

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

....

Original Application No, 620/2002

Jabalpur, this the 17th day of June, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

Dr. Jankilal Khatri,
S/o Shri Narottam Khatri,
Date of Birth 15.7.1952
Divisional Medical Officer,
M-98, Railway Hospital Campus,
Ujjain and
R/o 22, Sanghi Colony,
Indore (MP).

...Applicant

(By Advocate: Shri S.Paul)

-versus-

1. Union of India through
Secretary,
Ministry of Railway,
Railway Board,
New Delhi.
2. General Manager,
Western Railway,
Church Gate,
Mumbai (MS).
3. Director General,
(Medical & Health),
Railway Board,
New Delhi.
4. Chief Medical Director,
Western Railway,
Church Gate,
Mumbai- 400 020.
5. Divisional Railway Manager,
Ratlam Division,
Ratlam (MP).

...Respondents

(By Advocate: Shri M.N. Banerjee)

ORDER (ORAL)

By Madan Mohan, Member (Judicial) -

By filing the present original application, the applicant
has sought the following main reliefs:-

- i) Set aside the order dated 2.5.2000(A/1) and order dated 10.7.2000 (A/2).
- ii) respondents be commanded to not to treat the order dated 2.5.2000 as adverse against the applicant for any purpose including promotion.



suitability, compulsory retirement, etc.

- iii) consequently, respondents be commanded to provide all consequential benefits to the applicant as if the aforesaid impugned orders are never passed.

2. The brief facts of the case are that the applicant while working as Divisional Medical Officer was served with an adverse CR for the year ending 31st March, 1996 by order dated 4.7.1996. Apart from the said ACR, the applicant was not subjected to any punishment arising out of any disciplinary proceedings for his entire service career, i.e. since 17.1.79 when the applicant was initially appointed as Adhoc Asstt. Medical officer. The applicant was shocked to receive the letter dated 2.5.2000 (A/1) whereby following adverse remarks for the year ending 31.3.2000 were communicated to him:

"Part IV-General

4. "Any adverse remark including penalties imposed or warning/displeasure communicated - "Counseling for increase in mandays - in Ujjain Health Unit was done in fair 2000 by CMD-CCG."

The applicant failed to understand as to how the aforesaid statement of fact that a counseling take place in fair 2000 can be said to be an adverse entry against the applicant. The applicant is not in a position to gather how the aforesaid statement of fact can be treated to be an adverse entry against him. Whereas this is settled position in law that the purpose of communicating Adverse remarks to a government employee is to provide him opportunity to over-come to alleged shortcomings. Thus, to given an opportunity to the employee, it is necessary that the ACRs should contain reasons; instances etc., which were not communicated to the applicant.

2.1 Feeling aggrieved with the order dated 2.5.2000 he preferred a representation dated 23.5.2000 (A/4) which was rejected by impugned order dated 19.7.2000 (A/2) by a single stroke of pen without assigning reasons and without meeting the grounds/contentions raised by the applicant. The applicant again preferred a representation to the Director General (Medical & Health) on 17.8.2000 (A/5). When the said representation



was not decided by the respondents, the applicant sent a legal notice on 24.12.2000 (A/6) through his counsel which was followed by yet another notice for demand of justice through his counsel on 28.11.2001(A/7). Both the notices were duly served on the respondents and they are sitting tight over the matter and there is every likelihood that the aforesaid ACR dated 2.5.2000 which is founded upon on incorrect facts, may be given effect to and may adversely affect the applicant in the matter of his further promotions, service record, compulsory retirement, suitability etc. It is also worth mentioning here that subsequently the department also found that the data supplied regarding mandays was incorrect. Hence, the present original application has been filed seeking the aforesaid reliefs.

3. Heard the learned counsel for both the parties and perused the material on record.

4. It is argued on behalf of the applicant that the applicant was never given any opportunity to overcome the alleged shortcomings by the respondents. Since it was mandatory on the part of the respondents to assign reason while communicating the adverse remarks, the same were not assigned and hence the said adverse remarks are vague in nature and cannot be treated as adverse against the applicant for the purpose of his promotions, service record, compulsory retirement, suitability etc. It is further argued that annexure A-9 dated 4.7.2000 shows that applicant's working days were less than that of Dr. Hada and gradually mandays of Dr. Hada were increasing vis-a-vis applicant. Dr.

Hada and the applicant were working as DMO at the relevant time doing all the works of various Health Unit, whereas applicant was and infact Dr. Hada was/only performing the relieving duties.

In other words, Dr. Hada was solely responsible as applicant was only doing the relieving job. However, no action has been taken nor any ACR has been communicated to Dr. Hada inspite of the fact that his mandays were more than that of the applicant.

5. In reply, the learned counsel for the respondents argued that apart from the ACR in question, another adverse remarks

for the year 1996 were also communicated to the applicant. He further argued that the adverse remarks communicated to the applicant are not vague in any way and were communicated not to discourage but to enable him to overcome the shortcomings and improve the performance in right direction. He further argued that there is no provision of appeal/representation to a higher authority after consideration of the representation once submitted in the matter of CR. Therefore the question for consideration of the further representation does not arise at all. As such not necessary to give reply to the legal notices sent by the applicant. The representation submitted by the applicant was considered by the C.M.D. and he did not find any reason/justification to expunge the remarks of ACR's.

6. After hearing the learned counsel for both the parties and careful perusal of the material available on record, we find that the arguments raised on behalf of the applicant that the alleged adverse remarks are absolutely vague in nature seems to be correct on the ground that the applicant and Dr. Hada were working as DMO at the relevant point of time but Dr. Hada was solely responsible as he was doing all the works of various Health Units whereas the applicant was doing only the relieving job. The said fact has not been controverted by the respondents in their reply. More so, neither any action has been taken against Dr. Hada nor any ACR has been communicated to him inspite of the fact that his mandays were more than that of the applicant. Hence, the adverse remarks communicated to the applicant are not proper and justified and cannot be treated as an ^{adverse} entry in the ACRs.

7. Having regard to the facts and circumstances of the case and in view of the observations made above, we allow the original Application No. 620/2002 and quash the impugned orders dated 2.5.2000(A/1) and 10.7.2000(A/2). The applicant will be entitled to all the consequential reliefs

flowing from quashment of the aforesaid impugned orders.
There shall be no order as to costs.

(Madan Mohan)
Member (Judicial)

(M.P. Singh)
Vice Chairman

/na/

कृतांकन सं ओ/व्या..... जलपुर, दि.....
पलितिवि अयो धितः

- (1) सचिव, राजा न्यायालय नगर एम.पी.एस. जलपुर
- (2) अध्यक्ष श्री/श्रीमती/वृ..... के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/वृ..... के काउंसल

✓ (4) न्यायालय, एम.पी.एस. जलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

Bajundar
22/6/04

S. Paul
MN Banerjee

Issued
on 28.6.04
ES