

25

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.802/2003

New Delhi, this the 6th day of December, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

Dr. Ajay Kumar Sachdev
S/o Shri P.K.Sachdev
R/o 8/6 West Patel Nagar
New Delhi - 110 008.

(service of all notices on the Applicant
Counsel's following address:

Satya Mitra Garg
113-C, DDA Flats, Motia Khan
Jhandewalan, New Delhi - 110 055. .. Applicant

(By Advocate: Ms. Rekha Aggarwal)

Versus

1. Union of India through
its Secretary
Ministry of Health & Family Welfare
Nirman Bhawan
New Delhi - 110 001.
 2. Govt. of NCT of Delhi
Through its Secretary
Department of Health & Family Welfare
5, Sham Nath Marg
Delhi - 110 054.
 3. Dr. (Mrs.) Anandita Mandal
Director
G.B.Pant Hospital
New Delhi.
 4. Dr. Adarsh Chaudhary
Professor of General Surgery
G.B.Pant Hospital
.New Delhi.
- ... Respondents

**(By Advocate: Sh. V.S.R.Krishna for R-1 and Shri Harvir Singh
for R-2 and none for Rs-3 and 4).**

ORDER

By Mr. Justice V.S.Aggarwal:

26
- 2

Applicant (Dr. Ajay Kumar Sachdev) by virtue of the present application, seeks quashing of the adverse Annual Confidential Reports (for short 'ACRs') recorded against him for the years 1998-99 to 2001-02, i.e., 'Good' initiated by Respondent No.4 and reviewed by Respondent No.3 in the year 2003; and to pass an order directing Respondents No.1 and 2 to get the ACRs for the years 1998 to 2002, initiated by an Officer other than Respondent No.4 and reviewed by Respondent No.2 and if his ACRs are found above bench mark, grant him all consequential benefits.

2. Some of the relevant facts are that on an earlier occasion, the applicant had filed OA 1113/99 in this Tribunal. He was seeking a direction to include the ad hoc service rendered for the years from 1993 to 1997 and assign proper seniority to him and direct the respondents to consider him for the post of Head of the Department of Gastro-Intestinal Surgery at G.B.Pant Hospital, New Delhi.

3. On 25.5.2000, the said Original Application had been disposed of by this Tribunal. The reliefs claimed had been declined. Aggrieved by the order passed by this Tribunal, the applicant had filed **Civil Writ Petition No.507/2001** in the Delhi High Court seeking quashing of the orders passed by this Tribunal and reiterating the reliefs to which we have referred to above. The said Civil Writ Petition was dismissed by the Delhi High Court on 30.7.2002. The above order of the Tribunal even was challenged by Respondent No.4 and the Writ Petition had been allowed.

4. The grievance of the applicant is that he became eligible for promotion to the rank of Professor in April, 2002. Respondent No.1 had directed Respondents No.2 and 3 to send the ACRs of the

18 Ag

27 - 2 -


applicant and other Doctors. The applicant apprehending a biased report from Respondents No.3 and 4, submitted an application to Respondent No.1 at the time of handing over his filled ACRs that it would not be feasible for him to submit the Resume to Respondent No.4 against whom he has filed various applications.

5. Despite the apprehension conveyed by the applicant, ACRs from 1998-99 to 2001-2002 had been written by Respondent No.4 who deliberately is alleged to have vindictive mind, the downgraded the applicant's ACRs so that he could not become a Professor of Gastro Intestinal Surgery.

6. The applicant contends that Respondent No.4 had conspiracy with Shri Anil Kumar Aggarwal and they had planned to spoil his future. He was deliberately assessed as 'Good', which is below the 'bench mark' and, therefore, the above said reliefs are claimed contending that the ACRs recorded and reviewed are biased. There is a conspiracy referred to above to deprive the applicant of his due promotion and in any case, Respondent No.4 could not write the ACRs nor Respondent No.3 could review the same.

7. The application has been contested by Respondent No.1. In addition to that, private respondents have also filed separate replies controverting the pleas.

8. We have heard the parties' counsel and have seen the relevant record. Recording of ACRs is of utmost importance. Necessarily the same has to be recorded in an unbiased manner because this is one of the best methods to know about the capability of an officer.



26 -4-

9. The Supreme Court in the case of **DR. S.P. KAPOOR v. THE STATE OF HIMACHAL PRADESH AND OTHERS**, 1981 (3) SLR 220 had the occasion to consider this question. In the cited case, the ACR of Dr. S.P.Kapoor and others had to be looked into by the Departmental Promotion Committee. The same had been initiated by an officer not only junior to them but also an aspirant for promotion to a higher post. The Supreme Court held that in the facts, it was not fair for DPC to take into account the ACRs recorded by the said junior. Reliance upon the said decision, therefore, would be inappropriate because it was confined to the peculiar facts therein. It is totally distinguishable.

10. However, in the case of **STATE BANK OF INDIA AND OTHERS v. KASHINATH KHER AND OTHERS**, 1996 SCC (L&S) 1117, the Supreme Court provided the guidelines as to the object for recording of the ACRs. The Supreme Court held that it should be written by the superior officer who is higher in rank and there should be another higher officer in rank above the officer who has written the ACR to review such report. The findings read:

“15. The object of writing the confidential report is twofold, i.e., to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in *Delhi Transport Corpn. V. D.T.C.Mazdoor Congress*, 1991 Supp(1) SCC 600 pointed out the pitfalls and insidious effects on service due to lack of objectivity by the controlling officer. Confidential and character reports should, therefore, be written by superior officers higher above the cadres. The officer should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get

ls Ag

29
-5-

demoralized which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by a superior officer of high rank. Who are such high rank officers is for the appellant to decide. The appellants have to prescribe the officer competent to write the confidentials. There should be another higher officer in rank above the officer who has written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedure would be fair and reasonable. The reports thus written would form the basis for consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust."

(Emphasis added)

11. Similarly, in the decision rendered in the case of **STATE OF U.P. v. YAMUNA SHANKER MISRA AND ANOTHER** (1997) 4 SCC 7, the Supreme Court reviewed the law on the subject and thereupon held that the object of writing the ACR is to give an opportunity to a public servant to improve excellence. The person concerned who is entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately. The Supreme Court held:

"7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51-A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon

ls Ag e

20
-6

facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record.
....."

12. Almost identical was the view expressed in the case of **SWATANTAR SINGH v. STATE OF HARYANA AND OTHERS**, 1997 SCC (L&S) 909. The Supreme Court held:

"5. We find no force in the contention. It is true that in view of the settled legal position, the object of writing the confidential reports or character roll of a government servant and communication of the adverse remarks is to afford an opportunity to the officer concerned to make amends to his remissness; to reform himself; to mend his conduct and to be disciplined, to do hard work, to bring home the lapse in his integrity and character so that he corrects himself and improves the efficiency in public service. The entries, therefore, require an objective assessment of the work and conduct of a government servant reflecting as accurately as possible his sagging inefficiency and incompetency. The defects and deficiencies brought home to the officer, are means to the end of correcting himself and to show improvement towards excellence. The confidential report, therefore, would contain the assessment of the work, devotion to duty and integrity of the officer concerned. The aforestated entries indicate and reflect that the Superintendent of Police had assessed the reputation of the officer, his honesty, reliability and general reputation gathered around the officer's performance of the duty and shortfalls in that behalf."

13. There is indeed a little dispute in this regard. But the plea of the applicant is that Respondent No.4 could not record the ACRs.

14. Our attention has been drawn to **Swamy's Compilation on Confidential Reports of Central Government Employees** and



3
-7-

the D.G., P.&T.'s letter No.27-2/83-Vig.II, dated 21.1.1983 which clearly prescribes that there is no provision for any other authority for writing the remarks/comments of a public servant's work and conduct in his ACR.

15. Keeping in view the same, the request that some other authority should record the ACRs of the applicant cannot be taken to be fair. This plea must be rejected.

16. Not only that, we have already referred to above the authorities who have written the ACRs. If for a certain period, the applicant worked in a particular department and that one of the respondents was the Head of the Department, necessarily that respondent would be in a position to record the ACRs. In the circumstances, doctrine of necessity comes into play. A person who has watched would only be in a position to record the ACRs rather than any other person.

17. However, the learned counsel for the applicant very eloquently told us that the applicant had been in litigation with Respondent No.4 and therefore, Respondent No.4 could not write the ACRs. We have carefully thought about it. The fact that applicant was in litigation with Respondent No.4 is not in dispute but after the litigation came to an end, necessarily the ill will, unless there are reasons which are absent in the present case, would not prompt us to conclude that Respondent No.4 would not record the ACRs in a proper manner.

18. In the present case, Respondent No.3 had reviewed the ACRs. If that be so, at least the applicant was not in litigation with Respondent No.3 and taking totality of facts, therefore, this particular plea cannot be accepted in the facts of the present case.



32

19. Confronted with that position, it was urged that there is a bias in face of the above said facts and necessarily the abovesaid ACRs cannot be taken into account.

20. We do not dispute that when there is a bias in this regard, the said report should be ignored. We know from the decision of the Supreme Court in the case of **MANAK LAL v. DR. PREM CHAND SINGHVI AND OTHERS**, AIR 1957 SC 425 that test always is and must be whether a litigant could reasonably apprehend that bias is attributable to the concerned person. The Supreme Court held:

“(4) In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.”

21. Similarly, in the case of **S. PARTHASARATHI v. STATE OF ANDHRA PRADESH**, (1974) 3 SCC 459, the same principle was reiterated that there should be a “real likelihood” of bias. The Supreme Court held:

“13. We are of the opinion that the cumulative effect of the circumstances stated above was sufficient to create in the mind of a reasonable man the impression that there was a real likelihood of bias in the inquiring officer. There must be a “real likelihood” of bias and that means there must be a substantial possibility of bias. The Court will have to judge of the matter as a reasonable man would judge of any matter in the conduct of his own business [see R. v. Sunderland, (1901) 2 KB 357 at 373.].

14. The test of likelihood of bias which has been applied in a number of cases is on the

G Ag

33

9—

“reasonable apprehension” of a reasonable man fully cognizant of the facts. The Courts have quashed decisions on the strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed (see R. v. Huggins [(1895) 1 QB 563]; R. v. Sussex, JJ, ex. P. McCarthy [(1924) 1 KB 256]; Cottle v. Cottle [(1939) 2 All ER 535]; R.v. Abingdon, JJ. Ex. P. Cousins [(1964) 108 SJ 840]. But in R. v. Camborne, JJ ex. p Pearce [(1955) 1 QB 41 at 51 the Court, after a review of the relevant cases held that real likelihood of bias was the proper test and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries.”

22. More recently in the case of **STATE OF PUNJAB v. V.K. KHANNA AND OTHERS**, AIR 2001 SC 343, the Supreme Court reiterated the precedents on the subject and finally concluded that real test is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion would be drawn therefrom. The Supreme Court held:

“8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In that event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefore would not arise.”

23. On behalf of the applicant, it was alleged that the ACRs of the applicant were recorded only to help Anil Kumar Aggarwal

As Ag

34

-10-

and Respondent No.4 was in conspiracy with him. Shri Anil Kumar Aggarwal had not been impleaded as party. In the absence of the said person having been impleaded as a party, it would be improper for this Tribunal to consider allegations of the alleged conspiracy.

24. We have already referred to above that litigation, if any, was with Respondent No.4 but the matter had been reviewed by Respondent No.3. As against Respondent No.3, there is precious little on the record. The applicant had, against Respondent No.3, asserted the following facts to prompt us to conclude bias against the applicant and favouritism for Dr. Anil Kumar Aggarwal who is not a party before us. The facts alleged are:

- “(a) Respondent No.3 showed under favour to Dr. Anil Kumar Aggarwal by not relieving him from G.B.Pant Hospital and thus got canceled his transfer to Pondichery;
- (b) She gave misinformation to higher authorities regarding a news item leading to issuance of a Memo to applicant by Respondent No.2, despite the fact that Respondent No.4 and Dr. Anil Kumar Aggarwal were responsible for the destruction of expired material worth lakhs of rupees causing loss to the public exchequer. Further when the applicant submitted a detailed reply to the said Memo and requested Respondent No.2 to drop the said Memo and further requested to hold an inquiry in the matter, Respondent No.3 did not forward the said representation to Respondent No.2. True copies of documents regarding this memo are annexed as **Annexure P-28 (colly.)**.
- (c) Regarding a news item published in Dainik Jagran and Hindustan Times in 2002, the misinformation by respondent No.3 to respondent No.2 nearly led to suspension of the applicant. However, since the applicant explained the truth to Respondent No.2, the said action was not taken against the applicant by Respondent No.2. This fact can be verified by Respondent No.2”

ls Ag e

35

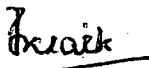
25. If one glances through the same, the allegations made are too far to fetch to prompt us to conclude that Respondent No.3 was biased against the applicant. These are day to day functions of a Govt. department that have been asserted and that it is only an assertion that she did not relieve Dr. Anil Kumar Aggarwal in time. Some information was given in this regard and that certain alleged information had been attributed to her on the basis of which no action had been taken.

26. These are certain facts, which the applicant mould into the malafides and bias but as referred to above, if they were to be so accepted, it would be impossible for any person to record ACRs. These are facts only in normal working in the department. We find that the reviewing authority in any case cannot, by any stretch of imagination, be taken as biased towards the applicant. Once, the ACRs had been reviewed by Respondent No.3, it is that report which has to be read and it cannot be termed, therefore, that the relief claimed can be granted.

27. In all fairness, the learned counsel for the applicant had urged that there is downgrading of the ACRs, which has not been communicated. But pertaining to that, no such relief has been claimed, and therefore, the fact of downgrading, if any, will not be ripe for consideration by this Tribunal.

28. No other arguments have been advanced.

29. For these reasons, the OA being without merit must fail and is dismissed.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman

/NSN/