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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01021/2018

Monday, this the 5th day of August, 2019

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Dr.Sajith Sukumaran,
Aged 45 years,
S/o Sukumaran N.,
residing at T.C.No.5/2712(3),
CRA A64(C), Thejus, Sreekaryam PO,
Thiruvananthapuram PIN – 695 017,
Presently working as Additional Professor,
Department of Neurology,
Sree Chitra Tirunal Institute for Medical
Sciences and Technology,
Thiruvananthapuram – 695 011.

....Applicant

(By Advocate Mr.P.G.Jayashankar)

V e r s u s

1. Sree Chitra Tirunal Institute for
Medical Sciences and Technology,
Thiruvananthapuram – 695 011,
represented by its Director.
2. The Director,
Sree Chitra Tirunal Institute for
Medical Sciences and Technology,
Thiruvananthapuram – 695 011.
3. Dr.Asha Kishore,
Director,
Sree Chitra Tirunal Institute for
Medical Sciences and Technology,
Thiruvananthapuram – 695 011.Respondents

(By Standing Counsel Shri T.R.Ravi for Respondents)

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This application having been heard on 31st July, 2019 the Tribunal on 5th August, 2019 delivered the following :

ORDER

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

OA No.1021/2018 is filed by Dr.Sajith Sukumaran, Additional Professor in the Department of Neurology at the first respondent Institute. He is aggrieved by the action of the 3rd Respondent in having entered adverse remarks in Annexure A1 Annual Confidential Report without adequate justification. The relief sought in the OA are as follows:

- i. Call for the records leading to the issuance of Annexure A1, and expunge the comments and remarks made by the 3rd respondent;
- ii. Declare that the action of the 3rd respondent in making adverse derogatory comments without diligence and without being the applicant on notice is unfair, illegal and arbitrary, and that the actions of the 3rd respondent are biased and prejudiced;
- iii. Grant such other and incidental reliefs as this Hon'ble Tribunal may deem just and necessary on the facts and circumstances of this case; and
- iv. Allow this Original Application with costs to the applicant.

2. The applicant is a Super Specialist Doctor working with the first Respondent Institution. He is at present Additional Professor in the Department of Neurology. He submits that he has a blemishless career record and his performance in both academic as well as therapeutic spheres has been exemplary. He has authored several articles in reputed journals and possesses excellent inter personal skills. He is also, at present, the

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Secretary of the Faculty Association, which is a registered Association.

3. He submits that the 3rd Respondent has made false, misleading and adverse remarks in his ACR without notice to the applicant. A copy of the applicant's ACR is produced as Annexure A1. The Head of Department had not made any adverse remarks against the applicant and the remarks made by the HOD on 22.01.2018 were communicated to the applicant. The 3rd Respondent, however, acting out of biased reasons interpolated highly adverse remarks in his ACR. The applicant points out that the 3rd Respondent had harbored ill feelings towards him as is evidenced by the disciplinary proceedings initiated against him earlier. In fact the applicant had to rush to this Tribunal with two OAs, No.975/2017 and 973/2018 due to harassment at the hands of the 3rd Respondent.

4. He goes on to list a large number of titles of articles that he has contributed in, but all these were overlooked by the 3rd Respondent while putting in the adverse remarks. He goes on to detail his objections to each remark made at Annexure A1 for the purpose of showing that they were made without any basis.

5. The respondents have filed the reply statement, wherein the contentions raised in the OA have been countered. ACRs of all the officers carry the Director's remarks besides the HODs and these are based on

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observation of professional performance takes into accounts disciplinary matters. From this point of view each one of the remarks made are with valid justification. The applicant's performance as a whole has been suboptimal. While it is true that he had faced disciplinary action for insubordination, that by itself is not evidence for any bias on the part of the 3rd Respondent. The applicant is particularly perturbed by his failure to qualify for the post of Professor as per 3-3-4 guidelines, when he failed at the interview conducted by internal as well as external experts.

6. Heard Shri P.G.Jayashankar, learned Counsel for the applicant and Shri T.R.Ravi, learned Standing Counsel for the first Respondent Institution. The learned Counsel for the applicant particularly addressed the Bench on the injustice of the adverse remarks not having been communicated to the applicant. While HOD's remarks which were positive were made known to the applicant, the highly adverse remarks of the Director were not made known. This has severely impaired his prospects of career advancement. Shri T.R.Ravi, learned Counsel for the respondent Institute, submitted that as a Head of the Institution the 3rd Respondent is closely aware of the performance of each and every one of the personnel at the applicant's level. Hence the remarks made are comprehensive and truthful. Any Head of Institution has the prerogative to objectively assess the attainments and performance of his/her subordinate staff. This may lead to remarks which may not always be positive.

7. We have considered the case in detail. We have no qualms about agreeing with the arguments of the learned Counsel for the respondent Institution that as Head of Institution, it is the Director's duty to observe and assess the officers working under her. What has happened in the applicant's case is also nothing extraordinary. However, it is seen that these observations which are highly adverse in nature were never communicated to the applicant which would have enabled him to give his remarks/observations on the remarks of the Director. Natural justice appears to have been denied to the applicant in the above aspect. The judgments in **Dev Dutt v. Union of India – MANU/SC/7666/2008 : (2008) 8 SCC 725** and **Sukhdev Singh v. Union of India MANU/SC/0481/2013 : (2013) 9 SCC 566** may be referred to, particularly highlighting the necessity for such information to be shared with the officers whose performance is commented upon. Also in a recent judgment in **Pankaj Prakash v. United India Insurance Co. Ltd. and Ors – Civil appeal Nos.5340-5341 of 2019 (Arising out of SLP (C) Nos.33462-33463 of 2018) dated 10.07.2019**, the Hon'ble Supreme Court has taken the same view observing:

“13. Admittedly, for one of the years under consideration (2011-12) for the promotional exercise for 2014-15, the Appellant was graded a “B”, while for the subsequent two years, he was graded an “A”. Consequently, the fact that the Appellant was given a lower grading for 2011-12 would materially affect whether or not he should be promoted from Scale III to Scale IV for the year in question. The non-communication of the entries is, therefore, a matter in respect of which a legitimate grievance can be made by the Appellate, particularly having regard to the position in law laid down in Dev Dutt (supra) and Sukhdev Singh (Supra).

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8. In the light of the above, we conclude that the OA has merit on its side and it succeeds. The remarks made by the Respondent-3 as per Annexure A1 is declared as expunged for the reason that these were not communicated to the applicant for his observations. OA is disposed of. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A. No.180/01021/2018

1. **Annexure A1** – True copy of the Annual Confidential Report of the applicant.
2. **Annexure A2** – True copy of the reply furnished by the Public Information Officer dated 06.10.2018.
3. **Annexure A3** – True copy of the order and 11.12.2018 issued by the First Appellate Authority under Right to Information Act.
4. **Annexure A4** – True copy of the details of project entitled, '*Efficacy of Theta Burst Stimulation and Functional Electrical Stimulation as Compared to Conventional Physiotherapy in Stroke Rehabilitation: A Randomized Control Trial* (which is Project No.5259 of 1st Respondent Institution).
5. **Annexure A5** –True copy of the details of project entitled '*Development of Computer Based Language Therapy Software (Malayalam Version) for Post Stroke Patients with Aphasia and Finding its Efficacy compared to Conventional Speech Therapy*' (which is project No.5271 of 1st Respondent Institution).
6. **Annexure A6** – True copy of the Details of the Publications of the applicant during the residency period 2013 and 2017.
7. **Annexure A7**– True copy of the Covering page of article published in *Acta Neuralogical Scadinavia* entitled "*Impact of Obstructive sleep Apnea on Neurological Recovery after Ischemic Stroke: a prospective Study*" (2017).
8. **Annexure A8** – True True copy of the First page of the article in *World Neurosurgery*, entitled "*Dwell Time of Stentriever Influences Complete Revascularisation and First Pass TICI 3 Revascularization in Acute Large Vessel Occlusive Stroke*"
9. **Annexure A9** – True copy of the First page of the article published in *Journal of Neurological Sciences* entitled "*Effectiveness of Speech Language Therapy Either Alone or With Add On Computer Based Language Therapy Software (Malayalam Version) for Early Post Stroke Aphasia: A feasibility Study*'.
10. **Annexure A10** - True copy of the First page of the article published in *journal of Neurological Sciences* on "*Moyamoya Disease: A Comparison of Long Term Outcome of Conservative and Surgical Treatment in India*"
11. **Annexure A11** - True copy of The relevant extracts of the book entitled "*Percutaneous Mitral Valvotomy*" compiled by Harikrishnan S

(Chapter 31 on “*Neurological Complications Related to Percutaneous Mitral Valvotomy*” authored by the Applicant)

12. **Annexure A12** - True copy of the first page of the article published in *Neurology India* entitled “Antisynthetase Syndrome with Stroke”
13. **Annexure A13** - True copy of the first page of the article published in *Neurology India* entitled “Diffusion Restriction in Fulminant Subacute Sclerosing Panencephalitis: Report of an Unusual Finding”
14. **Annexure A14** - True copy of order dated 05.06.2018 in O.A. No.975/2017 issued by this Hon'ble Tribunal.
