

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00012/18**

Reserved on: 06.09.2019

Date of Order: 11.09.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Phool Kant Jha, S/o Late Chhedi Jha, residing at Kanti Sadan, Ward No. 23, Goswamy Laxmi Nath Nagar, PO- Head Post Office, Saharsa, PS & District- Saharsa.

.... **Applicant.**

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India through the Secretary, Ministry of HRD, New Delhi- 110001.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi- 110016.
3. The Dy. Commissioner (Admn), Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi- 110016.
4. The Deputy Commissioner, Kendriya Vidyalaya Sangathan, Region office, Lohia Nagar, Kankarbagh, Patna- 800020.
5. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Lohia Nagar, Kankarbagh, Patna- 800020.
6. The Education Officer, Kendriya Vidyalaya Sangathan, Regional Office, Lohia Nagar, Kankarbagh, Patna- 800020.

.... **Respondents.**

By Advocate(s): - Mr. G.K. Agarwal

O R D E R

Per Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for quashing the order of Dy Commissioner(Adm), Kendriya Vidyalaya Sangathan, dated 27.9.2016, so far as it relates to the denial of Selection Grade to the applicant on the basis of ACRs and Service records of the applicant. He has also requested for directing the respondent authorities to consider the case of the applicant for grant of Selection Grade in the pay

scale of 7500-250-12500 w.e.f. 2009 with all consequential benefits. The main ground for his seeking these reliefs is that the denial of selection grade to him, which is apparently based on an alleged adverse entry of "he is involve in local politics", which was later termed as "remark", is wrong. He has cited, at length, the career graph of a number of great Indian and international personalities such as Dr S. Radhakrishnan, Mayawati, Mulayam Singh Yadav, Justin Trudeau, Lyndon B Johnson, to support his contention that being involved in politics is not such a bad thing so as to deny him the benefit of selection grade on that ground alone.

2. The respondents have filed their written statement in which they have denied the claims of the applicant. They have stated that the grant of selection grade required fulfilling conditions such as attending 21 days in-service course, having the required higher qualifications and on their screening by an appropriate DPC regarding their satisfactory performance. The relevant meeting of the DPC was held on 16.8.2016 which, after considering the APAR gradings of the applicant from the years 2005 to 2009, found him 'unfit' for grant of selection grade. They have also stated that as per the norms, the adverse remarks of APRs were communicated to him and his representation was called for and it was ultimately decided by the competent authority to retain such remarks. The respondents have submitted that though 'Average' is not an adverse remark, as such it is not communicated yet 'Average' is also not the required bench mark for grant of selection scale as it should be above then 'Average'.

3. A rejoinder was filed by the applicant on 24.7.19, in which he has reiterated his earlier claims. He has stated that denial of the benefit of selection grade, which he was eligible for since the year 2009, by a Selection Committee Meeting (which was held 16.8.2016 after his retirement on 28.2.2015), on the basis of the ACRs and service records of applicant (for a period of 2005 to 2009) is wrong. He has also claimed that none of the ACRs from the year 2005 to 2009 were communicated to him and as such he cannot be put to any kind of harm on the basis of such un-communicated ACRs. The respondent cited a judgment of this Tribunal in **Smt. Binita Mitra Vs the UOI** which was upheld by the Hon'ble High Court of Patna and the judgments of Hon'ble Supreme Court (in cases of **Abhijit Ghosh Dastidar, Devdutt, Sukhdev Singh** etc, and the recent judgment dated 23.7.2015 in **Prabhu Dayal Khandelwal Vs Chairman UPSC & Ors**) and also a decision of this Tribunal in a recently decided matter (**Sudhir Kumar Vs Union of India** in OA/50/00550/2016).

4. We have gone through the pleadings and heard the learned counsels of both the parties. There is no major disagreement about the facts of this case. The applicant has not been given the benefit of selection grade when a number of teachers in various Kendriya Vidyalayas were given this benefit, in most cases, retrospectively. The grant/denial of this grade has been on the basis on the recommendations of a Selection Committee Meeting held on 16.8.2016, the minutes of which are annexed as Annexure R/2 with the written statement of the respondents. It is seen in these minutes that the applicant, along with 6 others, was not recommended 'fit'

for grant of selection scale on the basis of ACRs. We do not find any mention in these minutes about what particular shortcoming in the ACR and the service record made the committee not recommend them fit. However if, in the applicant's case, it is based on the adverse remark (about the applicant's involvement in local politics that was communicated to him and not expunged despite his representation as the applicant himself suspects) we do not see any reason to quarrel with the judgment of the DPC. It is true that a number of hugely successful political personalities started their career as teachers. However, this cannot be taken as a ground to claim promotion, especially if such activity is considered undesirable and commented adversely upon by an employee's superior. We also cannot fail to take notice of the fact that while representing against the said adverse remark, the applicant has thrown counter charges at the Principal, instead of defending the charge against him, which, being part of his service record, could also be a reason for not finding him fit for promotion.

5. Be that as it may, the fact remains that we are not made fully aware of the exact reasons why the Department Promotion Committee did not recommend him fit for promotion. The written statement mentions both - his average grading in the APARs and the adverse remark that remained un-expunged. While denying promotion on the basis of the latter can still be justified, doing so on the basis of the former cannot be sustained in the light of the judicial pronouncements quoted in paragraph 3 above. We also note that in Annexure R/2, the Departmental Promotion Committee has recommended 145 teachers for grant of selection grade, out

of whom a large number since 2009/2010 and almost all of them with retrospective effect. They have declared only 7 unfit on the basis of adverse Service Records. 18 cases are kept pending for clarifications regarding ACRs etc. This exercise was done in the year 2016 to cover cases of promotion from 2009 to 2015. Since this decision would cause permanent loss to the applicant, we feel that the interest of justice will be served if the matter is remitted back to the concerned Departmental Promotion Committee, to examine the case of the applicant once again and give their recommendation about his fitness or otherwise for promotion. While doing so the applicant should not be adjudged unfit only on the basis on uncommunicated ACRs. The OA is disposed of accordingly. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member