

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00589/2014

Jabalpur, this Friday, the 14th day of September, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Smt. Manju Tiwari, W/o Shri S.K.Tiwari,
Aged about 53 years, Vice Principal,
Jawahar Navodaya Vidyalaya, Sidhi (M.P)-486771 -Applicant
(By Advocate –Applicant is present in person)

V e r s u s

1. Union of India, through Ministry of Human Resource Development, Department of Education, Through Chief Secretary, New Delhi, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001
2. Commissioner, Navodaya Vidyalaya Samiti, B-15, Institutional Area, Sector 62, Noida-201307 (U.P.)
3. Navodaya Vidyalaya Samiti, Regional Office, 160, Zone II, M.P. Nagar, Bhopal (MP) 462011
4. Shri B.K. Mahanti, Principal, Jawahar Navodaya Vidyalaya-Pacharhi, Dist.-Darbhanga (Bihar), Pin 847237
And through
Deputy Commissioner, Regional Office, Navodaya Vidyalaya Samiti, Boring Road, Opposite A.N.College, Patna, Pin 800013
5. Dr. Mohammad Kaleem (Retd.Dy. Commissioner), C-39 Company Bag, Civil Lines, Barabanki (UP), Pin 225001
Through Regional Office Address,
Deputy Commissioner, Navodaya Vidyalaya Samiti, Regional Office, Alkapuri, A/135 A, Gage No. 02, Bhopal (M.P.), Pin 462024 -Respondents

(By Advocate –**Shri Praveen Namdeo**)
(Date of reserving the order:- 13.08.2018)

ORDER**By Navin Tandon, AM:-**

The applicant is aggrieved by the fact that her ACRs have been reported/reviewed by officials not competent to do so, and consequently her promotion to the post of Principal has been adversely affected.

2. The following submissions have been made by the applicant:

2.1 She was appointed in 1989 in Navodaya Vidyalaya Samiti (NVS) on deputation from Kendriya Vidyalaya Sangathan as Post Graduate Teacher (PGT) in Chemistry. Subsequently, she was promoted and posted as Vice Principal Jawahar Navodaya Vidyalaya (JNV), Malhar, District Bilaspur in August 2002.

2.2 She was posted as Incharge Principal from March 2003 to 2006 in Janjgir Champa, from July 2006 to August 2007 in Kawardha, as Vice Principal from August 2007 to September 2011 in Malhar, as Incharge Principal from October 2011, to December 2012 in Kawardha.

2.3 She worked hard to develop the newly established school of Janjgir Champa, and a student from her school became regional topper in 8th Board examination.

2.4 She received a communication dated 10.09.2007 (Annexure A-2) from Dy. Commissioner, NVS, Bhopal through her Principal

that ACRs in respect of the applicant (and 41 other Vice Principals) for various years have not been received in their office. Accordingly, the duly completed ACRs in prescribed proforma were asked to be sent immediately to Bhopal office. The years 2003-04, 2005-06, 2006-07 were written against the name of the applicant. She was subsequently instructed on phone to send ACR's for four (04) years.

2.5 Though she had sent the self assessment for 2004-05 on 28.08.2005 (Annexure A-3) and for 2005-06 on 13.11.2006 (Annexure A-4), she again sent the self assessment for the sessions 2003, 2004, 2005, 2006 and 2007 (upto June) on 20.10.2007 (Annexure A-5).

2.6 She was communicated adverse entries in her ACR for the year 2004-05 and 2005-06 vide communicated dated 14/17.12.2007 (Colly. Annexure A-6). She submitted her representation dated 01.01.2008 (Annexure A-7), wherein she has highlighted her achievements inspite of the difficult and hostile working conditions.

2.7 She qualified the Limited Departmental Examination held on 22.02.2003(Annexure A-8), which is a pre-requisite for promotion to the post of Principal. She was called for personal talk for promotion on 17.11.2009 as per letter dated 28.10.2009 (Annexure

A-9). Orders for 30 Vice Principals to be promoted as Principals were issued on 23.12.2009 (Annexure A-10), in which name of the applicant does not feature.

2.8 She submitted her representation for denying her the promotion to the post of Principal on 04.03.2010. However, she was informed by the respondents vide letter dated 28.05.2010 (Annexure A-12) that her name was considered by the DPC for promotion to the post of Principal but was not recommended by DPC being found unfit on the basis of personal talk and having not attained the desired bench mark.

2.9 During the period from August 2007 to September 2011, when she was posted as Vice Principal in Malhar, her Principal was Shri B.K. Mahanti (Respondent No.4). She made written complaint about the corrupt ways of respondent No.4 and how deliberately her ACR's were spoilt by him. Accordingly, an enquiry was conducted by Shri P.K. Sharma, Deputy Commissioner (Admin), who found the complaints to be true. A copy of the report from page 5/N to 10/N was received by the applicant through RTI, which is filed as Annexure A-14.

2.10 She also obtained the names, designation of officers who reported/reviewed her ACRs of years 2004-2005 to 2008-2009,

dates of the signatures and remarks therein, vide letter dated 03.12.2010 (Annexure A-15).

2.11 She again submitted her representation on 16.12.2010 (Annexure A-16) stating therein that the ACRs of three years 2004-05, 2005-06 and 2006-07 were reported by an officer (Dr. Mohd. Kaleem) who was not incharge of her school. Dr Kaleem never visited her school. Theres ACRs were reviewed by Shri V.K.Sharma, who had superannuated on 31.07.2007 (Annexure A-20), much before the self appraisal of these years was submitted (for the second time) by the applicant in October 2007. No dates have been mentioned in any signatures of these years as per Annexure A-15.

2.12 A representation dated 08.01.2013 has been decided by respondent No.2 on 31.03.2014 (Annexure A-21), which is impugned in this O.A.

3. The following relief has been sought for by the applicant in this Original Application:-

“8. Relief Sought :

8.1 To quash the part of impugned memorandum whereby the petitioner’s A.C.R. for 2005-2006 has been upheld and it is further prayed that the A.C.R. for the year 2008 to 2009 may also be expunge.

8.2 To direct the respondents to reconsider petitioner’s case for promotion on the post of Principal after leaving aside adverse A.C.R.s for the consideration period.

8.3 Any other order or direction which this Hon'ble Court deems fit and proper may also be granted to the petitioner."

4. The respondents have filed their reply where they have submitted as under:

4.1 The applicant could not be promoted as the D.P.C. did not find her fit for promotion on the basis of her performance in the personal discussion and having not attained the required benchmark in ACRs.

4.2 As per Recruitment Rules-2007 (Annexure R-1) of NVS, 50% of the posts in the cadre of Principal is filled up by promotion from among all Vice Principals in order of their seniority in their grade of Post Graduate Teacher and Vice Principal of the Samiti subject to passing a Departmental Examination followed by personal talk.

4.3 Regarding the adverse remarks in her 2004-05 ACR, and her representations, "the Competent Authority had carefully examined the representation and agreed to the extent that the review part should not have been taken into consideration while considering her case for promotion."

4.4 Regarding the adverse remarks in her 2005-06 ACR, it was found that the Reviewing Officer who has seen her work has reviewed the ACR. Therefore, there is no reason to raise any doubt about the grading given by the Reviewing Officer.

4.5 As per the minutes of the DPC meeting held on 17th November 2009, under the Chairmanship of Commissioner, NVS (respondent No.2) for considering the promotion to the post of Principal it has been observed that the applicant has not been found fit for promotion on the basis of performance of personal talks besides her ACR.

4.6 The Competent Authority sympathetically considered her representation and expunged her ACR for 2004-05.

5. Heard the arguments from both sides and the pleadings available on record.

6. It is the case of the applicant that her ACRs for the three years 2004-05, 2005-06 and 2006-07 have been reported and reviewed by officers not competent to do so. Further, her ACR's for 2007-08 and 2008-09 have been written with malafide intention by Shri B.K.Mahanti (respondent No.4).

7. The following undisputed facts have emerged:

7.1 The self appraisal forms for ACRs for the years 2004-05, 2005-06 and 2006-07 were submitted by the applicant for the second time on 20.10.2007 (Annexure A-5) after being asked to do so by her superiors.

7.2 All these ACRs were reported upon by Shri Md. Kaleem Assistant Commissioner and reviewed by Shri V.K.Sharma, Dy. Commissioner. There are no dates of signatures (Annexure A-15).

7.3 Shri V.K.Sharma Dy. Commissioner had retired on 31.07.2007 (Annexure A-20).

8. The applicant has made a specific averment that Shri Mohd. Kaleem (respondent No.5) was not her cluster incharge in 2004-05 and 2005-06. He never visited her school during this period. Shri Keshavrao and Shri V.S.Ranavat were the cluster in-charge respectively. Also, Shri A.N.Ramchandra and Shri V.K.Sharma were the Dy. Commissioner respectively. Hence, the ACRs have been reported and reviewed by officers not competent to do so.

9. The respondents in their additional reply have submitted that Dr. Mohd. Kaleem was working as Assistant Commissioner at NVS, RO, Bhopal during the period 2004-05 and 2005-06. Though for academic supervision, the Assistant Commissioner posted in RO are allotted certain earmarked JNVs for the sake of close monitoring/supervision of the activities of JNVs of the region, it can not be said that Dr. Kaleem was not aware about the functioning/performance of the employees in the Vidyalaya.

10. The contents of the Memorandum dated 31.03.2014 (Annexure A-21) signed by Commissioner, NVS (respondent No.2) are reproduced below:

“Whereas Smt. Manju Tiwari, Vice Principal was not recommended by the DPC for promotion TO THE POST OF Principal in NVS in the meeting held on 17.11.2009.

And whereas Smt. Manju Tiwari has made a representation to the Joint Commissioner (Admn.) and Director (Grievance) dated 08.01.2013 on the following points:-

(1) That all the Vice Principals near to her in the seniority have been promoted in February, 2010.

(2) That in her ACRs for the previous two years “unfit” has been written with conspiracy by unauthorized officer Dr. Mohd. Kaleem.

(3) That the ACRs for the previous four years have been cooked and written in one day which is illegal and false.

(4) That in her ACRs for the year 2004-05, 2005-06 and 2006-07 have been reported by Dr. Mohd. Kaleem instead of Shri Keasav Rao, Cluster Incharge.

Based on the above, Smt. Manju Tiwari requested to expunge the said ACRs and extend promotion to her as Principal.

NOW, THEREFORE, the undersigned examined the ACRs of Smt. Manju Tiwari which were considered by the DPC in the year 2009. The ACR (2004-05) of Mrs. Manju Tiwari was reported and reviewed by the Officers other than her immediate Supervisory Officers. To that extent, I agree with the contention of Mrs. Manju Tiwari that the ACR reported/reviewed by the Officer who have not seen her work should be taken into consideration for promotion.

However, in other ACR (2005-06), the Reviewing Officer (Shri V.K.Sharma, Deputy Commissioner), who has seen her work, has also endorsed the remarks given the Reporting Officer. Therefore, we should not raise any doubt about the

grading of Reviewing Officer who was the actual Reviewing Officer of Mrs. Manju Tiwari. On perusal of the minutes of DPC meeting held on 17th November, 2009 under the then Commissioner, NVS for considering promotion of Vice Principal to the post of Principal, it is observed that Mrs. Manju Tiwari has not been found fit for promotion on the basis of her performance in personal talk besides her ACRs. The DPC found her unfit for promotion on the basis of her ACRs and personal talk as per the rules of NVS.

In view of the above, the representation dated 08.01.2013 submitted by Smt. Manju Tiwari is rejected being devoid of merit.”

11. During argument stage, learned counsel for the respondents as well as applicant have drawn inference from the contents of Annexure A-21 that adverse remarks of 2004-05 have been expunged. However, we notice that no such decision has been communicated. The representation has been rejected being devoid of merit. Even though the Commissioner has agreed with the contention of the applicant that the ACR reported/reviewed by the officer how have not seen her work should not be taken into consideration for promotion, no clear cut implementable instructions have been given.

12. Respondent No.2 has also not addressed the point of the applicant that Shri V.K.Sharma Dy. Commissioner had retired several months earlier than filling up of the self appraisal. Retiring Officers are granted one month time to complete writing the ACRs of their subordinate. It is clear that the said ACR has not been filled within one month of his retirement.

13. We have no hesitation in saying that all the comments made by Shri V.K.Sharma, Dy. Commissioner after 31.08.2007 (one month after retirement) can not be considered as valid.

14. The applicant has also brought to our notice the memorandum dated 31.05.2006 (Annexure A-19), signed by Shri V.K. Sharma, Dy. Commissioner, which reads as under:

“Considering their experience and devotion, the following Vice-Principals/Teachers are proposed to be assigned with the duties of I/c Principal at the Vidyalayas indicated against their name.”

The name of the applicant is mentioned at Sl. No. 6 of the list which contains 11 names.

15. On one hand the NVS is giving kudos to the applicant on 31.05.2006 for her experience and devotion, and on the other hand the ACR of the year 2005-06 grades her as “An average officer-unfit”. Obviously, the stands are contradictory. Interestingly, both are signed by Shri V.K. Sharma, Dy. Commissioner.

16. Regarding the year 2008-09, the extracts of the report of Shri P.K.Sharma, Dy. Commissioner (Admn.), NVS, New Delhi (Annexure A-14) are given below:

“4.1 As regard to allegations leveled by Mrs. Manju Tiwari, Vice Principal regarding spoiling her ACRs by Shri B.K.Mahanati, Principal Jawahar Navodaya Vidyalaya, Bilaspur at Para 2.1 above. It is stated that ACRs of Mrs. Manju Tiwari Vice principal for the period 2007-08 and 2008-09 have been written by Shri B.K.Mahanti, Principal in the capacity of Reporting Officer and reviewed by Shri DVSR Murthy, Asstt. Commissioner-cum-Cluster Incharge

in the capacity of Reviewing Authority. In the said ACRs though Smt. Tiwari has been graded as 'Good' for the year 2007-08 but for the year 2008-09 she has been graded as 'Average' by both i.e. Reporting & Reviewing Authority. During the conduct of inquiry the ACR of Mrs. Manju Tiwari, Vice Principal for the year 2008-09 was shown to Shri B.K.Mahanti with the remark to go through the adverse entries recorded by him in the said ACR and substantiate them. After going through the adverse entries recorded by him in the said ACR, Shri Mahanti expressed his inability to substantiate them and offered following comments vide his letter dated 07.09.2011.

- (i) "I like to bring it your kind notice that whatever comments I have written in the ACR of Mrs. Manju Tiwari, Vice Principal is true. I could not express the fact in proper terminology. Hence, sometimes it is ambiguous.
- (ii) Reviewing Officer has also not said anything about it."

4.1.1 A gist of certain adverse remarks made by Shri B.K.Mahanti, Principal, JNV, Bilaspur (CTG) in the ACR of Mrs. Manju Tiwari, Vice Principal for the year 2008-09 are reproduced on notes at page-3/ante. These remarks are irrelevant and have no linkage with the performance of the officer during the period under report. It is already evident that the concerned Principal either having no knowledge about writing the ACR or have written the adverse remarks deliberately to spoil the career of the officer. It is strange that the Reviewing Authority i.e. Assistant Commissioner-cum-Cluster Incharge (Shri DVSR Murthy) is also agreed to these remarks though they have no linkage with performance of the officer during the period under report. Thus, it is clearly established that the ACR of Mrs. Manju Tiwari has been spoiled by Shri B.K.Mahanti, Principal for the reason best known to him."

Conclusion

"(a) The allegation leveled by Mrs. Manju Tiwari, Vice Principal that her ACRs have been spoiled, found true keeping in view the facts mentioned in my notes on pages 1-4/ante."

17. The decision taken by the respondent No.2 on the report (Annexure A-14) has not been brought on record by the respondents.

18. From the foregoing, it is clear that the applicant has been given a raw deal and her grievances have not been addressed in a fair and transparent manner.

19. The Tribunals/Courts should not interfere in the normal administrative work of the organization. The grading in ACRs is also one such activity where the reporting/reviewing/accepting authority are the best judge. However, when the issue of natural justice or malafide is raised on valid points, Tribunal can not afford to be a silent spectator.

20. Regarding ACR's of 2004-05 and 2005-06, it has been undisputed that Dr. Md. Kaleem was not authorized to report the ACR. Also, these ACRs have been reviewed by Shri V.K.Sharma, many months after he has retired. Therefore, there is absolutely no doubt that such ACRs should not be considered for purpose of promotion.

21. Regarding ACR of 2006-07, the same logic is applicable that the remarks of Reviewing Officers can not be considered.

22. Regarding ACR of 2008-09, it is clearly stated in the fact finding report that her ACR have been deliberately spoilt. Since,

this point has not been controverted by the respondents, we consider that the report found favour with superior officers but chose to remain silent.

23. Before we part, we would like to bring out the fact that ACRs are being handled in a very casual fashion by the respondents. A Perusal of Annexure A-2 indicates that RO Bhopal has not filled the ACRs of as many as 42 Vice Principals over several years. This defeats the very purpose of using ACR/APAR as developments tool rather than fault finding one. These are against the guidelines of DoPT. Respondent No.2 is directed to review the system of ACR/APAR and ensure that this activity is completed as per model time table prescribed by DoPT.

24. In the result, the Original Application is allowed. The respondents are directed to convene review DPCs to review the recommendations of the committee which were held on 17.12.2009 and later also, for promotion of the applicant to the post of Principal. The review DPCs shall not consider the applicant's ACRs of the years 2004-2005, 2005-2006 and 2008-2009 and also the remarks of the reviewing authority in the ACR for the year 2006-2007 while reviewing the case of the applicant. On review, if the applicant is found fit for promotion by any of the review DPCs, she shall be granted the promotion as well as all consequential

benefits including arrears of pay, from the date she is found fit for promotion. This exercise should be completed within a period of 60 (sixty) days from the date of communication of this order. The respondents are further directed to communicate the result of the review DPCs to the applicants within the said stipulated period. No costs.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member