

Government of Himachal Pradesh
Department of Technical Education

No. EDN(TE)B(2)4/2021

Dated Shimla-171002, the 08th August, 2022.

ORDER

1. Whereas the Department Promotion Committee (DPC) was held on dated 28.04.2021 for considering Head of Departments (HODs) for promotion to the post of Principal (Polytechnic). As per the ACR dossier of Sh. Karam Singh Kaundal, HOD (Applied Sciences & Humanities) his ACRs for the last five years have been recorded as under:-

2016-17	2017-18	2018-19	2019-20	2020-21
Good	Good	V.G.	Good	V.G.

2. And whereas the Department of Personnel in para 2 of the O.M. No. Per(AP.B)B(3)-1/94 dated 21st June, 2016 has issued following instructions for considering an officer for promotion to 'selection' posts:-

“...in case of an officer to be considered for promotion to the 'selection' posts carrying grade pay Rs. 7600/- and above, the prescribed benchmark of 'Very Good' is to be invariable met in all APARs of five years under consideration.”

3. It has been further specified therein that *“the DPC, in terms of guidelines of this Department, is required to make its own assessment on the basis of entries in the APARs and not be guided merely by the overall grading. In cases where the assessment by DPCs are apparently not in line with the grades in the APARs, the DPC should appropriately substantiate its assessment by giving reasons, so that the appointing authority could factor these while taking a view on the suitability of officer for promotion.”*

4. And whereas, therefore the committee in its meeting held on 28.04.2021 has assessed the officer as “Good” and in the light of the provisions of the Office Memorandum dated 21.06.2016 of Personnel Department, Govt. of Himachal Pradesh which prescribes that in case of an officer to be considered for promotion to

the 'Selection' posts carrying grade pay Rs 7600/- and above, the prescribed bench mark of 'Very Good' is to be invariably met in all APARs of five years under consideration and hence the committee has not recommended the name of Sh. Karam Singh Kaundal, HOD, Applied Sciences for promotion to the post of Principal. But his immediate senior Sh. Acchar Singh and Junior Sh. Satish Dhingra were recommended for promotion to the post of Principal and promoted vide notification No. EDN(TE)B(2)4/2021, dated 28.04.2021.

5. And whereas feeling aggrieved and dissatisfied with the non consideration of his promotion, Sh. Karam Singh Kaundal filed CWP No. 4945/2021 and prayed for following relief:-

"It is, therefore, respectfully prayed that the present petition may very kindly be accepted and an appropriate writ, order or direction may very kindly be passed in favour of the present petitioner to the following effect:-

That appropriate writ, order or direction may very kindly be issued and Annexure P-1, notification dated 28th April, 2021 may very kindly be quashed and set aside to the extent, whereby persons junior to the petitioner has been promoted by further directing the respondents to promote the petitioner to the post of Principal (Polytechnic), Class-I (Gazetted) with effect from 28th April, 2021, with all consequential benefits of pay, arrears, seniority etc., in the interest of law and justice.

6. And whereas Hon'ble High Court has decided the above CWP and passed the following orders:-

"In the instant case, during hearing of the case, learned Deputy Advocate General placed on record the copy of instructions dated 21.06.2022, imparted from the office of Special Secretary (TE) to the office of learned Advocate General. According to these instructions, the APARs of the petitioner for the period in question were not communicated to him. These instructions have been taken on record. In the instant case neither the APARs for the period in question have been communicated to the petitioner nor any opportunity till date to represent against the same was granted to the petitioner. The petitioner is set to superannuate on 30.06.2022. One of the APAR of the petitioner i.e. for the year 2019-2020 fulfills the required benchmark "Very



Good". One of his APAR i.e. for the period 2015-2016 is prior in time to the office memorandum issued on 21.06.2016 mandating "Very Good" benchmark. All the APARs of the petitioner for the period in question otherwise hold him fit for promotion. No adverse entry per se is reflected in any of the APARs.

Considering all the above aspects, the conclusion is that petitioner has made out a case in his favour. Accordingly, this petition is allowed. The respondent No. 1 and 2 are directed to convene a review DPC for considering the case of the petitioner for promotion to the post of Principal (Polytechnic) without considering the un-communicated ACRs for the period in question. This exercise will be completed within a period of three weeks from today. Needless to observe that in case the petitioner is promoted to the post of Principal, he will be entitled to all the consequential benefits from due date. Pending miscellaneous application(s), if any, shall also stand disposed."

7. And whereas in view of the judgment of Hon'ble High Court. the matter was taken up with Law Department who has advised as under:-

"The record of the case and the judgment in question has been gone through in this department and this department is of the view that Hon'ble Supreme Court and various High Courts in catena of the judgments has laid down the principle that un-communicated and adverse ACRs cannot be relied upon, unless same are communicated. The grievances of the appellant in the instant case for the period in question which were not communicated to him, minimised his chances for promotion against the post of Principal (Polytechnic), and Hon'ble High Court vide judgment dated 22.06.2022 has directed the respondents to consider the case of petitioner for promotion to the post of Principal with all consequential benefits.

In view of the facts and circumstances of the case as discussed above, it is submitted that Hon'ble High Court has appreciated and weighed the instant case in accordance with the settled position of law by the Apex Court, especially in Dev Dutt vs. Union of the India and it is found that there is no reasons to disagree with the judgment of Hon'ble High Court, thus it is not fit case to be agitated further."



8. And whereas none of the ACRs of Sh. Karam Singh Kaundal as HOD were conveyed to him. Therefore, in view of the directions of the Hon'ble High Court and advice of the Law Department the Department has decided to review the minutes of DPC dated 28.04.2021. The minutes of DPC dated 28.04.2021 were accordingly reviewed on 02.08.2022 and the DPC has recommended the name of Sh. Karam Singh Kaundal for promotion to the post of Principal (Polytechnic) with effect from on 28.04.2021 the date when his junior were promoted and assessed him below Sh. Achhar Singh and above Sh. Satish Dhingra.

9. Now therefore, as per recommendation of DPC dated 02.08.2022, Sh. Karam Singh Kaundal is hereby promoted as Principal (Polytechnic) on notional basis w.e.f. 28.04.2021, (the date when his juniors were promoted) to the post of Principal (Polytechnic).

BY ORDER

Amitabh Awasthi
Secretary(Tech. Edu.) to the
Government of Himachal Pradesh.

No. EDN(TE)B(2)4/2021

Dated Shimla-171002, the 08th August, 2022.

Copy forwarded for information and necessary action to :-

1. The Director, Technical Education, H.P. Sundernagar, District Mandi, Himachal Pradesh for necessary action.
2. Sh. Karam Singh Kaundal, HOD (Retired) through Director, Technical Education, Himachal Pradesh Sundernagar, Distt. Mandi
3. Guard file.

(Shubh Karan Singh)
Special Secretary(TE) to the
Government of Himachal Pradesh.
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