

CENTRAL ADMINISTRATIVE TRIBUNAL  
MADRAS BENCH

Dated the day, <sup>25</sup> day of March Two Thousand And Twenty One  
PRESENT:

THE HON'BLE SHRI S.N. TERDAL, MEMBER(J)  
THE HON'BLE SHRI C.V. SANKAR, MEMBER(A)

O.A.310/191/2016

V. Thavamani Pandian,  
S/o. S. Vellaisamy,  
No. 143-L, Railway Officers Quarters,  
Sterling Road, Nungambakkam,  
Chennai-34.

.....Applicant

(By Advocate:M/s. S. Joel)

Vs

1. The Union of India  
Rep. by the Chairman, Railway Board,  
Ministry of Railways,  
New Delhi;
2. The General Manager,  
Southern Railway,  
Park Town, Chennai-3;
3. The Divisional Railway Manager,  
Salem.

...Respondents

(By Advocate:Mr. Y. Prakash)

CAV On :09.03.2021

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ASVS



**ORDER**

(Pronounced by Hon'ble Mr. C.V. Sankar, Member(A))

The relief prayed in this OA is as follows:-

"In view of the facts and reasons as stated in paragraph (4) & (5) the applicant prays that this Hon'ble Tribunal may be pleased to call for records relating to the first respondent's impugned order 2015/SCP/7/54 dated 14.08.2015, to quash the same and consequently direct the respondents to restore all benefits, without reference to the evaluation in April 2014-15, both service and monetary, and to pass such further or other order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render "justice."

2. The brief facts of the case in the OA are as follows :-

The applicant was appointed as Assistant Engineer in the respondents' organization in the year 1990 and after several promotions, reached the Senior Administrative Grade in the year 2012. He functioned as the Additional Divisional Railway Manager between 2012 and 2015. This application has been filed to quash the adverse remarks made by the Reporting Authority in his Annual Performance Appraisal Report (APAR) for the year

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- 2014-2015 which was upheld by both the Reviewing and Accepting Authorities. The applicant gave a detailed representation on 24.4.2015 to the competent authority for seeking the revision of the APAR. This was rejected by the Appellate Authority vide Annexure-A7 order dated 14.08.2015 which is impugned in this application. The main contentions of the applicant are as follows: -

I. There was a delay in the communication of adverse remarks which was done in April, 2015 instead of being done within a month of completing the APAR in the month of December, 2014;

II. The representation against the grading was dealt with by the same person who had earlier accepted the APAR namely, the Chairman of the Railway Board;

III. The consistently brilliant service record of the applicant as could be seen in the following table:-

2009-10	Very Good	
2010-11	Outstanding	JAG
2011-12	Very Good	
2012-13	Very Good	SAG Posted as ADRM, Salem on 23.8.2012
2013-14	Very Good	
2014-15	Average	<b>Not fit for DRM</b>

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2015-16	Outstanding
2016-17	Very Good
2017-18	Outstanding
2018-19	Outstanding
2019-20	Outstanding"

IV. The applicant was posted as ADRM for a period of two years and 9 months from 23.8.2012 to 12.5.2015 which is more than the usual service period of two years for such an assignment. During this period, he was awarded Very Good grades for the years 2012-13 and 2013-14. However, only for the year 2014-15, his grading was downgraded to that of Average. The applicant has raised objections relating to the various comments made by the Reporting Officer with respect to the nature and quality of work as well as the areas of improvement in which the applicant had made significant contribution. The applicant has cited various attributes of the applicant having been graded very good 8 times, good 8 times and average only three times in the same APAR 2014-2015 and, therefore, the overall grading of average being not supported by evidence needs to be modified. The applicant has raised objections to the comments of the Reviewing Authority mentioning about the applicant's repeated requests for attending a seminar conducted to commemorate

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- the Silver Jubilee of the appointment of the applicant and his batch mates. The applicant states that the conduct of the RRB exam was not part of any Corporate objective for which he was duty bound and therefore, the Reviewing Authority has disclosed his bias by mentioning this incident while accepting the average grade. The applicant also points out that the same reviewing authority, in the report for the previous year which he had signed on 17.4.2014, stated that the applicant was fit for the posts of DRM as well as PHOD. Within a short time of eight months, the Reviewing Authority found the applicant not fit for DRM basing his conclusions on the irrelevant point regarding repeated applications for attending the batch event. The applicant finds fault with the same acceptance of the report by the Accepting Authority who in fact had accepted the grading of very good and fitness for the post of DRM and PHOD for the earlier year vide his acceptance dated 30.09.2014.

3. The sum and substance of the contentions of the applicant is that he has been consistently graded very good and outstanding in all the five years before 2014-15 and in the subsequent five years he was graded as outstanding for four years and very good for one year. He, therefore, alleges that the

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grading given to him in the 2014-2015 is clearly biased and needs to be quashed. The applicant would also submit that the main intention of the APAR is to assess the performance of the officer concerned in all the attributes related to the higher level of administration of the respondent organization and the intention should not be to find fault on minor issues or to punish but rather to correct the individuals to better their performance in the future. The assessment should be free from any personal bias and should be objective.

4. The respondents have vehemently argued that the fact of the applicant having better records in the years previous to 2014-2015 and thereafter, would not be of any relevance to the year in question where it is possible that the performance of the applicant has deteriorated as observed by the reporting officer. The respondents have cited a number of cases including the written admonitions given to the applicant showing that he was not carrying out the instructions given by his immediate superior and that while he had shown competence in his area of operation viz, Civil Engineering, he was found wanting in many other aspects of higher level of administration as noted by the Reporting Authority. The respondents have pointed out as to

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how the applicant was in the habit of writing to the superiors of his immediate superior resulting in unwanted correspondence and delay. The respondents also state that the applicant had failed to carry out instructions of his superior officer relating to safety and other serious issues including finalizing of tenders etc. The respondents have concluded that the jurisdiction of this Tribunal and Courts in general with respect to APAR is limited as held by the courts in a catena of decisions. This Court should not sit in judgment over the views of the reporting authority/reviewing authority/accepting authority who are the persons competent to judge the performance of the officer reported upon based on what had happened during a particular year. The respondents also state that his representation has been considered at the appropriate level and the point relating communication of adverse remarks within one month can be brushed aside since after 2008-2009, the entire APAR is forwarded to the officer reported upon and no time frame is given excepting to state that the Section entrusted with maintenance of APARs after its receipt shall disclose the same to the officer reported upon vide O.M. Of the DOP&T dated 14.5.2009, Annexure-R21. The respondents also dismiss the

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contention of the applicant relating to the representation having been disposed of by the same accepting authority stating that the authority competent to decide on the representation is in fact the accepting the authority as evidenced by the Railway Board's communication dated 23.12.2009 produced at Annexure-R/24.

5. The crux of the issue is whether there is any inherent bias in the comments made against the applicant by the reporting authority and the subsequent review and acceptance by concerned authorities.

6. As has been rightly argued by the respondents, this court cannot sit in judgment over the appraisal of the performance done by the immediate superior officers of the applicant. At the same time, we have to give weightage to the important submissions made by the applicant relating to his having obtained outstanding or very good record in all the previous five years before 2014-2015 and five years thereafter. In fact, the applicant had got four outstanding grades in the subsequent five years after the average report of 2014-15. It is seen that the reviewing authority who considered him fit for the post of DRM & PHOD in April, 2014, found him not to be fit within eight months' time. It is a fact that the applicant had discharged the

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duties of the DRM although for a short duration. Even though several communications were given to the applicant by the reporting authority to improve his functioning and obey the instructions, it is seen that the applicant was graded very highly in most of the attributes of his functioning and the grading 'average' was given only for three attributes. The average grading appears to be an aberration for a short period in almost a decade of very good or outstanding grading. We hasten to add that we do not agree or disagree with the comments of the reporting authority since it is not possible for us to sit in judgment over the same. We have also gone through the detailed representation given by the applicant vide Annexure-A6 dated 24.4.2015. In the impugned order dated 14.08.2015, the respondents have stated that 'having regard to the representation made by the officer and the fact that the officer has not brought out any new facts warranting upgradation, I (Accepting Authority) find no reason for contemplating any change in the grading. The grading shall remain average.' We do not agree with this finding of the accepting authority since in his detailed representation, the applicant has commented extensively on each and every line of the APAR and given

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considerable details relating to his contribution and the areas of improvement. He has also mentioned about the decision making and management qualities and various initiatives he has taken including his functioning as DRM and the consistently good grading he has been given even in this APAR. It is apparent that the applicant has brought in certain new facts and certain arguments to bolster his case that the average grading needs to be upgraded if an objective view is taken. Therefore, we deem it justified to remit the matter back to the accepting authority to consider the representation of the applicant vide Annexure-A6 in a comprehensive and objective manner and take an appropriate decision with respect to the request made by the applicant within a period of three months from the date of receipt of this order. It is not out of place to mention that the exercise of APAR itself is for the improvement in the functioning of an officer and from the consistent good record of the applicant, it is apparent that the respondent's organization would do well to benefit from the competence and work of officers such as the applicant. With the above observation, the OA is disposed of. No costs.