

Reasoned

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00028/2020

Jabalpur, this Tuesday, the 10th day of November, 2020

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER



Jai Prakash Meena S/o Shri Pukhraj Meena
Aged about 44 years
Dy. Chief Electrical and Telecom Engineer
Project Kota (Rajasthan) R/o Qr. No.RE/V/II
Railway Officers' Colony Kota (Rajasthan)

-Applicant

(By Advocate –**Shri Manoj Sharma**)

V e r s u s

1. Union of India, Through its Secretary Ministry of Railway Rail Bhawan New Delhi 110001

2. Chairman Railway Board Rail Bhawan New Delhi 110001

3. Member (Establishment) Railway Board
Rail Bhawan New Delhi 110001

4. General Manager, West Central Railway
Opposite Indira Market Jabalpur (M.P.) 482001
(Accepting Authority)

5. Chief Signal and Telecom Engineer West Central Railway
Opposite Indira Market Jabalpur (M.P.) 482001
(Reviewing Authority)

6. Divisional Railway Manager Kota Division Kota (Rajasthan)
(Reporting Authority) **- Respondents**

(By Advocate –**Shri Y.N. Mishra**)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against the order dated 27.04.2016 (Annexure A/1-A) issued by respondents Nos.04 to 06 and order dated 16.04.2018 (Annexure A/2) passed by the respondents.



2. The applicant has sought for the following reliefs:-

“8(i) To summon the entire relevant record from the possession of respondents for its kind perusal;

8(ii) To quash & set aside the impugned APAR for the period 2014-15;

8(iii) To direct the respondent authorities to apply the letter dated 15.12.2015 & 16.04.2018 prospectively by which the benchmark for granting non-functional up-gradation (Senior Administrative Grade) and promotion to the post of Senior Administrative Grade to those APAR which have been written after issuance of letter dated 16.04.2018 & 15.12.2015 (Annexure A/2 & A/7);

8(iv) To command and direct the respondent authorities not to take the APAR for the year 2014-15 for the purpose of promotion in the next post/grade;

8(v) Grant any other relief/s which this Hon'ble Tribunal deems fit and proper;

8(vi) Award the cost of the instant lis to applicant.”



3. From the pleadings the case of the applicant is that the applicant was initially appointed as Probationer in the year 2002 under the Indian Railway Services of Signal Engineering Cadre of 2001 Batch UPSC Examination of Indian Engineering Service. Applicant got confirmed in the year 2006 and in the same year he was promoted in the Senior Time Scale. In the year 2009 applicant was promoted in the Junior Administrative Grade (Adhoc) and in the year 2013 he was confirmed in the Junior Administrative Grade. In the year 2015 applicant was promoted to the Selection Grade. Now the applicant is due for the promotion to the Senior Administrative Grade in the year 2020.

4. The performance of applicant except for the year 2014-15, all the APARs is either “Very Good” or “Outstanding” and all the APARs are beyond doubt for 7 years. The applicant got appreciation letters/award and efficiency shield for his duties, functions and



responsibility. The integrity of the applicant is beyond doubt and the same has been reflected in all his APARs since initial date of appointment. As per impugned APAR for the year 2014-15 the applicant has been graded “Good” by the reporting authority on the basis of the note given by the officer working in the Kota Division in an equivalent post and cadre to applicant. Applicant during that period was working as Senior DSTE (Signal), Kota and the person who has given the note against applicant on the basis of which the impugned APAR for the year 2014-15 has been graded by the reporting, reviewing and accepting authority is also posted as Senior DSTE (Co-ordination) Kota during that period. Copy of note dated 08.06.2015 is annexed as Annexure A/3. The reviewing authority and accepting authority has graded applicant as “Average”. As per APAR for the year 2014-15 in Part-3 Clause A it is mentioned by the reporting authority that “I Agree with the deficiency reported by DSTE and mentioned that “he was not fulfilled his role well”. In para-B of the impugned



APAR grading in all the attribute has been given by the reporting officer as either “Very Good’ or Excellent” only in Clause 2, 4, 7(iv) and 7(vi) graded as “Good”. The reporting authority has remarked and downgraded the APAR for the year 2014-15 of the applicant on the basis of the note given by the then Sr. SDTE (Co-ordination) Kota. In part-4 of the APAR in Clause A state of health is mentioned as “Fit”. Clause 2 Integrity is “Beyond Doubt”, in Clause 3 other assessment the adverse/below benchmark remark has been given by the reporting authority which is subsequently endorsed by the reviewing authority and accepting authority and again downgraded as “Average”. The applicant had made a representation before the respondent No.4 (accepting authority) on 25.01.2016. Accepting authority after considering the representation vide order dated 27.04.2016 affirmed remark and grade of applicant given by the reporting authority for the year 2014-15 as ‘Good’. The copy of representation is annexed as Annexure A/1-A and Annexure A/4. Accepting



authority while rejecting the representation again called the note and comments from the Sr. DSTE (Co-ordination). Copy of the note and comments dated 23.02.2016 along with covering letter dated 12.02.2016 is annexed as Annexure A/5. The action of respondents are challenged on the ground that the impugned order is bad in law. The action of the respondents is also being arbitrary and malafide. The applicant was given the grading outstanding for the 2013-14, 2015-16, 2016-17, 2017-18 and 2018 but for the subject year, i.e.2014-15, wherein the grading of good and adverse remarks have been entered by the respondent No.6 at the behest of the Sr. DSTE (Co) Kota without any basis. So the performance of the applicant as Good on account of violating the instructions without taken any decision on the reply to the displeasure note, without giving any reasons or without mentioning any specific instances is against the Railway guidelines for preparation and maintenance of APAR.



5. The respondents have filed the reply to the Original Application. Respondents have submitted in their reply that the respondent No.4, 5 and 6 have decided the grading of APAR of the applicant on the note given by his alleged equivalent post officer. It has been specifically submitted by the respondents that Sr. DSTE/Co. is overall incharge of S&T department of Kota division and thereby having general supervision of the applicant and he is duty bound to appraise the performance of all other officers of S&T department of Kota Division to DRM/Kota for effective supervision. In Para 8 of the reply the respondent-department has specifically submitted that the reporting authority in Part-III (1) has mentioned as under:-

“I agree with the accompanying report of Sr. DSTE/CO/Kota. He has not fulfilled his role well.”

So, it is crystal clear that the reporting officer after application of mind and assessment of performance of the applicant has given remark in APAR. In Para 11 of the reply it has been submitted by the replying respondents that as per Railway Board Circular dated 07.10.2013

(Annexure A-16 of the O.A.) reporting, reviewing and accepting officer of JAJ/SG is DRM, CHOD/PHOD & GM respectively. Meaning thereby reporting officer of the applicant is DRM, reviewing officer id CHOD/PHOD (i.e. CSTE) and accepting authority of applicant i.e. G.M. as per Annexure A-6 in the case of applicant. Hence norms are strictly followed. In Para 13 it has been submitted by the respondents that the applicant was considered for promotion to SAG/IRSSE in the panel approved on 26.02.2020. APAR for the period from 2013-14 to 2017-18 were considered for assessing the fitness of the officer who were considered in this including the applicant. The DPC after considering the case of the applicant assessed him as 'unfit' for promotion to SAG/IRSSE in the panel approved on 26.02.2020. The officers who were assessed as 'Fit' in this panel have been promoted to SAG/IRSSE vide Railway Board's Order dated 16.03.2020 subject to the outcome of the O.A. No.200/28/2020 filed by the applicant. It has been further submitted by the respondents



that the appeal against the applicant's APAR grading has been considered and decided by the competent authority and the same was communicated to applicant also.

6. We have heard the learned counsel for both the parties and have also gone through the documents attached with the pleadings.



7. From the pleadings, it is clear that the applicant's performance was 'Very Good'/'Outstanding' except for the year 2014-15 (Annexure A/1-A). The details of APAR of the applicant has been mentioned at Para 4.3 of the OA.

8. The main argument of applicant is that the reporting officer has assessed the APAR for the year 2014-15 on the basis of notes given by the officer working in the Kota Division and is the officer of the same cadre, which is not permitted under law for assessing the work by the same officer of the same cadre.

9. From the reply it is very clear that the overall in charge of S & T department of Kota Division is Sr. DSTE (Co.), who although holding the equivalent rank as to the



applicant but is much senior to the applicant and working as a coordinating S&T officer in Kota Division. So it is very much clear that the reporting officer is the equivalent officer to the applicant. Moreover as per reply of para 8 it has been submitted by the replying respondents that the reporting officer in Part-III (1) has mentioned as, I agree with the accompanying report of Sr. DSTE/Co./Kota. He has not fulfilled his role well.” It is very clear that the reporting officer has agreed that the report of the Sr. DSTE which shows that the reporting officer has not applied his mind at all and there is no independent assessment for the year 2014-15 regarding the applicant. The respondents have admitted the fact that reporting, reviewing and accepting officer of JAJ/SG is DRM, CHOD/PHOD & GM respectively. Reporting officer CHOD/PHOD (i.e. CSTE) and accepting authority of the applicant is DRM. It is also admitted by the respondents that the representation of the applicant has been decided by the competent authority and the same was communicated to the applicant.



10. The counsel for the applicant has relied upon the judgment passed by Hon'ble Apex Court in the matter of ***Ramchandra Raju vs. State of Orissa*** wherein it has been held by Hon'ble Apex Court that the career prospect of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the concerned officer/employee during the relevant period for the objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy. The reporting officer is bound to lose his credibility in the eyes of his subordinates and fail to command respect and work from them.

11. The counsel for the applicant has also relied upon the judgment of Hon'ble Apex Court in the matter of ***State of U.P. vs. Yamuna Shanker Misra***, (1197) 4 SCC 7



wherein the Hon'ble Apex Court has held that the object of writing the confidential reports making entries in the character rolls is to give an opportunity to a public servant to improve excellence. The officer entrusted with the duty to write confidential report, 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. So it is very clear from this judgment that the reporting officer should be higher in hierarchy in the cadre. But in the instant case the reporting officer is of the equivalent rank which is clear as per reply filed by the respondents so the main purpose of assessing the career working and responsibility of the officer has been violated by the reporting officer but is at the equivalent position.

12. As per Annexure A/1 at page 37 Clause 5 (iii) which pertains to an officer should not be graded 'Outstanding' unless exception qualities and performance have been



noted; grounds for giving such a grading should be clearly brought out; the reporting officer has specifically mentioned in this as “for the reasons mentioned above” i.e. in para 3 (Overall assessment with reference to strengths and shortcomings, attitude towards Rajbhasha also draw attention to qualities not covered by the earlier entries) the reporting officer has written “is not a willing worker and does not readily accept either his faults or any additional responsibility. No leadership qualities. Is positive towards Raj”. Further as per Para 5 of page 37 of the paper book in the column of ‘Fitness’ the reporting officer has graded the applicant as ‘Good and reviewing officer has graded him as ‘Average’.

13. From the records, it is very clear that the reporting officer has acted upon the note of Senior DSTE (Co.) and the applicant has been accordingly assessed as para 3 and resultantly in Para 5 reporting officer has assessed the officer as ‘Good’ and reviewing officer has assessed the

applicant as 'average' and accepting officer has assessed the applicant as 'average'.



14. In view of the above position, we are of the view that there is violation of natural justice and also violation of the instructions and the guidelines issued by Hon'ble Apex Court specifically in the matter of *Yamuna Shanker Mirsa* (supra). The assessment made by reporting officer is bad in law and the same is illegal. Hence, the same is deserved to be set aside.

15. Accordingly, this O.A. is allowed and the impugned APAR 2014-15 is quashed and set aside. Respondents are further directed to reconsider the case of the applicant for promotion to the post of SAG by not to take APAR 2014-15, for the purpose of promotion as per law within a period of 6 weeks from the date of receipt of copy of this order. No order as to costs.

(Naini Jayaseelan)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member