

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 46/2014

New Delhi this the 13th day of August, 2015

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Dr. Malti Gautam
Chief Medical Officer (NFSG),
RHTC (Adm) Najafgarh New Delhi-43
R/o 2/C/59, Ashirwadh Duplex,
Vaishali Distt. Ghaziabad (U.P.) ... Applicant

(Appeared in person)

Versus

1. Union of India through
The Secretary,
Ministry of Health & Family Welfare,
Govt. of India, Nirman Bhawan,
New Delhi-110011
2. The Chairman, Committee Upgradation of Grade, GDMO
Ministry of Health & Family Welfare,
Govt. of India, Nirman Bhawan,
New Delhi-110011
3. The Secretary,
UPSC, Dholpur House,
New Delhi-110069 ... Respondents

(Through Ms. Rinchen O Bhutia, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant joined as General Duty Medical Officer (GDMO) under CGHS Delhi on 2.01.1984. She was subsequently promoted as Chief Medical Officer (CMO) on 25.04.1993. Her next promotion was to the post of CMO (NFSG) with effect from

5.04.2002. Vide OM dated 29.10.2008, the respondents decided to extend the scheme of Dynamic Assured Career Progression (DACP) upto SAG level to all Medical/ Dental doctors in Central Government, whether belonging to organized service or holding isolated posts. It is further stated that SAG promotion is not linked to vacancy. As per the DACP Scheme, CMO (NFSG) grade pay of Rs.8700/- in Pay Band-4 is entitled to promotion as SAG (grade pay of Rs.10000/- in Pay Band-4) on completion of seven years in grade pay of Rs.8700/- in Pay Band – 4 including service rendered in the pre-revised scale of Rs.14300-18300 or twenty years of regular service. It is submitted by the applicant that she completed twenty years of service on 2.01.2004 and also completed seven years of service in pre-revised scale of Rs.14300-18300 and thus became entitled for grant of benefit of SAG grade under DACP Scheme.

2. In the year 2011, the respondents conducted the DPC for promotion to the post of SAG under DACP Scheme but the applicant was not considered by the DPC. Through RTI, the applicant received copy of ACR for the year 2003-04 in which the reporting officer as well as the reviewing officer had awarded 'average' grading, which is below bench mark grading, to the applicant. The respondents constituted a Committee for considering representations of Central Health Service (CHS) officers who had received below bench mark grading in their ACRs. The applicant states that the Committee drew up a set of guidelines for reviewing the ACRs which, *inter alia*, read as follows:

- “(iii) Where the reporting officer has agreed with the self appraisal of the officer, it would imply that the officer has tacitly agreed to what has been stated by the officer reported upon about the work done.
- (vi) In case reporting and reviewing officer have recorded the ACR in a casual manner i.e. without justifying his remarks in various columns, it would be construed as complete non application of mind by reporting/ reviewing officer in writing ACR.
- (vii) In case entries recorded by reporting/ reviewing officer against various columns are perverse and has no reference to material available in the ACR, it could be adjudged as a personalized unfair attitude on the part of the reporting/ reviewing officer.”

3. According to the applicant, these conditions were not satisfied in her case and, therefore, her ACRs should have been upgraded but the respondents did not do so and the ‘average’ ACR was retained. It is also alleged that ‘average’ remarks in ACR of 2006-2007 were retained in spite of the fact that these adverse remarks had been quashed by the Tribunal in OA 2276/2009 vide order dated 19.04.2011. It is stated that the Tribunal had quashed ACR of 2007-2008 also. The applicant represented against this decision but it was also rejected by the

respondents vide letter dated 2.11.2011. A DPC was again held on 10.12.2011-12.12.2011 for promotion to SAG but at that time also, the applicant was not considered. Vide order dated 7.10.2013, the respondents promoted 24 CMO (NFSG) panel years 2008-2009 to the post of SAG under DACP Scheme and it is alleged that the respondents promoted persons junior to the applicant but the name of the applicant was not included. In a further DPC held on 3.05.2013, the applicant was declared 'unfit' without giving any reason and justification. It is submitted that the fact of ACRs of 2006-2007 and 2007-2008 having been quashed was not placed before the DPC and thus the DPC declared the applicant 'unfit' based on wrong facts. It is further stated that in the year 2013, a major penalty charge sheet under Rule 14 of the CCS (CCA) Rules, has been issued to the applicant. It is submitted that although this charge sheet has no bearing/ relation with DPC for promotion to the post of SAG for the panel year 2008-2009 but otherwise also this charge sheet has already been quashed by the Hon'ble High Court of Delhi and if the DPC considered this charge sheet then also the proceeding of the DPC in respect of the applicant is liable to be quashed on this sole ground.

4. In this background, the applicant seeks the following reliefs:

- “(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the order dated 07.10.2013 and DPC proceedings held on 03.05.2013 for promotion to the post of SAG of the panel year 2008-09 only in respect of applicant by which the applicant has been

declared unfit for promotion to the post of SAG under DACP Scheme declaring to the effect that the same are illegal, arbitrary and discriminatory and consequently pass an order directing the respondents to consider and to promote the applicant to the post of SAG under DACP Scheme from due date with all consequential benefits including the arrears of difference of pay and allowances.

- (ii) That the Hon'ble Tribunal may graciously be please to pass an order of quashing the ACR of the year 2003-04 and order dated 02.11.2011 by which the representation of the applicant has been rejected declaring to the effect that the same are illegal and arbitrary and consequently pass an order directing the respondents not to consider the ACR of the year 2003-04 for any purpose including for promotion with all consequential benefits including conducting the review DPC for promotion to the post of SAG under DACP Scheme with all consequential benefits including the arrears of difference of pay and allowances.
- (iii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to consider the case of the applicant for her promotion to the post of SAG under DACP Scheme after ignoring/ without considering all the below bench mark ACRs which have not been communicated to the applicant, only on the basis of available above bench mark gradings with all consequential benefits from due date.

5. Applicant appearing in person stated that the offending ACRs were never communicated to her by the respondents and it was only through RTI that she could receive the copy of ACRs. She relied on **Dev Dutt Vs. Union of India and others**, (2008) 8 SCC 725 and **Abjijit Ghosh Dastidar Vs. Union of India and others**, (2009) 16 SCC 146 to state that in the light of ratio laid down by the Hon'ble Supreme Court in these cases, the aforementioned un-communicated adverse ACRs, should have

been ignored for the purpose of consideration of her promotion. She also relied on the judgment of the Hon'ble High Court of Delhi dated 31.05.2012 in W.P. (C) 5042/2002, **UOI and another Vs. V.S. Arora and others** and specifically to the following portion of the order, in which the Hon'ble High Court elaborated on the issue of need for communication of adverse ACRs:

"10. This is exactly what has been done in Dev Dutt (supra). There, the Supreme Court examined the constitutionality of the procedure of not communicating the below benchmark ACRs. The Supreme Court found that such a step meant that it would violate the principles of natural justice and would also be arbitrary and, therefore, would be contrary to Article 14 of the Constitution of India. Therefore, the Supreme Court came to the conclusion that below benchmark ACRs have to be communicated to the concerned officer/ employee. The exact words used by the Supreme Court in this connection are as under:

14. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a bench mark or not. Even if there is no bench mark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a 'good' or 'average' or 'fair' entry certainly has less chances of being selected than a person having a 'very good' or 'outstanding' entry.

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39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by [Article 14](#) of the Constitution in our opinion requires such communication. [Article 14](#) will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.”

6. It was further argued by the applicant that vide its OM dated 13.04.2010, the Department of Personnel and Training (DoP&T) has laid down elaborate guidelines regarding below benchmark gradings in ACRs prior to the reporting period 2008-09 and objective consideration of representation by the competent authority against remarks in the APAR or for upgradation of the final grading. It is alleged by the applicant that these guidelines were also not followed. It is pointed out that even for the year 2006-2007, vide OM dated 10.06.1989, applicant's representation was rejected through a cryptic order without assigning any reasons. Similarly, vide OM dated 16.04.2009, her representation in respect of adverse remarks in ACR for the period 2007-08 also was rejected through a cryptic order. It clearly shows that there has been no application of mind by the respondents, which is a clear violation of the aforesaid DoP&T OM. It is pointed out by the applicant that the Ministry of Health and Family Welfare vide their letter dated 25.11.2011 addressed to the Secretary, Union Public Service Commission (UPSC) requested to consider the name of the applicant in the DPC meeting to be held in UPSC along with 368 CMO (NFSG) officers of GDMO sub-cadre, in which letter it has also been mentioned in para 2 that as per order of this Tribunal, the ACRs for the years 2006-2007 and 2007-2008 should not be considered by the DPC while considering her for promotion or for any other purpose.

7. The applicant also drew our attention to the minutes of the meeting of the Committee held on 22.10.2010, 24.11.2010,

25.11.2010 and 29.11.2010 constituted for considering the representations of CHS officers against below benchmark grading in their ACRs and as pointed out earlier, the guidelines framed by the Committee itself were violated by it. In fact, it was pointed out that apart from the guidelines referred to above, there was also the following guideline decided by the Committee which reads as follows:

"vii. In case the entries recorded by Reporting/ Reviewing Officer against various columns are perverse and has no reference to material available in the ACR, it could be adjudged as a personalized unfair attitude on the part of the Reporting/ Reviewing Officer."

It is stated by the applicant that the perverse remarks recorded by reporting/ reviewing officer in her ACRs were unfair. The Committee has also observed as follows:

"c) In many ACRs, the Reporting/ Reviewing Officers while agreeing with the self-appraisal of the officer, have not only graded them as 'Good' but have also mentioned 'Good' against each and every column of the ACR, oblivious to its relevance to the attributes. The Committee accepted such method of recording of ACRs as casual reporting/ reviewing of ACRs with no application of mind and therefore decided that such ACRs must be reviewed and graded as 'Very Good'."

It is argued that even this was not followed by the Committee while rejecting the claim of the applicant.

8. The applicant also drew our attention to the judgment in **State of Haryana Vs. Shri P.C. Wadhwa, IPS, Inspector General of Police and another**, AIR 1987 SC 1201, in which

the Hon'ble Supreme Court observed that "The whole object of the making and communication of adverse remarks is to give to the officer concerned an opportunity to improve his performance, conduct or character, as the case may be. The adverse remarks should not be understood in terms of punishment, but really it should be taken as an advice to the officer concerned, so that he can act in accordance with the advice and improve his service career. The whole object of the making of adverse remarks would be lost if they are communicated to the officer concerned after an inordinate delay."

9. In fact, it is pointed out that vide letter dated 16.04.2010, the applicant had addressed the respondents that since the below benchmark ACR of 2003-2004 was not communicated to her, she should be given opportunity to put up her case but there was no reply to that. The applicant also brought to our notice that she had been transferred from Delhi to CLTRI, Chengalpattu on 16.05.2010 but later, on intervention of this Tribunal, the transfer order was cancelled and she was retained in Delhi. This was mentioned to emphasize the point that the respondents have also indulged in vindictive action. The applicant further points out that in a similar matter i.e. OA 1617/2012, **Dr. Shashi Aggarwal Vs. Union of India and another**, the Tribunal vide its order dated 20.03.2013 had allowed the OA directing the respondents to ignore the ACR of the applicant in that case for the year 2002-2003 as the adverse remarks therein were not communicated to her and to consider

her previous year ACRs. It is stated that the ratio of this Tribunal's order is squarely applicable in her case.

10. The respondents' case is that vide OM dated 8.07.2010, below benchmark ACRs in respect of officers of CMO (NFSG) of GDMO sub-cadre of CHS were communicated and in this list, the name of the applicant appears at serial number 391 and the relevant years indicated against her name are 2000-2001, 2003-2004 and 2006-2007. Therefore, it is stated that it is incorrect for the applicant to state that she had not been communicated her ACRs at all. Our attention was also drawn to a letter written by the UPSC to the Secretary, Ministry of Health and Family Welfare regarding the applicant in which it has been pointed out that her ACRs for the years 2001-02 and 2002-03 were not available and the department has furnished non-availability certificate. Going further backward, it is seen that the ACR for the year 1999-2000 was also having below benchmark grading and the same had not been communicated to the officer concerned. Therefore, the UPSC advised the respondents to take action in this regard accordingly. The respondents communicated to the applicant her ACR for the period 1999-2000 vide OM dated 7.12.2011 (this is however denied by the applicant that she received this OM). In fact there is a subsequent OM dated 22.12.2011, which is a reminder to the applicant to submit representation within seven days and there is a correspondence dated 4.01.2012 between the office of Additional Director (EZ), CGHS, Delhi and the Admn. Officer, CGHS, Bikaner House, New Delhi that the applicant has not sent

her representation till date. Finally vide OM dated 27.01.2012, since no representation was received from the applicant, the respondents decided to retain 'Good' grading for the period 1999-2000. Therefore, the respondents state that even for the year 1999-2000, they communicated the ACR and made an attempt to obtain representation but the applicant did not prefer to make representation and, therefore, her earlier grading was retained.

11. The position that emerges from the facts recorded above is that ACRs of 2006-2007 and 2007-2008 were not to be considered as per Tribunal's directions. Therefore, that is out of the way. As regards ACR for 2003-2004, it is seen that ACRs of such officers have been communicated and representations obtained and a decision taken by the Committee. As regards ACR for 2000-2001, because it was not available, the respondents went back to 1999-2000. The applicant was given a fair opportunity to represent and when she did not represent, the respondents had no option but to retain the grading. Therefore, based on these facts, we do not accept the contention of the applicant that she was never communicated the offending ACRs. When the ACRs were communicated to so many persons together, we see no reason why the applicant would be singled out and her ACRs not communicated for malafide reasons.

12. The other issue that remains to be decided is that the DPC did not follow their own guidelines while deciding her case and secondly, the rejection orders were non-speaking and, therefore,

should be quashed along with DPC proceedings held on 3.05.2013 in which the Committee observed that the ACRs of the applicant for the years 2000-2001, 2003-2004 and 2006-2007 contained below benchmark grading. Now when 2006-07 ACR has been directed to be ignored by the Tribunal, this observation of the Committee does not seem to be in order. Moreover, it is indeed a fact that the rejection orders are very cryptic.

13. Somehow, we also get the feeling that for some reason, some bad blood has been created between the applicant and the department. For instance, she had been transferred from Delhi to Chengalpattu and only on interference of the Tribunal, was the transfer cancelled. It also seems to us that the applicant has been feeling that she has not been heard properly and the respondent-UPSC has not applied its mind before passing final orders. Therefore, in order to meet the ends of justice, we direct as follows:

- (a) The applicant shall make a representation afresh for expunction of adverse remarks in her ACRs of 1999-2000 and 2003-2004 and the respondents will take a view thereon by passing a reasoned and speaking order; and
- (b) After taking action at (a) above, a review DPC will be convened in which the DPC will ignore 2006-2007 and 2007-2008 ACRs and consider and consider ACRs of 1999-2000 and 2003-2004 in the light of the

decision taken by the respondents at (a) above as well as their own guidelines which they had set for deciding such cases and again record its finding through a reasoned and speaking order.

14. The applicant may make representation aforesaid within fifteen days from the receipt of this order and the respondents will take a view thereon within a period of one month. Thereafter a review DPC will be convened to consider the case of the applicant within a period of two months. The OA stands disposed of with the above directions. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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