

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 355 of 1998 decided on 27.11.1998.

Name of Applicant : Kishan Lal Manhas

(By - Self)

Versus

Name of respondent/s Union of India & others.

By Advocate : Shri Ajay Siwach

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter. - Yes.
2. Whether to be circulated to the other Benches of the Tribunal. - No

N. Sahu
(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.355 of 1998.

New Delhi, this the 27th day of November, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)

Kishan Lal Manhas, IFS, Conservator of
Forests, Social Forestry Circle,
Rohtak

-APPLICANT

(By - Self)

Versus

1. U.O.I. through Secretary, Department
of Env't. Forests and Wild Life,
Paryavaran Bhawan, CGO Complex, New
Delhi-3.

2. State of Haryana, through the Secty.
Forests, Department, Haryana,
Chandigarh.

3. Smt. Veena Eagleton, IAS, Commissioner
& Secty. to Govt. Haryana, H.No.15,
Sec-7, Chandigarh.

4. Sh. Virender Nath, IAS, Financial
Commissioner & Secretary to Govt.
Haryana, H.No.1023, Sector-24,
Chandigarh.

5. Sh. S.K.Maheshwari, IAS, Commissioner &
Secretary, to Govt. Haryana, Forests
Department, Chandigarh.

-RESPONDENTS

(By Advocate Shri Ajay Siwach).

O R D E R

By Mr. N.Sahu, Member(Admnv)

The prayer in this Original Application is for quashing the adverse remarks given in the Annual Confidential Reports (in short 'ACR') of the applicant pertaining to the years 1991-92 to 1994-95 and for upgrading the above reports in the light of his performance during the period.

2. The applicant was recruited to the Indian Forest Service (in short 'IFS') with effect from 1.3.1976 and allocated to Haryana cadre with 1976 as

the year of allotment. The impugned adverse remarks are challenged on the ground that they violate Rules 5, 6, 6(A), 8 and 10 of the All India Services (Confidential Rolls) Rules, 1970 and the relevant guidelines issued from time to time by the Government of India on the subject of writing and reviewing of the confidential reports, as well as the procedure in dealing with the adverse entries. The ACRs are impugned on the ground that they have been reviewed and accepted belatedly after 31.10.1995 by the competent authority and they were communicated to him on 19.4.1996. For the year 1991-92 the delay is about 4 years; and for the years 1992-93 to 1994-95 the delay is 3 years, 2 years and 1 year respectively. Within a week of receiving the adverse communication the applicant sent his representation dated 25.4.1996 but this was not disposed of after a period of nearly 1-1/2 years. The second ground taken by the applicant is that the adverse remarks are not based on any material but their writing was inspired by malice and extraneous considerations. Thirdly, the remarks themselves show that they are unrelated to the performance of the applicant and finally the grading given is inconsistent with the tenor of the main remarks in the body of the ACRs. It is further stated that respondents 3 and 4, reviewing authorities from April 91 to December 92, and December 93 to September 94 respectively relinquished the charge of the post of Secretary, Forest, Haryana in December 1992 and September, 1994

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respectively. These functionaries were not competent to review and accept the applicant's ACRs of the years 1991-92 to 1994-95 after 31.10.1995.

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3. The adverse remarks communicated to the applicant are as under -

ACR for 1991-92

"You are a frustrated officer and have been involved in lot of litigation and representations."

ACR for 1992-93

"During the period under report you were involved in litigation regarding your inter-se seniority as a result of which you were not able to get along with other officers as a team and when posted as OSD, Land Use Board went into litigation against your posting."

ACR for 1993-94

"You need to devote more time to work rather than engaging in unnecessary correspondence with senior officers Grading Average".

ACR for 1994-95

"You have been overall assessed as a good officer for the year 1994-95 but the grading of the Annual Confidential report has been assessed as 'average'."

4. By an order of this Court in this OA dated 20.2.1998 a direction was given to dispose of the pending representations. Thereafter the representations were disposed of and the OA was revived.

5. The applicant has stated that the adverse remarks have absolutely no foundation as the main allegation was that the applicant litigated in the Court. The applicant has explained in a tabulated form the summary of court cases which he filed.

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There are 9 such cases. Since this is the main grievance of the respondents against the applicant, I shall do no better than extract the exhibit in this order -

Sr. No. : 1
Case No. : OA No.2311/89(By the applicant)
Name of Court : Hon'ble C.A.T.
Relief Sought : Quashing of disc. Proceedings/charge memo dated 18/6/87 and consequential benefits
Date of Order Passed : 2/8/1991
Gist of the Order : The Tribunal quashed the charge memo and allowed all the consequential benefits to the applicant.

Sr. No. : 2
Case No. : CP No.288/91 in OA No.2311/89 (By the applicant)
Name of Court : Hon'ble C.A.T.
Relief Sought : Action against the contemner (impleaded as Resdt. No.3 in the present OA) for deliberately disobeying the hon'ble tribunal's order.
Date of Order Passed : 31/3/1992
Gist of the Order : Resdt. contemner was found prima facie guilty of the contempt of the hon'ble tribunal and directed the resdt to appear personally before it on 21/4/1992 for further action under the Contempt of Courts Act.

Sr. No. : 3
Case No. : OA No.872/Hr92(By the applicant)
Name of Court : Hon'ble C.A.T.
Relief Sought : Quashing of transfer (from Gurgaon to Chandigarh on Special Duty) order dated 15/7/92 issued by resdt. No.3.
Date of Order Passed : 26/8/92
Gist of the Order : Hon'ble Tribunal quashed the transfer order.

Sr. No. : 4
Case No. : SLP No.5967/92 (By resdt.state)
Name of Court : Hon'ble Supreme Court
Relief Sought : Quashing of the order dated 2/8/91 of the hon'ble Tribunal.
Date of Order Passed : 8/10/92
Gist of the Order : The Apex Court set aside the Tribunal's order and directed the resdt. State to conclude the proceedings within a specific time frame and remitted the case to Tribunal for final adjudication uninfluenced from its observations, giving liberty to applicant to amend the OA; if the order of the resdt.State is adverse.

Sr. No. : 5
Case No. : CP No.50/93 in SLP No.5967/92
(By the applicant)
Name of Court : Hon'ble Supreme Court
Relief Sought : Action against the
contemner (impleaded as resdt. No.3 in the
present OA)
Date of Order Passed : 16/8/93
Gist of the Order : The Apex Court disposed
of the CP directing resdt. to despatch the
necessary orders in the matter of the disc.
Proceedings to the applicant within fifteen
days and giving liberty to the applicant to
revive the contempt proceedings in case the
said orders are not despatched within the
said period.

Sr. No. : 6
Case No. : CP No.288/91.
Name of Court : Hon'ble C.A.T.
Relief Sought : Action against the
contemner (impleaded as resdt. No.3 in the
present OA)
Date of Order Passed : 24/5/93
Gist of the Order : The CP was dismissed as
withdrawn.

Sr. No. : 7
Case No. : MP No.3253/93 in OA No.2311/89
(By the applicant)
Name of Court : Hon'ble C.A.T.
Relief Sought : Direction to the resdt.
State for holding a review D.P.C.
Date of Order Passed : 27/10/93
Gist of the Order : Hon'ble Tribunal
directed to hold a meeting of D.P.C. within
two weeks and consider the case of the
applicant's promotion on the basis of his
record as it existed on or before 18/10/91
and pass necessary orders within three weeks
thereafter.

Sr. No. : 8
Case No. : MP No.3449/93 (By the applicant)
Name of Court : Hon'ble C.A.T.
Relief Sought : Permission for necessary
amendment in OA 2311/89 for release of
consequential benefits on account of
applicant's retrospective promotion.
Date of Order Passed : 8/2/94
Gist of the Order : Hon'ble Tribunal
directed the resdt. State to make necessary
payment of arrears within 4 months to the
applicant and disposed of OA 2311/89
finally.

Sr. No. : 9
Case No. : CP No.249/94 in OA No.2311/89
(By the applicant)
Name of Court : Hon'ble C.A.T.
Relief Sought : Action against the
contemner (impleaded as resdt. No.4 herein)
Date of Order Passed : 10/94
Gist of the Order : CP was dismissed as

withdrawn on the request of the applicant as the resdt. had released the arrears to him on 3/10/94 after receipt of notice in the CP from the Tribunal.

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The details show that the applicant went to the Court to secure justice and relief either against disciplinary proceedings or against transfer orders or for securing consequential benefits on account of retrospective promotion and on many issues the Court upheld the applicant's claim. I am very clear in my mind that approaching the Court to secure justice cannot be subject matter of adverse entries. The respondents have not shown as to how pursuing the litigation in the Court has adversely affected the functioning of the applicant and made him less efficient or effective in the discharge of his duties. Government as an employer cannot discourage a Government servant from exercising his constitutional rights. That the applicant invoked the writ jurisdiction of this Tribunal to vindicate his rights and protect his interests cannot be the subject matter of an adverse entry because the respondents did not show that the litigation was on frivolous grounds or was motivated.

6. The applicant stated that there was a proposal for nominating IFS officers for empanelment to posts under Central Government. For this purpose they sought the ACRs of the officers. By a telegram dated 6.11.1995 the ACRs of the applicant as well as another officer were called for. It is only this telegram which prompted the respondents to process the ACRs of the applicant finally for the years

1991-92 onwards. The ACRs were sent with the uncommunicated adverse remarks ^{representations against} which were only disposed of by the intervention of this Court in 1998. His grievance is that he was not considered for empanelment with the uncommunicated adverse remarks.

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7. Under Rule 5 *ibid* the ACR is to be written within two months from the close of the relevant year. Rule 6 *ibid* says that the ACR is to be reviewed within one month of its being written. Rule 6(A) *ibid* lays down that it shall be countersigned by the accepting authority within one month of its review. Rule 8 *ibid* states that the adverse remarks are to be communicated to the concerned official within two months of the receipt of the ACR. Rule 9 *ibid* lays a period of 45 days for sending a representation and Rule 10 *ibid* mandates that the Government shall consider the representation made under Rule 9 by a Member of the Service and pass orders within three months of the date of submission of the representation. The applicant contends that each of the above rules has been violated.

8. The next ground taken by the applicant is that he was never issued any advice, counseling or warning orally or in writing by the concerned authorities during the course of the working period for which the ACRs relate. They have never communicated his shortcomings or urged him to improve his performance. He states that the achievement highlighted by him in his self appraisal report was

not taken into account in writing the ACRs. These are broadly ^{Inter alia} perspective plan relating to State Forestry Action plan for a period of two decades plus documentary films under the title of "Greening of Aravali Hills" and "Desert Control" : the first one was appreciated by the Chief Secretary and Documentaries received commendation by the Union Minister for Environment. The applicant had exposed certain "scandals" in the matter of Forestry in Hissar District and Kalesar Forests. His enquiry reports relating to the illicit felling of Khair trees in Kalesar Forest and inflated claims of expenditure causing financial loss to the government prompted the Government to conduct further enquiry.

9. The point raised by the applicant is that there is no evidence of appreciation of his achievements in the ACRs. He urges the Court to go through his ACRs. He states that he had undergone training in May and June, 1994. Under the instructions of the DOPT dated 30.1.1991 the training period has to be excluded and if so the reporting authority or the reviewing authority did not have the jurisdiction to write his ACR for the year 1994-95. Finally, he states that the reviewing officer's Secretary's pay is less than the pay of the Principal Chief Conservator of Forests; who has initiated his report. In fact with 17 years of service the applicant should have been by now ^a ~~the~~ Joint Secretary and the Principal Chief Conservator of Forests is of the status of Additional Secretary. The Secretary, Forests of the Government of Haryana is only of the

rank of Joint Secretary. Under the instructions the reporting officer and the reviewing officer should be more senior in rank ^{in successive progression} than the officer reported upon.

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10. After notice, the respondents contend that the Rules 5, 6, 6(A), 8 and 10 of the AIS (CR) Rules relating to the writing of the ACRs are only directory in nature. Bias was denied in writing the adverse remarks. It is stated that the adverse remarks were conveyed to the applicant by the letter dated 19.4.1996 and the representations were received on 25.4.1996. They were rejected by the letters dated 15.12.1997 and 3.4.1998 and yet they contend the delay has not adversely affected the applicant. The learned counsel for the respondents stated that the Court cannot act as an appellate authority and sit in judgment over the remarks of the officers who are entrusted with the job of examining the work of the applicant. There is no substance or basis in the allegation of bias. The claim of financial loss in the forestation programme in Hisar District is highly exaggerated as the subsequent inspection by a team of officers have shown. The allegation of bias cannot be countenanced without proper material and it is for the applicant to prove the said bias. He has not discharged the onus in this regard. The learned counsel cited the decisions of the Hon'ble Supreme Court in State of Haryana Vs. P.C. Wadhwa, AIR 1987 SC 1201, Swatantar Singh Vs. State of Haryana and others (1997) 4 SCC 14, and Bharat Ram Meena Vs. Rajasthan High Court at Jodhpur (1997) 3 SCC 233.

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11. The applicant on the other hand relied on the following decisions - (1) D. Padmanabhan Vs. Director of Postal Services, Comibatore and others, (1990) 12 ATC 302 (Mad) wherein it is held that the Government servant has a right to be furnished with specific instances basing on which the adverse remarks are recorded. (2) Ashok Kumar Vs. Union of India, 1989 (4) SLJ (CAT) 209 = (1989) 13 ATC 107 in which it is held that if there is a specific allegation of prejudice and personal bias on the part of the reviewing officer in the representation it was incumbent on the part of the Government to scrutinise and examine the points raised in the representation in an objective manner and to pass a reasoned order which may create a feeling of justice having been done to the aggrieved Government servant. (3) Brij Mohan Singh Chopra Vs. State of Punjab, AIR 1987 SC 948 wherein it is held that adverse entries cannot be acted upon unless communicated and representations considered. (5) G. Nanchil Kumaran Vs. Special commissioner and Secretary to Government, (1990) 12 ATC 308 (Mad) wherein it is stated that remarks in the nature of instructions or advice are to be communicated orally or in writing separately and not through entries in the ACR. (6) J. N. Bhatia Vs. Union of India, 1990 (1) ATJ 253 wherein it was held that the respondents should bring before the Court material in support of the adverse remarks. According to the instructions of the Government of India, a memo of service is required to be maintained for each reporting officer wherein all instances of good as well as bad work coming to his notice are to

be promptly recorded therein. In the absence of such a basis the adverse remarks are stated to lose credibility. With regard to the delay in preparing his ACRs the applicant states that the delay was avoidable and the State Government did not act promptly. As the Government failed to do its duties in time and as this caused prejudice to the officer it is a case of malice in law. He relied on S.D. Raiguru Vs. Union of India, (1990) 13 ATC 656 (Cuttack). The other decisions cited by him do not lay down a new point and, therefore, need not be discussed.

12. I have personally verified the ACRs of the applicant. In the year 1991-92 the reporting officer has agreed with the self appraisal report and has given either "good" or "very good" reports and also remarks of commendation but the reviewing officer agreed with the reporting officer on his assessment but stated that the applicant has been involved in litigation and representation. In 1992-93 the reporting officer has given very encouraging positive remarks about his achievements and the reviewing officer agreed with his assessment but stated that the applicant was involved in litigation regarding inter se seniority as a result of which he was not able to get along with other officer as a team. In 1993-94 one reviewing officer Ms Deepa Jain Singh has totally endorsed the report of the reporting officer. The other reviewing officer Shri Virendra Nath had recorded and communicated the impugned adverse remarks for the year. In the year 1994-95 the

reporting officer agreed with the achievements rated him "very good" in knowledge of sphere of work, communication skills, relations with the public; attitude towards Scheduled Castes, planning ability and state of health and gave him overall rating as "good". But the first reviewing officer made a positive comment that "the applicant is a good officer who takes interest in his work." It is the second reviewing officer who has down graded it to "Average".

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13. In the case of M.A. Rajasekhar Vs. State of Karnataka, (1996) 10 SCC 369 the following proposition has been laid down -

"The object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in various categories as outstanding, very good, good, satisfactory and average, etc. The competent authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent.

In State Bank of India Vs. Kashinath Kher, (1996) 8 SCC 762 = 1996 SCC (L&S) 1117 the following principles are laid down -

The object of writing the confidential report is two fold, 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. 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 demoralized which would be deleterious to

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the efficacy and efficiency of public service, they should be written by a superior officer of high rank.

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In Sukhdeo Vs. Commissioner, Amaravati

Division, (1996) 5 SCC 103 : 1996 SCC (L&S) 1141 the

following law is laid down -

"The controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in writing for improvement and yet was not availed of so that it would form part of the record. The power exercised by the controlling officer is per se illegal.

In U. P. Jal Nigam Vs. Prabhat Chandra Jain,

(1996)2 SCC 363: 1996 SCC (L&S) 519 their Lordships

held that for down grading the ACR, the authority has to record reasons and inform the applicant in the form of advice.

14. In M.A. Rajasekhar (supra) their Lordships emphasised that specific instances of shortcomings must be given in certain circumstances. The integrity of the official was not doubted in this case. His work was found to be satisfactory in all respects. Even so the adverse remark was; "does not act dispassionately when faced with dilemma". Their Lordships held that in such circumstances specific instances must be quoted in which he did not perform the duties satisfactorily, so that he would have an opportunity to correct himself of the mistake. In that case no opportunity was given. Their Lordships

stated that the superior authority is obliged to guide the subordinate by pointing out his deficiencies and since this exercise has not been done, the said adverse remark was stated to be not consistent with law.

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15. Finally, in Kashinath Kher's case (supra) their Lordships laid down that the character roll should be written by a superior officer and reviewed by a still higher officer. Reporting and preparing of character rolls by officers with the same rank as that of the officer whose character roll was reported upon was held to be unfair and violative of the principles of natural justice.

16. I have carefully considered the submissions. I am unable to agree with the learned counsel for the respondents that the time limit prescribed is directory and not mandatory. In the Central Services there are no statutory rules for writing confidential reports. The report writing is in the form of instructions given by the Department of Personnel & Training from time to time. But, the applicant is governed by statutory rules passed by the Parliament under Article 309 of the Constitution of India. These rules are binding and the officers who are guilty for infraction of these rules must explain their delay. When rule says that a particular thing has to be done in a particular manner, it has to be accomplished only in that manner. If it is not done so, it is for the State Government to take adverse notice of the officers who have not complied with the

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rules. There is a purpose as to why a time limit is prescribed by the rule making authority. The supervisory officers have a fresh memory of the performance of the official when they make the assessment of the officer. The positive and the negative aspects of the applicant's personality and achievements are green in their memory and, therefore, it is made incumbent that they should write the ACR within a specific time schedule. Secondly, postings, transfers, promotions, deputations depend upon this assessment. An officer who is rated very high is given a very responsible and sensitive job and an officer who is graded average is made incharge of a routine job. People are sent abroad for training, for deputation posts, for additional responsibilities entirely on the basis of this reporting. The delay defeats the very purpose of writing the ACRs, as it happened in the applicant's case. There is a delay of four years for the ACR for the year 1991-92 and when he was to be considered for empanelment in the central deputation his record was not complete and the officers have to scratch their memory to review and write the report of the applicant. This certainly acted against him and the very fact of delay has an inbuilt prejudice against the applicant. I shall only extract the comments of one of the reviewing officers dated 23.4.1997 on the applicant's representation against the ACRs -

"I have gone through the representation of Shri. K.L. Manhas. The output of this officer during the years under report i.e. 1991-92 and 1992-93 was not upto the mark.

I do not have the record before me but you may check from office files he indulged in litigations and unnecessary correspondence against seniors that he made during this period for his personal reasons. As far as I recollect he lost a case in High Court, therefore, he filed an SLP which was also dismissed. This was not the only case which he has lost. I stand by my remarks which recorded in his ACRs. My remarks were also endorsed by the Accepting Authority which give weightage to them.

17. It is easy to see that there is no logical or causal or organic relationship of impugned adverse remarks with the functional achievements of the officer reported upon. If somebody files a writ to defend his right and that is contested, how does it adversely affect his work? No shortcoming is pointed out in his work. Targets are set and targets are achieved. It is not a case the applicant had not achieved the targets or showed professional incompetence or lacked in discipline or violated any rules or procedure or had flouted norms. Simply because he had gone to a court of law cannot be treated as an adverse remark unless it is shown that he neglected his work or he pursued litigation at the expense of work. In one year it is mentioned that the applicant had fought a seniority dispute and, therefore, could not carry on with proper team spirit. The respondents cannot shut out a citizen from claiming his just dues under law either when it concerns his promotion, or seniority, or in defence of other rights. That per se cannot come in the way of judging the applicant's performance if otherwise

he has shown professional competence, achieved the targets, maintained discipline and worked in public interest.

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18. I am very clear in my mind that a Court cannot substitute the competent authority and pass its own judgment or impose its own grading. Here is an instance where the first reviewing officer agreed with the reporting officer and the second reviewing officer who only saw his work for a short period in that financial year had written the adverse remarks (i) belatedly, (ii) without instances, (iii) without justification, (iv) without giving him a prior warning to improve himself, and (v) without showing as to how the applicant who litigates has put the Government or the interest of the public to a disadvantage by pursuing litigation.

19. For the above reasons, the adverse remarks for all the four years including the average grading are hereby directed to be expunged. The present Secretary, Forest Department, Haryana, Chandigarh, respondent no.2 shall take an over all view of the situation of the applicant's performance and as this is a matter which is pretty old, consult the then Principal Chief Conservator of Forests if he is available or the present Principal Chief Conservator of Forests and substitute what in his honest opinion is a proper grading of the applicant within a period of 12 weeks from the date of receipt of a copy of

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this order. It is necessary to reiterate that in doing this exercise, the guidelines of the Hon'ble Supreme Court extracted above shall be kept in view.

20. I have not given any finding on the ground that the reporting officer and the reviewing officer should be superior in rank to the officer reported upon. The applicant claims that the Secretary to the Government of Haryana is only of the rank of Joint Secretary to Govt. of India, whereas the Principal Chief Conservator of Forests draws higher salary than the Secretary. The learned counsel for the respondents rightly pointed out that these aspects are notified by the Government as to who will write whose ACR and who will review and since this notification has not been challenged, it will be inappropriate on my part to adjudicate on this ground. I will only bring to the notice of respondent no.2 to consult his Chief Secretary, particularly in view of the observations of the Hon'ble Supreme Court which to a certain extent supports the applicant's claim. This is only as a suggestion for consideration of the respondents.

21. Before I close, respondent no.2 shall ensure that the time limits prescribed in the rules are statutory and are binding and they deserve to be enforced. As the DOPT has repeatedly observed delays in the writing ACRs are detrimental to the career and prospects of an officer.

22. In the result the O.A. is disposed of as
under :-

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(i) Prayer 8(i)(a) is allowed.

(ii) As regards Prayer 8(i)(b), the grading shall be done by respondent no.2

(iii) Prayer 8(i) (c) is rejected.

(iv) In the circumstances of the case. no costs are awarded.



(N. Sahu)
Member(Admnv)

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