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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 747 of 1991

Decided on : 4.5.95

HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

Shri Piara Singh

... Applicant

(By Advocate Shri B. S. Mainee)

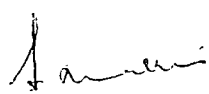
Versus

Union of India & Anr.

... Respondents

(By Advocate Shri Shyam Moorjani)

1. Whether to be referred to Reporter? Yes
2. Whether to be circulated to other Benches?


(S. C. Mathur)
Chairman

(S)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.747/91

New Delhi this the 4th day of May, 1995.

MR.JUSTICE S.C.MATHUR, CHAIRMAN
MR.K.MUTHUKUMAR, MEMBER(A)

Shri Piara Singh
S/o Sh.Sunder Singh
R/o Railway Bunglow,
Bhatinda
Working as Assistant Signal and Telecommunication
Engineer,
Northern Railway
Bhatinda

APPLICANT

(BY ADVOCATE SHRI B.S.MAINEE)

vs.

Union of India: Through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Signal and
Telecommunication Engineer
Northern Railway
Headquarter Office
Baroda House
New Delhi

RESPONDENTS

(BY ADVOCATE SHRI SHYAM MOORJANI)

ORDER

JUSTICE S.C.MATHUR:

Shri Piara Singh, Assistant Signal and Telecommunication Engineer in the Northern Railway posted at Bhatinda has directed this OA against the adverse entry recorded in his character roll for the year ending 31.3.1990 and communicated to him through Memorandum dated 28.5.1990 issued under the signature of Shri Ganesh Dayal for the General Manager and against the rejection of his representation against the said entry.

2. The impugned entry Annexure A-1, reads as follows:

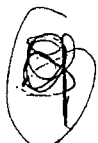
" Initiate:

"The officer is not willing to take additional responsibility but with pursuation, he does it."

Ability to inspire and motivate:

"He tends to have superiority complex which sometimes hampers the progress"

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Interpersonal relations and team work:

" His relations with his superiors need to be improved upon."

Against this entry, he preferred representation dated 16.7.1990 to the General Manager, Northern Railway which was rejected and the rejection was communicated to him through letter dated 29.1.1991, Annexure-2. Thereafter, the applicant preferred representation to the Chairman, Railway Board, on 8.2.1991. Before this representation could be disposed of, the applicant filed the instant OA on 21.3.1991.

3. The main ground of attack against the adverse entry is that it is not speaking and it does not give the details of alleged deficiencies in the applicant. It is also asserted that no prior warning or advice was given to the applicant and no instances of his alleged deficiencies are cited. It was submitted by the applicant's learned counsel that while communicating adverse entry, the respondents should have also communicated to the applicant the favourable remarks recorded in his character roll. Regarding the disposal of the representation, the submission of the learned counsel was that the same should have been done in a fair and just manner.

4. The application has been opposed on behalf of the Railway administration. Reply has been filed under the signature of Sh. Anil Gulati, Deputy CPO. According to the respondents, no procedural illegality or irregularity has been committed either in awarding the entry or in the disposal of the applicant's representation. It is stated that the entry is based on the personal experience of his immediate superior officer, Sh. H. C. Narang. It was submitted by the learned counsel for the Railway administration that before the applicant's representation was disposed of, the comments of Shri Narang were obtained and the applicant was given personal hearing. Even at the personal hearing, the applicant failed to satisfy

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that the entry awarded deserved revision.

5. At the time of hearing the learned counsel for the Railway administration produced before us the file containing papers regarding disposal of the applicant's representation. That file contains the comments dated 21.10.1990 of Sh.H.C. Narang. These comments are para-wise. In para 1 of the comments, Shri Narang has stated :

" It was my personal experience that whenever I had entrusted him with additional work of responsibility, he was not willing to shoulder the same and it was only after great persuasion that he used to carry out the orders. In view of the severe constraint under which we all are working it does not behove an officer to shirk responsibility. "

In para 2, he has stated:

" Whatever instructions were given by me about the execution of the works, he would retaliate. Even some time I had to ask ASTE/Spl. looking after other section to solve the problems so as to ensure that these works(mentioned by him) are executed expeditiously. "

In the last paragraph, it is mentioned:

" It was noticed during my tenure as Sr.DSTE that Shri Piara Singh used to leave his Hd.Qr. without prior permission and at times he used to get himself nominated as Member of Selection Committee and visited Ambala for selections etc. without intimation and taking specific approval from the undersigned. At times, I could not locate him at his Hd.Qrs.in times of emergency and it was very embarrassing to know that he was away for selection without my knowledge and obtaining prior permission for leaving Hd.Qr. "

From the entry and the comments made by Sh.H.C.Narang, it is apparent that the entry is based on the personal experience of Shri Narang. It is not the case of the applicant that Shri Narang bore any animosity against him.

6. The record further shows that the applicant's representation was disposed of by the CSTE who was an officer superior in rank to Shri Narang. The CSTE gave personal hearing to the applicant on more than one occasion. In his note dated 25.12.1991, the CSTE had observed :

" I have carefully gone through the representation of Sh.Piara Singh ASTE/BTI and further

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comments of the reporting officer viz. Sh. H. C. Narang Ex Sr DSTE/UMB. I have also given him personal hearing more than once. I find no justification to make any change in the C.R. The adverse remarks should stand."

(Underlining by us)

7. From the above facts, it is apparent that the authorities have observed the principles of natural justice and have acted fairly in disposal of the applicant's representation.

8. We may now notice the submissions made by the learned counsel and the authorities cited by him in support of the submissions. In support of the submission that the entry should be a speaking one, the learned counsel has cited certain authorities which deserve consideration. Some of the authorities were rendered by their Lordships of the Supreme Court and some of them were rendered by different Benches of the Tribunal. We shall first take up the decisions of their Lordships.

9. **The State of Madhya Pradesh v. Bani Singh and another** (AIR 1990 SC 1308), the adverse remark was in these terms:

" An officer of average ability who did not show any outstanding work. Appeared dissatisfied and casual about his work. Complaints of corruption and irregularities committed by him during his posting as Commandant, 14th Dn. between 1975-77 are under enquiry in the vigilance cell of CID. The enquiry made so far indicates that there is truth in its last stages. Not considered fit for promotion."

This entry was quashed by the Tribunal. The grounds on which the entry was quashed are not clear from the judgement of their Lordships. Although their Lordships did not interfere with the judgement of the Tribunal, there is no observation that an entry should be a speaking one and it should give details of the adverse material. In fact, the following entry made in the same year by the higher officer was not quashed either by the Tribunal or by their Lordships:

" His performance during the period under review was colourless."

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This entry was not quashed on the ground that it was of general nature. Of course, it was observed that such a general remark cannot be used for denying promotion. In the present case, we are not dealing with promotion; we are dealing only with the validity and legality of the entry awarded. There is no observation that a general remark cannot be made. This authority is, therefore, of no assistance to the applicant.

10. An adverse entry which came up for consideration in **Union of India and others v. E.G. Nambudiri** (AIR 1991 SC 1216) was in the following terms:

- "1. That you were not associated with the important work of the section such as the open house discussions, monthly analysis of the returns received from regional offices, complaints and Port Officers meetings.
2. That the quality of performance and application of knowledge, delegated authority and conceptual and professional skills on the jobs is very poor.
3. That you had a casual attitude to the work assigned. Your devotion to duty was insufficient. That subordinates used to complain that they could not work under you, as you could not give proper guidance.
4. That your job did not involve contact with the public, indications and your intellectual honesty and innovative capacity are average.
5. That nothing adverse has come to notice regarding your integrity.
6. That you were given advice/warning at various levels both orally and in writing but you did not react to these."

It was conceded before their Lordships that there were no statutory rules framed under Article 309 of the Constitution regulating the award of entries in the character roll. In paras 5 & 6, their Lordships have observed as follows:

- "5.The administrative instructions issued by the Government do not require the competent authority to record reasons either in accepting or rejecting the representation of a Government servant, made against adverse entries."
- "6. ...Once an adverse report is recorded, the principles of natural justice require the reporting authority to communicate the same to the Government servant to enable him to improve his work and conduct and also to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation

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offered by the person concerned, whether the adverse report is justified. The superior authority competent to decide the representation is required to consider the explanation offered by the Government servant before taking a decision in the matter. Any adverse report which is not communicated to the Government servant, or if he is denied the opportunity of making representation to the superior authority, cannot be considered against him. See: *Gurdian Singh Fijji v. State of Punjab*, 1979(3) SCR 518. In the circumstances it is necessary that the authority must consider the explanation offered by the Government servant and to decide the same in a fair and just manner. The question then arises whether in considering and deciding the representation against adverse report, the authorities are duty bound to record reasons, or to communicate the same to the person concerned. Ordinarily, courts and Tribunals, adjudicating rights of parties, are required to act judicially and to record reasons. Where an administrative authority is required to act judicially it is also under an obligation to record reasons. But every administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. But in the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide, it is always open to the authority concerned to place reasons before the Court which may/persuade it to pass the orders. Such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained in the records. Reasons are not necessary to be communicated to the Government servant. If the statutory rules require communication of reasons, the same must be communicated out in the absence of any such provision. ~~absence~~ of communication of reasons do not affect the validity of the order." (Emphasised)

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The proposition of law deducible from the above observations is that in the absence of rules, requirement of recording reasons is a principle of natural justice. This principle is required to be followed in judicial and quasi-judicial proceedings. It is not required to be followed in administrative proceedings. Recording of adverse remark is an administrative process or proceeding. Disposal of representation against adverse report is also an administrative proceeding. Therefore, there is no requirement to record reasons either at the stage

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of recording the adverse entry or at the stage of disposing of the representation. Of course, the representation should be disposed of in a fair and just manner. We have observed hereinabove that in the case on hand, the representation was disposed of in a fair manner. This authority is, therefore, of no assistance to the applicant.

11. **Shri Baikuntha Nath Das & anr. V. Chief District Medical Officer, Baripada and Anr. (JT 1992(2) S.C.1)** was relied upon for the proposition that favourable remarks should also be communicated. This was a case relating to compulsory retirement. The proposition of law laid down in this case is that the decision to retire compulsorily should be taken on the basis of entire record adverse as well as commendable. In this context, it is observed in para 33:

" What is normally required to be communicated is adverse remarks- not every remark, comment or observation made in the confidential rolls. There may be any number of remarks, observations and comments, which do not constitute adverse remarks, but are yet relevant for the purpose of F.R.56(j) or a Rule corresponding to it."

This authority rather negatives the submission of the learned counsel that favourable remarks are also required to be communicated.

12. **S. Ramachandra Raju v. State of Orissa (1994(3) S.L.J 95(S.C.))** was also a case of compulsory retirement. At page 99 of the report, the following observation is made:

"...Moreover, confidential reports are often subjective, impressionistic and must receive sedulous checking as basis for decision-making. The appropriate authority, not the court, makes the decision, but even so, a caveat is necessary to avoid misuse."

Again, at page 101, it is observed:

" ...It is seen that admittedly the appellant was promoted as a Reader after the adverse report and the adverse comments were communicated to him and in a mechanical way they rejected the report to expunge the adverse remarks, even without going into the contention of the appellant ..."

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that the then Principal was actuated with mala fides by submitting wrongly or falsely in confidential reports which appear to have some foundation or suspicion for such a contention consistent record earlier and later periods would establish that the appellant has meritorious record of service as a teacher and that his devotion to the service is good and fair and that he maintains discipline, good relations with the students and imparts teaching to the students fairly with good knowledge as a teacher."

In the succeeding paragraph, it is observed:

" It would speak volumes on the objectivity of assessment by the reporting officer i.e. the Principal. This conduct is much to be desired. This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. "

The word 'objectivity' has not been used in this observation to convey that objectivity should be reflected in the adverse report itself. What has been laid down in this authority is that the reporting officer should make objective assessment of the officer concerned and he should make fair, objective dispassionate and constructive comments in estimating or assessing the character, integrity and responsibility displayed by the concerned officer/employee. This judgement prescribes the manner in which the reporting officer should discharge his duty while making entry. In the process of making the entry, he is required to act objectively which means that he should not allow his personal prejudices to enter into the decision making process. This authority cannot be relied upon for the proposition that the adverse entry must be a speaking one. In fact, in the extracted report hereinabove, their Lordships have referred to the fact that the confidential reports are often subjective and impressionistic. Their Lordships have not expressed any disapproval of this manner.

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13. From the above discussion, it would follow that so far as the decisions of their Lordships are concerned it has not been laid down that adverse entry should be a speaking one. All that the said decisions lay down is that the entry should be made fairly and should not be actuated with personal prejudices. We may now pass on to the decisions of the Tribunal cited by the learned counsel.

14. In **Mrs. Rita Malhotra v. Union of India** through the Secretary, Ministry of Defence, Govt. of India, New Delhi and ors. (1990 (2) A.T.J.145), a Division Bench of the Tribunal at Chandigarh quashed the entry awarded to the applicant. The entry which was quashed was in the following terms:

"10. Has the officer been reprimanded for indifferent work or for other causes during the period under report? If so, please give brief particulars.	Yes. For insubordinate behaviour with superior officer."
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The entry was quashed with the following observations contained in para 4 of the report:

" There is, however, considerable force in the arguments advanced by the learned counsel for the applicant that the Reporting Officer should have given brief particulars as required by column 10 of the ACR."
..... In the present case, we find that the remarks against column 10 to the effect that the applicant had been reprimanded for "insubordinate behaviour with superior officer" are too vague and general and no effective representation against the same could be made unless specific instances of the alleged insubordinate behaviour were furnished." (Emphasised)

It needs to be pointed out that the format in which the entry was awarded itself required particulars to be given. It is in this context that the observations reproduced hereinabove have been made. Our attention has not been invited by the learned counsel for the applicant that in the applicant's department also there was a format of the nature which came up for consideration before the Division Bench at Chandigarh. It also needs to be pointed out that the following remark

of the reviewing officer in the same format was not quashed by the Bench:

"2. Do you agree with the remarks of the Reporting officer in part III above? If not, indicate the extent of your disagreement. If you wish to add anything specific with regard to the work and conduct of the official over and above the remarks of the Reporting Officer, please mention them. You may also sum up your views here.

I agree with the remarks of the Reporting Officer. The performance of the CSBO during the period of the report had been just satisfactory. Her dealings with her superior officers need further improvement. She should avoid her tendency to become rude with the unit administration to prove her point. The CSBO needs more experience in the present grade. She should inculcate cordial and pleasant manners which are vital to a Switch Board Operator."

Although details of rudeness were not given in this report, it was not interfered with by the Division Bench observing:

"As regards the remarks of the Reviewing Officer against column 2 of part IV of the ACR, we find that these are in the nature of an overall appraisal of the work and conduct of the official and, therefore, we see no justification for interfering with the same."

the present OA

✓ The remarks impugned in / are also in the nature of an overall appraisal of the applicant's work by his immediate superior officer. Therefore, if this authority is applied to the facts of the present case, no case for quashing is made out.

15. In **S.Thiagarajan v. Union of India & ors.** (A.T.R. 1990(1) C.A.T.205), learned Single Member of the Calcutta Bench quashed the following adverse remark:

"Your punctuality leaves room to be desired which has affected adversely your application."

In respect of this remarks, it has been observed in para 58 of the report:

"However, I find merit in the contention of the applicant that he was never warned about his unsatisfactory punctuality nor was any instance of such punctuality pointed out to him when he challenged this remark through his representation. This aspect was rightly emphasised by one of the officers with the recommendation that the remark about punctuality should be expunged. However, this view was not accepted. In the absence of any material to substantiate this remark, I do not find any justification in the remark".

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The remark was quashed in the background of the fact that even an administrative authority was satisfied that there was no basis for the remark. In para 60, it has been observed as follows:

" I find merit in the challenge of the applicant that his representations were disposed of through a non-speaking order. It should be appreciated that the applicant is a direct recruit of the Indian Ordnance Factories Service, that his annual confidential roll will play a vital role in his career prospects and any representation against adverse remarks cannot be disposed of peremptorily without assigning reasons. The bland communication to the applicant that his representations against the, adverse remarks had been carefully considered by the competent authority in the Ministry of Defence and rejected is not enough and cannot be called a speaking order."

This observation has been made relying upon one decision of the Calcutta High Court and another of the Bangalore Bench of the Tribunal. The decision of the Calcutta High Court is reported as **Dr.Gopeswar Dutta v. Union of India**(1982 (2) SLJ 207) and of the Bangalore Bench as **S.T.Ramesh v. State of Karnataka** (1988(7) ACT 820). In the Calcutta High Court, the plea of the petitioner was that his appeal against the adverse entry had been rejected without following the explicit terms of para 615 of the Procedure Manual. It appears from the report that the rules conferred right of appeal against adverse entry. The appellate authority was, therefore, exercising quasi-judicial function. As a quasi-judicial authority, it was its obligation to pass a reasoned order which it had failed to do. It is in this context that the appellate order was quashed and the appellate authority was directed to reconsider the appeal and decide the same after giving an opportunity of hearing to the petitioner. The learned Single Member of the Tribunal failed to appreciate the distinction between the exercise of quasi-judicial power and administrative power. The judgement of the learned Single Member of the Calcutta Bench , in our opinion, does not lay down the law correctly.

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16. So far as the judgement of the Bangalore Bench is concerned, the adverse entry was quashed because it was self-contradictory. Even though the applicant had been described as outstanding, it was also observed that the officer should have produced better results. If this was the expectation and better results had not been shown there was no occasion to describe the officer as outstanding. The judgement of the Bangalore Bench of the Tribunal is, therefore, based on its own facts. It also appears from para 62 of the report that the Bangalore/^{Bench} was also dealing with a case where the order impugned had been passed in exercise of judicial or quasi-judicial power.

17. In **Shri S.C.Vaish, IAS v. Union of India and others** (1991(2) S.L.J(CAT) 186, a Division Bench of the Tribunal at Jabalpur was dealing with the challenge directed against the following adverse remarks:

"An Officer who has had a chequered career which is not very complimentary to him....has hardly made any contribution to administration in his career and it is really regrettable that he has now come to acquire an outlook and frame of mind which make him hardly of any use."

The following portion in this remark was emphasised by the Tribunal:

"It is really regrettable that he has come to acquire an outlook and frame of mind which make him hardly of any use."

The reason for quashing this remark is expressed in these terms:

"Thus, in the report while what may be considered to be a factual report relating to his chequered career, and premature retirement and career as a whole, may remain but the comments about the future work and potential recorded by the Chief Secretary in the nature of subjective assessment not related to any items of work noticed during the year under report and therefore, this portion appears to be based on the general reputation of the officer and as conceded by the Reporting Officer in his comments based on observation of his personality and style of work stretching over a number of years."

From this observation, it would appear that the Bench was

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of the opinion that the remark was not related to any item of work noticed by the officer who made the remark. This is not the position in the present case. It is not disputed that Shri Narang was the immediate superior officer of the applicant and in that capacity he had every occasion to watch the performance of the applicant. The entry is based on the actual performance noticed by Shri Narang. It also appears from the report that certain columns of the format had not been filled up and in their remaining blank, the adverse entry could not draw any support from the material on record. The entry had been recorded for the year 1986-87. For the year 1987-88, the following entry had been recorded:

" An officer who has seen many ups and downs in his career which have finally left him in a state, when he is not in a position to handle any job requiring trust, application and achievement of positive results. He has progressed beyond his capabilities such has been the Destiny's dispensation in his case."

The entry was sought to be justified by the Chief Secretary who stated that the entry was not adverse in the normal sense of the term and that he had known the officer for three decades and what he had recorded was a factual and faithful description of the officer's personality and performance. The Bench took the view that the entry related to a particular year and, therefore, it could not be based on the experience of the Chief Secretary obtained during three decades. Further, the format has not been completely filled up. These are the factors which influenced the Bench in quashing the entry. In the case on hand no such situation arises. The entry is based on the performance of the applicant noticed by Sh. Narang during the year to which the entry relates. This authority is distinguishable on facts.

18. In **S. Krishnadoss vs. The Secretary, Central Board of Customs and Central Excise, New Delhi and another** (1992(2) S.L.J.(CAT) 76), the Division Bench of the Tribunal at Madras

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quashed the order rejecting the representation against adverse entry on the ground that the various grounds raised by the applicant in his representation had not been considered. The Division Bench has noticed the judgement of their Lordships of the Supreme Court in Union of India v. E.G. Mambudiri, 1991 SCC(L&S) 813 in which it has been held that mere absence of reasons in the appellate order would not by itself vitiate the proceeding and that it will be open to the Government to produce the file before the court to satisfy the court that the representation was considered in a fair and just manner. The Tribunal further observed that in the case before it, the Government failed to produce the record. In the case on hand, the respondents produced the record relating to the disposal of the representation and, therefore, this judgement is distinguishable on facts.

19. In **Rai Singh v. Union of India & ors.** (1993(2) ATJ 76), a Division Bench of the Tribunal quashed the adverse entry on the ground that the adverse remark had not been made by the "empowered" authority. The question that arose for consideration before the Bench had been referred to in para 7 of the report in these terms:

" The question involved in this case is a short one. Whether the Additional Secretary of the concerned Department i.e. Agricultural and Co-operation, and Secretary were vested with powers of proper authorities- Reviewing Authority and Accepting Authority for purposes of confidential rolls. "

Thus the question before the Bench was not whether the adverse entry is to be speaking one or not. This authority is, therefore, of no assistance.


20. In our opinion, subjectivity in confidential report cannot be completely excluded. The reporting officer has occasion to watch closely the performance of the officer reported upon. Not everything, he notices can be based on evidence which may be produced before a court of law or

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Tribunal. Every officer of the Government is required to act honestly. The reporting officer is no exception to this rule. Accordingly, while writing the confidential report, he is required to act honestly. In making the assessment of the officer and reflecting that assessment in the report, he must act objectively. The objectivity is required at the stage of making the assessment. That objectivity is not required to be reflected in the report itself. In the absence of any allegation of mala fide against the reporting officer, there should not be any reason to interfere with his assessment reflected in the report. While it is desirable that prior warning or advice may be given to the officer reported upon in respect of the adverse material sought to be incorporated in the confidential report, the confidential report itself will not be vitiated if such prior warning or advice has not been given.

21. Judging the disputed entry awarded to the applicant in the background of the legal position stated hereinabove, we are of the opinion that no interference is called for.

22. In view of the above, the application lacks merit and is hereby dismissed but without any order as to costs. Interim order, if any operating, shall stand discharged.


(K. MUTHUKUMAR)
MEMBER(A)


(S. C. MATHUR)
CHAIRMAN

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