

Reserved  
(On 20.02.2020)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD**

Dated: This the **21<sup>st</sup>** day of **February** 2020

**Original Application No. 330/01848 of 2019**

**Hon'ble Mr. Devendra Chaudhary, Member – A**  
**Hon'ble Mr. Rakesh Sagar Jain, Member – J**

Satish Kumar Kashyap, S/o Roop Chand, R/o House No. 579, Rail Gaon, North Central Railway Colony, Subedarganj, Prayagraj.

By Adv: Shri K.P. Singh and Shri Vrindavan Mishra . . . Applicant

**V E R S U S**

1. Union of India, through Secretary, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.
2. Chairman, Railway Board, Ministry of Railways, Baroda House, New Delhi.

By Adv: Shri P.K. Rai . . . Respondents

**O R D E R**

**By Hon'ble Mr. Davendra Chaudhary, Member – A**

In the instant OA the applicant has challenged the order dated 26.10.2016 passed by the Competent Authority concerning the representation of the applicant against the grading given to him in the Annual Performance Assessment Report (APAR) for the year 2015-16.

2. The matter is being heard finally at the admission stage itself, as, during the course of arguments on 20.02.2020, learned counsel for the applicant submitted that interest of justice would be served if the applicant is allowed to submit a representation on the adverse remarks stated in the order / communication letter dated 26.10.2016 with a direction for a reasoned and speaking order by the competent authority. that, there is plea is being made because the applicant is due to retire in a few years and any further delay in the decision on his OA could hamper his future prospects of promotion.

3. The brief facts of the case are that the applicant being Indian Railway Officer (IRSEE) has been serving Indian Railways for more than 36 years and is presently serving as Chief Safety Officer in North Central Railway. That the cause the action has arisen because of the fact that in the APAR 2015-16 while over all grading has been given "Very Good" but in the fitness column for General Manager, it has been recorded as "not fit for open line". That this has been done without specifying any reason and being an adverse remark, he has not been given opportunity of representing against it. Accordingly, he made a representation vide application dated 07.09.2016 (Annexure A-3) in which he submitted that he has given out-standing performance in various key areas of Operating, Commercial and Engineering performance in the year 2015-16 when he was posted as DRM, North Eastern Railway, Varanasi. However, decision dated 26.10.2016 communicated to him has allegations against him for which he was never asked explanation for and, therefore, he has right to represent against such adverse remark. It is, therefore, prayed that even if his representation dated 07.09.2016 has been decided vide order dated 26.10.2016, he should be given opportunity again to represent against new allegations brought out against him in the impugned order.

4. Learned counsel for the respondents opposed the contention of the applicant and has per-contra argued that the representation made by the applicant against this APAR of 2015-16 has already been decided once and there can be no occasion to decide the same again as the same would become on unending processes and would, therefore be against due procedure. Hence, the prayer of the applicant cannot be accepted and is liable to be rejected.

5. We have heard arguments from both the sides and perused the material available on record.

6. In order to decide the issue whether the applicant should be given another opportunity to represent quo his APAR 2015-16 in light of the impugned order dated 26.10.2016, it would be just and proper to reproduce the relevant portions of the impugned order, which is as under:-

“.....  
**2. The competent authority has considered your representation and has decided as under:**

*“I have gone through representation of Shri S.K. Kashyap, DRM, Varanasi Division, North Eastern Railway dated 07/09/2019 and entries recorded in his APAR for the year 2015-16 wherein he has requested for upgradation of his overall grading to Outstanding.*

*Shri Kashyap has submitted that the performance of the division improved on Diesel utilization, wagon interchange, Passenger earnings etc. However he has not submitted any data to support his claim.*

*It is noted that the Reporting Authority in his comments has taken into account the actual performance of the division under Shri Kashyap at the time of appraisal/grading and has pointed to the same in his comments on the representation. During derailment between Nunkhar and Deori Sadar station, the response of the division was very slow and casual. I note that Shri Kashyap has been served confidential letters by the GM/NER for mishandling the restoration of accident site and critical court cases.”*

7. A plain examination of the above would reveal that an observation has been made by the Competent Authority stating that during derailment between Nunkhar and Deori Sadar station, the response of the division was very slow and casual. It is also stated that Shri Kashyap has been served confidential letters by the GM/NER for mishandling the restoration of accident site and critical court cases. Now, if we examine the APAR for the year 2015-16 (Annexure III) of the concerning officer, we find that there is no mention of this remark of aforesaid derailment or mishandling of the restoration at accident site in the entire APAR. Learned counsel for the respondents has also not been able to point out any such remark. The learned counsel for the applicant on the other hand has emphasized that such adverse remark needs to be stated expressly in the APAR afresh otherwise gross injustice would be done against the applicant and grading has also been given “Very Good”. We are inclined to agree with the contention of the learned counsel for the applicant because it is plain from the records that in 2015-16 APAR, there is no adverse remark regarding delayed response to an accident incident. Therefore, such a remark

cannot now how does it figure in the impugned decision without giving an opportunity of hearing to the applicant. Such a remark could hamper any future considerations of promotion of the applicant. This is unfair because the applicant has not been given opportunity of hearing qua the adverse remark which has suddenly surfaced and was not in the APAR at any point of time. It is trite to observe that an employee has full right to represent against adverse remarks given at any point of time particularly moreso in context of assessing the annual performance.

8. In conclusion therefore, we are of the firm opinion that the applicant has right to represent against the said remark even if it is made in the context of deciding the representation of the applicant for upgrading of the APAR in 2015-16 which did not contain any adverse remark in the first place. Accordingly, it is directed that the applicant shall file a specific representation against the specific adverse remark in the impugned order within two weeks of the receipt of this order and the Competent Authority shall decide such a representation within three weeks thereafter. The OA is accordingly finally disposed of. No costs.

**(Rakesh Sagar Jain)**  
Member – J

/pc/

**(Davendra Chaudhary)**  
Member – A