

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 808/2016

Reserved on: 15.07.2019
Pronounced on: 24.07.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

K.N.Mathur son of Shri Shiv Narain Mathur, aged about 66 years, resident of Tiwary Ka Kuan, Munshi Bazar, Alwar, retired from the post of Trained Graduate Teacher (WET) K.V.No.1 Alwar.

...Applicant.

(By Advocate: Shri R.D.Tripathi)

Versus

1. Kendriya Vidyalaya Sangathan, through it's Commissioner, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi.
2. Deputy Commissioner (Admn.) Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi.
3. Deputy Commissioner Kendriya Vidyalaya Sangathan, (Regional Office), 92 Gandhi Nagar Marg, Bajaj Nagar, Jaipur, Rajasthan.
4. Principal, Kendriya Vidyalaya No.1, Alwar Rajasthan.

...Respondents.

(By Advocate: Shri Hawa Singh)

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ORDER**Per: A.Mukhopadhyaya, Member (A):**

The brief facts of this Original Application, (OA), are that the applicant, who was appointed as a Trained Graduate Teacher, Work Experience Teacher, i.e. TGT (WET), with the respondent organisation, was granted his Senior Scale with effect from 01.01.1986. On completion of a further 12 years of service he became entitled for grant of Selection Scale with effect from 01.01.1998 but this was not given to him at the time. He superannuated from the respondents' service on 31.03.2010. Thereafter, the respondent organisation decided to grant the benefit of Selection Scale to its TGT (WET) teachers who were in the zone of consideration for the same as on 01.01.1999. Being in the said zone of consideration on that date, the applicant's case was considered but vide office order dated 09.07.2015, (Annexure A/1), he was denied Selection Scale as he was not found fit for the same on the basis of his ACRs and service record. The applicant states that well after this order of 09.07.2015, (Annexure A/1), ACRs for the years 1994, 1997 and 1998 were communicated to him, (after he represented for the same on 08.12.2015), vide respondents' letter of 11.12.2015; (Annexure A/5). Upon this, the applicant states that he immediately submitted his comments on the aforementioned ACRs on 18.12.2015 requesting the respondents to treat his overall assessment in these years as being 'Very Good'.

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However, vide their order dated 12.08.2016, [Annexure A/1(a)], his request for upgradation of gradings was also denied on the ground that there was no specific basis/evidence available to justify any kind of change in the overall grading. The applicant contends that the Departmental Promotion Committee, (DPC), recommends a candidate for grant of Selection Scale on the basis of five years' ACRs and service record prior to the year for which his promotion is considered. As the applicant became due for grant of Selection Scale with effect from 01.01.1998, the previous five years ACRs in his case would necessarily be the years 1993 to 1997 both inclusive. Thus, he avers that the DPC, while considering his case did not consider the correct ACRs, (i.e. 1993 to 1997), and instead considered the wrong set of ACRs; (i.e. 1994 to 1998). He also states that the respondents did not invite his comments on his ACR assessment and gradings for the years 1994, 1997 and 1998 within any kind of reasonable period and that this was done only after the adverse consequences of refusal of Selection Scale were visited upon him vide the impugned order of 09.07.2015, (Annexure A/1), through a communication dated 11.12.2015; (Annexure A/5). Thus, he states that he was never given due opportunity to represent against the ACR gradings which were held to be of adverse nature by the DPC which considered and refused the grant of Selection Scale to him.

2. Aggrieved by the aforementioned action of the respondents, the applicant has sought the following relief from this Tribunal:-

- i). To quash and set aside the impugned order dated 09.07.2015 (Ann. A/1) and order dated 12.08.2016 [Annexure A/1(a)]
- ii). To direct the respondents to grant the benefits of Selection Scale to the applicant w.e.f. 1.1.1998.
- iii) Any other relief which is deemed fit, just and proper be passed in favour of the applicant.

3. In reply, the respondents, while not disputing the chronology of events as stated by the applicant, aver that Selection Scale was denied to the applicant by the DPC as he was **“found unfit due to average APAR grading”**; (para 4 of reply refers). While confirming that the applicant's ACRs for the years 1994 to 1998 had been considered, the reply does not address the applicant's contention that the ACR for year 1993 should have been considered and that his ACR for the year 1998 should have been kept out of consideration. The reply also does not address the applicant's allegation that the ACRs considered by the DPC were communicated to the applicant for his comments on the same only well after a decision not to grant him Selection Scale had been taken, (Annexure A/1 dated 09.07.2015), vide letter dated 11.12.2015; (Annexure A/5).

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4. Learned counsels for the parties were heard and the material available on record was perused.

5. Apart from reiterating the points made in the pleadings, learned counsel for the applicant cited the case of **Sukhdev Singh vs. Union of India & Ors.** (2013) 9 SCC 566 in which the Hon'ble Supreme Court, citing earlier decisions, ruled that "**every entry in the ACR of a public service must be communicated to him within a reasonable period whether it is poor, fair, average, good or very good entry**"; (para 3 of judgment refers). The order further went on to state that "**non-communication of an entry is arbitrary**" and that such entry of overall assessment such as poor, fair, average, good or very good etc. "**must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice.**" In the next paragraph of the cited judgment, the Apex Court reiterated that "**communication of entries and giving opportunity to represent against them is particularly important...**", (para 4 of judgment refers), and that "**the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period**"; (para 5 of judgment refers). Applicant's counsel pointed out that in the cited judgment, the Apex Court

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has repeatedly stated that non-communication of ACR gradings would be arbitrary and violative of Article of 14 of the Constitution, (paras-5 and 7 of judgement refer), and has held that every entry in the ACR – poor, fair, average, good or very good must be communicated to the reportee within a reasonable period.

6. Learned counsel for the applicant contended that in the present case it is undeniable that the applicant's ACR gradings, including the ones which the respondents confirmed that they considered while denying him Selection Scale, were communicated to him on his representation well after taking a decision against granting him Selection Scale, (Annexure A/1 – dated 09.07.2015), vide a communication dated 11.12.2015; (Annexure A/5). Thus, he argued that such obviously late communication cannot be construed as being within a reasonable period as the very purpose of such communication is to allow the reportee, (the applicant in this case), to represent and be heard against any entry which may affect his career prospects, (such as the grant of Selection Scale in this case), adversely. Applicant's counsel termed the communication made by the respondents after visiting the applicant with the adverse consequence of their ACR gradings, (Annexure A/1 dated 09.07.2015), as being tantamount to non-communication of these ACRs and therefore a gross violation of the most basic principles of fair play and natural justice.

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7. Learned counsel for the respondents reiterated the points made and arguments offered in the reply to the OA as detailed earlier and did not contest the chronology of facts stated by the applicant.

8. It is clear on perusal of the record and consideration of opposing counsels' arguments that the applicant was denied Selection Scale on the basis of ACR gradings which were never communicated to him before visiting him with the adverse consequences of these gradings. It is also undisputed that the applicant was never given an opportunity to represent his case against these gradings before treating them as final and denying him Selection Scale on the basis of these gradings. This action of the respondents militates against the canons of fair play and natural justice as ruled by the Apex Court in the case of **Sukhdev Singh**, (supra), and is found to be arbitrary and violative of Article 14 of the Constitution.

9. This being the case, the OA is allowed and the impugned order dated 09.07.2015, (Annexure A/1), denying Selection Scale to the applicant as well as impugned order dated 12.08.2016, [Annexure A/1 (a)], retaining the gradings given in his ACRs for the years in question are both unsustainable in law and are set aside qua the applicant. The respondents are directed to grant

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the applicant Selection Scale in the same manner and on the same terms and conditions as granted to others vide the impugned order dated 09.07.2015, (Annexure A/1), i.e. subject to the condition that he has completed 12 years of service in the Senior Scale including the old Selection Grade and was holding the same post on the date from which Selection Scale is granted.

10. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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