

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A.No.705/90

New Delhi, this the 22nd day of August, 1994.

HON'BLE SHRI J.P.SHARMA MEMBER (J)

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER (A)

Dr. J.L.Srivastava,
s/o Shri J.B.Srivastava,
r/o D.II/173, Kidwai Nagar (West)
New Delhi.

..Applicant

(By Advocate Shri S.Balakrishnan)

Vs.

1. Union of India, through
Secretary,
Ministry of Health & Family
Welfare, Nirman Bhawan,
New Delhi.
2. Secretary,
Union Public Service Commission,
Dholpur House, New Delhi.
3. Director General of Health
Services, Ministry of Health &
Family Welfare, New Delhi.

...Respondents.

(By Advocate Shri PH Ramchandani)

ORDER (ORAL)

Hon'ble Shri J.P.Sharma, Member (J)

A very short point is involved in the present case. The applicant has been working at the relevant period as Medical Superintendent, Safdarjung Hospital New Delhi. For the period 1988-89 Dr.G.K.Vishwakarma was the Director General of Health Services and being immediate officer of the applicant was the reporting officer for the relevant year for writing A.C.R. Dr. Vishwakarma had written the ACR and he himself also reviewed the same. The Ministry of Health & Family Welfare vide its orders dated 20-4-1990 cancelled the comments made in review by Dr.GK Vishwakarma Director General Health Services and instead as a Reviewing Officer gave the following remarks some of which are adverse in nature and are reproduced below:-

".....I have reasons to believe

that having regard to the widespread complaint of bad behaviour, insulting demeanour, inter-personal aberrations noticed in the conduct and work of Dr. Srivastava by several of his colleagues, public leaders and the hospital employees... ..Dr. Srivastava.....is a poor manager, does not possess the qualities of team leadership, has a tendency to bend rules in his favour or against those he disfavors and exhibits a sense of less than adequate fairplay. I do not consider him fit enough to hold the post of Medical Superintendent.....

.....
During 1988-89, his conduct and work could be said to be merely satisfactory. He should be advised to mend his manners to public and colleagues if he is to realise his professional potential."

The representation by the applicant against the said adverse remarks was also rejected by the order dated 19-4-90. In this application the relief prayed by the application is that the aforesaid adverse remarks be expunged and the respondent be directed to hold a D.P.C. and further the applicant be considered for the post of Additional Director General Health Services.

2. Respondents in reply have contested the application and have stated that the confidential remarks for the period were completed on 19-1-1990 and conveyed to the applicant on 27-2-90. Representation dated 30-3-90 was carefully considered and was rejected by the order dated 9-4-90. The competent authority- both while reviewing the ACR and rejecting the representation is the same. He has done so as the government instructions required that the adverse remarks are self-explanatory in nature. Thus the application does not deserve any favourable consideration and is therefore rejected.

3. We have heard the learned counsels of the parties. On 14-7-94 we had summoned certain records from the respondents and heard the counsels of the parties today. We have also seen the ACR as well as the personal file of the applicant. The ld. counsel for the respondents has placed reliance on the case of Union of India Vs. RG Namboodri reported in 1991 (SC) 1216. The remarks

given to the applicant for the subsequent year are not available in the ACR file except that the reporting officer has recommended the officer as an 'excellent' but this remark has not been reviewed. We are particularly referring to this ACR of the next year i.e. 89-90 for the reasons that during the course of arguments the counsel for the respondents has referred to certain complaint said to have been made by Hospital Karamchari Union in a letter dated 12-12-89. When there is no review of this remarks of the year 1989-90, nothing adverse was conveyed to the applicant and the ACR would be deemed to be ⁱⁿ⁻complete. In any case we are only confining the present consideration to the remarks for the year from 1-1-88 to 31-3-89. Inspite of best efforts and series of queries from the counsel for respondents, he could not elucidate any complaint against the personal and professional functioning of the applicant as Medical Superintendent during that period. The ld. counsel has only referred to a complaint made by the Karamchari Union much after the period in review in December 1989 and on that complaint too inspite of the expert body CBI and CVC did not recommend or advise for action against the applicant on the basis of allegations of culpabale nature resting with the behaviour of the applicant with his subordinates and other members of the staff and also affecting his integrity. Shri Ramchandani has emphatically impressed that the opinion gathered by the reviewing officer was duly influenced by the allegations made in this complaint. In fact, the period in the review was only to be commented by the reviewing officer on the basis of remarks given by the reporting officer and the assessment given by the person to be reported exclusively for that period. The matter remained with the reviewing authority who may have reviewed the remarks subsequently. Logically also this remark cannot be taken for the

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period when the reviewing officer has given his opinion and comments regarding the functioning of the applicant upto February, 1990.

4. In any case after giving a prolonged hearing to the ld. counsel for the respondents and patiently going through the departmental review file that the conclusions drawn by the reviewing officer are not at all supported by the material available either on the official file or on the departmental file for the period under review. Here it may be pointed out that for the next year i.e. 1989-90 when there was a complaint against the applicant dated 14-12-89 even the supervisory officer that is Director General of Health Services assessed the applicant fairly without reverting to any complaint of the Karamchhari Union. The Reviewing Officer has not reviewed these remarks. The applicant cannot be put to notice regarding this complaint received in this period 1989-90. Even ^{considering} certain effects of this complaint the allegations cannot by themselves be substantiated without going through the preliminary inquiry or preliminary documents in that regard. If the allegations are taken truthful on the very face of it, then anybody will be through to pass information on the supervisory officer or may get any such anonymous or pseudonymous complaints so that a hurdle in the way of promotion ^{of complained person} may easily be created. Allegations therefore by themselves cannot be taken for granted. We are therefore not persuaded by the arguments of the ld. counsel for the respondents that the complaint dated 12-4-89 was the basis before the reviewing officer for commenting on the conduct, behavior and functioning capacity of the applicant as Medical Superintendent of Safdarjung Hospital.

5. The ld. counsel for respondents also at certain length referred to the fact that the Secretary,

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of
Ministry/Health had formed the opinion on the basis of meetings he might have entered into at intervals with the officers of the Karamchhari Union and they must have been conveyed resentment against the applicant touching his behaviour and conduct. The ld. counsel has also referred to the complaint of 14-12-89 where the complainant union has mentioned the fact that since last two years (i.e. from the date of the complaint) the applicant has not been courteous and has been rash and abusive towards the subordinates. We appreciate the contention raised by the ld. counsel for the respondents but the opinion that is attributed to the reviewing officer does not find mention in the remark itself. Even the disposal of the representation done by the same officer who reviewed the remark though with the approval of the Hon'ble Minister does not elucidate this fact. In fact we do not think proper to reproduce the order of rejection but we have shown it to the ld. counsel for the respondents inasmuch as there is no reason given except that the representation does not mention any such fact to call for interference which is a narration of fact and not a reason. Reason means a sum of such facts together which support the conclusion. Here the conclusion is reached without giving any substance whatsoever in support of that conclusion

6. In the case of PG Namboodri^{supra} though the rejection of the representation is not by way of speaking order but when the adverse remark is assailed before the court of Tribunal, there must be averment in the counter^{filed} that such a remark was called for for the period under review for the reason stated. The ld. counsel for the applicant also cited 1973 (2) SCC 854 Union of India Vs. ML Kapur. In the reported case the ld. counsel has argued that the material on which the assessment of the officer is based should be conveyed

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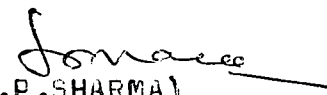
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to him. We also refer to the relief prayed for by the applicant that is relief (b) which has become redundant as the selection for the post of Additional Director General has already been completed. During the course of arguments it also came to our knowledge that the applicant was selected for the post of Additional Director Health Services but he refused. The relief, therefore, has not been rightly pressed for the counsel of the applicant and this has become infructuous. Regarding relief (a) which we have considered above, we dispose of the present application in the following manner.

The memorandum dated 27-2-1990 whereby the adverse remarks in his ACR for the period from 1-1-88 to 31-3-89 were communicated to the applicant is quashed and shall not form the part of the ACR for the applicant which shall never be considered in any meeting of the D.P.C if held for promotion of the applicant in case the necessity arises. Parties in the circumstances are directed to bear their own costs. A copy of this order shall be placed on the personal file of the applicant.

P. J. 20

(P.T.THIRUVENGADAM)
Member(A)


(J.P.SHARMA)
Member(J)