

(18/20)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 28th day of Feb 2006.

Original Application No. 103 of 2005.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Ajeet Saxena, S/o Sri A.N. Saxena,
R/o Officer's Guest House, Jhansi.
At present working as Senior Divisional Commercial
Manager, N.C. Railway,
JHANSI (UP)

.....Applicant

By Adv: Sri S. Narain

V E R S U S

1. Union of India through the Secretary,
Ministry of Railways, Rail Bhawan,
NEW DELHI.
2. General Manager, Central Railway,
Chhatrapati Shivaji Terminus,
MUMBAI.
3. Sri Vivek Sahai,
The then Divisional Railway Manager,
MUMBAI.
4. Sri Madhav Pathak,
The then Divisional Railway Manager,
MUMBAI.
5. Sri S.P.S. Jain,
The then General Manager, Central Railway,
Chhatrapati Shivaji Terminus,
MUMBAI.

.....Respondents

By Adv: Sri K.P. Singh

O R D E R

"Adverse entry in the confidential report is the challenge in this OA. At the very outset, it has to be stated that the scope of judicial intervention by the Tribunal in such matter has been brought out in the case of *State of Orissa v. Jugal Kishore Khatua, 1997 SCC (L&S) 1768* and needless to mention that the Tribunal shall travel within this confined arena:-


[Signature]

6. The Tribunal has also expressed the view that the adverse remarks were not justified in view of the substantiation report and the comments sent by the Reporting Officer. In taking this view the Tribunal has transgressed the limits of its jurisdiction. While exercising the power of judicial review in respect of adverse remarks in the ACR, the Tribunal does not function as an appellate forum in respect of the assessment made by a superior officer about the performance of an employee working under him. Such assessment is made by the reporting authority which is subject to scrutiny by the countersigning authority as well as by the higher authority which considers the representation of the employee against the remarks. In the present case, we find that the performance of the respondent had been assessed not only by the Reporting Officer but also by the countersigning authority and the Commissioner of Commercial Taxes, while dealing with the representation of the respondent, has agreed with the said assessment. The Tribunal was in error in interfering with the said assessment as reflected in the adverse remarks made in the ACR of the respondent."

The applicant at the material point of time was functioning as Senior Divisional Commercial Manager (Selection Grade). His functional responsibility involved two spheres, - freight and coaching and according to the applicant his performance in both the spheres had been adjudged by the higher authorities in superlative degrees by way of commendations or cash prize to the entire team which worked alongwith the applicant. The applicant had, however, been communicated adverse remark for the year 2002-03, which is as under:-

"The following remarks have been recorded in your Annual Confidential Report for the year ending 31.3.2003:

"He has not cared to give any details of work done by him despite constant reminders."

 "The officer was on CL for 1½ day on 20th & full day on 21st March did not return to office thereafter, even though CL for 21st

was cancelled. He is under orders of transfer to JHS Division."

"As this was his first posting as Sr. DOM in his career, he was trying to pick up the work. Level of knowledge was not very high though improving."

"He has dependent primarily on his DOMs to give the output."

"An intelligent officer who can do much better if he puts his heart into actual working of the Railways."

"Intemperate in speech & Words, sometimes bordering on insubordination. Impetuous. Needs to control these tendencies."

"Attitude towards work	Below Average
Decision making ability and judgment	Below Average
Initiative	Below Average
Ability to guide, inspire and motivate	Below Average
Communication Skill	Below Average
Inter personal relations, team work and Coordinating ability	Below Average
Safety Consciousness	Below Average
Approach to customers	Below Average
Innovation-new technology progression	Below Average
Human Resource Development	Below Average
Cost and Expenditure Control	Below Average
Environment Improvement	Below Average
Aptitude towards Research & Development	Below Average

2. The above remarks are being conveyed to you not to discourage you but to enable you to overcome your shortcomings and improve your performance.

3. In case you wish to submit any representation, you may do so through proper channel within one month from the date of receipt of this letter.

4. Kindly acknowledge receipt."

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In addition to the above as regards his integrity, of the applicant as late as in February 2004 the respondents have communicated as under:-

"In continuation to this office letter of even No. dated 20/06/2003, through which adverse remarks recorded on your Annual Confidential Report for the year ending 31/01/02, were communicated to you, it is further advised that your "Integrity" has been recorded as "doubtful" for the year ending 31/03/2003 by competent authority.

If you want to make any representation against the remarks of doubtful integrity, the same can be done within one month from the date of receipt of this letter, through proper channel to the undersigned."

The applicant submitted necessary representation against his adverse remarks vide letter dated 28.07.2003 and the same was rejected by order dated 05.11.2003. As regards integrity, the applicant moved another representation dated 22.03.2004 which was also rejected vide order dated 15.04.2004. The applicant has challenged the aforesaid orders of rejection of the representations and prayed for expunction of adverse remarks. The following are the main grounds of the attack:-

- a. Applicant's working during period since 2002-2003, were found excellent.
- b. Adverse Entry awarded is wholly illegal. He may not be considered for promotion to Senior Administrative Grade.
- c. Representation against adverse entry has been illegally and arbitrarily rejected.
- d. Orders rejecting the representations are lacking reason and unsustainable in the eyes of law.
- e. The respondents have failed to consider the M.C.D.O. Letters, by which working of the

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applicant was found excellent and satisfactory, even Ministry of Railways appreciated the working of the applicant and awarded cash prize.

f. The General Manager who is accepting authority awarded Coaching Shield.

g. Respondents invented another category of adverse entry i.e. 'below average'.

h. Consideration for promotion is fundamental right of the employee and that can not be taken away by the respondents' authorities in such an arbitrary and malafide manner.

2. The respondents have contested the OA. According to them the awarding of cash prize are commendations etc in respect of the entire team cannot in any way bar the respondents in registering the individual performance in the ACR of the applicant during the year in question. Other allegations made in the OA have all been denied.

3. Rejoinder has been filed by the applicant reiterating the stand taken by the applicant in the OA.

4. Arguments have been heard and documents perused. Respondents' counsel has also filed written arguments and cited the following cases in support of his case:-

a. OA No. 673 of 2001 R.P. Meena Vs. Union of India and others.

b. Civil Appeal No. 6007 of 2001 State of U.P. Vs. Narendra Nath Singh and others.

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c. (2005) 3 SCC 134 Mahindra & Mahindra Ltd.
Vs. N.B. Narwade.

The counsel for the applicant vehemently argued that an officer with substantial experience in the field under no stretch of imagination could be adjudged in all the faculties as "Below Average", a category which does not figure in, in the recognized grading in the descending order from "Outstanding to Average". Communication against the integrity aspect, when timing of issued of the same is considered, is a clear after-thought and with ulterior motive. The rejection also does not meet the elaborate points contained in the respective representations.

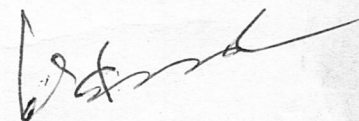
5. Per-contra, counsel for the respondents submitted that the applicant had earlier suffered penalties for certain misconduct and the adverse reports are based only upon his performance and in view of the law laid down by the Apex Court in the case of *Union of India Vs. E.G. Nambudiri (1991) 3 SCC 38*, there is no need to give elaborate reasons while rejecting the representation.

6. A perusal of the records shows that on a few occasions the applicant was awarded minor penalty and the applicant's attempt to seek legal remedies was unsuccessful. At the same time the records also

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go to show that as a team there were commendations and cash award. It is trite that ACR is written taking into account the overall performance as an individual worker and performance as a member of a team would contribute to a certain extent. Personal attributes count more while recording the ACRs. In a team work the overall efficiency of the entire team is seen and in that event, the deficiency of some may be covered or eclipsed by a grater degree of efficiency of others in a team. Personal attributes of any member of the team take a rear row in a team work unlike the front bench in the case of writing ACR. As such, not much of benefit can be claimed by the applicant in challenging the ACR by showing that his team was awarded commendations or cash prizes. The reports have been written/reviewed and perhaps countersigned by different authorities. It cannot be the case that all the authorities would be against the applicant. It is not exactly known whether the applicant's performance was outstanding in the previous past. If the penalties awarded to the applicant are taken into consideration, the same might go to show that the performance of the applicant in the past also could not be too good. In that event recording below average cannot be a steep decline in the grading of the applicant. We are inclined to accept the contention of the respondents that the ACR recorded was correct. Again, the Apex Court's judgment in the case of **Jugal Kishore** (Supra) having laid down the parameter

for judicial review, we are of the considered view that the applicant could not make out a case. At the same time our view as above is based on the presumption that the performance of the applicant in the past was not outstanding. If they were outstanding, the respondents may have to contrast the reports of the past with the report in question to ascertain the extent of variation and reasons thereof. If the variation is too steep, the reports in question may have to be suitably diluted by the respondents. Interest of justice would thus be met if a direction is given to the respondents to verify from the records the grading awarded in the past three years and if the same are Average/Good, the adverse ACRs shall remain and if consistently the grading for the preceding ^{for} ~~there~~ ⁱⁿ years prior to 2002-03 were Very Good or above the General Manager may reconsider the representation of the applicant and arrive at the final decision judiciously. The OA is disposed of with the above terms. No costs.


Member (J)

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