

Central Administrative Tribunal  
Principal Bench

O.A.No.2676/96

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 6th day of October, 1997

Sumer Singh Solanki  
s/o Shri Subh Ram  
r/o Village & PO Shahabad  
Mohdpur  
IGI Airport  
New Delhi.

... Applicant

(By Shri V.N.Jha, Advocate)

Vs.

1. Union of India through  
Director General  
Health Services  
Nirman Bhawan  
New Delhi.
2. Medical Superintendent  
Safdarjung Hospital  
New Delhi.
3. Shri K.Ramachandran  
Bio Chemist  
Bio Chemistry Department  
Safdarjung Hospital  
New Delhi. ... Respondents.

(By Shri R.V.Sinha, Advocate)

O R D E R (Oral)

The applicant joined Safdarjung Hospital in 1984 <sup>as Lab</sup> ~~as Lab~~  
Assistant w.e.f. 5.8.1992. He claims that his record of service  
from 1985 to 1993 had been above average and he believes that he  
earned good reports for that period till 30.8.1994 when adverse  
remarks recorded in his ACR for the period 1993-94 were  
communicated to him. The adverse remarks are reproduced as  
under:

iii) Readiness to accept responsibility: Does not always accept  
responsibilities given by Seniors in the deptt.

iv) Amenability to discipline : Has difficulty in amena  
-bility to discipline

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- vii) Behaviour towards the public : Has a tendency to pick up arguments with public
- viii) Personality : Has difficulty in adjusting with colleagues
- ix) Good qualities and short comings : Gets easily provoked and pick up quarrels with colleagues.

2. The applicant submits that the main adverse comment against him is that he is not a disciplined Government servant; on the other hand, in the memorandum conveying the above adverse remarks it has also been mentioned that there are complimentary remarks about his discipline, intelligence and professional techniques. He therefore states that the adverse remarks recorded in his ACR are self contradiction. He also submits that the representations filed by him have been disposed of with considerable delay and no reasons have been given for rejecting the representations.

3. The respondents have filed a counter. They submit that the ACRs have been recorded on the basis of the observation of the work and conduct of the applicant. Respondent No.3 has also filed a separate affidavit denying the allegation of malafide and bias. Respondent No.3 has also pointed out that the Safdurjung Hospital deals with a large number of poor patients. Some of these patients as well as the colleagues of the applicant had been making verbal complaints about the non-cooperation and arrogant attitude of the applicant. The applicant was advised to improve his conduct but on his failure to do so, the adverse entries were recorded.

4. I have heard the counsel on both sides. It is clear that no written advice or warning was given to the applicant before the adverse remarks in question were recorded. The learned counsel for the applicant points out that in the reply of the

respondents in Para 4.7 it has been stated that the copies of the complaints were not given to the applicant as there was no intention to hold an enquiry against him. The learned counsel points out that unless the applicant was informed of the complaints and made aware about his deficiencies, he could not have made a proper representation against the adverse remarks. The learned counsel for the respondents on the other hand submits that as pointed by R-3, the Sufdarjung Hospital is dealing with poor patients and it would not be possible to get written complaints from them. It was therefore on observation of the general conduct of the applicant that the adverse remarks were recorded.

5. I have carefully considered the matter. The purpose of recording ACR is firstly to record the performance of the applicant during the year and secondly it is <sup>an</sup> intended as <sup>a</sup> tool for further human resource development. The guidelines, regarding the ACR, issued by DoPT in their OM No.51/4/72 Estt. (A) dated 20.5.1972 (Swamy's Compilation on Seniority & Promotion of 1996 edition, Page 73) that though performance appraisal is a year end exercise, in order that it may be a tool for human resource development the reporting officer should at regular intervals review the performance and take necessary corrective steps by way of advice, etc. In this case, R-3 has stated that the applicant was verbally advised to improve his conduct. In the reply, as pointed out by the learned counsel for the applicant, the respondents have stated that the copies of complaints received from the public against the applicant were not given to the applicant since no enquiry was initiated. They say that the intention of recording the remarks in the ACR was by way of caution to him to improve his conduct towards his colleagues and patients. This however was to be done by advise first and not by recording the adverse remarks in the ACR. There

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is no indication as to when the applicant was verbally advised. In view of this, it is clear that no opportunity was given to the applicant nor any advise was given to improve his performance before recording the adverse remarks. For that matter even when he filed his representation and sought to know about such instances he was summarily told that since no enquiry was intended the copies of the complaints could not be supplied to him.

6. In view of the above discussion, it is clear that the adverse remarks in ACR of the applicant for the period 1993-94 was recorded in contravention of the instructions of the DoPT. Accordingly, the respondents are directed to expunge the same from his record within a period of one month from the date of receipt of a copy of this order.

The OA is disposed of as above. No costs.

*Rao*  
(R.K. ARGOJA)  
- MEMBER(A)

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