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Central Administrative Tribunal
Principal Bench, New Delhi.

OA-628/2004

New Delhi this the 1st day of March, 2005.

Hon'ble Sh. Shanker Raju, Member(J)

Ms. Poonam Kharbanda,
B-7, Shopping Complex,
Shanker Garden,
New Delhi-8.

.... Applicant

(through Sh. Arun Bhardwaj, Advocate)

Versus

1. Union of India through
Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Dr. M.S. Rao, Chief Forensic
Scientist, Directorate of Forensic
Sciences, Government of India,
Ministry of Home Affairs,
Block No. 11, 3/4th Floor,
CGO Complex, Lodhi Road,
New Delhi-3.
3. Sh. Amar Singh,
Govt. Examiner of Questioned Documents,
Now Directorate Forensic Sciences,
(Formerly Bureau of Police Research
and Development), Govt. of India,
Ministry of Home Affairs,
Railway Board Building,
Shimla-171003.
4. Sh. N.C. Sood,
Deputy Government Examiner of
Questioned Documents, Directorate of

Forensic Sciences,
(Formerly Bureau of Police Research
and Development), Govt. of India,
Ministry of Home Affairs,
Shimla-171003.

..... Respondents

(through Sh. Parvinder Chauhan, Advocate)

O R D E R

Applicant impugns respondents' memorandum dated 27.2.2003 wherein in the ACR for the period from 1.4.2001 to 31.3.2002, the following adverse remarks have been recorded in Column 12:-

"Adverse Remarks" Her performance is below average in discharge of duties and responsibility as an officer. She is a mental case."

2. Applicant was appointed as a Laboratory Assistant in CFSL, CBI on 4.6.1993 and was selected as Senior Scientific Assistant by the UPSC in 1998.

3. Through UPSC applicant was appointed as Assistant Government Examiner of questioned Documents on 3.1.2001 and was deputed to work as an Assistant under Respondent No.4 Sh. N.C. Sood. On the allegations of sexual harassment against Sh. Sood in the light of the decision of the Apex Court in Vishaka & Ors. Vs. State of Rajasthan & Ors. (JT 1997(7)384), a Committee headed by Dr. S. Kaur at the level of Joint Secretary with two other members was appointed which had not substantiated the allegations leveled by



the applicant. Meanwhile, applicant has also filed a complaint on 29.5.2002 to the Additional Superintendent of Police, Shimla. Applicant on account of an injury was on earned leave from 27.10.2001 to 25.3.2002. She was allegedly not allowed to join her duties. Applicant was transferred from Shimla to Chandigarh on 12.6.2002. Various memoranda were issued to the applicant from 27.2.2003. Adverse remarks were communicated vide memorandum dated 27.2.2003 against which an appeal preferred is yet to be disposed of.

4. Applicant's services stood terminated and was repatriated for which OA-953/2004 filed by her was dismissed on 29.11.2004.

Learned counsel of the applicant Sh. Arun Bhardwaj states that adverse remarks recorded in the ACR of the applicant lack objectivity and it is on the behest of Respondent No.4.

5. Learned counsel states that as per Rule 16(2)(b) of the instructions where the officer has a good record, adverse entries are not evaluated on performance and without any basis. It has been observed that the applicant is a mental case.

6. Learned counsel further states that the performance is not below average as she had performed work during the training also and when no work was assigned to her, there is no question of evaluating her performance. Learned counsel further states that the applicant has not been allowed to do independent work and was not

allowed work during the leave period and as such the performance report is nullity.

7. On the other hand, learned counsel of the respondents vehemently opposed the contentions and stated that the OA is barred by principles of constructive res-judicata as earlier two OAs filed by her i.e. OA-209/2004 and OA-558/2004 where the termination was assailed. Action to challenge the ACR which being available and this has not been done. This O.A. is barred by res-judicata. Moreover, it is stated that as the applicant himself made applications that her mental condition is not good, the remarks are justified.

8. Learned counsel states that detailed report of Additional Supdt. Of Police dated 6.7.2004 found her complaint as without any substance and is due to mental condition and general behaviour of the applicant which was erratic. Respondents' counsel further stated that during the probation period, the probation report clearly showed that the applicant has not fared well in training itself and was not able to conduct independent investigations, As such, only one file has been marked to her.

9. Referring to the ACR it is stated that the same is based on creditable material as the applicant has been issued memos on 15.4.2002, 24.10.2001, 23.4.2002 and 31.5.2001 to show that her performance was not upto the mark and she has not improved. As such corrective measures have been taken but despite this the



applicant has not improved her performance. As such the remarks are legally justifiable.

10. In the rejoinder, applicant has reiterated the contentions and stated that the applicant during the period she remained on leave was not entrusted any work but during the training the applicant had performed work and was served with a memo of 24.10.2001 which is without any basis and due to her injury and being patient for which earned leave was availed, reasonable opportunity was denied to her.

11. I have carefully considered the rival contentions and perused the material placed on record.

12. In so far as the remarks that applicant is a mental case, the same is without any material and is unwarranted. From the perusal of probation report from January 2001 to January 2002, the applicant's behaviour and mental condition has been stated to be deteriorating and she started behaving as a unbalanced person. However, there is nothing on record supported with any medical documents to indicate that for the reported period, the applicant was under any mental stress or suffering from any disease. Accordingly, such a remark lacks objectivity and without any basis cannot be recorded in the ACR.

13. As regards unsatisfactory performance, it is trite law in the light of decision of the Apex Court in State of U.P. Vs. Yamuna Shanker Prasad (1997(4) SCC 7) that objectivity is to be maintained while

recording ACRs and corrective measures should have been followed to indicate that the deficiencies have been highlighted to the concerned. In the ACR what has been recorded is that the applicant was under training and this was extended for 3 months due to unsatisfactory progress. The probation report for the aforesaid period shows that performance of the applicant during training was also not upto the mark. ACQD is a prestigious department and any error in performance would have serious repercussions. Accordingly, Amar Singh who has written the ACR had also ~~Served~~^h memo ^h to the applicant to correct her behaviour. This is a corrective measure taken against the applicant to improve her performance. The aforesaid is in consonance with the decision of the Apex Court and the remark for unsatisfactory or below average performance is well founded and justifiable.

14. Moreover, non-accord of cases to her during this period has reasonable nexus as due to poor performance the independent charge could not be given to the applicant. I do not find any infirmity in the same.

15. As regards mala fides and bias against Sh. Amar Singh and Sh. Sood, I find that the charge of sexual abuse has been investigated by the police as well as competent Committee has found to be otherwise. The aforesaid aspect of the matter has been meticulously dealt with in OA-953/2004 where applicants allegations

were substantiated. We cannot sit as an Appellate Authority in the matter of challenge to the ACR and if the adverse remarks are justifiable by the record, the same cannot be interfered in judicial review.

16. In the result, for the foregoing reasons, OA is partly allowed. Adverse remarks recorded in the ACR of the applicant for the year 2001-2002 as regards observations regarding her as mental case, are directed to be expunged but rest of the remarks stand. No costs.

S. Raju
(Shanker Raju)
Member(J)
1/3/2005

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