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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 567/2001
MA No. 945/2001
MA No. 1012/2001
MA No. 1105/2001
MA No. 1333/2001

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New Delhi this the 17th day of April, 2002.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Vinay Vasishtha,
S/o late Sh. M.R. Vashishta,
R/o C-II/47, Satya Marg,
Chanakya Puri,
New Delhi-110021.

-Applicant

(By Advocate Shri K.C. Mittal)

-Versus-

Union of India through:

1. Secretary,
Department of Personnel & Training,
Government of India,
North Block,
New Delhi.
2. Cabinet Secretary,
Cabinet Secretariat,
Government of India,
Rashtrapati Bhavan,
New Delhi.
3. The Establishment Officer &
Additional Secretary,
Government of India,
North Block, New Delhi-11000.
4. Sh. M.S. Dayal, Member,
Appellate Authority for Industrial
and Financial Reconstruction,
10th Floor, Jeevan Prakash Building,
25, Kasturba Gandhi Marg,
New Delhi-110001

-Respondents

(By Advocates Shri K.R. Sachdeva and Sh. Madhav Panikar)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant in this OA impugns ACR for the period
1.4.1999 to 29.2.2000 and through the amended OA has sought
the following reliefs:

- "1. Declare that respondents have failed to
communicate adverse remarks regarding

"integrity" for the year 1999-2000 in accordance with rules/instructions.

2. Declare that the letter dated 11.10.2000 does not amount to communication of adverse remarks in accordance with the law and the respondents have violated the principles of natural justice and the instructions.
3. Declare that Respondent No.4 was neither competent nor authorized to write the ACR of the applicant as he was not a duly appointed Chairman under the Act.
4. Consequently the letter dated 11.10.2000 or the remarks mentioned cannot be deemed to be in existence or acted upon for any purpose regarding the applicant in the alternative.
5. Declare that the un-communicated remarks recorded in the impugned ACR cannot be used against the applicant for any purpose, much less for promotion and for that reason alone the ACR should be treated as invalid.
6. For all purposes ACRs upto the year 1998-99 alone should be taken into consideration for deciding the applicant's claim for inclusion in the panel or for that matter, for promotion etc. and for all other intents and purposes.
7. Any other order/direction deemed fit in the present case may also be granted."

2. Applicant, who is a member of the Central Secretariat Service (CSS) belonging to 1990 batch of Joint Secretaries has assailed his non-empanelment for the post of Additional Secretary, despite having completed three years regular service in the pay scale of Rs.5900-6700. As the criteria for empanelment has been changed in the year 1998 to seven years as Joint Secretary it is contended that the applicant would have been considered for empanelment in the selection held in 1999. On an apprehended grievance that the meeting of the Committee of the Secretaries (COS) is meeting to prepare a panel for the post of Additional Secretary as no panel was prepared in 1999-2000 the ACR of the applicant for the period 1999-2000 cannot be considered and as some adverse remarks have been recorded by the Reporting Officer in the ACR for 1999-2000 on which no

valid communication has been made, which is contrary to the guidelines and rules the same should not be taken into consideration.

3. Vide letter dated 11.10.2000, Reporting Officer has not certified applicant's integrity, which led to filing the present case. By an order dated 8.3.2001 interim orders have been passed, restraining the respondents from considering the ACR of the applicant for the year 1999-2000 for preparing panel for the year 1998-99 and 1999-2000.

4. Applicant has sought for an amendment of the OA, which was allowed on 2.5.2001.

5. Applicant was commissioned in the Indian Army in 1968 as Short Service Commissioned Officer and has successfully competed for the Indian Administrative Service in 1974. He was posted as Secretary, Appellate Authority for Industrial and Finance Reconstruction (AAIFR) from December, 1996 to February, 2000. His work was commended during the years 1996-98 by the then Chairman, Hon'ble Mr. Justice M.M. Pillai on his retirement in October, 1998. Respondent No.4, Shri M.S. Dayal, who has been impleaded later on, took over as Chairman of the AAIFR who being a reporting as well as reviewing authority commented upon adversely in the ACR of the applicant for the period April, 1999 to February, 2000. It is not disputed that on receipt of the ACR of the applicant and on its scrutiny it was observed that the integrity column has not been filled in in accordance with the instructions dated 20.5.72. The ACR was returned to the officer, i.e., respondent No.4 to fill

up the integrity column in accordance with the instructions. Respondent No.4 intimated that applicant was drawing Rs.800/- per month as well as using staff car for journey between office and residence on which recovery was effected from the salary of the applicant and he was informed that the integrity column which has been left blank and the remarks therein have been shifted to general assessment. Later on the remarks have been entered in the integrity column and communication was sent to the applicant with reasons.

6. Learned counsel Shri K.C. Mittal challenged the communication of the ACR as well as has also assailed the selection and preparation of yearwise panel for the year 1999-2000 and stressed upon his plea of not taking into consideration the ACR communicated to him.

7. He has also impleaded the reporting/reviewing officer Sh. M.S. Dayal into the array of parties as respondent and has alleged malafides against him and also questioned his competence to report upon.

8. According to Sh. Mittal, in brief there has not been a valid communication of the adverse remarks, he has been deprived of a reasonable opportunity to represent against it. As a result the aforesaid ACR cannot be considered for preparation of the panel for the year 1999-2000.

9. According to him while working in AAIFR the applicant has an excellent record without blemish and has alleged malice against Sh. Dayal by stating that reporting

officer has no opportunity to assess his performance during the period Sh. Dayal was Chairman of AAIFR from 1.4.90 to 22.9.2000. Only two matters were decided with the intervention of Sh. Dayal whereas all other matters have been disposed of by the applicant at his own level. No personal meetings have been taken place between them. He has referred two incidents to substantiate his plea of malice wherein he has stated that during the Chairmanship of Sh. Pillai PPS to Sh. Dayal was approved for promotion in his parent cadre and order to this effect was issued by the Chairman and as Sh. Sharma did not carry out the assigned work the applicant on the directions of the then Chairman submitted a note suggesting disciplinary action against Sh. Sharma which infuriated Sh. Dayal. On another occasion refusal to consider accord of higher grade to the Driver of Sh. Dayal and not ante dating his promotion beyond two years indicates the deep-seated malice harboured by respondent No.4 towards the applicant.

10. According to learned counsel as per sub section (5) of Section 6 of Sick Industrial Companies (Special Provisions) Act, 1985 authorizes the Central Government to appoint as a Member to act as a Chairman, stop gap arrangement till appointment of a regular Chairman. But the qualification is either to be a Judge of the Supreme Court or a Judge of the High Court for not less than five years. Moreover, the notification issued in respect of sh. Dayal to act as a Chairman AAIFR does not authorise him to be a controlling authority. In this backdrop it is stated that he is not competent to write the ACR of the applicant. As regards communication sent by the reporting officer on 11.10.2000 it is contended that the

same cannot be treated as a valid communication as the integrity has not been validly certified as per DOPT OM dated 20.5.72. The column pertaining to the integrity should be left blank and a separate sheet should be prepared about the doubts and suspicion regarding the officer's integrity and the same should be recorded and communicated to the officer concerned.

11. As regards allegation of availing Rs.800/- per month transport allowance despite using staff care it is contended that in September, 1997 aftermath of recommendations of the 5th CPC officers have been asked to furnish a certificate to the effect that the residence was not within one kilometre from the place of working which was accordingly furnished by the applicant. On this basis of this certificate the controlling officer started drawing and disbursing the conveyance allowance to the applicant whereas the use of staff car has been reflected in the log book of the staff car used by the applicant. There exists no suspicion and it is only a case of over payment without any malafide intention for which the recovery has already been effected and as this does not cast any expression and reflection on the integrity of the applicant the remarks are unfounded.

12. According to Sh. Mittal the ACRs of the applicant were excellent while the assessment in the ACR of 1999-2000 is certainly below the requisite bench mark and as the comparison striking and loud, as it is, is easily discernible on a bare perusal of the ACRs and contrary to the decision of the Apex Court in U.P. Jal Nigam & Ors.

v. Prabhat Chandra Jain & Ors., JT 1996 (1) SC 641. 30 years meritorious service career of the applicant has been given a go bye.

13. As per OM dated 30.1.78 and 31.10.61 it is incumbent upon the Government to put concerned government servant on notice by allowing him a month's time from the date of communication of the adverse ACT to prefer a representation and in that event it is mandatory upon the Government to bring to the notice of the government servant its time limit. As no such procedure was adopted the communication is not a valid communication.

14. As regards decision in OA-773/96 filed by the applicant where the OA was dismissed, seeking expunction of adverse remarks and transfer where this Tribunal has observed that the transfer was in administrative exigencies. In his reply to this affidavit it is contended that the judgment has to be read in totality, keeping in view the overall excellent performance of the applicant.

15. Sh. K.C. Mittal by referring to the format of the confidential report for the officers of the CSS, more particularly to the instructions has highlighted the OM dated 21.9.95 with regard to the procedure to be followed while filling up the item relating to integrity. According to him due procedure has not been followed for filling up the integrity column and shifting of the remarks from one column to the other, illegal communication without following the rules and the issue of integrity and its authenticity in the circumstances of the case.

16. Shri Mittal contended that Annexure A-1 communicating remarks is only an information but not a valid communication, without putting reasonable notice. According to him putting a government servant on notice and fair hearing in the form of representation where the decision of the Government ensue civil consequences and even in the absence of any rules, principles of natural justice would hold the field. By placing reliance on a decision of the Apex Court in Suresh Koshy George v. University of Kerala and others, AIR 1969 SC 198 it is stated that principles of natural justice are also extended and applied to an administrative action as well. As the respondents have deprived the applicant a reasonable opportunity, their action cannot be countenanced. As the CR was not considered and finalised the communication cannot be treated as a notice or communication. By referring to OM dated 31.7.78 it is stated that the communication pertains to only integrity and as per the guidelines ibid as there is no provision for representation against integrity, opportunity at later stage of communication of the ACR is to be accorded. By referring to the decision of the Apex Court in Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851 with regard to fair hearing it is contended that it postulates that it can be fair without the rules of evidence or forms of trial. It cannot be fair if apprising the affected and appraising the representations is absent.

17. Shri Mittal relied upon the following decisions to contend that no enquiry was made by the reporting officer to enquire into the then circular which

ix) State of U.P. v. Yamuna Shanker Misra & Anr., JT 1997 (4) SC 1.

x) Madan Mohan Choudhary v. The State of Bihar and ORs., JT 1999 (1) SC 459.

xi) M.S. Bindra v. Union of India and Ors., JT 1998 (6) SC 34.

18. In nut-shell applicant's counsel contended that whatever has been communicated is actuated with bias and malafide of the respondent No.4 and the communication is not a valid communication under the guidelines being mandatory in nature as deprived the applicant an opportunity to effectively defend and represent against it. As such taking into consideration the aforesaid remarks in the selection would not be legally sustainable.

19. Respondents' counsel Shri K.R. Sachdeva denied the contentions and stated that the eligibility criteria for empanelment to the post of Additional Secretary is contained in the Central Staff Scheme, which requires 7 years residency in the post of Joint Secretary, suitability test and 20 years of Group 'A' Service. Panel is drawn through the process of strict selection and evaluation of qualities. The same is not a process of selection for promotion. ACRs upto the previous years in which Special Committee of Secretaries meets for preparing suitability list are to be considered. Applicant has not represented against the adverse remarks communicated by respondent No.4. Representation to that effect was considered by the respondents and as his integrity has not

been certified in the ACR from 1.4.99 to 20.9.2000 as he has drawn transport allowance of Rs.800/- per month and simultaneously used the staff care. The aforesaid allegation was admitted by the applicant as he has not challenged the recoveries being effected from the applicant. The contention that the representation lay only against the adverse remarks communicated by the DOPT being the cadre controlling authority is not supported by any rule or instruction. Applicant despite opportunity has not represented, has no valid claim. It is stated that for empanelment to the post of Additional Secretary panels are not vacancy related and are to be drawn as far as possible on annual basis. Applicant was considered as per para 14 of the Central Staff Scheme. The panel is to be approved by the ACC on the basis of proposal submitted by the Cabinet Secretary, who is assisted by Special Committee of Secretaries. In fact panel was drawn in 1999 but his name was not included in the panel. However, no panel was drawn in 2000. As the ACR recorded by the Acting Chairman AAIFR was final and his competent to record the same does not suffer from any infirmity.

20. Shri K.R. Sachdeva contended that on receipt of the ACR of the applicant it was found that the same was not filled up in accordance with the OM dated 20.5.72 the same was returned to the reporting officer, R-4, to fill up the integrity column in accordance with the instructions. As the fact of recovery of drawl of conveyance allowance and it was informed that the column has been left blank and remarks have been shifted to the general assessment R-4 returned the ACR by stating that an entry has been made in the integrity column and

communication has been sent to the applicant. As per instructions if suspicion regarding integrity is confirmed this fact can be recorded and duly intimated to the Government servant and suspicion was confirmed and recovery was started. As no representation was filed the remarks stood confirmed. It is stated that Sh. Dayal was the Acting Chairman and was competent to write the ACR of the applicant. According to Shri Sachdeva there is no provision for communicating downgrading ACR of the officer concerned.

21. Shri Sachdeva further contended that even a Member is to work as a Chairman of AAIFR under Section 5 (6) of the SIC Act, 1985. As per Rule 3 (2) (i) of CCS (Conduct) Rules Government servant holding supervisory post shall take all possible steps to ensure integrity of his subordinate. Acting Chairman AAIFR has acted as per law within the jurisdiction. Placing reliance on the following decisions it is stated that the Tribunal cannot act as an appellate authority over the ACR of the applicant and as no representation was made against the ACR the OA is pre-mature and is barred under Section 20 of the Administrative Tribunals Act, 1985:

i) R.L. Butail v. Union of India, 1970 SLR SC 926.

ii) S.S.S. Venkatarao v. State of Orissa, 1975 AISLJ HC 266.

iii) Union of India v. M.E. Reddy, AIR 1980 SC 563.

iv) State of Haryana v. P.C. Wadhwa, AIR 1987 SC 1201.

22. Respondent No.4 is represented through Shri Madhav Panikar contended that in earlier OA-773/96 it has been recorded by the Tribunal in the case of the applicant that due to suspicion with regard to the integrity he has been shifted out from the sensitive post to Secretary AAIFR. He further stated that in the capacity of Acting Chairman, AAIFR ACR of the applicant was written and communicated to him by R-4. The allegation of malice and malafide alleged against him are absolutely baseless and are not substantiated. The same are specifically denied. He also alleges lack of performance on the part of the applicant. In so far as making any secret note and enquiry in the matter as the recovered has been effected upon the applicant and the same has not been challenged and as the applicant was using the staff car between residence and office yet he has given an undertaking and started getting transport allowance certainly reflects upon the lack of integrity. By referring to the grant of transport allowance and Govt. of India's letter dated 3.10.97 in the wake of recommendations of the 5th CPC it is stated that the allowance should not be admissible within a distance of one kilometre or within the campus and who are provided with the facility of Government transport.

23. We have carefully considered the rival contentions of the parties and perused the material on record. Before dealing with the issue it is expedient and relevant to reproduce the relevant guidelines on the subject of writing and communicating of ACR:

"(a) Supervisory officers should maintain a confidential diary in which instances which create suspicion about the integrity of a subordinate should be noted from time to time and action to verify the truth of such suspicions should be taken expeditiously by making confidential enquiries departmentally or by referring the matter to the Special Police Establishment. At the time of recording the annual Confidential report, this diary should be consulted and the material in it utilized for filling the column about integrity. If the column is not filled on account of the unconfirmed nature of suspicions, further action should be taken in accordance with the following sub-paragraphs.

(b) The column pertaining to integrity in the character roll should be left blank and a separate secret note about the doubts and suspicions regarding the officer's integrity should be recorded simultaneously and followed up.

(c) A copy of the secret note should be sent together with the character roll to the next superior officer who should ensure that the follow up action is taken with due expedition.

(d) If, as a result of the follow up action, an officer is exonerated, his integrity should be certified and an entry made in the character roll. If suspicions regarding his integrity are confirmed, this fact can also be recorded and duly communicated to the officer concerned...."

(CS OM NO.51/572-Estt.(A), dated the 20th May, 1972 para 5).

The instructions contained in DOP&T's O.M. No.51572-Estt.(A) dated 20.05.1972 read as under:

"The authority having the custody of the Annual Confidential Report should ensure that Confidential Reports duly completed are received in time. After their receipt, they should be scrutinised to see whether there are any adverse remarks to be communicated to the Government servants concerned. If so, such reports will be sent back to the officer concerned for completing action in accordance with Paragraph 4.5 below.

4.5 All adverse remarks in the Confidential Reports of the Government servants should normally be communicated by the Reviewing Officer or by the

Reporting Officer in case there is no Reviewing Officer. This should be done as far as possible within one month of the completion of the report. The communication should be in writing and a record of such communication should be kept in the Confidential Report dossier of the Government servant concerned."

"Representations against adverse remarks:- Only one representation against adverse remarks (including reference to 'warning' or communication of displeasure of the Government or 'reprimand' which are recorded in the confidential report of the government servant) should be allowed within one month of their communication. While communicating the adverse remarks to the Government servant concerned, the time-limit should be brought to his notice. However, the competent authority may, in its discretion, entertain a representation made beyond this time if there is satisfactory explanation for the delay.

(DP&AR O.M. NO.21011.1.77-Estt. Dated 30.1.78 and O.M. No.51/14/60-Estt.(A) dated 31.10.61.)"

As per format of Confidential Report for officers of the Central Secretary issued by the DOPT and the instructions contained therein the following procedure has been held to be followed:

"The following procedure should be followed in filling up the item relating to integrity:

(i) if the officer's integrity is beyond doubt, it may be so stated.

(a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report to the next superior officer who will ensure that the follow-up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he has not watched the officer's work for sufficient time to form a definite judgement or that he has heard nothing against the officer, as the case may be.

(b) If, as a result of the follow-up action the doubts or suspicions are cleared the officer's integrity should be certified and an entry made accordingly in the Confidential Report.

(c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.

(d) If as a result of the follow up action, the doubts or suspicions are neither cleared nor confirmed the officer's conduct should be

watched for a further period and thereafter action taken as indicated at (b) and (c) above."

(Ministry of Home Affairs O.M.
No.51484-Estt.(a), dated 21-6-1965).

24. In so far as competence of respondent No.4 to write the ACR of the applicant is concerned, it is not disputed that after retirement of Sh. Pillai applicant has taken over as Acting Chairman of AAIFR. As per Section 6 (5) of the SIC Act in the event of occurrence of a vacancy in the office of the Chairman by his resignation or otherwise, such one of the Members as the Central Government may, by notification, authorize in this behalf shall act as the Chairman, appointed in accordance with the provisions of this Act to full such vacancy, enters upon his office. Government, has by notification appointed R-4 as the Acting Chairman and the contention that he should not be other than a judicial officer and having failed to fulfil the qualification of becoming a Chairman he cannot be deputed, as such the ACR written by such an officer is without competence, cannot be countenanced. As the applicant was the only member in AAIFR and was authorized under Section 6 (5) of the Act which does not prescribe any qualification for the members to be authorized as Chairman to the vacancy has taken over and the period of report w.e.f. 1.4.99 to 29.2.2000 was when R-4 was Acting Chairman being the controlling authority he was competent to write the ACR of the applicant. This ground of the applicant does not hold any water and is rejected.

25. As regards the malafides alleges against R-4 we have carefully considered the same and also evaluated the instances quoted by the applicant to substantiate the plea of malice or malafide. We find that merely because in

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some incident R-4 and his Driver and one of the staff have not been promoted on the basis of the note written by the applicant would not be sufficient to establish the malafide. Respondent No.4 vehemently and specifically denied the allegation of malafide and we also find that the attempt of the applicant to allege malafide against the R-4 cannot be countenanced without any definite material conclusively pointing out towards the personal malafide of R-4. R-4 has recorded the ACR on the basis of the facts existing. As the applicant has drawn transport allowance of Rs.800/- per month simultaneously using the official staff car despite undertaking and Government orders dated 3.10.97 the same does not throw any iota of malice of R-4 towards applicant. However, we are not expressing any opinion as to the correctness of the remarks entered in the ACR of the applicant by R-4.

26. In so far as communication of the remarks is concerned, it is not disputed that initially the column of integrity was left blank and the remarks have been shifted to the general assessment. But later on the advice of the DOPT the remarks have been entered regarding conveyance allowance and recovery and were communicated to the applicant. As per the guidelines of filling up the integrity column it is mandated upon the reporting officer to leave the column pertaining to integrity as blank and to prepare a separate secret note. This note should be sent to the next superior officer and if as a result of follow up action if suspicion regarding integrity is confirmed the same is to be recorded and to be communicated. These instructions also reflect in the ACR form of the CCS Officer. More so, when the adverse remarks are conveyed

within one month of writing the ACR a stipulation is to be inserted in the adverse ACR regarding the time limit to prefer a representation against those remarks. Applicant has requested for communication of the remarks in an appropriate manner in accordance with the rules. As the DOPT has also instructed the reporting officer to follow the procedure filling up the integrity column but despite this the secret note as well as the follow up action was not followed by the reporting officer. These instructions are to be followed and no other rule or instruction have been brought forward by the respondents which could have held the field. Letter dated 11.10.2000 indicating that originally the integrity column has been left blank but not follow up action was taken up against the applicant. Though subsequently reasons have been recorded, as no follow up action like enquiry departmentally or through the SPE was held in view of the decision of the Apex Court in S. Venkatrarao's case (supra) an adverse report in the confidential roll can be considered to deny promotion unless it is communicated to the person concerned as an opportunity to exercise his right of representation. Maintenance of CR is not governed by any statutory rules framed under Article 309 of the Constitution of India but is to be governed by the circulars and instructions issued by the Government from time to time which are applicable to the case of the applicant and are to be followed in entirety. It is more important when the earlier ACRs rate the officer has outstanding and a down grading has been made which necessitates an opportunity to represent as held by the Apex Court in Apex Court in U.P. Jal Nigam's case (supra). Applicant who has during the 30 years of tenure of service has either been awarded "Outstanding" or "Very

Good', denial of communication of the remarks with an opportunity to represent certainly mars his future prospects.

27. Even if it is presumed that the remarks are validly entered in the ACR, yet the OM dated 13.10.61 mandates that while communicating the adverse remarks a time limit should be brought to the notice so that a fair hearing should be accorded to the concerned officer for representing against the adverse remarks. No such stipulation has been incorporated in the impugned ACR which certainly deprives the applicant of a reasonable opportunity to represent and in this view of the matter as the ACR is not in accordance with the rules and instructions the same cannot be treated as a valid communication, as held by the Apex Court in Yamuna Shanker Misra's case (supra) that while recording adverse remarks in the ACR the report should be objective, fair and give accurate statement of facts without any iota of bias, arbitrariness and unbridled discretionary power.

28. In P.K. Shastri's case (supra) it is imperative upon the reporting officer to first come to the conclusion that the fact situation makes imperative to make remarks and the decision should be taken objectively.

29. In S. Ramachandra Raju's case (supra) it has been held that writing of confidential remarks should be objective and constructive and communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service.

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30. In Bindra's case (supra) the Apex Court while dealing with the case of remarks pertaining to the integrity has come to the conclusion that while evaluating the material the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "Nemo Firut Repente Turpissimus" (no one becomes dishonest all on a sudden is not unexceptional but still it is a salutary guidelines to judge human conduct particularly in the field of Administrative Law.

31. If one has regard to the above rulings the irresistible conclusion which can be derived is as the instructions require a stipulation and as the adverse ACR affects adversely the advancement of a Government servant in his career entailing civil consequences even if there exists no rule to the effect or the instructions are only directory, yet it is incumbent upon the Government i.e., respondents to follow the principles of natural justice which as a basic essence, inter alia requires the foremost compliance of fair hearing, including knowledge of acquisition and a right of representation to put up one's case. As the applicant has been deprived of this right and the communication of adverse remarks is not in accordance with the rules depriving an opportunity to the applicant to represent against these remarks certainly the action of the respondents is not in consonance with the principles of natural justice and contrary to the guidelines on the subject. Such a communication cannot be allowed to stand. Apart from it, the authorities have failed to follow the proper procedure for filling up the integrity column which has a great importance in the service tenure of a

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Government servant and for his further progression. Apart from it, though not expressing any opinion about the remarks entered upon and taking a view of a reasonable prudent man and having regard to the circumstances leading to withdrawal of transport allowance and the fact that no mala fide was involved and the follow up action has not been followed by the respondents by holding an enquiry or referring it to SPE, we are constrained to observe that the allegations do not draw suspicions over the integrity of the applicant.

32. In the result and having regard to the reasons recorded above the OA is disposed of declaring that letter dated 11.10.2000 does not amount to communication of adverse remarks in accordance with law and also declaring that remarks mentioned vide letter dated 11.10.2000 cannot be used against the applicant while considering his claim for empanelment for the post of Additional Secretary for the years 1998-1999 and 1999-2000. In case these remarks have already been considered for empanelment for the post of Additional Secretary for these years, respondents shall review applicant's claim for empanelment for the post of Additional Secretary for these years ignoring the aforestated remarks contained in letter dated 11.10.2000 and in case the applicant's case is empanelled for the post of Additional Secretary, he shall be entitled to consequential benefits in accordance with law. No costs.

S. Raju
(Shanker Raju)
Member (J)

"San."

V.K. Majotra
(V.K. Majotra)
Member (A)