> </tr> </thead> <tbody> <tr> <td>Sober & mature.</td> <td>AA</td> <td>AA</td> <td>A</td> </tr> </tbody> </table> <u>II. General Assessment:</u> A competent teacher of English. Quiet efficiency. Methodical and punctual. Class control, good and effective. His written English is effective and precise and at times brilliant. Highly co-operative. Willing to accept additional responsibilities.	P	TA	I	KE	Sober & mature.	AA	AA	A	Agrees with the RO and adds: "A good teacher O.M. nil."	Good.	<u>I. Character Assessment</u> <table border="1"> <thead> <tr> <th>P</th> <th>TA</th> <th>I</th> <th>K&E</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>-</td> <td>AA</td> <td>Keen & energetic.</td> </tr> </tbody> </table> <u>II. General Assessment:</u> Sincere. Takes great interest in academics and co-and extra-curricular activities. Teaching, class control and command of language, very satisfactory. A keen sportsman. Took great interest in Staff Club activities. Very well disciplined. Mixes well and is pleasant. Has initiative and organising ability.	P	TA	I	K&E	A	-	AA	Keen & energetic.	Agrees with RO and adds: "A good teacher who knows his subject very well. Possesses good organising ability. A keen sportsman. Good in dramatics. Can organise all types of school activities very well."	Good
P	TA	I	KE																			
Sober & mature.	AA	AA	A																			
P	TA	I	K&E																			
A	-	AA	Keen & energetic.																			



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1 2 3 4 5 6 7

1981 I. Character Assessment

<u>P</u>	<u>TA</u>	<u>I</u>	<u>K & E</u>
A	AA	AA	A

Agrees with Good
RO and adds:
"A good
teacher -
O.M. nil."

Agrees with RO and adds: "An above Very Good."

average teacher, who has good command over the language. A loyal sincere and hard working, individual.

An asset to
to the insti-
tution in all
respects."

Knowledge of the subject, ability to teach, power of expression, class control, good. Regularity and punctuality, Very good. Interested in sports. Very keen in extra-curricular activities. Gets on well with all. His results are always good. Has initiative and is intelligent.

NB: The ACR form is slightly different.

NB: The remarks
are self-
contradic-
tory.

ABBREVIATIONS:

'A' means .. "Average"
'AA' means .. "Above Average"
'I' means .. "Intelligence"
'K&E' means.. "Keeness & Energy"
'NB' means.. "Nota Bene"

'OM' means: Outstanding merit
'RA' means: Reviewing Authority
'RO' means: Reporting Officer
'TA' means: Technical ability.

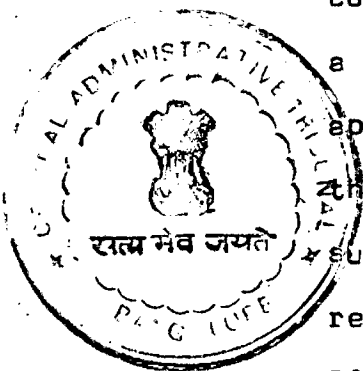
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24. Based on the assessment of the RO and RA, for each year of the quinquennium, we have indicated in columns 4 and 7 of the above tabular statement, as to what should have been the rational grading yearwise, in respect of the applicant and R-2 respectively, bearing in mind, that it is the assessment of the RA, which finally prevails over that of the RO. The following is the analysis of such grading of the applicant, vis-a-vis R2.

		Assessment Years				
		1977	1978	1979	1980	1981
Applicant:		Good	Good	Good	Good	Good
R-2	..	Good with a minor aberration.	Good	Very Good	Very Good	Very Good

25. It would be seen from the foregoing, that except for a minor aberration, in regard to lack of control of temper in the year 1977, R-2 has merited a distinctly superior grading, as compared to the applicant. It is significant, that he has overcome this minor aberration, which has not recurred in the succeeding years. For the year 1981, the RA while remarking at the outset, that R-2 is an "Above Average Officer", strange enough, states at the end, that he is



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"an asset to the Institution in all respects"(emphasis added). This assessment, is manifestly mutually contradictory and therefore, we are of the view, that it is but proper to grade R-2 as "Very Good", taking into account the overall assessment by the R.O. as well. In fact, the printed ACR form, made use of, in the case of R-2 for Assessment Year 1981, differs from the ACR forms of the preceding years and in particular, the grading indicated at S.No.21 therein, does not accord with the conventional grading, adhered to by the DPC and ratified by the Supreme Court, This is anomalous.

26. In contrast, the grading of the applicant is just "Good", throughout. The stray remark of the R.O. for 1978, that the applicant is occasionally brilliant, in Written English, does not ipso facto, qualify him for grading as "Very Good", as claimed by Dr.Nagaraja for the simple reason that this remark, relates to a small part of the entire gamut of his discipline and the excellence referred to, is of a fleeting nature, as can be characterised, as mere "flash in the pan". The R.A. has therefore, rightly graded him as just "Good" for that year, as based on relevant material. Even were he to be graded as "Very Good" for that year, as contended by Dr. Nagaraja, it would not help tilt the overall grading in his favour, considering that R-2 has merited three "Very Good" gradings in succession, towards the end of the quinquennium, in the light of what we have clarified earlier.

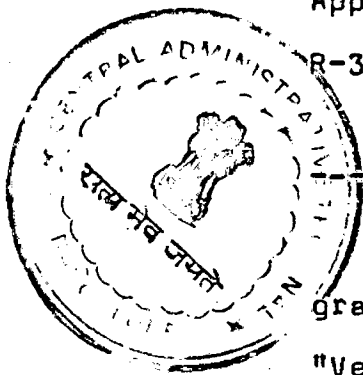


27. It is therefore evident, that R-2 was positively superior in merit, to the applicant, as on 17-8-1982 and therefore, rightly earned his promotion to the post of MG(E), in preference to the latter, as the said post was a "selection post", where merit takes precedence over seniority.

28. With reference to the contention of Dr. Nagaraja, that his client should have been considered for promotion to the post of MG(E) at least in the next vacancy i.e., after 17-8-1982, we have examined carefully, the minutes of the meeting of the DPC held for this purpose, on 24-3-1988, as also the ACRs of the applicant vis-a-vis R-3, for the quinquennium immediately preceding this date. The following is a comparative analysis, of their yearwise grading, as based on their ACRs, for the said period:

		Assessment Years				
		1983	1984	1985	1986	1987
Applicant	..	Good	Good	Good	Good	Good
R-3	..	Good	Very Good	Very Good	Out-stand- ing.	Very Good.

29. The DPC at its above meeting, has overall, graded the applicant, as just "Good", as compared to "Very Good" in the case of R-3. We are satisfied on examination of their ACRs, for the aforementioned period that



that this overall grading is just and proper.

In fact, Dr. Nagaraja, on going through the above ACRs (of both his client and R-3), to which we allowed him access, did not rightly challenge the said overall grading. As a result, the applicant has no case to claim promotion as MG(E), in the vacancy that arose after 17-8-1982, as merit gains premium over seniority, the post being a "selection" one, as stated earlier.

30. The contention of Dr. Nagaraja, therefore, that the overall grading of his client, vis-a-vis R2 and R3, was not determined objectively, by the Review DPC, at its meeting held on 24-3-1988, for the vacancy of MG(E), to be filled in as on 17-8-1982 and by the regular DPC at its meeting held on the same date, for filling in the vacancy of MG(E), that arose thereafter and that such a grading could not have been arrived at by a person of reason and sanity, falls to the ground. On the contrary, we are convinced that these gradings were objective and rational, as corroborated by the ACRs for the relevant period.

31. We are informed that there is one more vacancy of MG(E) to be filled in. We hope and trust that the authorities concerned, will consider the applicant for the same, taking into account his fairly good service record.



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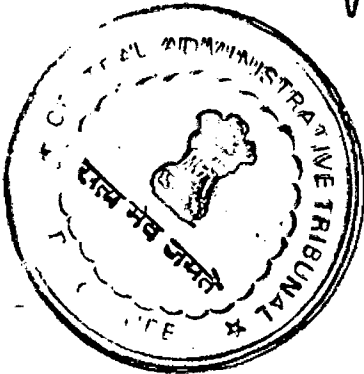
32. In the result, we dismiss the applications as bereft of merit, with no order however as to costs..

Sd _____

(K.S.PUTTASWAMY) 2/1
VICE CHAIRMAN.

Sd _____

(L.H.A.REGO) 7.2.989
MEMBER(A).



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Dated : 14 FEB 1989

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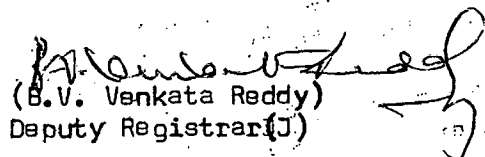
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5. M/s All India Reporter
Congressnagar
Nagpur

Sir,

I am directed to forward herewith a copy of the undermentioned order passed by a Bench of this Tribunal comprising of Hon'ble Mr Justice K.S. Puttaswamy Vice-Chairman/Member (A) and Hon'ble Mr L.H.A. Rego Member (A) with a request for publication of the order in the journals.

Order dated 7-2-89 passed in A. Nos. 1010 & 1756/88(F).

Yours faithfully,


(B.V. Venkata Reddy)
Deputy Registrar(J)

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425/89
11.11.89
14-2-89

Copy with enclosures forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compounds, Nungambakkam, Madras - 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta - 700 020.
4. The Registrar, Central Administrative Tribunal, C.G.O. Complex(CBD), 1st Floor, Near Konkon Bhavan, New Bombay - 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad - 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O. 102/103, Sector 34-A. Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shillong Road, Guwahati - 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathi Towers, 5th & 6th Floors, Opp. Mahareja College, M.G. Road, Ernakulam, Cochin - 682 001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15, Civil Lines, Jabalpur (M.P.).
10. The Registrar, Central Administrative Tribunal, 88-A, B.M. Enterprises, Shri Krishna Nagar, Patna - 1 (Bihar).
11. The Registrar, Central Administrative Tribunal, C/o Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmadabad (Gujarat).
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak - 753 009 (Orissa).

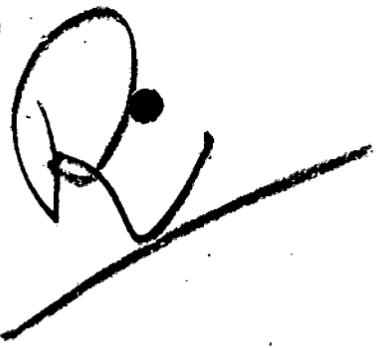
Copy with enclosures also to :

1. Court Officer (Court I)
2. Court Officer (Court II)

Sd/-
(B.V. Venkata Reddy)
Deputy Registrar (J)

Issued
11.11.89

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

Dated the 7th day of February, 1989.

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY VICE CHAIRMAN

THE HON'BLE MR. L.H.A. REGO .. MEMBER(A)

APPLICATIONS NOS. 1010 & 1756 OF 1988(F)

Sri M.S. Venugopal
44 years,
Assistant Master in English,
Bangalore Military School,
2500, Richmond Town,
Hosur Road, Bangalore-25. .. Applicant in both
the applications.

(By Dr. M.S. Nagaraja, Advocate for the applicant)

-vs.-

1. Union of India
by its Vice Chief of Army Staff
General Staff Branch
Army Headquarters,
New Delhi-110 011.

2. Shri V.N. Purohit,
Master (Gazetted)
Military School,
Dholpur.

3. Sri A.K. Awasthi,
Master (Gazetted)
Military School,
Chail.

.. Respondents.

(By Shri M.S. Padmarajaiah, Senior Standing Counsel
Central Government, for respondents.)



These applications coming on for hearing, the HON'BLE MR.L.H.A.REGO, MEMBER(A), made the following:

O_r_d_e_r

In these two applications, the applicant who is one and the same, has prayed for two distinct and separate reliefs namely, to quash the orders dated 5-5-1988 and 20-5-1988 (Ann.A3 and A4, respectively) promoting his juniors viz., Respondents (R) 2 and 3 respectively, as Masters (Gazetted) in English [MG(E)], in preference to him and to direct R-1 to promote him as MG(E), from the dates, his above juniors were promoted and to grant him other appropriate relief.

2. The following is a profile of this case. The applicant was appointed as Assistant Master in English [AM(E)], on a temporary basis, with effect from 27-12-1971, in the Military School at Bangalore, which is one among the chain of five schools, under the control and supervision, of the Defence Ministry of the Government of India. The other four schools are situated at Chail, Ajmer, Dholpur and Belgaum. He has been working as AM(E) since then. He states, that though he was senior to R-2, the latter was promoted as MG(E), with effect from 17-8-1982, superseding him, on account of which, he filed Writ Petition No.806 of 1984, in the High Court of Judicature,

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Karnataka, for redress. The same came to be transferred to this Tribunal, under Sec.29 of the Administrative Tribunals Act, 1985 and was registered as Application No.1393 of 1986.

3. The said application was disposed of by this very Bench of the Tribunal, on 26-10-1987, by an Order, which reads as under:

"33. In the light of our above discussion, we make the following orders and directions:

1) We declare that the applicant and R2 had been appointed on a regular basis as AMs in English in the vacancies which occurred in the Ajmer and Bangalore Schools from 27-9-1973 and 24-10-1973 respectively;

2) We declare that the applicant is senior to R-2 in the cadre of AMs in English. We direct R-1 to assign rank No.3 to the applicant and rank No.4 to R2, as against rank Nos.3 and 4 assigned to them respectively in the seniority list drawn up as 03-1-1982;

3) We quash the promotion of R2 and the proceedings of the DPC which met on 17-8-1982 in so far as the same relate to selection to the post of MG in English only and direct R1 to re-determine the case of the applicant and R2 for promotion to the post of MG as on 17.8.1982 afresh with the assistance of a DPC and then make a fresh selection to the vacant post of MG in English only between them, in accordance with law and the observations made in this order, with all

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such expedition as is possible in the circumstances of the case, and in any event, within a period of four months from the date of receipt of this order. If in the fresh selection, the applicant is selected to the post of MG in English in preference to R2, then he should be given only notional promotion from the earlier date and the benefit of promotion from the date of actual promotion. But till then, R2 is permitted to hold the post of MG he is now holding, which fact however, shall not be taken into consideration when the DPC or Government makes a fresh selection to the post of MG in the light of this order.

34. Application is disposed of in the above terms. But in the circumstances of the case, we direct the parties to bear their own costs."

4. Pursuant to the above order of this Tribunal, the Principal, Military Schools, drew up anew, the Seniority List of Officers as on 1-2-1988(Ann-A2), in the cadre of AMs, in all the five Military Schools in the country, relating to seven different disciplines, of which English was one. The same was circulated to all concerned, inviting their objection if any, thereon, by 8-2-1988. The applicant (S.No.1 in the Seniority - List) was shown as senior to R-3(S.No.2 ibid). The name of R-2, does not appear therein presumably because, he was holding the post of MG(E) then.

5. Pursuant to the orders and directions of this Tribunal, in the aforementioned Application No.1393 of 1986, the Departmental Promotion Committee(DPC), met

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on 24-3-1988, to review the proceedings of the earlier meeting of the DPC held on 17-8-1982, to consider promotion of officers, to the grade of MG only, in regard to the discipline of English and assessed the applicant merely as "Good" and R-2 as "Very Good". On the basis of this fresh assessment, the DPC recommended R-2, who was junior to the applicant, for promotion as MG(E). Consequential action thereon, is reflected in Letter dated 20-5-1988(Ann.A-3) addressed by the Principal, Military School, Bangalore, to the applicant.

6. The DPC also deliberated on 24-3-1988, to consider promotion of AMs, to the grade of MG in various disciplines, including English, in further vacancies that had arisen. The case of the applicant came to be considered along with R-3 and three others, for officiating promotion as MG(E), when except R-3, who was assessed as "Very Good", the rest, including the applicant, were graded as just "Good". The DPC thus recommended R-3, who was junior to the applicant, for officiating promotion, in the grade of MG(E), R-3 was promoted accordingly by R-1, by his Letter dated 25-5-1988(Ann.A-4).

7. The applicant states, that he was hoping to be promoted as MG(E) on either occasion, on account of his seniority and clean service record. He alleges, that his supersession was motivated by extraneous considerations, as his Annual Confidential Reports (ACRs) were not evaluated and assessed objectively.

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8. Aggrieved

8. Aggrieved, he has come before this Tribunal for redress.

9. R-1 has filed his reply, resisting the application.

10. R2 has sent a copy of his letter dated 6-2-1988, addressed to the Principal, Military School, Bangalore, to this Tribunal, stating the Review DPC at its meeting held on 24-3-1988, has duly complied with the order and directions issued by this Tribunal on 26-10-1987, in Application No. 1393 of 1986 and therefore, the applicant can have no cause to be aggrieved.

11. R-3 has filed a written reply countering the application.

12. Neither R-2 nor R-3 were present, at the time of the hearing nor were they represented by Counsel.

13. The spearhead of the attack of Dr.M.S. Nagaraja, learned Counsel for the applicant, was, that the DPC was not objective in its assessment of the ACRs, of his client. According to him, the service record of his client, for the quinquennium immediately preceding the date namely, 17-8-1982, which was the datum for the Review DPC, at its meeting held on 24-3-1988, to reconsider the case of his client

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as on that date, in compliance with the directions of the Tribunal, was distinctly superior to that of R-2 and therefore, the latter could not have superseded his client, for promotion as MG(E), specially, when he was senior to him. Dr. Nagaraja made this submission, on our giving him an opportunity to examine the relevant ACRs, of both the applicant as well as R-2. Explicating the service record of his client for the said quinquennium, year by year, Dr. Nagaraja sedulously argued, that his service record was uniformly good, throughout. He asserted, that for the Assessment Year 1978, his client ought to have been graded overall, as "Very Good", in the context of the individual entries in his ACR but the Principal of his School, had erroneously and unfairly, graded him as just "Good". He stressed, that no person of reason or sanity, could have arrived at such an assessment, to the detriment of the service career of his client and therefore, he pleaded, that this was a fit case where the Tribunal should step in and intervene, to render justice to his hapless client, by exercising its power of judicial review, in all its plenitude.

14. Dr. Nagaraja argued trenchantly, that the injustice caused to his client was flagrant, as would be evident, from minute scrutiny of the ACRs of R-2 and his client, for the relevant period. Developing

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his argument with finesse, he pointed out, that there was a clear adverse remark against R-2, by the Reporting Officer, for the Assessment Year 1977, in regard to lack of control on his temper, which he said, was endorsed ^{by the} by Reviewing Officer and even communicated to R2, on 11-3-1978, advising him to control his temper. The overall grading of R2, for the Assessment Year 1981, was just "Above Average", he submitted, which was below the grading, "Good". Assessing the service record in its entirety, for the above quinquennium, Dr. Nagaraja canvassed with vigour, that his client had a more meritorious record than that of R-2 and therefore submitted, that the Review DPC grossly erred, in grading his client merely as "Good", as compared to "Very Good", in respect of R-2, at its meeting held on 24-3-1988. This he said, was totally at variance with the evidence on record in the relevant ACRs, and such a grading, could not have been arrived at by a person, of sanity and reason and therefore urged, that this Tribunal should intervene, in exercise of its power of judicial review of administrative action, to correct this travesty of justice. In any case, he argued, that on account of the above blemish, R-2 could by no stretch of imagination be graded overall, as "Very Good". If in that event, he was graded as

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just "Good", he asserted, that on the principle of ceteris paribus, his client by virtue of seniority, should be rightfully promoted as MG(E), in preference to R-2,

15. The sheet anchor of the counter of Shri Padmarajaiah, to the above submission of Dr. Nagaraja was, that the Review DPC, at its meeting held on 24-3-1988, had objectively assessed the performance and merit of the applicant and the others concerned, afresh, on the basis of their ACRs, to consider their promotion as MG(E), as on 17-8-1982, and had graded them accordingly. It found no justifiable reason ^{he said,} ~~to~~ alter the grading assigned by the DPC, to the applicant and R-2 earlier, at its meeting held on 17-8-1982 viz., "Good" and "Very Good", respectively. He emphasised, that this grading was based on their relative assessment, with due regard to the material evidence, that was available in their ACRs, to substantiate, which, he gave an exposition of the comparative remarks, in regard to both the applicant as well as R-2, on the relevant items of their ACRs, for the quinquennium, immediately preceding 17-8-1982. He pertinaciously urged thereon, that the overall merit of R-2, for the said quinquennium, was distinctly superior to that of the applicant, so as to justify his grading as "Very Good", as compared to that of the applicant, which was just "Good". In this background, Shri Padmarajaiah


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vehemently

vehemently, refuted the contention of Dr. Nageraja, that the assessment and grading of his client vis-a-vis R-2, by the Review DPC, was such, that no person of reason and sanity, could have arrived at the same. He pleaded, that in the context of the above facts, it would not be proper for the Tribunal, to probe into the matter with an eagle's eye, for mathematical precision and nicety, to ascertain the correctness of the grading, as such acme of perfection was scarcely feasible. What was material and important, he asserted, was, as to whether the overall relative assessment was objective and rational, on the basis of the evidence on record. The Review DPC he stressed, was duly guided by these considerations and was fair and objective, in assessing the performance and merit of the applicant, vis-a-vis R2 and in grading them accordingly. The matter therefore, did not come within the sphere of judicial review by this Tribunal, he urged and submitted, that the application was meritless.

16. We have heard both sides at length and have carefully examined the material placed before us and in particular, the proceedings of the Review DPC and the ACR dossiers of the applicant and R-2, for the relevant period.

17. Before we turn to the merits of the case, it is but proper, that we deal with question of the nature and extent of the power of this Tribunal, in

Nil

regard

regard to judicial review of administrative action, taking due note of the assiduous submission of Shri Padmarajaiah, that the case before us does not call for our scrutiny of the assessment and grading of the applicant, vis-a-vis R-2, determined by the Review DPC, objectively, on the basis of their ACRs, at its meeting held on 24-3-1988.

18. We have discussed comprehensively, in Application No.1653/1986(T) (corresponding to W.P. No.11714 of 1985) [S.K.SRINIVASAN v. DIRECTOR GENERAL, EMPLOYEES' STATE INSURANCE CORPORATION & ORS] decided by this very Bench on 30-1-1987, the matter relating to exercise of the power of judicial review by this Tribunal over administrative action, Paras 8 to 13 of that decision, highlight the salient aspects. In SAMPAT KUMAR's case, the Supreme Court held, that the Administrative Tribunal was a substitute for the High Court, not only in form and de jure but also in content and de facto and that consequently, it was equally competent, to exercise the power of judicial review, as the High Court, acting under Articles 226 and 227 of the Indian Constitution.

19. As observed by the Supreme Court in AIR 1954 SC 215 (WARYAM v. AMAR) and in AIR 1954 SC 217 (VICE CHANCELLOR v. GHOSH), the object of judicial review of administrative action, is to keep the administrative authorities


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within the bounds of their powers under the law (emphasis added). In all modes of judicial review, the jurisdiction of this Tribunal, is merely to set aside the unlawful order and not substitute its own decision, for that of the statutory authority, for that would be exercising a power of appeal, where none exists, - vide (1954) 3 All ER 449(453) CA (HEALEY v. MINISTRY OF HEALTH). This implies, that its supervisory jurisdiction, over the administrative decision, cannot enter into the question, whether such decision is wrong on its merits, even on a question of law (except, where that is apparent, on the face of the record) as enunciated by the Supreme Court in A.1967 SC 908(915-16) [LAKHANPAL v. U.O.I.].

20. The Supreme Court has further clarified, that a Court or Tribunal, cannot examine the material as if an appeal lay to it, ^{to} form the subjective decision of the competent authority, but that it can examine the material, only for seeing, as to whether the decision is so patently unreasonable, that no reasonable person properly instructed in law, could have arrived at it [vide (1980) 5 SCC 321 (BALDEV RAJ v. U.O.I)] or whether, any irrelevant material, has influenced the decision or some relevant material, has been ignored, before taking that decision - in either case, where the material, thus wrongly taken into account or wrongly ignored, was not insignificant but was of substantial importance [(1977) 4 SCC 345 - STATE OF U.P. v. CHANDRA MOHAN].

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21. With this prologue, we shall now proceed to examine the various contentions urged before us by both sides. The fate of the applicant primarily hinges, on his ACRs for the relevant period, as they have been the basis, on which his performance has been assessed and he has been graded by the Review DPC. While, Dr. Nagaraja trenchantly contends, that the Review DPC has not objectively and factually analysed, the ACRs of his client for the said period and has determined his overall grading, as just "Good", on that basis, as against "Very Good", and that a man of reason and sanity, would not have so graded his client, on that material, Shri Padmarejaiah forcefully argues to the contrary.

22. In such circumstances, we deem it proper, ex debito justitiae, to exercise our power of judicial review, over administrative action, bearing in mind the nature and extent of that power, in the light of what we have explained earlier, in paras 18 to 20 above, to help ascertain, as to whether the decision taken by the authorities concerned, in this case, was patently unreasonable.

23. For this purpose, it is necessary for us, to examine the ACRs of the applicant and R-2, for the quinquennium, immediately preceding the date viz., 17-8-1982, when the DPC first met, to consider their cases for promotion

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promotion to the grade of MG-E. We have duly examined these ACRs and cull out below, in the form of a tabular statement, the quintessence of the remarks therein, both by the Reporting Officer as well as the Reviewing Authority, for each year of the quinquennium, which had a crucial bearing on their overall grading:

Year	Assessment of the Applicant by			Rational Grading.	Assessment of R-3 by			Rational Grading.
	RO	RA			RO	RA		
	1	2	3	4	5	6	7	
1977	<u>I. Character assessment</u>			Good	<u>I. Character assessment</u>			'Good', with a minor aberration.
	<u>P</u> A	<u>TA</u> -	<u>I</u> AA		<u>P</u> A	<u>TA</u> -	<u>I</u> AA	
			<u>K&E</u> .A				<u>K&E</u> Keen & energetic.	
	<u>II. General assessment</u>				<u>II General assessment:</u>			
	Has developed into a good teacher of English. Initiative, tact and judgment fair. Dependable, sincere in work. Polished and suave. A quiet worker. Interested in extra-curricular activities, particularly English Dramatics. A useful member of the staff.				Has initiative and organising ability. A dependable and good teacher. Has very good knowledge of the subject. Takes interest in sports.			
					Relationship with colleagues good. He is disciplined and honest. <u>He is advised to control his temper.</u> Otherwise a fine young man, with pleasing manner.			
					Agrees & adds: "A good and devoted teacher. Did a good job in his charge of Dramatics. <u>Certainly needs to control his anger, O.M. nil.</u> "			
					NB: Adverse remarks communicated to the applicant on 11-3-1978.			

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1	2	3	4	5	6	7																
1978	<u>I. Character Assessment</u> <table><tr><th><u>P</u></th><th><u>TA</u></th><th><u>I</u></th><th><u>KE</u></th></tr><tr><td>Sober & mature.</td><td>AA</td><td>AA</td><td>A</td></tr></table>	<u>P</u>	<u>TA</u>	<u>I</u>	<u>KE</u>	Sober & mature.	AA	AA	A	Agrees with the RO and adds: "A good teacher O.M. nil."	Good.	<u>I. Character Assessment</u> <table><tr><th><u>P</u></th><th><u>TA</u></th><th><u>I</u></th><th><u>K&E</u></th></tr><tr><td>A</td><td>-</td><td>AA</td><td>Keen & energetic.</td></tr></table>	<u>P</u>	<u>TA</u>	<u>I</u>	<u>K&E</u>	A	-	AA	Keen & energetic.	Agrees with RO and adds: "A good teacher who knows his subject very well. Possesses good organising ability. A keen sportsman. Good in dramatics. Can organise all types of school activities, very well."	Good
<u>P</u>	<u>TA</u>	<u>I</u>	<u>KE</u>																			
Sober & mature.	AA	AA	A																			
<u>P</u>	<u>TA</u>	<u>I</u>	<u>K&E</u>																			
A	-	AA	Keen & energetic.																			
	<u>II. General Assessment:</u> A competent teacher of English. Quiet efficiency. Methodical and punctual. Class control, good and effective. His written English is effective and precise and at times brilliant. Highly co-operative. Willing to accept additional responsibilities.			<u>II. General Assessment:</u> Sincere. Takes great interest in academics and co-and extra-curricular activities. Teaching, class control and command of language, very satisfactory. A keen sportsman. Took great interest in Staff Club activities. Very well disciplined. Mixes well and is pleasant. Has initiative and organising ability.																		

-----1-----2-----3-----4-----5-----6-----7-----

1979

I. Character Assessment

<u>P</u>	<u>TA</u>	<u>I</u>	<u>KE</u>
A	A	A	A

Agrees with
the RO and
adds:

Good.

II. General Assessment:

A good well-mannered
Instructor. Organi-
sed dramas and deba-
tes well. Soft-spoken.
Accepts responsibility
cheerfully. Has good
knowledge of the sub-
ject. Cooperative
towards subordinates.
Good at Sports.

LL

I. Character Assessment

<u>P</u>	<u>TA</u>	<u>I</u>	<u>K&E</u>
A	-	AA	A

Agrees with
R.O.

Very
good.

O.M. nil.

II. General Assessment:

Has a very good
knowledge of the
subject and tea-
ches well. Has very
good class control.
Takes keen interest
in School activities
Good at sports and
in organising func-
tions.

LL

1	2	3	4	5	6	7
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1980. I. Character Assessment:

<u>P</u>	<u>TA</u>	<u>I</u>	<u>K&E</u>
A	AA	AA	A

Agrees with
RO and adds:

"A good teacher - OM
nil."

Good

I. Character Assessment

<u>P</u>	<u>TA</u>	<u>I</u>	<u>K&E</u>
A	-	AA	Keen and energetic

Agrees with
RO and adds: Very good.

"An extremely good teacher. Well up in the knowledge of his subject.

II. General Assessment:

Quite a competent teacher. Has a comprehensive knowledge of the subject. Conscientious. Methods of teaching are up-to-date and effective. Well read and well-informed. Successful in coaching in co-curricular activities and English dramatics. Highly co-operative, cordial with others.

[Signature]

II. General assessment:

A very good teacher. Has a very good knowledge of the subject. His teaching methods and results are good. The boys have gained a lot under his guidance. Keen on sports. Very keen in school activities. Very competent in co-curricular activities. Produced a very good play at the Annual Function.

[Signature]

Did excellent job at the School Jubilee celebrations. Very good in directing Plays. Has done well as Editor of the School Magazine. Popular with staff and students. O.M. nil."

that this overall grading is just and proper.

In fact, Dr.Nagaraja, on going through the above ACRs(of both his client and R-3),to which we allowed him access,did not rightly challenge the said overall grading. As a result, the applicant has no case to claim promotion as MG(E),in the vacancy that arose after 17-8-1982, as merit gains premium over seniority, the post being a "selection" one, as stated earlier.

30. The contention of Dr.Nagaraja, therefore, that the overall grading of his client,vis-a-vis R2 and R3,was not determined objectively,by the Review DPC,at its meeting held on 24-3-1988,for the vacancy of MG(E),to be filled in as on 17-8-1982 and by the regular DPC at its meeting held on the same date,for filling in the vacancy of MG(E),that arose thereafter and that such a grading could not have been arrived at by a person of reason and sanity, falls to the ground. On the contrary, we are convinced that these gradings were objective and rational,as corroborated by the ACRs for the relevant period.

31. We are informed that there is one more vacancy of MG(E) to be filled in. We hope and trust that the authorities concerned,will consider the applicant for the same, taking into account his fairly good service record.

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32. In the result, we dismiss the applications as bereft of merit, with no order however as to costs.


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(K.S.PUTTASWAMY) 2/1
VICE CHAIRMAN.

Sd —

(L.H.A.REGO) 7.2.989
MEMBER(A).

TRUE COPY


DEPUTY REGISTRAR (JDL) 2/2
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

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24. Based on the assessment of the RO and RA, for each year of the quinquennium, we have indicated in columns 4 and 7 of the above tabular statement, as to what should have been the rational grading yearwise, in respect of the applicant and R-2 respectively, bearing in mind, that it is the assessment of the RA, which finally prevails over that of the RO. The following is the analysis of such grading of the applicant, vis-a-vis R2.

		Assessment Years				
		1977	1978	1979	1980	1981
Applicant:		Good	Good	Good	Good	Good
R-2	..	Good with a minor aberration.	Good	Very Good	Very Good	Very Good

25. It would be seen from the foregoing, that except for a minor aberration, in regard to lack of control of temper in the year 1977, R-2 has merited a distinctly superior grading, as compared to the applicant. It is significant, that he has overcome this minor aberration, which has not recurred in the succeeding years. For the year 1981, the RA while remarking at the outset, that R-2 is an "Above Average Officer", strange enough, states at the end, that he is

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"an asset to the Institution in all respects" (emphasis added). This assessment, is manifestly mutually contradictory and therefore, we are of the view, that it is but proper to grade R-2 as "Very Good", taking into account the overall assessment by the R.O. as well. In fact, the printed ACR form, made use of, in the case of R-2 for Assessment Year 1981, differs from the ACR forms of the preceding years and in particular, the grading indicated at S.No.21 therein, does not accord with the conventional grading, adhered to by the DPC and ratified by the Supreme Court. This is anomalous.

26. In contrast, the grading of the applicant is just "Good", throughout. The stray remark of the R.O. for 1978, that the applicant is occasionally brilliant, in Written English, does not ipso facto, qualify him for grading as "Very Good", as claimed by Dr. Nagaraja for the simple reason that this remark, relates to a small part of the entire gamut of his discipline and the excellence referred to, is of a fleeting nature, as can be characterised, as mere "flash in the pan". The R.A. has therefore, rightly graded him as just "Good" for that year, as based on relevant material. Even were he to be graded as "Very Good" for that year, as contended by Dr. Nagaraja, it would not help tilt the overall grading in his favour, considering that R-2 has merited three "Very Good" gradings in succession, towards the end of the quinquennium, in the light of what we have clarified earlier.

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27. It is therefore evident, that R-2 was positively superior in merit, to the applicant, as on 17-8-1982 and therefore, rightly earned his promotion to the post of MG(E), in preference to the latter, as the said post was a "selection post", where merit takes precedence over seniority.

28. With reference to the contention of Dr. Nagaraja, that his client should have been considered for promotion to the post of MG(E) at least in the next vacancy i.e., after 17-8-1982, we have examined carefully, the minutes of the meeting of the DPC held for this purpose, on 24-3-1988, as also the ACRs of the applicant vis-a-vis R-3, for the quinquennium immediately preceding this date. The following is a comparative analysis, of their yeerwise grading, as based on their ACRs, for the said period:

		Assessment Years				
		<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Applicant	..	Good	Good	Good	Good	Good
R-3	..	Good	Very Good	Very Good	Out-stand- ing.	Very Good.

29. The DPC at its above meeting, has overall, graded the applicant, as just "Good", as compared to "Very Good" in the case of R-3. We are satisfied on examination of their ACRs, for the aforementioned period

that

[Signature]

that this overall grading is just and proper.

In fact, Dr.Nagaraja, on going through the above ACRs(of both his client and R-3),to which we allowed him access,did not rightly challenge the said overall grading. As a result, the applicant has no case to claim promotion as MG(E),in the vacancy that arose after 17-8-1982, as merit gains premium over seniority, the post being a "selection" one, as stated earlier.

30. The contention of Dr.Nagaraja, therefore, that the overall grading of his client,vis-a-vis R2 and R3,was not determined objectively,by the Review DPC,at its meeting held on 24-3-1988,for the vacancy of MG(E),to be filled in as on 17-8-1982 and by the regular DPC at its meeting held on the same date,for filling in the vacancy of MG(E),that arose thereafter and that such a grading could not have been arrived at by a person of reason and sanity, falls to the ground. On the contrary, we are convinced that these gradings were objective and rational,as corroborated by the ACRs for the relevant period.

31. We are informed that there is one more vacancy of MG(E) to be filled in. We hope and trust that the authorities concerned,will consider the applicant for the same, taking into account his fairly good service record.

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