

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

O.A.No. 90/89

Date of decision: 13.05.93.

Dr.(Mrs.) Sushma Dube ..... Applicant

versus

Union of India ..... Respondents

Coram:-

The Hon`ble Mr. B.N. Dhoundiyal, Member(A)

For the applicant : Sh. J.K. Bali, counsel

For the respondents : None

1. Whether Reporters of Local Papers may be allowed to see the Judgement?
2. To be referred to the Reporters or not?

JUDGEMENT (ORAL)

(delivered by Hon`ble Sh. B.N. Dhoundiyal, Member(A)

This O.A. has been filed by Dr.(Mrs.) Sushma Dube working as Asstt. Medical Officer with the Railway. She is aggrieved by the adverse remarks in the <sup>6</sup> ~~for~~ confidential report for the year ending 31st March, 1987 while she was working as Assistant Medical Officer, Northern Railway Hospital, Moradabad. The adverse remarks are extracted below:-

"She believes in bringing pressure from outside for her posting and then for

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working at specific post at specific station and in her representation (she) uses intemperate language."

She submitted a representation on 1.1.1987 to which there has been no response. This case admitted on 13.1.1989 and a number of opportunities were given to the respondents to file their counter which was not done. Even on the date for final hearing the case was called twice but none was present on behalf of the respondents. The case is, therefore, being decided on the basis of the pleadings of the learned counsel for the applicant, relevant rules and regulations and the facts available on record.

The learned counsel for the applicant has drawn our attention to Rule 1608 of India Railway Establishment Code Vo.1 which prescribes that a government railway servant shall not ordinarily be given an unfavourable confidential report before an opportunity has been taken, preferably at a personal interview or, if that is not practicable by means of a personal letter pointing out to him the direction in which his work has been unsatisfactory or the faults of character or temperament, etc. which require to be remedied. The manner and method of conveying to the gazetted railway servant that his work needs improvement in certain directions must be such that the advice given and the warning or censure administered, whether orally or in writing, shall, having regard to the temperament of the gazetted railway servant, be most beneficial to him. If, inspite of this, there is no appreciable improvement and an

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adverse, confidential report has to be made, the facts on which the remarks are based should be clearly brought out. Similarly Rule 1610 also provides an opportunity to the official to give his comments on the adverse report or for personal hearing before these remarks are finalised. According to the learned counsel for the applicant no such opportunity was given before finalising the remarks. The learned counsel <sup>has</sup> drawn attention to judgement of Bangalore bench in the case of N.K. Narayanakar Vs. Member(TP), Telecom Board, New Delhi & Another decided on 3.2.1989 and reported in (1989)10 ATC Vol.10 P.477, wherein it is held that in such cases judicial interference <sup>is</sup> called for when departmental officers have acted with malice or adverse remarks were given without supporting evidence. Similarly, in the case of Kirshan Lal Sharma Vs. U.O.I. & Ors. decided on 4.6.1987 and reported in (1987)4 ATC P. 709 it was held that giving <sup>instances</sup> ~~opportunities~~ to support the adverse remarks is necessary. In the absence of the participation by the respondents in the proceedings, we have no evidence that another opportunity was given to the applicant or her representation was duly considered. <sup>Moreover</sup> ~~Therefore~~, the remarks are vague. We, therefore, hold that the adverse remarks are not sustainable and the impugned order dated 25.8.1987 is hereby quashed.

The application is disposed of on the above lines.

*B.N. Dhundiyal*  
(B.N. Dhundiyal)

Member(A)

13.05.93