

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.4245/2013

Reserved on: 07.05.2019

Pronounced on: 15.05.2019

Hon'ble Mr. S.N. Terdal, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

Smt. Ravi Kiran Jha
w/o Sh. S.K. Jha,
r/o C-803, Krishna Apra Sapphire,
Indrapuram, Ghaziabad (UP).

-Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Kendriya Vidyalaya Sangathan
Through its Commissioner,
18, Institutional Area,
Sahjit Singh Marg, New Delhi.
2. The Deputy Commissioner,
Delhi Region, K.V. Sangathan,
JNU Campus, New Mehrauli Road,
New Delhi.
3. The Education Officer (at present Assistant
Commissioner), Delhi Region,
K.V. Sangathan, JNU Campus,
New Mehrauli Road,
New Delhi.
4. The Principal,
K.V. Sector-3, Rohini,
Delhi.

-Respondents

(By Advocate: Shri S. Rajappa)

ORDER**Hon'ble Mr. A.K. Bishnoi, Member (A):**

The applicant has filed this OA seeking the following reliefs:-

- “i) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the whole action of the respondents not granting the promotion to the applicant to the post of Principal is illegal, arbitrary and against the Govt. of India instructions and consequently pass an order directing the respondents to promote the applicant to the post of Principal from the date of promotion of her juniors with all consequential benefits after ignoring all the below bench mark grading in the ACRs.
- ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the order dated 23.7.2013 and below bench gradings in the ACRs of the year 2005-06, 2007-08 and 2008-09 and consequently, pass an order directing the respondent to re-consider the case of the applicant for her promotion the post of Principal with all consequential benefits including arrears of difference of pay and allowances, after ignoring all the adverse and down grading ACRs of the applicant.
- iii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to promote the applicant to the post of Principal w.e.f. 1.9.2010/ or from the date & years in the other juniors were promoted after ignoring all the below bench grading with all the consequential benefits including the fixation of pay and arrears of difference of pay and allowances.
- iv) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants”.

2. The applicant was initially appointed in Kendriya Vidyalaya Sangathan (KVS) to the post of Primary Teacher (PRT) on 21.08.1981 and subsequently appointed as PGT (Physics) w.e.f. 20.10.1983 as direct recruitment. She was further promoted to the

post of Vice Principal on 03.07.2003 and since then has been working on the same post.

2.1 The applicant was neither communicated any adverse remarks in ACR nor any below bench mark grading. From the year 2005, the respondents promoted persons junior to the applicant to the post of Principal but she has not been promoted. No charge sheet has been issued to the applicant till date.

2.2 The applicant demanded that she be provided the copies of her ACR for the years 2005-06, 2006-07, 2007-08 & 2008-09. She represented against each of these ACRs, which was rejected vide order dated 23.03.2011 by the respondents.

2.3 After following upon this rejection administratively, she filed OA No.513/2012 before this Tribunal, which was disposed of on 09.04.2013 with the following orders:-

“7. In view of the aforesaid premises, we are of the considered view that the impugned communication dated 23.8.2011 declining to review the applicants ACRs is not sustainable and the same is accordingly quashed and the matter is remanded back to the respondent Sangathan to consider and decide the applicants representations made against the adverse ACRs on merits by the concerned authority. Consequences as per the Rules would flow from the decision which the respondents may finally take on the applicants representations. This exercise shall be completed within three months from the date of receipt of a certified copy of this order.”

2.3 The applicant thereafter submitted separate representations of each year dated 23.03.2011 against and with respect to the ACRs for the years 2005-06 to 2008-09. These representations have been

disposed of through a common order dated 23.07.2013 by the Appellate Authority in compliance of the orders passed in OA No.513/2012 dated 09.04.2013.

3. The respondents in the counter reply have primarily sought to defend the impugned order on the basis that the applicant has not provided any convincing reasons or proof in support of her request to upgrade the entries/grading in the APARs.

4. The applicant has filed a rejoinder more or less reiterating the averments made in the OA.

5. During the course of the arguments Shri Yogesh Sharma, learned counsel on behalf of the applicant and Shri S. Rajappa, learned counsel on behalf of respondents further elaborated on the points raised in the pleadings.

6. We have carefully gone through the pleadings on record and have considered the arguments advanced by the learned counsel for the two sides.

7. Let us now proceed to examine the matter year-wise with respect to the impugned order dated 23.07.2013 passed by the competent authority amongst the respondents on the representation of the applicant.

i) **2005-2006**

The applicant has made a representation in which she has asked on what ground she has been assessed as “Average” and what are the parameters of assessing individual’s “Honesty & Integrity” in the context of her being marked “Average” in this category. She has questioned the ground on which she has been marked average and that she has not been given any verbal/written advice or instruction regarding unsatisfactory performance. She has also asked that why she has not been communicated any remarks to defend herself.

In the impugned order dated 23.07.2013, it has been mentioned as follows:-

“Whereas this office cannot review her APAR as Reviewing Officer because she did not work in the Vidyalaya in the Region during the relevant period of the APAR”.

It is amply clear that there has been non-application of mind and that the assertion as quoted above itself confirms that at least as far as this particular year is concerned, the submission of the representation by the applicant was an exercise in futility. It is also not mentioned that the comments of the Reporting Officer have been obtained, which should have been the case as per the established procedure. Further, no reason has been given for not communicating the remarks to the applicant.

It can also be seen that the ACR has not been reviewed and that no reason has been assigned for this. There are normally three levels of officers, viz. Reporting, Reviewing and Accepting. It is not clear whether in this organization there is a provision for Accepting Authority. This proforma shows the level of Reporting Officer and Reviewing Officer. Thus, in the normal case comments of Reviewing Officer should have been obtained which has not been done and it has also not been explained why it was so.

ii) **2006-07**

In the representation the applicant has submitted that as regards the ACR for the year 2006-07, she has been informed that “the same is not available in the dossier.” She has contended that she submitted ACR for the year 2006-07 in the office of KV Sector-3 Rohini but is being submitted again. The self-appraisal is shown on the file. There are no remarks of the Reporting Officer or the Reviewing Officer.

In the impugned order, curiously, there is no reference to the representation made by the applicant.

As it is an admitted fact that the ACR for the year has not been recorded there is no need to further discuss the issue.

iii) **2007-08**

The applicant has among others made the following points:-

- a) In response to the assessment of the Reporting Officer that “most of the time she has either been on Official Duty or Leave”, she has stated that she has not availed any unauthorized leave.
- b) As for the remark of “very average performer” in column 1(b) she has demanded to know if there is any scale for measuring “very average” and that this gives an impression of biased remarks. She has also contended that the adverse remarks were made without indicating any specific reasons and that the adverse remarks have not been communicated to her earlier. Had they been communicated, she could have defended herself by placing more facts before the concerned authority.

In the impugned order it has been mentioned that the Reporting Officer and Reviewing Officer made comments on her working and did not take into consideration the fact of being on leave. This is inexplicable since the Reporting Officer has specifically mentioned that the applicant was most of the time on official duty or leave. It clearly shows non-application of mind on the part of the respondents. It is also noticed that the comments of the Reporting Officer or Reviewing Officer have not been obtained. It is mentioned that the Reporting Officer Shri D.S. Negi is not

working in the Delhi Region. Even if he is working somewhere else, is not averred that he was not in service. Hence, there is no reason why his comments could not have been obtained, which is required as per the established procedure.

iv) **2008-09**

The Reporting Officer has made certain remarks in response to which the applicant has made her submissions in the representation.

In this period also the comments of the Reporting Officer, who was still in service, have not been obtained. This was essential as per the established procedure. The Appellate Authority while discussing the representation has straightaway agreed with the comments of the Reporting Officer. As regards the Part-III Column 1 (b) where it is stated “whatever she is doing all that is forcefully done”, the Appellate Authority has observed that she neither has negated nor has brought any evidence to disprove the same. This observation is incorrect as the applicant has clearly in the representation stated that she disagreed with the remark “whatever was done when (sic) forced”. As regards the evidence, what possible evidence could have been submitted by the applicant? If the Reporting Officer had any such information, the evidence should have come from him. There is no mention of any communication made by the Reporting Officer during the course of the year which

would suggest that the negative comments made in the course of writing the ACR had any basis. Comments of the Reporting Authority have also not been obtained though he is, apparently, still in service.

8. In view of the above discussion there is no scope for any doubt that there has been a total lack of application of mind on the part of the Appellate Authority while considering the representations made by the applicant. The established procedures requiring calling for the comments of the Reporting and Reviewing Officer have not been followed. If the Reviewing Officer had retired the comments of Reporting Officers who were still in service could and should have been obtained. For the said reasons given above, the impugned order is liable to be set aside.

9. It is established law that adverse or below benchmark remarks have to be necessarily communicated to a public servant within a reasonable period. In the instant case this was not done causing grave injustice to the applicant. The applicant through her own efforts obtained the ACRs, where available, for the period between 2005-06 and 2008-09. Requests for review were turned down. Thereafter she approached this Tribunal through OA No.513/2012 dated 9th April 2013 in which directions were issued to the respondents to decide representations of the applicant. Even after a clear direction given by this Tribunal, the respondents chose to

deal with the matter in a cursory manner with practically no application of mind and with disregard to the established procedure.

10. Under the circumstances, the impugned order dated 23.07.2013 is quashed and we direct the respondents to reconsider the case of the applicant for promotion from the date when her immediate juniors were promoted disregarding her ACRs for the years 2005-06, 2007-08 & 2008-09. Depending on the outcome of the exercise, the respondents shall provide all consequential benefits as may accrue to the applicant. This exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order and the respondents shall pass a reasoned and speaking order in this regard with a copy to the applicant. No costs.

(A.K. BISHNOI)
MEMBER (A)

(S.N.TERDAL)
MEMBER (J)

cc.