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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

NO  
Adverse  
remedies

O.A. No. 237/90  
T.A. No.

DATE OF DECISION 7th April 1993

Dr. Sucharita Sen.

Petitioner

Mr. D.K. Mehta

Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Mr. B.R. Kyada

Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. N.B. Patel

Vice Chairman

The Hon'ble Mr. Radhakrishnan

~~Member~~ (2)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Dr. (Mrs.) Sucharita Sen  
9, Kothi Compound,  
Railway Quarters, Rajkot.

Applicant

Advocate Shri D.K. Mehta

Versus

1. Union of India  
(Notice to be served  
through General Manager  
Western Railway, Churchgate,  
Bombay)-

2. Divisional Railway  
Manager (E), Rajkot Div.,  
Western Railway, Kothi Compound  
Rajkot.

3. Dr. A.P. Tandon (since retired)  
(Now by his successor in office  
Chief Medical Officer, Western  
Railway, C/o Railway H.Q. Office,  
Churchgate, Bombay 400 020

4. Medical Superintendent,  
Railway Hospital, Rajkot.

Respondents

Advocate Shri B.R. Kyada

O R A L J U D G E M E N T

In

O.A. 237 of 1990

Date: 7th April, 1993

Per Hon'ble Shri N.B. Patel

Vice Chairman

By filing the present application the  
applicant seeks quashing of the adverse remarks entered  
in her Confidential-sheet for the year 1987-88. She has  
also sought the relief directing the respondents to allow  
her to cross Efficiency Bar with effect from 1st January '89,  
and to pay her the arrears on the basis of crossing of

Efficiency Bar with effect from January 1, 1989, However so far as this relief directing the respondents to allow the applicant to cross Efficiency Bar, with effect from January 1, 1989, is concerned, it is made clear at the Bar that the applicant is since allowed to cross the Efficiency Bar with effect from the due date and, therefore, we have to confine ourselves to the relief prayed for by the applicant that the adverse remarks entered in her Confidential sheet for the year 1987-88 be expunged.

2. The applicant is M.D. (Pathology) and was appointed as Resident Pathologist in 1981 on the post of A.M.O. Class II in the Railway Hospital at Rajkot, on an adhoc basis but, by an order dated December 14, 1989 the applicant was regularised as Class I officer with effect from November 3, 1981. There is no dispute about the version of the applicant, that no adverse remarks were made against her till the year 1986-87, but, in the year 1987-88, her immediate superior, i.e. respondent no.4, Medical Superintendent Railway Hospital, Rajkot, made several adverse remarks in her Confidential sheet and sent the same to the respondent no.3, the Chief Medical Officer, who was the reviewing authority, for the applicant. The respondent no.3 accepted the adverse remarks made by the respondent no.4, in the Confidential sheet of the applicant and all such adverse remarks were conveyed to the applicant on January 10, 1989, by the letter dated July 26, 1988. The applicant thereupon filed an Appeal

to respondent no.1, General Manager, Western Railway, and the said appeal has been rejected by the respondent no.1 on March 17, 1989, by his order produced as Annexure A-2. The adverse remarks are to be found at Annexure A-1. On the same date, i.e. March 17, 1989, by another order (Annexure A-3), the applicant was stagnated at the stage of Rs. 2800/- in her pay-scale and was not allowed to cross Efficiency Bar. As already said, the applicant's grievances regarding not allowing her to cross the Efficiency Bar has disappeared and, therefore, that part of the application now does not survive.

3. The only question that remains for consideration is whether there was any valid foundation for making adverse remarks against the applicant and whether the appeal against the adverse remarks is rightly rejected by the respondent no.1, General Manager, Western Railway.

4. The adverse remarks entered in the Confidential sheet of the applicant, as mentioned in Annexure A-1 read as follows ;

<u>Items</u>	<u>Remarks recorded by MS</u>
<u>Part III - A</u>	
<u>Quality of Output</u>	Quality of performance is far from satisfactory. She being a qualified Pathologist much of quality and standard was expected from her but it falls far short of expectations. I have got many tests and biopsy done from outside.

Task relevant know-  
ledge.

Her level of knowledge is good but its application is very poor. I could not make her do the culture for A.F.B when it is done in other Rly. Hospitals and in private Laborartory.

Interest taken in  
Family welfare

She does not take any interest in F.W. programme, Leprosy, blindness prevention Control.

Part III- B

Attitude towards work

She is most unwilling worker. Much of the work she has been made to do. She has neither dedication nor motivation nor commitment to objectives.

Decision making  
ability

She cannot take any decision or judgement other than her profession.

Initiative

She is not willing to take any additional responsibility and new areas of work.

Inter-personal re-  
lations and team  
works

Relations with superiors, colleagues and subordinates is not satisfactory.

It will be evident from the aforesaid adverse remarks that all of them are of very general nature and do not specify any concrete instances of lapses on the part of the applicant. There is nothing to show as to on what basis the Reporting Officer, i.e. the respondent no. 4, had made such general

remarks against the applicant. The learned Railway Counsel Mr. Kyada has shown the relevant file to us and it appears that when the Reporting Officer was asked to substantiate the adverse remarks, he has not produced any record in the form of ephemeral roll or otherwise, detailing the lapses committed by the applicant which would justify the making of adverse remarks about her performance etc. It appears that, after the applicant preferred the appeal, the Chief Engineer (C) East, who was Divisional Railway Manager for the Rajkot Division, had written a letter dated February 22/23, 1989 to the respondent no.3, Chief Medical Officer, Dr. Tandon, wherein the D.R.M. Rajkot clearly stated that the Medical Superintendent, Rajkot, could have given concrete figures to justify the remarks that the applicant was not taking adequate interest in family welfare activities. It is also pointed out by the D.R.M. in this letter that, he had noticed that no communication was ever sent to the applicant in writing pointing out to her as to what were the short comings in her work and requiring her to show improvement in her work. The D.R.M. has also pointed out in his letter that, though there was a remark that the applicant was an unwilling worker and was avoiding to shoulder "additional responsibility and new areas of work", it was not pointed out as to on which occasions the applicant had refused to do the work entrusted to her by the respondent no.4. The trend of this letter of the D.R.M., is clearly in the direction of not being satisfied with the adverse remarks entered in the confidential sheet of the applicant. It may be presumed that this letter of the D.R.M. must have been placed before the General Manager when he considered and decided the appeal filed by the applicant. Apart from the fact that the impugned order

passed by the General Manager, rejecting the applicant's appeal (Annexure-2) is a non-speaking order, it is evident on the perusal of the file produced by Shri Kyada that no reasons for rejecting the applicant's appeal are mentioned by the General Manager even in the file in question. One may agree with the contention of Mr. Kyada that reasons need not be stated in the order rejecting an appeal against the adverse remarks. However, there cannot be any doubt that reasons must, in fact, exist for rejecting the appeal. In the present case, even the file does not contain anything to show as to what were the reasons why the General Manager had rejected the appeal of the applicant and that too in the face of the contents of the letter of the D.R.M addressed to the Chief Medical Officer. The position which, therefore, emerges is that, even at this stage, there is no material on record or any material brought to the notice of the Tribunal which would substantiate the adverse remarks passed against the applicant for the year 1987-88.

4. In the result, therefore, the adverse remarks cannot be allowed to stand. The application is allowed and the adverse remarks (Annexure A-1) entered in the Confidential sheet of the applicant for the year 1987-88 are expunged. No order as to costs.

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( N.B. Patel)  
Vice Chairman.