

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

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**ORDERS OF THE BENCH**

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**Date of Order: 9.10.2014**

OA No.782/2012

Mr. S.Srivastava, Counsel for the applicant.

Mr. Anupam Agarwal, Counsel for Respondents.

Heard the learned counsel for parties.

Order Reserved.

*Anil Kumar*

(ANIL KUMAR)

ADMINISTRATIVE MEMBER

Adm/

15/10/14

order pronounced  
today in the open  
court.

*Amey*  
15/10/14  
C.O.

Recd  
on 16/10/14  
16/10/14

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

**Original Application No. 782/2012**

Order Reserved on: 09.10.2014

**Date of Order:** 15.10.2014

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Dr. Lal Shankar Damor S/o Shri Somaji Damor a/a 52 years, R/o Railway Bungalow No. 45, Near Officer's Rest House, Udaipur City, Udaipur, presently posted as Sr. D.M.O. H/U Udaipur, NWR, Udaipur.

...Applicant

Mr. S. Srivastava, counsel for applicant.

**Versus**

1. Union of India through General Manager, North Western Railway, Jaipur, near Jawahar Circle, Jagatpura, Jaipur.
2. Chief Medical Director, North Western Railway, Railway Hospital, Jaipur, through G.M. NWR, Jaipur.
3. Divisional Railway Manager, Ajmer Division of North Western Railway, Ajmer.
4. Chief Medical Superintendent, Railway Hospital, Ajmer.
5. Director General of Health Services, Railway Board, Rail Bhawan, New Delhi.

...Respondents.

Mr. Anupam Agarwal, counsel for respondents.

**ORDER**

The applicant has filed the present O.A. praying for the following reliefs: -

“(A) That this Hon'ble Tribunal may graciously be pleased to quash and set aside the inquiry report communicated through order dated 25.11.09 (Annexure A-1) and the order dated 06.07.10 (Annexure A-2) passed by the accepting authority by which grading “good” given by the reporting officer has been accepted by the accepting authority.

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(B) That the respondents may further be directed to up-grade the grading from "Good" to "Very Good" keeping in view the facts and grounds mentioned in the O.A.

(C) As an alternative respondent no. 5 may be directed to consider the representation and may instruct the authorities concerned to re-assess the performance of the petitioner for up-grading the grading in ACR (in question) from "Good" to "Very Good".

(D) Any other order which this Hon'ble Tribunal may deem fit and proper may be passed in favour of the petitioner."

2. The brief facts of the case, as stated by the applicant, are that the applicant is aggrieved by the remarks given below the benchmark i.e. 'Good' for the year 2008-09. He submitted that these remarks are not based on correct assessment of the work done by him under the period of review but on account of malafide intent against him. The grading given in the APAR for the year 2008-09 as 'Good' is below benchmark for the purpose of further promotion / selection in S.A. Grade. The assessment given by the Reporting Officer is totally subjective and not objective. The Reporting Officer while grading the applicant as Good rather than Very Good has not recorded any reason. The remarks given by the Reporting Officer under certain heads are vague.

3. The applicant lodged an FIR against the Reporting Officer and the Accepting Authority and, therefore, he did apprehend that he will not be fairly judged, therefore, he wrote a letter to the M.D. on 10.03.2008 that his ACR be initiated either by another S.A.G. Doctor or by Reviewing Officer and not by present C.M.S. Dr. I.P. Keswani (Annexure A/5).

4. The applicant also filed a representation for upgrading his APAR for the year 2008-09 on 20.12.2009 (Annexure A/3) which has

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been rejected without assigning any reason by the respondents vide their letter dated 06.07.2010 (Annexure A/2).

5. The respondent No. 2 i.e. the Chief Medical Director who belongs to Medical Sphere has considered the grading of the applicant as 'Very Good' but the same has been overlooked by not only the Reviewing Authority (DRM Ajmer) but also by the Accepting Authority. Therefore, he prayed that his APAR for the year 2008-09 be upgraded from 'Good' to 'Very Good'.

6. On the other hand, the respondents have filed their reply. They have submitted that the applicant is presently posted at Udaipur, therefore, the territorial jurisdiction of C.A.T. would be at Jodhpur. Therefore, the present O.A. deserves to be dismissed on this ground alone.

7. In the reply, the respondents have stated that the very procedure of writing the APAR is made in such a way that any particular authority has no final say. The APAR is initiated by one authority i.e. the Reporting Officer and then it is reviewed by another Officer and finally accepted by still the higher authority than the Reviewing Authority. This procedure has been laid down to bring in the objectivity in the assessment of an employee / officer.

8. Though the applicant has alleged malafide against the Reporting Officer and the Accepting Authority but he has not made them party by name.

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9. The Reporting Officer has judged the performance of the applicant objectively. Merely because he failed to secure the benchmark for the purpose of promotion in S.A. Grade did not vitiate the APAR for the year 2008-09. Any submission of mala fide is wholly misconceived. The Reporting Officer has assessed the applicant on all the parameters which are required to be assessed as per the APAR form. The Reviewing Authority i.e. the DRM has also agreed with the assessment given by the Reporting Officer. The General Manager who is the Accepting Authority has also accepted the APAR as 'Good'. Thus, the applicant has been assessed by three officers.

10. Though the Chief Medical Director has graded the applicant as Very Good under the column of Reviewing Authority but the Accepting Authority has accepted the grading as 'Good'.

11. The applicant submitted his representation against the APAR of 2008-09 (Annexure A/3) which was duly considered by the respondents and it has been rejected vide letter dated 06.07.2010 (Annexure A/2). There is no illegality or infirmity in the letter dated 06.07.2010 (Annexure A/2), therefore, the O.A. has no merit and it should be dismissed with costs.

12. The applicant has also filed rejoinder.

13. Heard the rival submissions of the parties and perused the documents available on record.

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14. Learned counsel for the applicant argued that the Reporting Officer has agreed with the objectives and achievements of the applicant while recording the APAR for 2008-09 but in the subsequent columns, the Reporting Officer has categorized his performance either 'Average' or 'Good'. In column-3, which relates to quality of output, the Reporting Officer has stated that the applicant is instructed to be sympathetic to patients and keep good relations with colleagues but he was never given any complaint regarding his behaviour either to the patients or with his colleagues. The APAR for the year 2008-09 has been written by the Reporting Officer being aggrieved by the applicant since he had lodged an FIR against the Reporting Officer. He has also made a representation to the M.D. in this regard that his Reporting Officer be changed or Reviewing Authority be asked to initiate his APAR vide letter dated 10.03.2008 (Annexure A/5). The applicant has also filed an FIR against the Accepting Authority. Since the Reviewing Authority i.e. the DRM works under the General Manager, therefore, he has also graded the applicant as 'Good'. The respondents have deliberately ignored the grading given by the CMD as 'Very Good'. The C.M.D. who belongs to the Medical Sphere was in a better position to judge the performance of the applicant. The order of the Accepting Authority is an arbitrary order and deserves to be quashed. Since the applicant had fulfilled his objectives and achievements fixed for the period in question and therefore there was no occasion to assess the applicant below benchmark. He has been assessed as an 'Average' under various heads by the Reporting Officer, which is totally vague and without any materials to substantiate his findings. Therefore, the applicant

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needs to be upgraded as Very Good in the APAR for the year 2008-09.

15. On the other hand, learned counsel for the respondents denied any malafide. He argued that the Reporting Officer, the Reviewing Officer and the Accepting Officer have assessed the applicant fairly and objectively. He admitted that the Chief Medical Director while recording his views have assessed the applicant as 'Very Good' but argued that the Accepting Authority has accepted the applicant's grading as 'Good' and since the Accepting Authority is the final authority for recording APAR, therefore, the grading given to the applicant for the year 2008-09 would be treated as 'Good'. The representation submitted by the applicant for the upgradation of his APAR for the year 2008-09 has been duly considered by the competent authority and it has been rejected. With regard to his representation dated 10.03.2008 (Annexure A/5) with regard to the change of his Reporting Officer, learned counsel for the respondents submitted that the applicant made such a request for the year 2007-08 and not for the year 2008-09. If he was apprehending that the Reporting Officer will not judge the performance of the applicant fairly then he should have moved an application to that effect but there is no such application on record for the year 2008-09. The Reporting Officer, the Reviewing Officer and Accepting Officer have graded the applicant as 'Good'. Learned counsel for the applicant has failed to prove any mala fide against any of these authorities. The applicant cannot be a judge in his own case. His performance has been judged by three different officers at three

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different levels and, therefore, the O.A. has no merit and it should be dismissed.

16. I have considered the submissions made on behalf of the respective parties.

17. With regard to the submissions made by the learned counsel for the respondents that this O.A. is not maintainable on the ground of jurisdiction alone, I am of the opinion that since the APAR was written when the applicant was posted at Ajmer and the APAR has been communicated to him from Jaipur, therefore, part cause of action has occurred at Ajmer and Jaipur, thus, it is the choice of the applicant to file O.A. where the part cause of action has arisen, therefore, I am of the opinion that this Bench of the Tribunal at Jaipur has the jurisdiction to hear and decide the present O.A.

18. I have perused the APAR for the year 2008-09 of the applicant. The Reporting Officer has recorded the performance of the applicant either as 'Good' or 'Average' in different columns and in the overall grading, he has been graded as Good by the Reporting Officer. The Reviewing Officer has recorded his remarks on 14.05.2009. He has agreed with the assessment given by the Reporting Officer. However, the Chief Medical Director on 11.06.2009 has considered the applicant as 'Very Good' but the Accepting Authority has accepted the grading of the applicant as 'Good'. The applicant filed a representation against the APAR for the year 2008-09 vide letter dated 20.12.2009 (Annexure A/3). The respondents have considered the representation of the applicant and vide letter dated 06.07.2010 have come to the conclusion that there is no reason to

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change his assessment. This decision has been taken by the competent authority and communicated to the applicant.

19. Learned counsel for the applicant had laid emphasis on the malafide on the part of the Reporting Officer as well as Accepting Authority and he drew my attention to the letter dated 10.03.2008 (Annexure A/5) vide which he requested for another initiating authority or his APAR to be recorded by the Review Officer and not by present C.M.S. Dr. I.P. Keswani. But from the perusal of this letter, it is clear that the applicant made request for the year 2007-08 whereas in the present O.A. the APAR of the applicant in question is for the year 2008-09. The learned counsel for the applicant could not show me any letter with the same request for the year 2008-09. If the applicant had any apprehension that the Reporting Officer would not be fair in his assessment because the applicant has filed an FIR against the Reporting Officer then he should have again moved an application. Even in the application dated 10.03.2008 (Annexure A/5), there is no request that his Accepting Authority should not be the General Manager. Moreover, the applicant has not made party any of the official respondents by name against whom he alleges mala fide. Therefore, I am of the opinion that no direction can be issued to the respondents that the APAR of the applicant for the year 2008-09 be upgraded. The APAR of the applicant for the year 2008-09 has been written by three different officers at three different levels. I do not find any infirmity or illegality in the action of any of the officers who have written APAR of the applicant for the year 2008-09, which require any interference by this Tribunal.

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20. The representation of the applicant dated 20.12.2009 (Annexure A/3) for the upgradation of his APAR for the year 2008-09 has been duly considered by the respondents. The competent authority after examination of the representation of the applicant has come to the conclusion that there is no reason to change the assessment. This decision of the competent authority has been communicated to the applicant vide letter dated 06.07.2010 (Annexure A/2). I do not find any infirmity or illegality in this order also.

21. The Chief Medical Director has recorded his views about the applicant considering him as 'Very Good'. However, the Accepting Authority has recorded the applicant's performance as 'Good'. Since the Accepting Authority has recorded the performance of the applicant as 'Good', therefore, the performance of the applicant would be graded as Good and not as Very Good as recorded by the Chief Medical Director in the column of Reviewing Authority.

22. On the basis of the above discussions, I am of the opinion that the applicant has failed to make out any case for interference by this Tribunal. Consequently, the Original Application being devoid of merit is dismissed with no order as to costs.

*Anil Kumar*  
(ANIL KUMAR)  
ADMINISTRATIVE MEMBER

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