

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

OA No.848/2016

Dated this Tuesday the 25th day of February, 2020

Coram: R. Vijaykumar, Member (A).
Ravinder Kaur, Member (J).

Mahesh Kumar Agarwal,
Working as
Deputy Chief Safety Officer (HQ)
CSO Office, First Floor,
G.M. Building, Western Railway,
Churchgate Mumbai 400 020,
Residing at: 1/8 Railway
Officers Quarters, Nesbit Road,
Mazgaon, Mumbai-400 010.

...Applicant.

(In person).

Versus

1. Union of India
Through Member (Engineering),
Railway Board, Rail Bhawan,
Raisina Road, New Delhi-100 001.
2. General Manager,
Western Railway HQ Office,
Churchgate, Mumbai 400 020.
3. Shri K. C. Swami
Chief Bridge Engineer,
PCE Office, Second Floor,
Western Railway HQ Office,
Churchgate, Mumbai 400 020.
4. Shri S. N. Agarwal,
Principal Chief Engineer,
PCE Office, Second Floor,
Western Railway HQ Office,
Churchgate, Mumbai 400 020.

... Respondents.

(By Advocate Shri V. D. Vadhavkar).

Order Reserved on: 23.10.2018

Order Pronounced on: 25.02.2020.

O R D E R**Per :R.Vijaykumar,Member (A)**

The present OA was filed originally as P.T. before the Principal Bench and after its transfer to this Bench, notice was sent to the respondents on 02.01.2017 and reply has been furnished by them after which, the applicant has filed rejoinder and the matter was heard finally on 23.10.2018 and reserved for orders. The applicant has sought the following reliefs:

"a) The Railway Board (Annexure A-1 collly) passed the order by considering several verbal advices and placing reliance on two letters which are not the part of the record. The applicant humbly submits that the honourable tribunal quashed the order passed by the Railway Board.

b) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, penalise the respondent number 3 for using the power illegally for writing the adverse remarks without any legal basis and made the applicant UNFIT for promotion, when acted as reporting officer. The applicant humbly submits that this illegal use of power not only placement of the applicant in Selection Grade was denied and also the applicant is running pillar to post to rectify the illegality done by the respondent no.3. The applicant is relying on the honourable Supreme Court's judgment in case of State Bank of India Etc vs Kashinath Kher & Ors. Etc: 1996 AIR 1328, 1996 SCC (7) 470.

c) The respondent no.3 wrote the APAR placing reliance on verbal advices and non-existent written advices which were considered and decided by the competent authority for placing in

the service records. The respondent no. 3 made the applicant UNFIT promotion without having anything on records to justify. The adverse APAR for one year will ruin the career of an officer. The honourable tribunal is pleased to debar the respondent no. 3 for writing APAR for the officers as the respondent no. 3 using his power on personal whims and fancy which is not allowed in the democracy.

d) The honourable Supreme Court in the case of K.I. SHEPHARD & ORS. ETC. Vs. UNION OF INDIA & ORS. 1988 AIR 686, vide para 5.3, made a law that once a wrong decision has been taken then there is a tendency to uphold the same in the government parlance

5.3 There is no justification to think of a post-decisional hearing. on the other hand, the normal rule should apply. The excluded employees have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then given them an opportunity of representation when the requirement is that they should have the opportunity as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.

The reporting, reviewing and accepting authorities wrote the adverse remarks and made the applicant UNFIT for promotion on the basis of verbal advices, which is not permitted as per law decided by the honourable Supreme Court and the Railway Board while deciding the representation also relied upon several verbal advices, hence all the authorities relied on several verbal advices to write the adverse remarks and adjusting fitness for promotion of the applicant and this action results in clear cut violation of honourable Supreme Court's orders hence the adverse remarks and fitness given by the authorities is null and void. The honourable tribunal is kind enough to order that the APAR for the year should not be taken in to consideration for the promotion of the applicant.

e) The reporting, reviewing and accepting authorities wrote the adverse remarks and made the applicant UNFIT for promotion on the basis of verbal advices, which is not permitted as per law decide by the honourable Supreme Court and the Railway Board while deciding the representation also relied upon several verbal advices, hence all the authorities relied on several verbal advices which makes the adverse remarks and fitness given by the authorities as null and void. hence all the adverse remarks should be expunged, APAR should be upgraded to OUTSTANDING grading and made the applicant FIT for promotion.

e) The reporting, reviewing and accepting authorities wrote the adverse remarks and made the applicant UNFIT for promotion on the basis of nonexistent written advices, which is not permitted as per law decide by the honourable Supreme Court and hence all the adverse remarks should be expunged. As the Railway Board has accepted that the performance of the applicant was better than the previous year hence, APAR should be upgraded to OUTSTANDING grading and made the applicant FIT for promotion.

f) Costs of the application are provided for.

g) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. This is a second round of litigation in which the applicant had initially, in OA No.12/2016, challenged the APAR for the year 2014 and 2015 for the dismissal of his representation by the Accepting Authority itself and on which, this Tribunal passed orders on 22.08.2016, directing that an Authority above the level of the Accepting Authority who accepted his APAR and

other than the Member (Mechanical), who was formerly the General Manager of Western Railway, to decide his representation. Accordingly, the respondents have nominated Member (Engineering) in the Railway Board to consider the applicant's representation dated 10.12.2015 and that officer has passed speaking orders in the impugned reference no.2016/SCC/07/99 dated 02.11.2016.

3. The applicant has primarily raised the following grounds by which he challenges these speaking orders as not having traversed the entire aspects of his case. The issues raised by him are;

(a) that he was never fixed targets by the Reporting Officer despite his better performance as Reporting Officer. He also asserts that the Reporting Officer was duty bound to fix qualitative and quantitative targets.

(b) that the Reporting Officer relied on the verbal advice and had not communicated any adverse remarks to him in writing.

(c) that the Reporting Officer had not mentioned the details of such written advice that could enable the applicant to make adequate representations on the aspects contained in them.

(d) that the Reviewing Authority failed to arrive at an independent opinion and acted in a mechanical manner.

(e) that his performance in the Review Year was better than in the previous year and he has provided certain details of performance in the form of the table for the years 2013-14 to 2014-15.

ITEM	Performance in 13-14	Performance in 14-15 by the applicant
Proposal and making of Joint Safety Certificate	46	50
CRS Sanctions obtained	32	34
GAD approval for pipe line crossings	40	73
New proposal for pink book	Nil	5
Scrap sale for bridges items	Nil	13

4. The respondents have replied in detail to his averments and have denied his averments including any allegations of mala fide suggested. They refer to the APAR that was filed by the applicant on 23.04.2015, initiated by Reviewing Authority on 30.04.2015, reviewed on 16.05.2015,

and accepted on 12.06.2015, after which the applicant accessed his APAR on the Railway Employees Information System on 06.10.2015. The applicant was awarded Below Average by the Reviewing Authority after reviewing various aspects of his work and attributes and after providing detailed remarks in each of these aspects as can be gauged from a perusal of the APAR. Thereafter, the Reviewing Authority has also written detailed remarks and then has altered the assessment from Below Average to Average which was agreed by the Accepting Officer. Therefore, they deny that any mechanical review was made by the various officers involved.

5. Respondents also enclose with their reply, the details of work and duties and functions which was circulated by his Reviewing Officer on 07.07.2014 (Annexure R-4). They submit that the applicant is a senior officer in the Selection Grade and his next promotion is to be in the Senior Administrative Grade. For such senior positions, it may not be possible to set specific targets and it is for the officer reported upon, to achieve quantitative and qualitative results in his work area and

demonstrate his performance. With regard to averment of the applicant that no written advice was given to him, that only verbal advices have been claimed, and that written advice was quite non-existent, the respondents have enclosed as Annexures R-1, R-2, and R-3, specific notices sent by his Reporting Officer which set out his observations on work done by the applicant in detail and suggest an improved style of working and its content. In regard to one of these (Annexure R-1), there is also an acknowledgment of receipt of such advice by the applicant. As regards the claim of the applicant that his performance in the reported year 2014-15 was better than in the previous year, the respondents have examined these issues while forwarding remarks by the Reviewing Authority to the Railway Board in an office note dated 07.12.2015 (Annexure R-5) at para-4(3) that, in the previous year, despite lower staff strength, they have done quite well and that could not become a basis for comparison. The flow of work could not also become a basis for claiming better performance. In some aspects, the Railway Board had issued directions for not processing new work and

formulating proposals in the previous year whereas that was not the case in the reported year. Therefore, all these claims lacked basis in facts and circumstances as assessed by the respondents.

6. At this stage, it is necessary to consider that this Tribunal is constituted to conduct a judicial review of the decision making process of respondents in regard to the grievances contained in the OAs filed by individual applicants. Such a judicial review would need to be enter into some of the details and especially the principles that guided the respondents in dealing with the problems referred by the applicant and to see that the principles of natural justice have been followed strictly in the individual case and each officer takes an independent and fair view of the issue. In the present case, the APAR of the applicant is seen to have been written in great detail and the factual elements had been reviewed by the Tribunal in OA No.712/2016, whereupon the respondents Railway Board was directed to conduct a thorough examination of the case of the applicant and his grievances. The notices issued

by the Reporting Authority at Annexure R-5 and the subsequent speaking orders of the respondents which have been impugned in this OA, are found to have traversed the entire range of issues raised by the applicant and examined each aspect of the allegations and claims of the applicant.

7. It is therefore quite apparent that the respondents have given a fair opportunity to the applicant while recording their independent and considered views. The assessment of facts and events are also within the administrative jurisdiction of the respondents' officers and it is not the role of this Tribunal to assess the adequacy of such evidence or to transform itself into an Appellate forum to query the assessment arrived by the respondents in the said APAR of the applicant.

8. In these circumstances, this OA is clearly without any merit and is accordingly dismissed without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)