

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA No.2068/2014

Reserved On: 03.10.2018

Pronounced On:17.10.2018

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

Shri S.R. Sharma
S/o Late Shri Mangal Ram Sharma,
Aged about 59 years
Working as Assistant Accounts Officer, PWD,
Dr. B.S.A. Hospital Complex,
Sector-6, Rohini-110085.

...Applicant

(By Advocate: Dr. N. Gautam)

Versus

1. Govt. of NCT of Delhi,
Through Chief Secretary,
GNCT of Delhi,
5th Level, A Wing, Delhi Secretariat,
I.P. Estate, New Delhi-110002.
2. Principal Secretary Finance,
Department of Finance (Accounts),
4th Level, A Wing, Delhi Secretariat,
I.P. Estate, New Delhi-110002
Through Chief Secretary, GNCT of Delhi
3. Secretary Health,
9th Level, Delhi Secretariat,
I.P. Estate, New Delhi-110002.
4. Medical Superintendent cum HOD
Pandit Madan Mohan Malvia Hospital
New Delhi-110017

-Respondents

(By Advocate: Shri Tushar Kochhar for Shri Ankur Chhibber)

ORDER

By Hon'ble Mr. A.K. Bishnoi, Member (A):

Through this OA, the applicant has sought the following reliefs:-

“a) Direct the respondent to expunge the adverse remarks for the period 2009-10.

b) Direct the respondent to release all consequential benefits stopped during the pendency of adverse remarks in ACR.

c) Pass such other and further order as this Hon'ble Tribunal may deem fit and proper in the interest of justice”.

2. Briefly, the facts of the case, as stated by the applicant are as follows:

2.1 The applicant was working in Delhi Pollution Control Committee earlier and joined in Pandit Madan Mohan Malviya Hospital as Asstt. Accounts Officer on 18.02.2009 under the orders of the competent authority.

2.2 Thereafter while the applicant was working in Pandit Madan Mohan Malviya Hospital certain financial irregularities were discovered in the internal audit for the year 2009-10 and an enquiry was conducted and concluded.

2.3 In the course of time the applicant submitted his self-appraisal for recording of his ACR for the period 2009-10. Subsequently, vide Memorandum dated 30.05.2011, Dy. Secretary (Finance), Govt. of NCT of Delhi communicated the below bench-mark grading in ACR for the period 2009-10 and forwarded the ACR with the remarks to the applicant with the request to submit his representation if any, within 15 days of the receipt of the memorandum. The applicant submitted his representation vide letter dated 17.06.2011 to the Principal Secretary (Finance), Govt. of NCT of Delhi followed by a reminder dated 26.07.2011. The said

representation was rejected vide Memorandum dated 31.07.2012, the contents of which are as follows:-

“With reference to his appeal dated 17.06.2011 addressed to Principal Secretary (Finance), Govt. of NCT of Delhi against the adverse remarks reported in his ACR for the period 2009-10 and personal hearing given by Principal Secretary (Finance) on 23.7.2010. Sh. S.R. Sharma, AAO is hereby informed that his appeal was considered by Principal Secretary (Finance) but has been rejected on the ground that the appeal does not have sufficient reason to expunge the said adverse remarks. Principal Secretary (Finance) has ordered that the adverse remarks stand”.

2.4 Thereafter the applicant submitted a Memorial dated 23.01.2013, which was rejected vide communication dated 07.03.2013 as follows:-

“Please refer to your Memorial against Appellate Order dated 31.07.2012 against the adverse remarks inscribed in the ACR for the period 2009-10.

In this regard, you were heard by the Chief Secretary on 07.03.2012 when the Deputy Secretary (Finance(E-1) Shri G.S. Pandey was also present. The position was explained to you by the Chief Secretary. It is pertinent to mention here that your earlier appeal has already been heard by the then Pr. Secretary (Finance) and rejected. Now, there is no remedy available to you in the form of Memorial before the Chief Secretary.

Therefore, now I am directed to convey to you that there are no grounds for filling this Memorial before the Chief Secretary.

In view of the above, your application dated 23.01.2013 in the shape of Memorial is rejected.”

3. Respondents have filed their counter reply in part of which they have given details of the matter relating to financial irregularity referred above and its connection with the applicant. Since it is an issue which is not central to the matter under adjudication in this OA, we need not to go into its details. As regards the matter regarding the remarks and grading in the ACR for 2009-10, the relevant extract from Para 4.15 of the reply of the respondents is as under:

“As per Government of India, DoPT OM No.21011/1/2010-Estt. A dated 13.4.2010, the decision on the representation may be taken objectively after taking into account the views of the concerned

Reporting/Reviewing Officers if they are still in service. Accordingly, a copy of representation of the applicant received in Finance Department on 20.6.2011 has been forwarded to both Reporting Officer and Reviewing Officer for their comments on 28.7.2011. After receiving the comments from Reporting Officer dated 18.8.2011 and Reviewing Officer dated 14.9.2011, the First Appellate Authority heard the official personally on 23.7.2012 and accordingly took a decision on the said representation. The same has been conveyed to the official vide this office letter dated 31.7.2012.”

3.1 As regards the Memorial, the position has been explained by the respondents in Para 4.17 of the counter affidavit as follows:-

“The official had the opinion to file a Memorial/Appeal against the rejection of the representation against the adverse remarks to the President of India. Instead approaching appropriate authority, the applicant filed a Memorial to the Chief Secretary, GNCTD. Being not an appropriate authority, the Chief Secretary rightly rejected the same”.

4. Heard the learned counsels for the applicant and the respondents and perused the records on file.

5. Since the relief prayed for is regarding the ACR for the period 2009-10, we confine ourselves to this point only and need not to go into other details. We find that:

- i) The ACR of the applicant for the period mentioned is based on the assessment of the Reporting/Reviewing Authority and does not, on the face of it, suffer from any apparent defect which should require correction. The Note on Integrity is also a statement of fact.
- ii) Further the applicant was given due opportunity to represent against the ACR which he did and the representation was decided after properly receiving the comments of the Reporting/Reviewing Officer and even giving a personal hearing to the applicant. As, for, the

Memorial, that, too, was correctly disposed of, as there was no remedy available to the applicant in the form of Memorial before the Chief Secretary.

6. Thus, it cannot be said that there was any flaw in the process or that the applicant was not given due opportunity to represent his case. This being so the applicant has failed to establish any ground on which relief can be granted to him.

7. The OA is accordingly dismissed. No order as to costs.

(A.K. Bishnoi)
Member (A)

(V. Ajay Kumar)
Member (J)

cc.