

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.2994/2012

Monday, this the 12th day of September 2016

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

Dr. Vinod Kmar Goyal
s/o late Mr. K L Goyal
aged about 57 years
presently posted as
Sr. Ortho Surgeon
DDU Hospital, Hari Nagar
r/o C-134 K, Surya Nagar
Ghaziabad (UP)

..Applicant

(Mr. Nilansh Gaur, Advocate)

Versus

1. Union of India through its Secretary
Ministry of Health & Family Welfare
(CHS Division), Nirman Bhawan
New Delhi
2. Union Public Service Commission
Through its Chairman
Dholpur House, Shahjahan Road
New Delhi-1
3. Department of Personnel & Training
Through its Secretary
North Block, New Delhi
4. Govt. of NCT of Delhi
Through its Principal Secretary (Health)
Delhi Sachivalayala
IP Estate, New Delhi

..Respondents

(Mr. V.S.R. Krishna, Advocate for respondent No.1 –
None for respondent Nos. 2 to 4)

O R D E R (ORAL)

Justice Permod Kohli:

This O.A. is directed against the impugned order dated 02.03.2012
(Annexure A-3A) passed by respondent No.1 whereby the representation of

the applicant for upgradation of his Annual Confidential Report (ACR) from 'good' to 'very good' has been declined.

2. It may be useful to briefly notice the factual background giving rise to the present O.A. The applicant belongs to Central Health Service (CHS). During the period 2005-06, he was posted at Sushruta Trauma Centre (STC), an Annexe of Lok Nayak Hospital in the orthopedics department. He was serving as Senior Ortho Surgeon and Head of the Office of STC. The applicant claims to have made some complaint against one Dr. Prashant Kumar, which was later probed into by a Committee resulting in show cause notice dated 05.10.2004 to the applicant by Dr. V.K. Ramteke, the then Medical Superintendent, Lok Nayak Hospital (Annexure A-4). On his response, no further action was taken. It is further stated that on the basis of some newspaper report regarding mismanagement in the STC, Hon'ble High Court of Delhi took *suo moto* cognizance in W.P. (C) No.18655/2005 where the applicant filed his affidavit bringing out certain facts, which made Dr. V.K. Ramteke uncomfortable and hostile. One Dr. K.D. Mehta, a Supertime Grade Officer of CHS, was posted as Additional Medical Superintendent (OPD). He was also made the Incharge of STC vide order dated 08.06.2006 (Annexure A-7) by the Medical Superintendent, Lok Nayak Hospital. It is further alleged that on the complaint made regarding irregularities in purchase of medical supply and equipments by Dr. V.K. Ramteke, an inquiry was conducted where the applicant appeared as witness against Dr. V.K. Ramteke. The said inquiry resulted in registration of two criminal cases against Dr. Ramteke under the Prevention of Corruption Act, 1988 etc. During the assessment period, i.e., 01.04.2005 to 31.03.2006, the ACRs of the applicant were reported by Dr. K.D. Mehta,

who was given charge of Additional Medical Superintendent (STC) only on 08.06.2006, and his review assessment was made by Dr. V.K. Ramteke. The applicant was granted grading of 'good', which was below the benchmark, as earlier he had earned 'very good' and 'outstanding' gradings in his ACRs. It is further stated that during the relevant period, the self-appraisal methodology had been adopted in writing the ACRs. However, the Medical Superintendent of Lok Nayak Hospital had not circulated any notice regarding self-appraisal to be furnished by the officers to be reported upon, nor was any reminder given to the applicant. He, for this purpose, relies upon an information received under Right to Information Act, 2005, as is evident from Annexure A-10. A meeting of Departmental Promotion Committee (DPC) was convened for promoting officers of Specialist Grade I of the Non-Teaching Specialist Sub-Cadre of CHS to Consultant under Dynamic Assured Career Progression (DACP) Scheme notionally w.e.f. 29.10.2008 and actually w.e.f. 06.07.2010. The applicant was declared unfit for promotion on account of below benchmark grading of his ACRs for the period 2005-06, which resulted in promotions of his juniors, namely, Dr. Deepak Chaudhary, S.J. Hospital and Dr. Rajendra Kumar, Dr. R.M.L. Hospital. The applicant was served with a notice dated 20.09.2010 (Annexure A-1) in terms of the Office Memorandum dated 13.04.2010 issued by the Department of Personnel & Training, communicating him below benchmark grading in his ACR for the period 2005-06. It is against this order the applicant made a representation dated 11.10.2010 (Annexure A-11), which was rejected by the respondents in terms of order dated 07.07.2011. Aggrieved of rejection of his representation, the applicant

filed O.A. No.2953/2011. The Tribunal, finding that the rejection order does not contain any reasons, passed the following Order on 17.11.2011:-

“2. It is not in dispute that order rejecting the representation does not contain any reasons, even though a Committee might have been constituted to examine the representation of number of employees for the same purpose. That being so, Shri Krishna representing the respondents fairly states that fresh order has to be passed on the representation of the applicant as regards the grievance qua ACRs for the year 2005-06.

3. In the light of statement made by Shri Krishna, this OA is disposed of with a direction to respondents to pass fresh orders on the representation of the applicant, which shall contain reasons if the representation has to be rejected. Let the exercise as ordained be completed as expeditiously as possible and preferably within a period of three months from today.”

3. Consequent upon the aforesaid directions, the respondents have passed the impugned order dated 02.03.2012. We have perused the impugned order. It contains three grounds for rejection of the representation of the applicant viz. (i) the comments of the reporting officer, Dr. K.D. Mehta, the then Additional Medical Superintendent (STC) cannot be obtained as he had retired; (ii) the reviewing officer Dr. V.K. Ramteke, the then Medical Superintendent, LNJP Hospital, still in service, has not communicated his comments; and (iii) absence of any justifiable achievement in his representation and new facts to substantiate his representation for upgradation. It is accordingly stated that the competent authority after examining the case in totality and objectively has decided to retain the gradings in the ACRs of the applicant.

4. The aforementioned order has been again assailed on the following grounds:

- (i) The applicant had specifically mentioned in his representation that the reviewing officer Dr. V.K. Ramteke was biased against him, as he had appeared against him as a witness in the inquiry and also filed an affidavit before the Hon'ble High Court of Delhi in *suo moto* proceedings initiated by it.
- (ii) The reporting officer, Dr. K.D. Mehta was not competent for reporting, as he was posted as Additional Medical Superintendent (STC) from 08.06.2006 onwards.
- (iii) The self-appraisal format had not been communicated to the applicant providing him an opportunity to furnish his achievements, which deprived him of an opportunity to apprise the authorities regarding his gradings in the ACRs.
- (iv) Under the similar circumstances, one Dr. Vikas Rampal was also communicated the self-appraisal report and on his representation, his grading had been upgraded from 'good' to 'very good' on the basis of his grading awarded in the previous year.

5. Mr. V.S.R. Krishna, learned counsel appearing for respondent No.1 has resisted the claim of the applicant primarily on the ground that the applicant did not indicate any of his achievements in his representation and thus there was no occasion for the Committee, which considered his claim, to go into the same, and hence the order rejecting the plea of the applicant for upgradation has been rightly passed.

6. We have heard the learned counsel for the parties at length.

7. From the impugned order, we find that the specific allegations of the applicant about the biased approach of Dr. V.K. Ramteke and the incompetence of Dr. K.D. Mehta have not been dealt with at all. These were two major grounds on which the applicant had sought setting aside of the gradings in ACRs for the period 2005-06. As regard the above grounds, the respondent No.1 in its counter affidavit has categorically admitted the specific averments / allegations of the applicant in paragraph 4.13. While referring to the letter dated 06.02.2015 (Annexure R/4 with the counter affidavit), it is stated that the applicant was never served any show cause notice and there is no adverse entry for the period under consideration, i.e., 2005-06. It is also mentioned that there is no record available with the Establishment regarding initiation of ACR and subsequent acknowledgement or reminder to the applicant for submission of the ACR for that period.

8. Regarding Dr. K. D. Mehta, it is stated that Dr. Mehta was posted as Incharge OPD Lok Nayak Hospital vide order dated 26.04.2005 and he was transferred from OPD Lok Nayak Hospital to look after the charge of Additional Medical Superintendent (STC) on 08.06.2006. The allegation of the applicant in paragraph 4.13 of the O.A. regarding incompetency of Dr. K.D. Mehta on the ground that he was not immediate supervising officer of the applicant during the period in question, is admitted. It is further stated that during the period in question, one Dr. M.S. Chopra, Additional Superintendent (Admn.), Lok Nayak Hospital was the Incharge of STC and immediate supervising officer of the applicant. The respondent No.1 has admitted that both the reporting as well as reviewing officers have written the ACR of the applicant mechanically and in a casual manner without

application of mind and following the prescribed guidelines in this regard. The gradings earned by the applicant in the years prior to the period 2005-06 are 'very good' / 'outstanding'.

9. In the ACR of the applicant for the period 2005-06, there is an endorsement by Dr. K.D. Mehta, which reads as under:-

“In spite of repeated Circulars/reminders by hospital authority, officer to be reported upon, did not submit brief resume.”

This endorsement stands belied in view of the reply filed by respondent No.1, as noticed by us hereinabove. The endorsement further indicates that the applicant was unfairly treated by the reporting officer. Bias of the reporting officer is apparent.

10. Mr. Nilansh Gaur, learned counsel appearing for the applicant has also brought to our notice the case of one Dr. Vikas Rampal, whose ACRs for the same period were 'good', i.e., below benchmark. He made a representation to the authorities (page 127 of the paper book). The said representation was recommended by the then Medical Superintendent, Lok Nayak Hospital vide letter dated 07.12.2011 (page 128 of the paper book). It is deemed appropriate to take note of the contents of said recommendations / letter:

“The ACR of Dr. Vikas Rampal posted in Sushruta Trauma Centre for the period of 2005-06 should be expunged for the following reasons:

- (i) In this ACR there is no self appraisal by Dr. Vikas Rampal.
- (ii) There is no evidence in the available hospital records that Dr. Vikas Rampal was asked to submit his ACR for the year 2005-06 alongwith self appraisal repeatedly.

- (iii) The reporting office for this ACR, Dr. K.D. Mehta was not an immediate superior or Incharge of Sushurta Trauma Centre during the period of ACR, hence not authorized to report his ACR.
- (iv) The reviewing officer has reviewed the above ACR very mechanically and casually without application of mind. As per the prescribed guidelines issued for the reporting officer as well as reviewing officer columns in the ACR form have to be filled with appropriate comments.
- (v) In the absence of self appraisal, reporting by the official not directly concerned with STC and the casual approach shown by the reviewing officer are sufficient reasons for expunging the ACR of Dr. Vikas Rampal for the year 2005-06.

I in my capacity as Medical Superintendent, LNH strongly recommend that the ACR of Dr. Vikas Rampal for the year 2005-06 should be upgraded as Very Good, keeping in mind that all his earlier ACRs showed the consistent overall performance as very good.”

11. On the basis of the aforesaid recommendations, respondent No.1 passed the order dated 30.03.2012 (page 129 of the paper book), which reads as under:-

“In terms of DOPT’s O.M. No.21011/1/2010-Estt.A dated 13.4.2010, the representation of Dr. Vikas Rampal, CMO (NFSG) for upgradation of grading in his below benchmark ACR for the period 2005-06 was considered by the Competent Authority. The Competent Authority assessed the ACRs objectively and recommended to upgrade the ACR from “Good” to “Very Good” for the period 2005-06.

- 2. This issues with the approval of Secretary (H&FW).
- 3. Necessary entries have been made in the original ACR.”

12. In case of Dr. Vikas Rampal, ACRs had been upgraded from ‘good’ to ‘very good’ for the same period of 2005-06, keeping in mind that all his earlier ACRs showed the consistent overall performance as ‘very good’. On facts, we find that the case of the applicant is no different than Dr. Vikas Rampal. The question of absence of details regarding achievements does

not arise, as applicant's categorical representation was the non-observance of the laid down guidelines, incompetence of the reporting officer and the casual and mechanical manner in which the ACRs were recorded. All these allegations are admitted and the grounds are exactly similar as in the case of Dr. Vikas Rampal. We do not find anything on record to distinguish the two cases. Thus the different treatment meted out to the applicant is totally uncalled for. Apart from that, we find that the specific allegations of incompetency of the reporting officer and bias approach of the reviewing officer have not been addressed to while passing the impugned order.

13. For the above reasons, this O.A. is allowed. Impugned order is hereby set aside. The respondents are directed to pass a fresh order in view of our observations made hereinabove and also keeping in view the representation of the applicant dated 04.04.2012 (Annexure A-17), which he filed subsequent to the passing of the impugned order. Let the entire exercise be completed within a period of three months from the date of receipt of copy of this Order. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

September 12, 2016
/sunil/