

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
ORIGINAL APPLICATION NO: 247/2014**

DATED THE 27th DAY OF MAY, 2021.

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Sh. Dr.A.K. Dubey, Member (A)

Vishnu Chandra Gupta,

Aged: 55 years (DOB being 01.11.1955)

S/o Shri Badri Prasad Gupta,

Presently serving as Senior Section Engineer(Signal),

Under Dy. C.S.T.E. (Construction) at Ahmedabad in

Ahmedabad Railway Division of Western Railway

And presently residing at No.4, Dharti Bungalows, IOC-Tragad Rd.,

Opp. Chandkheda Railway Station, Post:Digvijaynagar,

Ahmedabad – 382 470.

... Applicant

By Advocate Shri P H Pathak

V/s

- 1 Union of India,
(Through the Special Secretary to the Government of India &
Ex Officio Chairman, Railway Board,
Ministry of Railways, Government of India,
Rail Bhavan, New Delhi – 110 001.)
 - 2 The General Manager,
Western Railway Zone, O/o. General Manager (Estt),
Western Railway Head Quarters Office,
Churchgate, Mumbai – 400 020.
 - 3 The Chief Signal & Telecom Engineer (Construction),
Western Railway Zone,
Western Railway Headquarters,
Churchgate, Mumbai – 400 020.
 - 4 The Deputy Chief Signal Telecom Engineer,
O/o. Dy. C.S.T.E. (Construction),
Ahmedabad Railway Division,
Western Railway,
Opp. Computer Reservation Centre,
Kalupur, Ahmedabad – 380 002.
- ... Respondents

By Advocate Ms R R Patel.

ORDER

Per Shri Jayesh V Bhairavia, Member (J)

- 1 Being aggrieved by the order dated 07.01.2014 (Ann. A), passed by the respondent no.2 rejecting the representation of the applicant for change of final grading “Average” as recorded in his ACRs for the years 2004-05, 2007-08, he has preferred the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following prayers:-

“VIII

- A Be pleased to quash and set aside the impugned decision of the respondent no.2 herein as reflected in the impugned communication dated 7.1.14 and down grading adverse remarks for 2004-05 & 2007-08 at Annexure A hereto, holding and declaring the same to be arbitrary, illegal, unjust and direct the respondents to grant all consequential benefits to the applicant ignoring the adverse remarks/down grading for 2004-2005 & 2007-2008.
- B Be pleased to declare and hold that in view of the what has been made out by the applicant herein in the foregoing paragraphs the average grading recorded in the applicant’s ACR for 2004-05 and 2007-08 deserve to be upgraded to the level of the bench mark grading i.e “Good and consequently the applicant herein deserves to be granted as Gr.B ASTE, under 70% regular selection ‘initiated with the issuance of the notification dt. 2.9.2008, at par with those who are placed in the provisional panel dt. 31.3.2009 with all consequential benefits flowing therefrom including arrears of salary, seniority, etc. Etc., in terms of the directions contained in the final order of this Hon’ble Tribunal passed on 9.3.2010 in the applicant’s previous OA No. 146 of 2009;
- C Be pleased to award such cost as may be deemed fit and appropriate in the facts and circumstances of the present case;
- D Any other and further relief/s as may be deemed fit and proper in the facts and circumstances of the present case.

- 2 The facts in brief of this case are as under:

- 2.1 This is third round of litigation, with regard to recording of below Bench Mark grading of “**Average**” in ACR for the years 2004-05 & 2007-08 of the applicant.
- 2.2 The record reveals that in the first round of litigation by way of filing OA No.146/2009, the applicant has challenged the decision of selection committee for not including his name in select panel published on 31.03.2009 for promotion to the Group ‘B’ post of ASTE in Signal & Telecom Department of Western Railway as the selection committee had

taken into consideration the un-communicated ACRs for the year 2004-05 and 2007-08 wherein the grading granted to him was “Average” which is below Bench Mark.

- 2.3 Further, the said selection committee had also taken into consideration the minor penalty awarded in the year 2006 on the applicant. Since his appeal dated 21.02.2007 against the minor penalty was pending and same was rejected by order dated 24.08.2009/25.08.2009 by the Appellate Authority and though he had undergone the minor penalty awarded to him vide order 28.12.2006 by the Disciplinary Authority, the AA without affording any opportunity to the applicant enhanced the penalty into “withholding of increment of pay for a period upto September 2010 with effect from September 2009 without having effect on future increments of his pay”. Therefore, aggrieved by the order passed by Appellate Authority, the applicant had filed OA 145/2009.
- 3 It is noticed that this Tribunal by its common order dated 9.3.2010 set aside the order passed by the Disciplinary Authority as well as Appellate Authority and allowed OA 145/2009.
- 4 So far as prayers in OA 146/2009 are concerned, this Tribunal in para 41 of the said common order observed as under:

“41 In the facts and circumstances, we are of the view that the applicant has made out a case that ***there has been an abuse of power in issuing the charge sheet that the allegations in respect of certain ACRs requires to be controverted. This having not been done,*** the charges of mala fide against the private respondent Shri Vinod Agarwal are sustained.”

Having recorded aforesaid observation, this Tribunal had not accepted the submission of applicant to disregard the ACRs recorded by superior officer as also the submission that his claim be considered on the basis of ACRs for the earlier years as held in para 42 of the said order which reads as under:

“42 The learned counsel for applicant has placed reliance on the decision of Benoy Gupta (supra) ***to contend that the ACRs recorded by private respondent may be disregarded and the applicant considered on the basis of ACRs for the earlier years.*** The applicant was working in a different capacity before July 2001. Besides, this decision in Binoy Gupta (supra) has been given in the facts and circumstances of that case. This contention of Mr Rao has accordingly to be rejected.”

- 5 With the aforesaid observation, this Tribunal vide said common order disposed of the said OA 146/2009 with a direction to the respondents ***“to communicate the adverse attributes recorded by the Reporting Officer, the down-gradation in ACR to the applicant and on receipt of it the applicant was allowed to submit his representation in stipulated time, further directed the respondents to decide the said representation by the General Manager having regard to what has been discussed in the said order.”***

Pursuant to the aforesaid order the respondents had supplied the copy of ACRs for the period 2001-2008 including the ACR for the year 2004-05 & 2007-08, on receipt of which the applicant had submitted his representation dated 26.08.2010.

- 6 It is also noticed that aggrieved by common order dated 09.03.2010 passed by this Tribunal, the respondents approached the Hon'ble High Court by way of filing SCA No.7216/2011 the Hon'ble High Court vide order dated 14.07.2011 (Ann. A/12) affirmed the order passed by this Tribunal and dismissed the said SCA, also extended time limit of one month for the General Manager to decide the representation of the applicant dated 26.08.2010.
- 7 The respondent no.2 had considered the said representation and vide order dated 11.08.2011 rejected the same. Aggrieved by it, the applicant had approached this Tribunal by way of OA No.320/2011 (i.e. second round of litigation) mainly on the ground that the respondents have not passed speaking order on each point raised in his representation. This tribunal vide order dated 16.09.2013, disposed of the said OA by quashing and setting aside the decision dated 11.08.2011 with further direction to the respondents ***to re-consider the matter on the basis of the representation given by the applicant and answer each point separately after obtaining specific comments from the Reporting and Reviewing Officer.*** (Ann. A/19).
- 8 In response to the aforesaid direction of this Tribunal dated 16.9.2013 in OA No.320/2011, the respondents passed the detailed speaking order dated 07.01.2014 and rejected the representations/application of applicant (Ann. A/1 impugned herein).

9 In the present (third) round of litigation, the learned counsel for applicant – Shri P H Pathak on the basis pleadings in OA and rejoinder mainly submitted as under:-

9.1 The applicant is a victim of mala fide exercise of power by his Superior Officers. Earlier, this Tribunal also held that the appellate authority has acted in a mala fide manner against the applicant. However, once again the respondent no. 2 reiterated its view and rejected the representation of the applicant.

9.2 The respondent failed to take into consideration the provision of Rules as well as the grounds taken by the applicant in his representation and erroneously passed the impugned decision.

9.3 The respondent no.2 failed to consider that the existing instructions/rules which provides filling up a self appraisal by the employee and if Reporting Authority disagrees with the said self appraisal, he has to give the reason not only that but has to point out the specific details and incident for his disagreement. However in the present case no remark was available from the Reporting Authority i.e. Shri Anand Bhave and Shri Ram Sunder, as both of them are now retired and same has been admitted by respondent no.2. Therefore, in absence of it, the decision of Reviewing Authority endorsing the assessment and grading of Reporting Authority was required to be expunged. However, the respondent no.2 in its impugned order failed to consider the said point and erroneously rejected the representation.

9.3 He further argued that the Reviewing Authority ought to have conducted the inquiry and ought to have given an opportunity of being heard to the applicant before recording below Bench Mark grading of “Average.”.However, respondent no.2 in its conclusion failed to appreciate the said requirement.

9.4 It is argued that respondents failed to take into consideration the instruction contained in Railway Board Circular which stipulates that once the adverse remark is recorded in the ACR the employee was

required to be issued warning/opportunity for improvement. However, in the case of applicant the Reviewing Authority had never issued any communication/warning by giving opportunity for improvement after regarding adverse remark in his ACR,. Therefore, the respondent no.2 ought to have expunged the said adverse remark in the case of applicant.

- 9.5** It is submitted that as per the instructions contained in master circular: *“when reviewing officer is not sufficiently familiar with the work and performance must verify the correctness of the remarks made by reporting authority after making inquiries if needed, a hearing may be given to the officer concerned.”* Accordingly, the reviewing authority ought to have conducted the inquiry and ought to have given an opportunity to be heard to the applicant, as the reviewing authority had no occasion to judge the work of the applicant personally and in fact the applicant had work under him only for 3.1/2 months. Therefore, the conclusion of respondent no. 2 in the impugned decision is contrary to the instructions of the circular and same requires to be set aside.
- 9.6** It is submitted that the respondent no. 2 failed to appreciate that the reviewing authority was biased against the applicant.
- 9.7** The respondent no. 2 failed to consider that the penalty imposed on the applicant vide order dated 28.12.2006 by the Disciplinary Authority as well as the order passed by Appellate Authority dated 24.08.2009 was found to be awarded contrary to the provision of rules as also issued with mala fide and the same was set aside by this Tribunal. Therefore, the foundation for writing ACR by the Reporting Officer and confirming by Reviewing Authority itself vanished and no adverse remarks could be written against the applicant.
- 9.8** The respondents have not considered the case of applicant in its true spirit with regard to various observations of this Tribunal in earlier order and directions issued to the respondent. The respondent conveniently ignored the fact that in the year subsequent to 2007-08,

the applicant has been able to secure in his APAR equivalent to Bench Mark.

- 9.9** In sum, it is the grievance of applicant that the respondent no.2 ought to have cancelled the remarks/grading of “Average” based on his earlier grading in ACRs. Therefore, the impugned order passed in arbitrary manner and in violation of the rules.
- 10** Per contra the respondent Nos.1 & 2 appeared through Standing counsel, Ms. R.R.Patel and filed their reply, the respondent No.3 i.e., The Chief Signal & Telecom Engineer (Construction) Western Railway Zone & respondent no. 4, i.e., The Deputy Chief Signal & Telecom Engineer (Construction) also appeared through Standing counsel, Ms. R.R.Patel and had filed their separate replies. All the respondents denied the claim of applicant in their respective reply.
- 11** The respondent nos.1 & 2 in their reply have mainly submitted that :
- 11.1** The respondent no. 2 has reconsidered each and every point as stated by the applicant in his representation dated 26.08.2010 (Ann. R/1) and the remarks from the Reporting and Reviewing Officer on applicant's ACRs, except for the year 2004-05 since the remarks of Reporting Officer Shri Anand Bhave could not be obtained as he had superannuated on 30.09.2006. The respondent no.2 had passed a detailed speaking order dated 07.01.2014 (Ann. A impugned herein).
- 11.2** The applicant has suppressed a vital fact that his lien was maintained in North Western Railway having headquarter at Jaipur and not in the Western Railway. The respondent submits at this stage that applicant was wrongly called for the selection for the Group B post of ASTE S&T Department as he did not belong to Western Railway. In support to this averment, the respondents relied upon the letter dated 26.02.2013 (Annexure R-2) written by AFO(E) for DRM(E), ADI to GM(E)-CCG wherein it is categorically stated that the applicant himself has given willingness for not including his name in the seniority of ADI Division as his name has already been included in

the North Western Railway (Jaipur). He belongs to NWR (JP) and seniority published by NWR(JP). In view of this, the applicant was wrongly called for said impugned selection and therefore, the OA is required to be dismissed at this stage itself on this count.

- 11.3** It is stated that the respondent no. 2 in his speaking order dated 07.01.2014 considered the representation of the applicant on objective assessment and material on record. The grievance of the applicant as raised in representation that his ACR for 2004-05 had been made adverse by the reporting officer at the behest of the reviewing officer and further that the said reviewing officer had joined that organisation only on 15.12.2004 i.e, he had only 3.1/2 months of working period during the year of ACR writing are concerned, the said allegations and the ground stated by the applicant was not found to be logical since no reason has been ascribed which could have resulted in the perceived animosity of the reviewing officer towards the assessee.

It is further submitted that the very same reviewing officer had also given the Bench Marks “Good” grading to the assessee (i.e., applicant herein) for the years 2005-06 and 2006-07. Therefore, the allegation of bias does not sustain.

- 11.4** Since the ACR was written for each year considering the performance during the year, the grading of the performance of the previous and subsequent year does not affect it.
- 11.5** The respondents submit that the allegation of the applicant that the reviewing officer had been biased against him and his ACR 2004-05 was downgraded as “Average”, and he initiated the minor penalty charge sheet in 2006 are also not found acceptable by the respondent no.2 and for which he has recorded the reason that the ACR of 2004-05 was written much prior to initiation of minor penalty charge. The very same Reviewing Authority recorded grading as “Good” for consecutive years (2005-2006 and 2006-2007) that too even after initiation of minor penalty. Therefore, the allegation of bias as contained in the representation is not sustainable. The Reviewing

Officer gives his own assessment which may differ from the assessment of Reporting Officer and would have been written in his own right to do so if he had wanted to down grade.

- 11.6** The respondents denied the contention of the applicant that during year 2007-08 he was not issued with any memo or for warning by either the reporting officer or the reviewing officer. According to the respondent, the applicant was served with a confidential DO letter no. EP/Sig/308ACG dated 04.01.2008 for disobeying the instruction and unfair dealing. It is further contended that for the year 2007-08, the reviewing officer has endorsed the assessment made by the reporting officer as per their own assessment.

Learned standing counsel for the respondents submits that in the year 2004-05 and 2007-08 the grading of “Average” was not considered as adverse remarks. Therefore, there was no necessity for the Reporting Authority or Reviewing Authority to record it as adverse remark in the ACR of the employee nor any warning or opportunity for improvement was needed to be communicated. This Tribunal after considering the law laid down in the case of Dev Dutt v/s Union of India reported in (2008) 8 SCC 725 held that the grading of “Average” was below the Bench Mark for further prospects of the employee, the copy of the said ACR required to be communicated to the applicant for filing his representation thereon. It is also submitted that this Tribunal in its earlier order had never accepted the claim of applicant that his below Bench Mark ACRs, i.e., for year 2004-05 and 2007-2008 be disregarded on the basis of his earlier ACRs.

The respondent no.2 has reconsidered the representation with regard to entries i.e. grading of “Average” recorded in the ACR for the years 2004-05 & 2007-08 of applicant and by a speaking order rejected the representation. As such, the applicant is not entitled for any relief as sought for.

- 12 The Respondent Nos.3 & 4, by rebutting the averments made by the applicant in this OA, reiterated the same ground as submitted by the respondent Nos.1 & 2.
- 13 The applicant has filed separate rejoinder to reply filed by the respondents and denied the contention of the respondents. Additionally, it is stated by the applicant no letter or order had been issued to the applicant saying that the applicant was wrongly called for the selection. The applicant submits that maintenance of his lien reflects in the Headquarters' letter 13.5.2003. He further submits that vide letter dated 18.07.2013 issued by the Headquarter pertaining to integrated seniority list for selection for the post of Assistant, Signal Telecom Engineer, his name reflects at Sl.No.27 for regular selection and shown as belonging to Ahmedabad Division. It is further submitted that to mislead the Tribunal, subject of lien of the applicant has been raised whereas in the earlier round of litigation, it dealt with supply of adverse ACR. In the present OA the applicant has also mainly pray for expunge of grading made in 2004-05 and 2007-08.
- 14 We have heard the learned counsel for the applicant, Shri P.H.Pathak and Standing counsel for the respondents, Ms. R.R.Patel. Perused the material placed on record including the written submissions filed by the applicant.
- 15 It is noticed that as per observation in para-42 of common order dated 09.03.2010 passed in OA 145/2009 & 146/2009 (i.e. first round of litigation) by this Tribunal, *had not accepted the claim of the applicant to disregard the ACRs for the years 2004-05 & 2007-08 which were written by the reporting authority and accepted by the reviewing authority (private respondent i.e Shri Vinod Agarwal in the said OA) and his claim be considered on the basis of earlier ACRs.*

Further it is noticed that on pronouncement of judgment/order by the Hon'ble Apex Court in the case of **Dev Dutt v/s Union of India reported in (2008) 8 SCC 725**, considering the same, this Tribunal in its common order held that since the grading of "Average" was below the Bench Mark for further prospects/promotion of the applicant, the copy of the said ACRs for the relevant years was required to be communicated to the applicant for

filing his representation thereon. Accordingly, the only direction given by this Tribunal was to communicate the adverse attributes recorded by Reporting Officer and Reviewing Officer and opportunity was granted to applicant to file his representation.

- 16** It can be seen that in the case of present applicant the grading of “Average” in the ACRs for the years 2004-05 & 2007-08 was not considered as “Adverse remark” by the reporting officer as well as reviewing authority in terms of master circular issued by the Railway Board at the relevant time.

In this regard, it is appropriate to refer the effective circulars of the Railway Board at the relevant time, [i.e. E(NG)II-75/CR/1 dated 06/10.01.1977; E(NG)II/78/CR/2 dated 10.11.1978 and E(NG)I/81/CR/5 dated 26/30.09.1981], which stipulates that “any remark describing as “Average” either the performance or any other quality of the railway servant shall not be treated as an adverse remark. Further, the remark “Average” recorded in the confidential report are not to be treated as adverse as per the Railway Board Circular/letter No. E(NG)II/76/CR/1 dated 15.10.1976. Since the reporting authority had not recorded any adverse remarks against the self appraisal of applicant, there was no occasion or necessity for Reporting Authority to mention in his report about any warning(s)/admonition/displeasure/reprimand administered to a Railway servant for inefficient work or performance for the purpose of improvement.

It is noticed that the Reviewing Authority had accepted the report of Reporting Authority and as there was no adverse remark recorded in the ACR, the Reviewing Authority had also not found it necessary to enquire into assessment of the Reporting Authority.

At this stage, we also take note that this Tribunal in its earlier common order dated 09.03.2010 considered the submission of respondents on the issue of the grading of “Average” was not an adverse remark and there was no necessity for reviewing authority to inquire or issue warning to the concerned employee for improvement and recording of such remark in ACR. This Tribunal by considering law laid down by Hon’ble Apex Court in the case of Dev Dutt (supra), directed the respondents to communicate

any special attributes for such downgrading in ACR of applicant i.e. the fall from “Good to Average for ACR of the years 2003-04 to 2004-05 & 2006-07 to 2007-08” and also observed that the reporting officer has recorded satisfactory grading in respect of attributes in 2007-08 but the overall grading is shown as Average only, the said aspect at the relevant time was not considered by the Reviewing Authority or Departmental Promotion Committee as to whether satisfactory entry can lead to “Average” overall grading. It can be seen that the respondents have supplied the copy of ACRs in question and applicant herein had submitted his representation thereon. The respondents have considered the remarks of Reporting Officer and the Reviewing Authority as also the representation of the applicant and recorded its findings that the assessment of quality of work and whether it was outstanding or not, as well as other attributes of working during the year are assessed by the superior and not by the assessee himself. No adverse comments were given at the instance of Reviewing Authority, the Reviewing Authority has endorsed the assessment made by the Reporting Officer as per the performance of the applicant for a particular year, the assessment was made on overall working and not finding any irregularity in some area does not necessarily mean higher grading should be recorded. The Reviewing Authority accepted the report of Reporting Officer and did not make any inquiry since there were no adverse remarks by recording the grading of “Average”. The learned standing counsel for respondents submits that the General Manager i.e. respondent no.2 considered representation of the applicant objectively and by recording cogent reason arrived at its conclusion that there was no reason to change or disturb the assessment recorded in the ACR of 2004-05 & 2007-08 and passed a speaking order. We find force in the said submission of the respondents.

16.1 At the cost of repetition, it is required to mention that in the impugned order while declining to accept the allegation of bias against the Reviewing Authority, the respondent no.2 also observed that he initiated minor penalty charge sheet in 2006, since this happened after assessment year 2004-05, the minor penalty is not relevant for the year 2004-05.

- 16.2** Further, with regard to allegation/contention of the applicant that the same Reporting Officer had assessed him for better grading in the previous year and assessing below Bench Mark grading only under the influence of Reviewing Officer, rejecting the said contention, it has been further observed by the respondents that very same Reviewing Officer gave him the Bench Mark “Good” grading in the subsequent two years. If the Reviewing Officer had been biased against the assessee he would not have given him such grading. The respondent no.2 concluded that the ACRs of the applicant have been written based on his performance every year rather than under influence of any officer, the ACR is the performance during the year and did not find any reason to change the assessment in the ACR.
- 16.3** It can be seen that the respondents had supplied the copy of attributes recorded in ACRs for the years 2004-05 and 2007-08, as per the direction of this Tribunal the representation thereon has been considered twice by the higher authority and same has been rejected by passing a speaking order. The reason assigned by the respondent no.2 cannot be said to be suffering from procedural infirmities.
- 17** At this stage, it is appropriate to mention that it is settled principle of law that the Courts of law are to act with due care and utmost circumspection when they interfere with the administrative matter relating to the executive function. At this stage, it is not out of place to mention that the law laid down by the Hon’ble Supreme Court in the case of State of M.P. v/s Shrikant Chapekar reported in AIR 1993 SC 1221, wherein it is held that *“it is not the concern of administrative tribunal to assess the service of government servant and that the function to evaluate the ACRS has been vested in the Departmental Promotion Committee.”*
- 18** It is also appropriate to refer to the observations of Hon’ble Apex Court in the case of Saroj Kumar v/s Union of India & Anr reported in [2016] 1 SCC (L&S) 350, wherein the issue was also raised before Apex Court about the controversy relating to downgrading ACRs of the applicant without giving him any opportunity, which were later communicated and representation

made by the said applicant was also considered and rejected. The Hon'ble Apex Court while dismissing the said appeal of Saroj Kumar observed as under:-

- 8 *From the above paragraphs of the counter affidavit it is clear that after first round of litigation i.e. OA No. 640 of 2006, concluded vide order dated 18.9.2008, passed by the Tribunal, communication of the entries, due to which the appellant's promotion was affected, was made and representation was submitted by the appellant on 12.6.2009. It is also clear from the record that the representation of the appellant was rejected vide order dated 22.1.2010. Consequent to subsequent direction of the Tribunal in second round of litigation, as affirmed by the High Court in Civil Miscellaneous Writ Petition No. 8357 of 2011, the matter has been reconsidered and rejected.*
- 9 *In the above circumstances, after communication of the entries made to the appellant and subsequent rejection of the representation, now, the law laid down in the cases of Dev Dutt v. Union of India (supra), Abhijit Ghosh Dastidar v. Union of India and others (supra), and Sukhdev Singh v. Union of India[3], is of little help to the present appellant for the reason that in the present case not only the ACRs have been communicated to the appellant, his representation too has been rejected.*
- 10 *In our opinion, the High Court has rightly taken note of the fact that on conclusion of second round of litigation neither there was direction by the Tribunal nor by the High Court to ignore the entries in question (after rejection of the representation against it) for promotion of the appellant from the date when his juniors were promoted. In the present round, the Tribunal has erred in directing the authorities to consider the case of the appellant for promotion from the date when his juniors were promoted, ignoring the remarks, which had been communicated after first round of litigation. We are in agreement with the High Court that after the ACRs have been communicated and representation has been rejected, the Tribunal should not have treated the remarks uncommunicated.*
- 11 *Therefore, we do not find any error in the impugned order passed by the High Court.*
- 12 *Accordingly the appeal is dismissed.....”*
- 19 In the present case also, as noted hereinabove, neither was there a direction by this Tribunal nor by High Court of Gujarat to ignore or disregard the entries recorded in ACRs of 2004-05 & 2007-08 in the earlier litigations. Taking into consideration the law laid down in Dev Dutt case (supra), this Tribunal in its earlier order issued limited direction to the respondents to supply copy of attributes recorded in the ACR of the applicant and representation thereon be considered by the higher authority by way of a speaking order. Undisputedly, the copy of ACRs were communicated, the representation thereon filed by the applicant has been re-examined objectively by the respondent no.2 and by recording cogent reason the same

has been rejected. As such, the Tribunal has limited scope to adjudicate the matter relating to assessment of performance of the applicant.

In view of the reason assigned by the respondent no.2 and discussion made hereinabove this Tribunal decline to accept the submission of applicant.

- 20 As discussed hereinabove and in view of the law laid down by the Hon'ble Apex Court, we do not find any infirmities in the impugned order. Accordingly, the OA is dismissed. No costs.

(A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

abp