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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 54 of 2010

Cuttack, this the 23rd day of December, 2011

Shri Murali Mohan Rao.....Applicant
-Versus-

UNION OF INDIA & Ors.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to CAT,PB, New Delhi or not ?


(C.R.Mohapatra)
Member (Admn.)


(A.K.Patnaik)
Member (Judicial)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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Cuttack, this the 23rd day of December, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER(A)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER(J)

.....
Shri Murali Mohan Rao, aged about 53 years, Son of M.Prakasam, Senior Surgeon, Regional Leprosy Training Institute, Aska, PO. Babanpur, Dist. Ganjam, Odisha, resident of Gnadi Nagar, Main Road besides Paramayoti Cinema Hall, Berhampur-760 001, Ganjam, Odisha.

.....Applicant

By legal Practitioner :Mr.K.C.Kanungo, Advocate

-Versus-

UNION OF INDIA REPRESENTED THROUGH

1. Secretary to Govt. of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi-110 001.
2. Director General of Health Service Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi-110 001.
3. Deputy Director General (Leprosy), Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi-110 001.
4. Director, Regional Leprosy Training Institute, Aska (Babanpur), Dist. Ganjam, Odisha.

....Respondents

By legal practitioner :Mr.U.B.Mohapatra,SSC

O R D E R

A.K.PATNAIK, MEMBER(J) :

The Applicant who is a Senior Surgeon in the Regional Leprosy Training Institute, Aska, has filed this Original Application U/s.19 of the Administrative Tribunals Act, 1985 assailing the adverse remarks recorded in his CCR/ACR for the year 2006-07 which was communicated to him in the year 2009 (13/04/2009) under Annexure-A/1 and the orders of rejection of his representation



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 and Memorial under Annexure-A/3 & A/5 respectively those he submitted against recording of such adverse remarks. Hence he has prayed in this OA to quash the order under Annexure-A/1,A/3&A/5 and to direct the Respondents to expunge the adverse entries made in his ACRs under Annexure-A/1 and grant him all other consequential benefits/entitlements on expunction of the adverse remarks made in his ACR for the period 2006-07.

2. Respondents have filed their counter trying to substantiate the stand taken by them in their orders of rejection under Annexures-A/3 &A/5 and have prayed for dismissal of this Original Application to which the Applicant has filed rejoinder and additional rejoinder enclosing thereto some documents in support of his claim made in the Original Application.

3. We have heard Mr. K.C.Kanungo, Learned Counsel for the Applicant and Mr. U.B.Mohapatra, Learned Senior Standing Counsel for the Union of India, appearing for the Respondents and perused the materials placed on record. Before dealing with various contentions advanced by the counsel appearing on behalf of the respective parties, we feel it proper to quote the remarks made in Part-III column of the ACR/CCR of the Applicant for the period 2006-07 by the Reporting Officer. It reads as under:

A(1)	Nature and Quality of work	No surgery is done by him. Though he has undergone one spell of trainings at CLTRI for a more than 4 weeks and another short spell, he is not interested on performing surgery. As reported he takes more interests in developing the Nursing Home of his wife and stays away from the HQ. From investigation it has been found that he has not attended the HIV programme organized by Clinton Foundation.
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(2)	Quality of output	Not upto mark. Practically no works except a few case of ulcer Surgery like removal of dead bone. If he is interested for RCS Lepra India, Bhubaneswar as willing to station a full time trained physiotherapist. Even this office can hire the service of physiotherapist on contract basis.
C(4)	Aptitude and Potential	The officer does not come forward to be deputed for National work like LEM, validation of diagnosis of Leprosy cases, Leprosy contracts like ILA due to obvious reason.

4. At the outset, Mr.K.C.Kanungo the Learned Counsel for the Applicant submitted that the adverse remarks recorded in the ACR of the Applicant and communicated under Annexure-A/1 so also the order of rejection of his representation under Annexure-A/3 & A/5 are not sustainable on the ground of delay and laches. It has been contended that though the adverse remarks pertain to the year 2006-07 yet the same was communicated to the applicant only on 13.04.2009. Against the said remarks the applicant immediately submitted his representation on 04.05.2009 i.e. before expiry of the period of 45 days period provided in the Rules. Therefore the Respondents should have considered and communicated the result thereof within a period of three months from the date of the representation i.e. by 04.08.2009 as per the rules whereas the order of rejection was passed on 14.10.2009 which is not permissible in the eyes of law being contrary to the provisions as enumerated under the Rules. Besides the above delay and laches, the remarks recorded in the ACR of the applicant are not tenable being bias based on no evidence. Mr.Kanungo has drawn our attention to the letter of the Reporting Officer [Ex Director (Dr.D.C.Mohapatra) of the RLTRI) placed at Annexure-R/2 vis-à-vis the compliance to the inspection report dated 30.9.2008 by Dr.V.Santaram,

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the Director, RLTRI, Aska, under Annexure-A/7 to establish that the remarks are recorded without due application of mind and is the out come of bias and *mala fide* exercise of power. Adverse remark at A(1) of the ACR stating there in that no surgery is done by the applicant is contrary to the compliance report where it has been stated that during 2005-06 total 18 and during 2006-07 (upto 30.09.2006) total 13 major operations have been performed respectively. By drawing our attention to the above report, Mr. Kanungo, Learned Counsel for the Applicant has strongly objected to the remarks recorded in Column A(1) of the ACR of the Applicant.

Similarly, to establish that the report made by the reporting officer that the applicant has not attended the HIV programme organized by the Clinton Foundation, is without due application of mind & based on no evidence, Mr. Kanungo drew our attention to the letter of the Indian Medical Association, dated 30.08.2010 under Annexure A/13 in which it has been stated that the applicant had participated in the CME on HIV/AIDS Prevention & Treatment Awareness Programme on 09.09.2006 held in the IMA House Berhampur which was organized by NACO and Indian Medical Association in association with Clinton Foundation and the training was approved by the Medical Council of India.

ii. So far as the remarks made in A(2) of the ACR that the quality output of the applicant was not upto mark is concerened, Mr. Kanungo, Learned Counsel for the Applicant has argued that RCS could not be performed for want of a regular physiotherapist as immediate post care by a physiotherapist is required. The RCS is a delicate surgery performed on a hapless, stigmatized patient ostracized by the society to improve his quality of life that needs to be performed very carefully and

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diligently. It is the physiotherapist who shall make efforts for getting the optimum results out of the said surgery. The then Physiotherapist Mr. B.N.Pal having superannuated on 31.7.2004, no substitute was arranged affecting the RCS activities to a greater extent. In this connection by drawing our attention to Annexure-A/8 he submitted that the post of Physiotherapist is lying vacant since 2004. Neither the officer reported upon the remark nor the authority while rejecting the representation of the applicant has taken into consideration this aspect. Hence the remark being based on no evidence and on irrelevant considerations goes on to prove non-application of mind and hence the same is liable to be struck down.

iii. In so far as the remarks made in Column C (4) on the Aptitude and potential is concerned, Mr. Kanungo contended that the remarks are contrary to the material available on record as admittedly the Respondent No.5 [the then Reporting Officer] himself was opting for participation in national workshops/seminars thereby depriving the applicant of any scope what so ever for attending such programme. By way of argument Mr. Kanungo ^{emphatically} submitted that when the superior authority decides to attend any programme, workshop, seminar and symposium etc. relating to the activities of the organization, obviously subordinate officer even having the interest and inclination will have no scope to attend. In such premises the applicant did not have any scope to attend those the national workshops. Therefore, the remarks recorded in this regard do not have any leg to stand.

iv. Coupled with the arguments advanced as above, it was submitted by Mr. Kanungo that at no point of time any short comings of the Applicant was

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 communicated or no ephemeral character roll was maintained for which the remarks as recorded are subjective in nature rather than objective in character. He also specifically pointed out that both the representation as well as the memorial were rejected by the representation without considering the same in proper perspective.

v. In support of the stand that since the adverse remarks recorded in the ACR of the applicant is the outcome of malice being based on without due application of mind and evidence, the same are not sustainable in the eye of law and are liable to be struck down in support of which Mr.Kanungo has relied on the following decisions:

- (a) State of Harayana V P.C.Wadha & Another, AIR (1987) SC 1207 [paragraphs 13 & 14];
- (b) Dr.Arun Basu Sarkar V State of Tamil Nadu 2000 (2) AISLJ, VOL.7 263;
- (c) Himangsu Sekhar Jha V State of West Bengal, 1979 (1) SLR 837;
- (d) Sukhdeo V the Commissioner of Amarvati Division, 1996 (5) SC 477 (para 6);
- (e) The Inspector of Post Offices V V.Ranganathan Prabhu, 1972 (2) SLR 703(para 31);
- (f) S.N.Mukharjee V Union of India, AIR (1990) SC Page 1984, para 35;
- (g) Order dated 12.06.2008 in OA N o. 936 of 2005 in the case of Thakur Arun Kumar Sinha V Union of India and others of the Cuttack Bench of the Tribunal.

5. On the other hand, Mr.U.B.Mohapatra, Learned Senior Standing Counsel for the Union of India, appearing for the Respondents by reiterating the stands taken in the counter submitted that the remarks made in the ACR are completely based on the available material/record and that's too without any ill intention. He has contended that in compliance with the principles of natural justice the remarks recorded in his ACR was duly communicated to the applicant on receipt

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of his representation the same was forwarded to the Reporting as well as Reviewing Officers for their comments before taking a final decision. After taking into consideration the points raised by the Applicant in his representation vis-a-vis the available material/records and the comments given by the Reporting and Reviewing Officers, the representation of the applicant was rejected which was duly intimated to him which needs no interference by this Tribunal.

6. After giving in-depth consideration to various arguments advanced by the learned counsel for both the respective parties we have perused the materials. We have also gone through the decisions relied upon by the learned counsels appearing for the parties.

7. Before advertiring to the arguments advanced by the parties, we would like to put on record that it is trite law that the purpose of judicial review is to ensure that the individual receives fair treatment. The Judicial Review is not directed against the decision but is confined to the examination of the decision making process. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct. Rules are framed and laws are made only to be followed to create a society free from misdeeds or misdemeanor and to make the society sustainable and orderly. Similarly, fairness needs to be the principle to ensure that the authority will arrive at a just decision protecting everybody's interest. To use the time hallowed phrase that 'justice should not only be done but be seen to be done' is the essence of fairness equally applicable to administrative authorities. Thus, fairness is the prime test for proper and good administration.

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8. The Confidential roll of a Government servant is just like a mirror which reflects his performance and is paramount to be considered for progression in the hierarchy of service. Though statutory rules and administrative instructions framed operate the field of writing confidential reports and it is on the basis of a self appraisal of an officer which is on the basis of watching the performance of the concerned for a statutory period with intent to perform the officer commented upon/to give him an opportunity to improve. Various judge made laws available on the subject make the matter clearer that there are different stages of writing one's CCR/ACR i.e first is the counseling, second is the guidance and third is the consequences of the officer ~~failing~~ to show the desired improvement. Only when an officer fails to show the desired improvement then only the adverse/advisory remarks are included in his confidential report so that cognizance is taken of his weakness while planning his future placements. There cannot be any dispute that in the matter of recording ACR/CCR in a judicial review, the Court/Tribunal would not step into the shoes of administrative authorities but in rule of law when the remarks on the face of it are not justifiable and an incorrect version has been incorporated to support the remarks, which is non-existent, then only the legal mala fides are to be inferred with by the competent court. Malice in law acting with caprice, arbitrariness in utter derogation of rules and highlighting adverse materials which is either non-existent or is not supported by justified reasoning can be agitated before the court of law by the affected person for redressal.

9. Report which is annually recorded in confidential report has some purpose. In fact the performance of an employee, the opinion about his

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individuality, personality, status and role played, work action, performance activities, attitude, devotion, diligence, honesty, integrity and faithfulness of an employee has to be assessed. Confidential character reports should be written by superior officers objectively, impartially and without any prejudices. Such annual confidential report has to be recorded with confidentiality with two folds objectives in mind i.e. firstly to give an opportunity to the officer concerned to remove deficiencies and to inculcate discipline; secondly it seeks to serve improvement of quality excellence and efficiency of officer for public service. This has more lucidly been dealt into by this Tribunal while disposing of the OA No.936 of 2005 filed by Thakur Arun Kumar Sinha V UOI and others in its order dated 12th June, 2008.

10. Keeping in mind the principles set out and discussed above vis-à-vis the materials placed by the Applicant so also Respondents in support of their respective prayers, we find no reason to hold that the adverse ACRs recorded and communicated in Annexure-A/1 are based on due application of mind/ available record. The remarks recorded in the ACR/CCR of the Applicant for the year 2006-07 are itself contrary to the records of the Respondents. Nothing has been produced by the Respondents to show that the short coming recorded in the form of adverse remarks has ever been communicated to the Applicant and in spite of that he did not improve. We also find no reason to approve the delay in communication of the same to the Applicant. Similarly, we find that the rejection of the representation/memorial submitted by the applicant is bereft of giving consideration to the above points. Hence in our view there was miscarriage of justice caused to the Applicant in the decision making process. Accordingly, the adverse remarks

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recorded and communicated under Annexure-A/1 so also the order of rejection under Annexure-A/3 & A/5 are hereby quashed.

11. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.

Chmbr
(C.R.Mohapatra)
Member (Admn.)

A.K.P.
(A.K.Patnaik)
Member (Judicial)