

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2724 OF 2014

New Delhi, this the 23rd day of September, 2016

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Dr.Anita Yadav, aged 47 years,
Assistant Professor, Radiology,
B-204, Puneet Apartment,
Plot B-10, Vasundhara Enclave,
New Delhi 110096 í í
(By Advocate: Mr.Anand Nandan)

Applicant

Vs.

1. Union of India,
Represented by its Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi 110001
2. Director,
LRS Institute of TB &RD,
National Institute of TB & Respiratory Diseases,
Sri Aurobindo Marg,
Mehrauli,
(Near Qutub Minar),
New Delhi 110030
3. Dr.Devesh Chauhan (HOD Radiology),
LRS Institute of TB & RD,
Sri Aurobindo Marg,
Near Qutub Minar,
New Delhi 110030 í í .

Respondents

(By Advocates - Dr.Ch.Shamsuddin Khan, Ms.Neha Bhatnagar, &
Mr.Vaibhav Kalra)

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ORDER

The applicant is working as Assistant Professor (Radiology) in the LRS Institute of Tuberculosis and Respiratory Diseases (hereinafter referred to as 'LRS Institute'), New Delhi. She has filed the present O.A. praying for quashing of the Memorandum dated 20.12.2013 (Annexure P/1) whereby she was informed by the Administrative Officer of the LRS Institute that her representation against the adverse remarks in her APAR for the year 2010-2011 was duly considered, but no justification was found by the Chairperson, LRS Institute, to modify the assessment given by the then Director, LRS Institute. The applicant has also prayed for a direction to the respondent no.2 to modify her APAR for the year 2010-11.

2. It is the case of the applicant that she joined as Assistant Professor (Radiology) (Teaching Sub-Cadre) in the LRS Institute on 9.6.2008 when Dr.Devesh Chauhan was the Head of Department of Radiology. Since the date of her joining, the animosity towards her from the side of Dr.Chauhan started surfacing because Dr.Chauhan was a Diploma holder whereas she had a very illustrious academic career. Dr.Chauhan, being the Head of Department of Radiology, was her Reporting Officer for the year 2008-09. In the APAR for the year 2008-09, Dr.Chauhan had graded her as 'Good'. The Director, LRS Institute, while reviewing her APAR for the year 2008-09, had observed that many of the comments of the Reporting Officer (Dr.Chauhan) were inappropriate and incorrect because of professional rivalry. In the APAR for the year 2009-10, though Dr.Chauhan

had graded her as 'Average', the Director, LRS Institute, as Reviewing Officer, had graded her as 'Very Good'. But as regards her APAR for the year 2010-11, both Dr. Chauhan as Reporting Officer, and the Director, LRS Institute, as Reviewing Officer, graded the applicant as 'Good'. The Reviewing Officer also gave the following adverse remarks in her APAR for the year 2010-11:

- (a) "She has poor interpersonal relationship with other colleagues in the Department as well as in the Institute."
- (b) "Irresponsible attitude. Does not prepare to take extra load of work. Absents from duty more often with one or other pretext."
- (c) "Her academic achievements are very unsatisfactory. Need to improve. Also to improve frequent unauthorized absenteeism."

The aforesaid adverse remarks were duly communicated to the applicant by the LRS Institute, vide letter dated 19/22.9.2011. The applicant made representation dated 6.3.2013 before the Chairperson, LRS Institute, for expunction of the said adverse remarks and for upgradation of grading to 'Very Good' in her APAR for the year 2010-11. The said representation dated 6.3.2013 having been turned down by the Chairperson, LRS Institute, the applicant has filed the present O.A.

3. It has been contended by the applicant that no reason has been assigned by the Chairperson, LRS Institute, while rejecting her representation. Because of his malice, prejudice and ill-will towards her, Dr. Chauhan gave adverse remarks in her APAR for the year 2010-11. When it had been observed by the Director, LRS Institute that the comments of the

Reporting Officer (Dr.Chauhan) in her APAR for the year 2008-09 were inappropriate and incorrect because of professional rivalry, the said Director, LRS Institute, ought not to have graded the applicant as 'Good' by accepting the remarks and the grading given by Dr.Chauhan in the APAR for the year 2010-11. The adverse remarks given by the Reviewing Officer are also baseless.

4. On the other hand, the respondents have denied the applicant's allegation of bias or animosity. They have stated that both the Reporting Officer and the Reviewing Officer gave their remarks based only on the performance of the applicant. A bare perusal of the APAR of the applicant would clearly illustrate the performance of the applicant and the evaluation made by the respondents of such performance. The applicant's representation dated 6.3.2013 was forwarded to the Reporting Officer for his comments. After getting the comments from the Reporting Officer, the same was forwarded to the Reviewing Officer. The Reviewing Officer, after going through the comments/reasoning given by the Reporting Officer, came to the conclusion that the representation made by the applicant was without any basis, and instead the comments given by the Reporting Officer were based on facts and office records. In the meanwhile, a complaint was made by the applicant against respondent no.3. A Committee consisting of Dr.Shashi Khare, Additional Director, Head of Department (Micro), NCDC, and Shri Manoj Sinha, Under Secretary to Government of India, Ministry of Health & Family Welfare, was constituted with the approval of the Joint

Secretary (PH), Ministry of Health & Family Welfare, to enquire into the allegations made by the applicant and to submit a report in the matter to the Ministry. After holding necessary enquiry, the said Committee submitted a report dated 22.7.2011 concluding that no case of harassment was made out by the applicant, and that there was only lack of interpersonal communication which created problems for the applicant. The comments of the Reporting and Reviewing Officers on the applicant's representation, the APARs of the applicant for the years 2008-09, 2009-10, 2010-11 and 2011-12 and other relevant materials were placed before the Chairperson of the Governing Body of the Institute while considering the applicant's representation dated 6.3.2013. After taking into consideration all relevant materials available on record, the Chairperson of the Governing Body of the LRS Institute came to the conclusion that there was no justification for modifying the assessment given by the Director of the Institute in the applicant's APAR for the year 2010-11. In the above view of the matter, the respondents submit that the O.A. is liable to be dismissed.

5. I have perused the records, and have heard the learned counsel appearing for the parties.

6. The purpose of writing of annual confidential report/annual performance appraisal report, and also the scope of interference in exercise of the power of judicial review have been reiterated in **Rajiinder Singh Verma (Dead) through LRs and others Vs. Lieutenant Governor (NCT**

of Delhi) and others, (2011) 10 SCC 1, where the Honøble Supreme Court has held thus:

õ147. Writing the confidential report is primarily and essentially an administrative function. Normally tribunals/courts are loath to interfere in cases of complaints against adverse remarks and to substitute their own judgment for that of the reporting or reviewing officers. It is because these officers alone are best suited to judge the qualities of officials working under them and about their competence in the performance of official duties entrusted to them. Despite fear of abuse of power by prejudiced superior officers in certain cases, the service record contained in the confidential reports, by and large, reflects the real personality of the officerö.

7. In **Union of India and Ors. vs. E.G. Nambudiri and Ors.**, AIR 1991 SC 1216, the Honøble Supreme Court has considered the contention as to whether a representation against the adverse entry can be rejected by a non-speaking order. The Honøble Supreme Court has held as under:

õ10. There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a Government servant against the adverse entries the competent authority is not under any obligation to record reason. But the competent authority has no license to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation, merely on the

ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the Court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action.

8. The respondents have asserted that the comments of the Reporting and Reviewing Officers on the applicant's representation dated 6.3.2013 were placed before the Chairperson of the Governing Body of the LRS Institute while considering the said representation of the applicant. Along with their counter reply, the respondents have also filed the comments given by the Reporting Officer on the applicant's representation. The Reporting Officer has commented thus:

Following are point to point comments against representation of Dr. Anita Yadav.

- She raised objection regarding comment about her frequent absenteeism and herself asked to check her leave records. Her leave record is attached for kind perusal for year 2010-2011. Her leave record clearly indicates that she took more than 50% leaves without prior information and submitted application after availing leave. Thus her claim of contesting

her frequent absenteeisms stands baseless and comment in APAR is based on actual facts as per record.

- 2nd objection was raised against the unsatisfactory academic performance. Dr. Anita Yadav has not submitted any documents to prove that comment wrong. She has herself explained the reason for this adverse comment as per her own understanding and her explanation is itself suggestive of her arrogant attitude. Instead of submitting her academic performance, she blamed reviewing officer for same without any documentary evidence. Adverse comment in her APAR stands as such.
- 3rd objection was regarding poor personal interpersonal relationship with other colleagues in department as well in Institute. Above comment also stands same as it was based on her day to behavior with colleagues in department as well in institute. Her explanation for same is classical indication of her mindset and her attitude of blaming others for her own shortcomings. Thus this adverse comment in her APAR stands as such.ö

The applicant's representation, along with the Reporting Officer's comments, was also forwarded to the Reviewing Officer. It was observed by the Reviewing Officer that the remarks given by him in the applicant's APAR for the year 2010-11 were based on facts, and that the remarks were given so that she could improve on these accounts. The applicant has filed copies of the noting of the relevant files. A perusal of the noting of the relevant files reveals that all the relevant materials available on record were placed before the Chairperson of the Governing Body of the LRS Institute while considering the applicant's representation dated 6.3.2013. After taking into consideration all the relevant materials available on record, the Chairperson of the Governing Body of the LRS Institute observed that there is no justification for modifying the assessment given by the Director.

Thus, it cannot be said that the Chairperson of the Governing Body of the LRS Institute has arbitrarily rejected the applicant's representation dated 6.3.2013. In the above view of the matter, I do not find any substance in the applicant's contention that the order of the Chairperson of the Governing Body of the LRS Institute being a non-speaking one is liable to be quashed.

9. The applicant has not produced before this Tribunal any material to substantiate the allegation of malice, prejudice, and ill-will made by her against Dr. Devesh Chauhan, HOD (Radiology) of the LRS Institute. No man would accept the applicant's plea that since the date of her joining as Assistant Professor (Radiology) in the LRS Institute, the animosity towards her from the side of Dr. Chauhan started surfacing because Dr. Chauhan was a Diploma holder whereas she had a very illustrious academic career.

10. The performance and conduct of an officer as evaluated and remarks already given by his/her superior officers in the APAR for the preceding year/years cannot be held to have any bearing on the assessment of his/her performance and the remarks given by the superior officers in the APAR for the following year, especially when enough testimony justifying the remarks so given is available on record. Therefore, I do not find any substance in the contention of the applicant that having observed that the comments of the Reporting Officer (Dr. Chauhan) in her APAR for the year 2008-09 were inappropriate and incorrect because of professional rivalry, the Director, LRS Institute, ought not to have graded her as 'Good' by

accepting the remarks and the grading given by Dr.Chauhan in the APAR for the year 2010-11.

11. As already noted, a Committee consisting of Dr.Shashi Khare, Additional Director and HOD (Micro), National Centre for Diseases Control (NCDC) and Shri Manoj Sinha, Under Secretary, Ministry of Health & Family Welfare, was constituted to enquire into the allegations made by the applicant against Dr.Devesh Chauhan, Head of Department (Radiology), LRS Institute, as well as the Director of the LRS Institute, and to submit a report. The said Committee, after holding necessary enquiry, submitted the report on 25.8.2011. The relevant portions of the Committee's report dated 25.8.2011 are reproduced below:

“Allegation No.1: Dr.Anita Yadav had taken earned leave for the period 6th June to 18th June 2011 to visit her home town in Jamshedpur. She extended her leave on the ground of her illness after informing P.A. to Director (LRSI) and Mr.Ashok Kumar, Ward boy. A memorandum was issued by post by the Institute to her asking her to join duties failing which leave availed by her after 18th June 2011 will be treated as unauthorized absence and disciplinary action may be taken against her for the same. Dr.Yadav has alleged harassment on this account.

Finding: Enquiry into this issue has revealed that Dr.Yadav has extended her leave by informing junior officials. She has neither informed Director/HOD, Radiology/any other senior officer nor did she formally apply for extension of leave. Issue of a show cause to her is an administrative action intimating her about non-receipt of any communication regarding extension of leave giving her an opportunity to explain her unauthorized absence and such action cannot be a reason for harassment to her. She has an option to explain her position for regularization of period of overstay of leave.

Allegation No.2: Dr.Yadav has alleged that she has been accused of taking money from patient when she asked for

permission for attending court on being summoned by the Court Magistrate.

Finding: On this matter, the Committee has talked to Dr.Chauhan, HOD and other technicians of the department and it emerged that on one occasion she has applied for leave for attending court. The HOD had forwarded her application to Director and she was allowed to attend the court after taking leave due to her. The allegation of being accused of taking money from patients could not be proved either by any material evidence nor confirmed by any of the employees of the Radiology Department.

Allegation No.3: Refusal to use the toilet in city scan which Dr.Yadav was previously using after she brought to notice of the management regarding unethical practice of Dr.D.Chauhan administering only water or oral contrast to patients of abdominal city scan I place of water mix with contrast.

Finding: Dr. D.Chauhan has clarified that earlier Dr.Yadav was using the toilet attached to his room. With the approval of Director, LRSI, she was advised not to use the toilet in his room and instead she may use the toilet outside his room. The Committee felt that it is the prerogative of the officer to allow any other person to use the toilet in his room. Since she has been given an alternative, no case of harassment on this ground is made out.

Allegation No.4: Refusal to allow Dr.Yadav to attend Conferences.

Finding: Permission to attend conferences is given by the Director, LRSI on the basis of recommendations of the HOD, Department of Radiology, after taking into account the exigencies of work and other administrative considerations. Allegation of harassment on this ground, therefore, does not sustain.

Conclusion: The Committee is of the opinion that for some reason there is lack of regular communication between Dr.Yadav and her HOD, which is creating problem for the complainant officer and for smooth functioning of the Department. Dr.Yadav needs to communicate directly with the HOD/Director for any of her grievance to avoid such situations of communication gap. Interpersonal relationship between officers requires to be further improved. She should also appreciate the fact that administrative actions/decisions are taken depending on exigencies of work and other administrative needs. In fact during the course of enquiry when Dr.Yadav was

called vide letter No.3034/US(CCD VBD/2011) dated 25th July, 2011 to appear before the committee on 28th July, 2011 for first personal discussion, she expressed her inability to attend the meeting as she would be away to Goa for three days to attend a conference and the proposed discussion was postponed.

After going through the above report of the Committee, this Tribunal is not inclined to accept the contention of the applicant that the adverse remarks and the grading given by the Reporting and Reviewing Officers in her APAR for the year 2010-11 are without any basis.

12. When the Reporting and Reviewing Officers are found to have given adverse remarks and graded the applicant as 'Good' in the APAR for the year 2010-11 after assessing her performance and conduct, and when the said adverse remarks are found to have been based on materials available on record, the decision of the Chairperson of the Governing Body of the LRS Institute, rejecting the applicant's representation for expunction of the adverse remarks and for upgradation of the grading to 'Very Good' in her APAR for the year 2010-11, remains unassailable. Therefore, there is no scope for interference in the matter. In **Major General IPS Dewan V. Union of India**, JT 1995 (2) S.C. 654, it has been observed and held by the Hon'ble Supreme Court that adverse remarks can be made by the appropriate superior officer on the basis of mere assessment of the performance of the officer, and no enquiry or prior opportunity to represent need be provided before making such remarks, unless, of course, the Rules so provide. In **Bharat Ram Meena Vs. Rajasthan High Court at Jodhpur and others**, (1997) 3 SCC 233, it has been held by the Hon'ble Supreme

Court that if factual elements formed the basis of adverse remarks, it would be just and proper for a court of law not to enter the arena of appreciation of facts and it would be right in declining to enter into the controversy.

13. In the light of above discussions, I have no hesitation in holding that the applicant has not been able to make out a case for the reliefs claimed by her. The O.A., being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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