

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 256/2013
MA 3081/2014

Reserved on: 28.04.2016
Pronounced on: 4.05.2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Sh. Krishna Dutt Sharma
Aged about 54 years
S/o Shri Chet Ram
R/o F-6/93, Sector-15, Rohini,
Delhi-110085 ... Applicant

(Through Shri N.K. Rohatgi, Advocate)

Versus

1. Chairman,
Union Public Service Commission
Shahjahan Road, New Delhi
2. The Chief Secretary,
Govt. of N.C.T. of Delhi
Delhi Sachivalaya, I.P. Estate,
New Delhi-110002
3. Director of Education
Govt. of N.C.T. of Delhi
Old Secretariat,
New Delhi-110054
4. Joint Director
Education (Sectt. Branch)
Govt. of N.C.T. of Delhi
Room No.223, Old Secretariat,
New Delhi-110054 ... Respondents

(Through Shri Rajinder Nischal, Advocate for Respondent 1 and
Shri Amit Anand, Advocate for respondents 2 to 4)

ORDERMr. P.K. Basu, Member (A)

The applicant was appointed as Post Graduate Teacher (PGT) (Sanskrit) on 15.09.1989. He was promoted to the post of Vice Principal with effect from 14.04.2005. Vide letter dated 6.05.2010, the applicant was informed that his ACR grading for the year 2005-06 and 2006-07 was 'average', which was below benchmark for promotion to the post of Principal and the applicant was given opportunity to represent against the 'average' remarks.

2. Vide his representation dated 4.06.2010, the applicant sought upgradation/ expunction of average grading/ remarks given by the reviewing officer against the grading 'good' given by the reporting officer. However, the authorities rejected his aforesaid representation vide order dated 17.09.2010 holding that there was no reason to interfere with the gradings given by the then reporting and reviewing authorities.

3. The name of the applicant did not appear in the list of promotees to the post of Principal declared on 4.02.2011 and 30.01.2012. The applicant made a representation dated 14.02.2012 and a legal notice dated 14.03.2012 seeking reasons for non-inclusion of his name in the list of promotees. In reply, the Additional Director, Education vide letter dated 18.04.2012 informed the applicant that his name was considered by the DPC against the vacancy year 2009-2010 and 2010-2011 and

recommended 'unfit' for the post of Principal. Being aggrieved by such action of the respondents, the applicant has filed the instant OA seeking the following reliefs:

- (a) Set aside the grading "Average" given by the reviewing officer in the annual confidential Rolls of the applicant for substituting the grading "Good" given by the reporting officer after expunction of remarks of the reviewing officer.
- (b) To quash the minutes of DPC dt. 21/22 December 2010 and 21/11/11 in respect of the applicant declaring him unfit for promotion as Principal.
- (c) Formation of review DPC to reconsider the case of the applicant for promotion to the post of Principal for the vacancies of the year 2009-10 and 2010-11.
- (d) To direct the respondent no.1 to declare the applicant fit for promotion.
- (e) To promote the applicant from a retrospective date from which his juniors were promoted by creating supernumerary post.

4. The grounds for filing of this OA are as follows. The average ACRs for the years 2005-06 and 2006-07 were not communicated to the applicant whereas as per provisions of Department of Personnel and Training (DoP&T) as contained in OM dated 30.01.1978, adverse remarks should be communicated within one month from the date of writing of such remarks. The adverse remarks for the years 2005-06 and 2006-

07 were conveyed after four years and three years respectively. It is thus argued that these remarks are required to be expunged being in contravention of provisions of OM dated 30.01.1978. This criteria was not considered by the DPCs held on 21.12.2010 and 23.11.2011. In this regard, the learned counsel for the applicant drew our attention to the judgment in **Dev Dutt Vs. Union of India**, 2008 (3) SLJ 244 (SC) where the Hon'ble Supreme Court has held that non-communication of adverse entry to the government servant would be arbitrary and in violation of Article 14 of the Constitution. Attention was further drawn to the order of the Tribunal dated 7.04.2011 in OA 49/2011 where it has been held in para 20 that the purpose of adhering to the time-schedule would be that if there are some adverse remarks as regards efficiency of the officer he must be informed in time, so that he may start improving immediately. Even if the overall grading is below benchmark, as required for promotion of the officer, if he may be of the view that the same are not justified, may by representation seek up-gradation of his ACRs. It is thus contended that because of non-communication of adverse remarks the applicant did not get opportunity to improve himself.

5. It is next contended that as per OM dated 13.04.2010 of DoP&T, views of reporting/ reviewing officer, if they are still in service, should be obtained on the points raised in the representation. It is stated that the reviewing officer Smt. B. Tirkey, Deputy Director had retired but the reporting officer who was still in service, even his views were not taken in

contravention to the provision contained in aforementioned OM dated 13.04.2010.

6. Another ground taken is that in the ACR of 2005-06, without assigning detailed reasons, the reviewing officer observed that the applicant failed to coordinate with colleagues whereas the reporting officer recorded that the applicant had capacity to take out work from colleagues. It is stated that perusal of the ACR would further reveal that the date of reporting and review is the same i.e. 17.07.2006, which indicates that review has been done without application of mind and in great haste. In this regard, the learned counsel for the applicant drew our attention to the judgment in **M.A. Rajshekhar Vs. State of Karnataka**, 1996 (19) SCC 369, where the Hon'ble Supreme Court has held that "it must be pointed out with reference to the specific instances in which he did not perform his duty satisfactorily". However, the reviewing officer failed to give any reasons for disagreement with the reporting officer.

7. It is further pointed out that the reviewing officer has observed that the applicant failed in maintenance of the school building whereas an expenditure of Rs.1,19,973/- was incurred on maintenance of school building. It is stated that the reviewing officer while reviewing ACR for the year 2006-07 observed that the applicant hardly monitored/ supervised the staff whereas the reporting officer has reported "Officer shows ability regarding administration/ supervision/ guidance to

teachers and students." Again the reviewing officer has not given any reasons for its disagreement with the reporting officer.

8. Lastly, it is contended that the reviewing authority has commented that the applicant, as Head of School, has shown lowest result in the district. The applicant represented against this stating that his school was disturbed due to the news of merger with another school, which finally took place. Moreover the decline in result was mere four percent in comparison to last year's results.

9. It has also been pointed out that the competent authority has failed to notice the following achievements of the applicant:

- (i) Students of the school took part in Gymnastic at National/ State Level;
- (ii) Remedial classes were taken in holidays and in zero period;
- (iii) Results in the year 2007-08 improved to 64% from 52%; and
- (iv) Results in the year 2008-09 improved from 64% to 98%.

It is also stated that the applicant was allowed second MACP vide order dated 17.11.2011, which means that his performance must have been found 'good'.

10. The learned counsel for the respondents stated that this OA is time barred as the impugned order is dated 17.09.2010. The applicant had filed an MA for condonation of delay in which

the reason for delay is stated to be that the applicant had approached this Tribunal in OA 1917/2012 and the Tribunal vide its order dated 31.05.2012 permitted him to file a fresh OA on the same cause of action with better particulars within one month from the date of the order. However, the applicant states that he could not file the fresh OA within one month because his Advocate did not keep him informed of the position till December 2012 and it is only thereafter that he could file the fresh OA in January 2013. The learned counsel for the respondents states that this is not a valid reason for delay and, therefore, this OA is not maintainable on the ground of limitation as there is a delay of three years.

11. The learned counsel for the respondents further points out that from perusal of the order dated 17.09.2010 with respect to his grading in the ACR, it would appear that the applicant had sought review/ upgradation on the ground that he was newly promoted to the post of Vice Principal and was given independent charge of the school and due to merger with some other school, the school was very much disturbed and it was the main cause for the lowest result. It is argued that this is a flimsy ground taken by the applicant. Moreover, the applicant has himself admitted that this was the lowest result. In fact, the order dated 17.09.2010 further goes on to state that the officer under report has also not given any convincing justification for the poor results (34% in Class X and 42% in Class XII) which had declined by 14% & 34% in comparison to the previous year results, respectively.

12. Similarly, for the year 2006-07, the order contained the following remarks:

"And whereas, Sh. Krishna Dutt Sharma, Vice-Principal in response to the above said memo dated 06-05-2010 made a representation dated 04-06-2010 and sought for review/ upgradation enclosing therewith the results of last 05 years from 2005-06 to 2009-10. In his representation, he claimed that his school was disturbed due to the news of merger. He explained that this disturbance was the main cause of the lowest result. Moreover, he had been newly promoted as Vice Principal. Lastly, no memo/ warning was issued to him for the adverse entry in the ACR.

And whereas, the undersigned has gone through the above representation dated 04-06-2010 and found that the officer has not rebutted the points raised by the Reviewing Authority that the officer hardly monitors/supervises the staff for the betterment of the institution. As per the information given by Sh. Krishna Dutt Sharma, in the enclosure supplied by him along with his representation dated 04-06-2010, he was entrusted with hardly 46 students in the year 2006-07. Despite such a small number of students, almost half (22) failed."

It is, therefore, contended by the learned counsel for the respondents that through these reasoned orders the respondents have rejected the prayer of the applicant for upgradation of remarks on specific ground of non-performance and as such, this OA does not merit consideration.

13. Shri Rajinder Nischal, learned counsel for respondent no.1, Union Public Service Commission (UPSC) stated that the UPSC did not recommend the case of the applicant as he was found 'unfit' based on his ACRs.

14. We have heard the learned counsel for the parties and gone through the pleadings available on record.

15. From the facts of the case, it is clearly established that there has been considerable delay in filing of this OA. This Tribunal had permitted the applicant to file a fresh OA but even thereafter, the applicant did not adhere to the time limit of one month allowed by the Tribunal and the only reason assigned is that he was not informed by his Advocate and, therefore, there has been a delay. We cannot condone the delay on this ground. The OA is, therefore, not maintainable on the ground of limitation.

16. Even on merits of the case, we find that there is clear evidence of the applicant's non-performance. In fact, in his representation, the applicant himself states that due to certain disturbances arising out of merger of schools, the performance went down. This is a very flimsy excuse. The data produced shows that the performance indeed drastically went down and the Vice Principal has to be held responsible. In view of his performance, we also do not feel that the reviewing officer had done any injustice in grading him 'average'.

17. Therefore, even on merits of the matter, the OA does not succeed. It is, therefore, dismissed both on the ground of limitation as well as on merits. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)
/dkm/

(P.K. Basu)
Member (A)