



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: July 31, 2023

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+ W.P.(C) 9971/2023

J.S GAUR

..... Petitioner

Through: Mr. Aman Mudgal, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Virender Pratap Singh Charak,
Mr. Ravindra Vikram, Ms. Shubhra
Parashar and Mr. Pushpender Singh
Charak, Advocates for R-1/UOI.
Mr. Rajappa and Mr. R.
Gowrishankar, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

CM APPL. 38442/2023 (Exmp.)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

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1. This petition has been filed by the petitioner challenging the order dated May 16, 2023 passed by Central Administrative Tribunal, Principal Bench, New Delhi (in short "*Tribunal*") in O.A. 1024/2015, whereby the Tribunal has rejected the O.A. filed by the petitioner.

2. The challenge of the petitioner in the O.A. was to a communication dated November 14, 2014, whereby his representation against certain

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grading in his ACRs for the years 2001-02 to 2005-06, was rejected by stating as under:-

*Kendriya Vidyalaya Sangathan
Regional Office
KV AFS Campus, Sector 14, Gurgaon, Haryana 122001*

No.F.32050/Sel. Scale/Admn/KVS/Gurgaon 10460

Dated: 14.11.2014

*The Joint Commissioner (Admn)
Kendriya Vidyalaya Sangathan (HQ)
New Delhi.*

Subject: Grant of Selection Sale to Shri J.S. Gaur, TGT (WE) KV Narela

Sir,

I am to refer to your letter No.F.11058-2/TGT/2009/KVS (HQ)/RPS/1532 dated 24.07.2014 on the subject cited above and to inform that ACRs for the year 2001-2002 to 2005-06 were communicated to Shri J.S. Gaur, TGT (WE), KV, Narela, vide this office memorandum No.F.32085/Admn/2014-154/KVS/GGN/5435 dated 12.08.2014.

In response to memorandum dated 12.08.2014 referred above, Shri J.G. Gaur has sent his representation dated 26.08.2014 against the adverse remarks through Principal, KV, Narela, vide letter No.F.23/KVN/2014-15/176 dated 20.08.2015 (copy enclosed).

After consideration of his representation and ACRs for the period from 2001-02 to 2005-06 by the competent authority, it has been observed that the abovesaid ACRs may be treated as average.

This is for your information and further necessary action, please.



Yours faithfully
Sd/-
(C. MANI)
Deputy Commissioner

Copy to:
Shri R.S. Gaur, WBT, KV, Narela, for information."

3. The case of the petitioner before the Tribunal was that in view of the judgment of Supreme Court in the case of ***Dev Dutt vs. Union of India & Ors., 2008 (8) SCC 725*** and ***Abhijit Ghosh Dastidar vs. Union of India & Ors., 2010 (1) SCC (L&S) 959***, the ACRs being adverse/below bench mark, having not been communicated, could not have been considered by the DPC, which held on October 01, 2012 for grant of selection grade to the petitioner w.e.f. March 14, 2007.

4. It may be stated here that immediately thereafter the petitioner did make a representation to the respondents about the factum that the ACRs of the aforesaid period, were not communicated to him. Accordingly, the ACRs were communicated to the petitioner and was called upon to represent against the same.

5. The petitioner has represented against the ACRs vide a letter dated June 30, 2014. The representation was rejected vide the impugned order dated November 14, 2014.

6. We have seen the Original Application filed by the petitioner, wherein he does not really challenge the gradings in the ACRs except stating in para 5.2 that the same are perverse. Mere saying perverse shall not mean that the gradings have not been properly given. No factual foundation has been laid in support of that ground.



7. In any case, the Tribunal was justified in rejecting the O.A. inasmuch as the Supreme Court in Dev Dutt's case (supra), has clearly held in para 44 as under:

“44. We, therefore, direct that the "good" entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.”

8. In other words, though the communication of the gradings in the ACR was after the DPC has held, the fact remains the representation having been dismissed and the gradings have not been upgraded, the conclusion drawn by the DPC on October 01, 2012 cannot undergo a change inasmuch the DPC has rightly on the basis of the record between 2001 to 2006, has found the petitioner not fit for being granted the selection grade.

9. We do not see any reason to interfere with the impugned order. The same is dismissed.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

JULY 31, 2023/akc