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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 604 OF 1996
Cuttack, this the 29th day of September, 2000

Bharat Kumar Barik

....Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
29.9.2000

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CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

.....

Bharat Kumar Barik, aged about 37 years
son of Madhu Barik,
working as LDC, Eastern Rivers Division,
Central Water Commission, Plot No.13 and 14,
Vani Vihar, Bhubaneswar..... Applicant

Advocates for applicant - M/s Ganeswar Rath
S.N.Misra
A.K.Panda
S.Mohanty

Vrs.

1. Union of India, represented by its Chairman,
Central Water Commission,
Sewa Bhawan, R.K.puram, New Delhi.
2. Chief Engineer, Mahanadi & Eastern Rivers,
Central Water Commission,
Bhubaneswar.
3. The Superintending Engineer, Hydrological Observation Circle,
Central Water Commission,
Saheed Nagar,
Bhubaneswar-7.
4. Executive Engineer,
Eastern Rivers division,
Central Water Commission,
near Saheed Nagar, Vani Vihar,
Bhubaneswar Respondents

Advocate for respondents - Mr.Akhaya
Addl.S.C.

K. Misra

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the order dated 25.4.1995
(Annexure-1) communicating the adverse entries in the

13
13

Confidential Report of the applicant for the period from 1.4.1993 to 31.3.1994, the order dated 18.8.1995 at Annexure-4 communicating certain adverse entries in his CR for the period from 1.4.1994 to 28.11.1994, and the order dated 31.7.1995 at Annexure-6 communicating certain adverse entries for the period from 26.11.1994 to 31.3.1995. He has also prayed for quashing the order dated 17.8.1995 (Annexure-3) rejecting his representation for expunging the adverse entries for the period from 1.4.1993 to 31.3.1994 and the order dated 7.12.1995 (Annexure-8) rejecting his representation for expunging the adverse entries for the period from 1.4.1994 to 25.11.1994 and the adverse entries for the period from 26.11.1994 to 6.3.1995. His third prayer is for a direction to the respondents to expunge the adverse remarks in the CR for the periods mentioned in Annexures 1,4 and 6.

2. The facts of this case, according to the applicant, are that during the period from 1.4.1993 to 31.3.1994 he was working as L.D.Clerk in the office of Superintending Engineer, Hydrological Observation Circle, Central Water Commission (respondent no.3). He was a member of Central Water Commission Employees' Association, Orissa Circle. Government of India decided on 24.3.1994 to close down Brahmani-Subarnarekha Division functioning at Bhubaneswar for the last twenty-five years. The office bearers of the Association discussed several times with respondent no.3 regarding non-closure/non-functioning of Brahmani-Subarnarekha Division and non-transfer of any employee working in Brahmani-Subarnarekha Division owing to such closure/conversion. When the transfer of a number of employees was certain, almost all the employees of the organisation sat on a Dharana at lunch hour at the gate of Brahmani-Subarnarekha Division office on 18.2.1995 to register the general protest of the employees against such transfer. In this application the petitioner has

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challenged the adverse entries made in his CRs for the periods from 1.4.1993 to 31.3.1994, from 1.4.1994 to 25.11.1994 and from 26.11.1994 to 31.3.1995 communicated by respondent nos. 3 and 4 respectively. Respondent no.3 communicated the adverse entries made against him by the Reviewing Officer. The Reviewing Officer in the case of the applicant was respondent no.3. In Annexure-1 it has been mentioned that in his confidential character roll the reviewing officer has recorded that the applicant provoked the Union employees for Gheraoes and shouting of slogans against the Superintending Engineer of Eastern Rivers Circle, Central Water Commission. In Annexure-1 it has been written that the above remarks have been given by the reviewing officer against column no.5, Part IV of C.R. The applicant states that according to the instruction dated 18.12.1986 of the Department of Personnel and Training, column no.5 is meant for general remarks with specific comments about the meritorious work of the officer including grading. The applicant made a representation against the adverse remark in his letter dated 16.5.1995 at Annexure-2, but the same was rejected in the order dated 17.8.1995 at Annexure-3. For the period from 1.4.1994 to 25.11.1994 the adverse remarks communicated in letter dated 18.8.1995 at Annexure-5 were that he was an active participant of the unrecognised employees' union and took part in dharnas, shouting slogans and organising black flag and protest demonstrations against the Department and higher officers. He wrote some remarks against his senior officer and was reprimanded for writing such remarks. He was disobedient. His relations with some of the fellow employees and officers were extremely bad. He was not hard working. He was indisciplined and a hard headed official. He was not well aware of the rules and regulations and he misinterpreted them in his own way. He was not keen to learn or obey and change his attitude. He lacked

devotion to duty and was irresponsible. The applicant filed a representation dated 15.9.1995 (Annexure-5) for expunging the adverse entries. The applicant received another communication communicating adverse entries made in his CR for the period from 26.11.1994 to 31.3.1995, i.e., the second part of the year 1994-95. This letter dated 31.7.1995 is at Annexure-6 in which it has been communicated to him that the entries recorded in his CR for the above period are that he was General Secretary of the employees association and instigated employees against the officers. On 18.2.1995 he instigated and intimidated the employees to shout slogans, disrupt official function, stage dharana and Gherao officers and staff. He was under suspension from 7.3.1995 for the above indiscipline. The applicant preferred representation dated 29.8.1995 at Annexure-7 for expunging the above entries. He was intimated in order dated 7.12.1995 at Annexure-8 that his two representations dated 15.9.1995 and 29.8.1995 have been rejected. It was also noted that the applicant has made certain derogatory and uncalled for remarks against some senior officers which were viewed very seriously. He was advised and warned to desist in future from making such remarks against the senior officers. The applicant has stated that the employees were sitting in a peaceful Dharana without indulging in criminal activities and without obstructing the movement of any officer from and to the office. The officers including the Superintending Engineer were sitting in the first floor of the said office building whereas the employees were sitting at the gate which is at a distance of about 12 metres away from the office building. It is further stated that the service career of the applicant is very good and no adverse entries were ever made against him except the impugned remarks and these have been made due to

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16
16

ulterior motive and union activity of the applicant. It is further submitted that it is only after 18.2.1995, the date of peaceful Dharana that respondent no.3 has manipulated Character Rolls and influenced his subordinate officers to give adverse remarks against the applicant. In the above background of facts, the applicant has come up in this O.A. with the prayers referred to earlier.

3. The respondents in their counter have submitted that there is no recognised association by the name Central Water Commission Employees' Association. They have also submitted that Brahmani-Subarnarekha Division has not been closed, as has been alleged. This Division has only been converted into Monitoring & Appraisal Unit under the regionalisation programme of the Central Water Commission to monitor major and medium irrigation projects in the State of Orissa and such conversion did not involve any retrenchment of the existing staff. It is further stated that transfer and posting of employees in the Central Water Commission are routine and made to meet the administrative exigencies. It is submitted that the adverse entries for the period from 1.4.1993 to 31.3.1994 were made by the then Superintending Engineer who has since retired and the reviewing officer, based on actual performance and activities of the applicant during the period of reporting. The adverse entries made in the CR for the period from 1.4.1994 to 25.11.1994 were made by different officer than the one who made the adverse entries for the year 1993-94. The adverse entries for the period from 1.4.1994 to 25.11.1994 were based on the actual performance and activities of the applicant. In one of the files, the applicant wrote certain remarks

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against his senior officer and for this he was reprimanded by the Superintending Engineer for writing such remarks. The respondents have stated that the concerned file in which the applicant wrote such remarks and was reprimanded can be produced before the Tribunal at the time of hearing. The respondents have denied that the applicant and some other staff were sitting on a peaceful Dharana. The respondents have averred that on 18.2.1995 the applicant along with others staged demonstration and Dharana raising slogans against the Superintending Engineer, the Head of the Circle and blocking the main gate of the office premises involving wrongful confinement within the office premises of the Superintending Engineer, Bhubaneswar and several other officers and staff from 1300 hours during office hours upto 11 O'clock at night on 18.2.1995. Besides committing the above misconduct they also disrupted the the official function concluding the three-day Hindi Workshop organised by Official Language Implementation Joint Committee, C.W.C. Because of the demonstration and gherao the officers who were gheraoed could not take even their food and an ailing Government servant who was confined was not allowed to leave the office premises after normal office hours, i.e. 5.00 PM. In the counter it is further alleged that there has been no ulterior motive of the reviewing officers, as alleged by the applicant. It is also stated that the adverse entries have been rightly noted in Column 5 of the Character Roll for the year 1993-94. The applicant has not given any reason why the officer giving the adverse entries, the then Superintending Engineer, who has since retired from Government service, would bear any malice against the applicant. It is also stated that the remarks given by the Reviewing Officer have given correctly and without any prejudice. It is further stated that the time prescribed for communication of adverse entries and

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disposing of the representation is not mandatory but directory. If the adverse entries are not communicated in time they do not get automatically withdrawn. It is further stated that it is not necessary under the rules to disclose the identity of the officers who made the adverse entries and this contention of the applicant has been opposed. It is further stated that the assessment of performance of the applicant is based on actual performance. The applicant was reprimanded verbally on a number of occasions and the displeasure of the Superintending Engineer was communicated to the applicant in the official file. The respondents have stated that the applicant indulged in demonstration, shouting of slogans, illegal confinement of the staff and officer and disrupting the official function on 18.2.1995 for which a criminal case is pending in the court of the learned SDJM, Bhubaneswar. It is stated that the appellate authority after duly considering his different representations, has rejected the representations. In one of the representations the applicant had made certain derogatory remarks against the Superintending Engineer. The appellate authority had taken a serious view of the same. These remarks of the applicant clearly indicate the character and behaviour of the applicant. In view of the above, the respondents have opposed the prayers of the applicant.

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4. The petitioner has filed a rejoinder in which he has stated that according to the labour law in force, when an association is created to ventilate the grievance of the meber-employees, it need not be a recognised one. The applicant has pointed out that the respondents in their counter have not denied the existence of Central Water Commission Employees Association, Orissa Region. As a matter of fact, the authorities of Central Water Commission have accepted the aforesaid Association as the representative body of

the employees in Orissa under Central Water Commission. Various correspondences have been made with the Association by the authorities. The applicant has also stated that it is false that Brahmani-Subarnarekha Division has not been closed down, but has been converted into Monitoring and Appraisal Unit. According to the applicant, the function of a Division is quite different from that of a Monitoring & Appraisal Unit which is borne out by the fact that three Sub-Divisions continuing under Brahmani-Subarnarekha Division are now functioning under E.R. Division. Though till date no retrenchment has taken place due to closure, the fact remains that posts of Head Clerk, Divisional Accountant and Choukidar were abolished by the closure of Brahmani-Subarnarekha Division and some of the employees were adjusted in the newly created Chief Engineer's office and some of the employees have been adjusted under E.R. Division due to increase of Sub-Divisions under E.R. Division. Although the transfer and posting of employees are routine work, the promotional prospect and the posting outside Orissa for low-paid employees are quite troublesome and as such the employees have a genuine grievance to protest before the authorities. The applicant has stated that the reviewing officer, who has recorded the adverse entries for the year 1993-94 has been prevailed upon by Shri K.S. Khandarpur, the Superintending Engineer, for giving the adverse entries. It is further stated that the Superintending Engineer who gave the adverse entries for the year 1993-94 was transferred from Orissa in June 1994. According to the instruction, he should have recorded his views within that period and the adverse entries should have been communicated within one month thereof. But the adverse entries were communicated only on 25.4.1995 after the incident on 18.2.1995. Therefore, conclusion can be drawn that Shri K.S. Khandarpur prevailed upon the then Superintending Engineer to give adverse entries to the

-9-

applicant. It is further stated that the applicant throughout his service career, was holding higher responsibilities and on different occasions received honorarium during different periods. It is also stated that before recording adverse entries no reprimanding letter has ever been issued to the applicant. In view of this, the applicant has reiterated his prayers in the OA.

5. The respondents have filed a counter to the rejoinder in which they have denied that Shri K.S.Khandarpur has influenced the subordinate officers to give adverse entries in the CR of the petitioner for 1993-94. It is submitted that Brahmani-Subarnarekha Division has been converted into Monitoring and Appraisal Unit. This was a Cabinet decision of the Government of India taken under the regionalisation programme of the Central Water Commission. Such change and conversion are not only confined to Orissa but also other parts of the country. By such conversion no staff has been retrenched or declared surplus and interests of the employees are in no way affected. The respondents have also stated that granting of honorarium for different periods is not relevant with regard to his ACR. In view of this, the respondents have reiterated their opposition to the prayrs of the applicant.

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6. We have heard Shri Ganeswar Rath, the learned counsel for the petitioner and Shri Akhaya Kumar Mishra, the learned Additional Standing Counsel appearing for the respondents, and have also perused the records. The respondents have produced the Confidential Reports File of the applicant for the period under consideration in this O.A. as also for the period from 1.1.1988 to 31.3.1993 and this has also been taken note of.

21

7. It has been submitted by the learned counsel for the petitioner that according to the form in which Confidential Report is to be written for Lower/Upper Division Clerk and which is printed at pages 45 to 48 of **Swamy's Compilation on Confidential Reports of Central Government Employees (3rd Edition)**, Column 5 of Part IV is meant for general remarks with specific comments about the meritorious works of the officer. For the year 1993-94 the reviewing officer in his remark has given adverse entries which have been noted earlier. It is submitted that this column is meant only for meritorious works and adverse remarks should not have been written in this column. This contention is wholly without any merit. This column is meant for general remarks about the officer. If the meritorious work is there, the same has to be noted in this column. Similarly, if there are serious lapses which are of general nature, then this is the column where it has to be written. There is no separate column in the CR format for writing the deficiencies of the officer about whom the CR is being written. This contention of the applicant is, therefore, held to be without any merit and is rejected.

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8. Secondly, it is submitted that for the year 1993-94 the reporting officer had given good remarks, but the reviewing officer has given adverse remarks maliciously. It has been also stated that because of the peaceful demonstration and dharana on 18.2.1995, the Superintending Engineer, Shri K.S.Khandarpur has pressurised the reviewing officer to make the adverse entries. This contention is also without any merit because according to the petitioner himself the Dharana was held on 18.2.1995. The respondents have stated that this was a Gherao and wrongful confinement. Whatever it may be, this incident is of 18.2.1995 and the adverse entries for the year 1993-94 given by the reviewing officer have been written before this date.

9. The third contention is that as the reviewing officer has differed from the assessment of the reporting officer, he should have given reasons for his disagreement. He has also not communicated to the applicant in letter during the year pointing out his deficiencies or reprimanding him. As such the adverse remarks should not have been given by the reviewing officer. While writing the CR of an officer, the reporting officer and reviewing officer have to come to their independent finding. The reviewing officer should not unthinkingly endorse the remarks of the reporting officer. There is no provision anywhere that for giving a remark which is different from that made by the reporting officer, the reviewing officer has to give adequate reasons and the same are to be communicated to the officer concerned at the time of communicating the adverse entries. As regards the point that the reviewing officer has not, in course of the year, communicated any deficiencies in the work of the applicant to him. The learned counsel for the petitioner has referred to the circular dated 5.6.1981 of the Department of Personnel & Administrative Reforms printed at pages 22 and 23 of the **Swamy's Compilation on Confidential Reports of Central Government Employees (Third Edition)**. This circular is not applicable in the instant case because this deals with a case where in course of the year an officer has been given written warning, or displeasure has been communicated to him, or he has been reprimanded. There at the end of the year the superior officer may or may not make appropriate mention of such warning, displeasure and reprimand depending upon the seriousness of the matter and the consequent conduct of the concerned officer. This does not indicate that for writing any adverse entries there must necessarily be a prior intimation to the officer concerned about his

deficiencies. This contention of the learned counsel for the petitioner is also rejected.

10. It is next contended that the adverse remarks should be communicated to the applicant as quickly as possible and within one month of their being recorded. This has been laid down in Office Memorandum dated 30.1.1978 printed at page 23 of **Swamy's Compilation on Confidential Reports of Central Government Employees (Third Edition)**. But in this case, the adverse entries for 1993-94 have been communicated beyond the period of one year in letter dated 25.4.1995 at Annexure-1. At page 12 of **Swamy's Compilation on Confidential Reports of Central Government Employees (Third Edition)** it is clearly mentioned that the time prescribed in the circular for communication of the adverse entry is not mandatory but directory. If the adverse entry is not communicated in time, it is not wiped out. In a similar case dealing with an All India Service officer in whose case time for communication of adverse entries, etc., has been laid down in All India Services(Confidential Rolls)Rules, 1970, which have been issued under Section 3 of All India Services Act, 1951, reported in AIR 1987 SC 1201 (State of Haryana v. Shri P.C.Wadhwa, IPS, Inspector General of Police and another) the Hon'ble Supreme Court, while deprecating inordinate and unreasonable delay, held that the rules applicable in that case with regard to time period for writing of CR and time for communicating the adverse entries are directory and not mandatory. In view of this, because the adverse entries for 1993-94 were communicated after one year, that by itself would not justify quashing the adverse entries.

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11. The next point relates to the adverse remarks for the year 1994-95 which is in two parts from 1.4.1994 to 25.11.1994 and from 26.11.1994 to 31.3.1995.

In the remarks for the later part of the period it has been mentioned that on 18.2.1995 the applicant instigated and intimidated the employees to shout slogans, disrupt official function, stage Dharana and gherao against officers and staff. The applicant has stated that there was no gherao. The employees only sat in a peaceful Dharana near the gate whereas the officers were sitting on the first floor. He has further stated that the employees had a legitimate grievance and for ventilating their grievance, they are entitled to sit in peaceful Dharana. Therefore, the applicant has urged that no adverse view should have been taken of the peaceful dharana. the respondents, on the other hand, have submitted that the officers and staff were gheraoed from 1 O' clock in the afternoon to 11.00 P.M. at night. the officers could not leave the office and had to miss their food. One ailing officer could not leave office after office hours at 5.00 P.M.. and a criminal case has been filed in respect of this incident and the same is pending. We have noted from the Original Application that the immediate cause of this was closure/conversion of Brahmani -Subarnarekha Division and transfer of employees working in Brahmani-Subarnarekha Division. The applicant has stated that when transfer of a number of employees was almost certain, the employees sat in a Dharana during lunch hour at the gate of Brahmani-Subarnarekha Division office on 18.2.1995 to register general protest of employees against such transfer. From the above averment, it is seen that there was no transfer. Only apprehending that such transfer will take place, the Dharana, according to the applicant, and gherao, according to the respondents, were organised. In the

counter the respondents have stated that this conversion of Brahmani-Subarnarekha Division into a Monitoring and Appraisal Unit was done in pursuance of the regionalisation plan of the Central Water Commission and the decision was taken by the Ministry and Cabinet approval was obtained. The respondents have further stated that there was no question of any staff becoming surplus and their retrenchment and interests of the staff had been fully taken care of. The applicant admitted in his rejoinder that no transfer was involved. But he has stated that transfer and posting of the employees are routine work and because of conversion of Brahmani-Subarnarekha Division, the posts of Head Clerk, Divisional Accountant and Choukidar were abolished and the promotion prospects of the staff were reduced. Thus, it is seen that the stand taken by the applicant with regard to the cause of Dharana or gherao, as the case may be, has been changed. In his OA he has stated that this is because of imminent transfer of staff, but in the rejoinder he states that this is because of reduction of promotion prospects due to abolition of posts of Head Clerk, Divisional Accountant and Choukidar. The post of Choukidar is not a promotional post for any category of staff. The employees have also no right to promotion. They have only a right to be considered and it is perfectly within the right of the Department to abolish promotional posts if because of an all-India policy the promotional posts become unnecessary. In any case, no retrenchment has taken place. As such it is clear that the grievance of the applicant and his Union with regard to imminent transfer as has been mentioned in the OA is without any merit and the Dharana cannot be held to be a legitimate expression of employees' grievance. The other aspect is that according to the respondents, the officers and staff

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were gheraoed and a criminal case has been filed and the same is pending. It is also stated that those participating in the gherao shouted slogans and disrupted an official function relating to a Hindi Workshop. In consideration of this, it cananot be held that there was no gherao and the remarks in the later part of CR for the year 1994-95 are based on incorrect facts.

11. It has been further stated that the disciplinary proceeding initiated against the applicant for the incident on 18.2.1995 has been challenged by him in OA No.510 of 1995 which is pending and during the pendency of this OA, this incident of 18.2.1995 should not have been made the basis of adverse entries. This contention is also without any merit. The adverse entries have been recorded basing on the conduct of the applicant as assessed by his superior officer and the initiation of the departmental proceeding and the filing of the OA by the applicant in respect of that proceeding have nothing to do with the adverse entries. It is further stated that during the service career of the applicant he has handled higher responsibilities and has got honorarium and his career has all along been good and in view of this, the adverse entries for the year 1994-95 in two parts have been given only because of his union activity and the incident of 18.2.1995 and, therefore, these adverse entries should not be allowed to stand. We have noted from Annexures 9 and 10 that honorarium which the applicant got was for the years 1990-91, 1991-92 and 1992-93. These honorariums do not relate to the period under consideration in this OA. Therefore, his getting honorarium in earlier years has nothing to do with the adverse entries given for the years 1993-94 and 1994-95.

12. It has been further submitted by the applicant that the representations filed by him against the three adverse entries have not been properly dealt with. In his representation against the adverse entries for the year 1993-94, which is at Annexure-2, he has taken the same grounds which have been urged by him in this OA and it is, therefore, not necessary to consider them again besides recording that the grounds taken are that the remarks given by the reviewing officer have been inspired by malice, the column no.5 in Part IV of CR format is not the place for writing adverse entries, for legitimate union activity adverse entries should not be recorded, and the remarks have been communicated after delay of one year. These submissions have been already considered and rejected by us. In his representation dated 15.9.1995 against the adverse remarks for the first part of 1994-95, he has mentioned about his good service, his cash rewards, and the fact that the remarks arise out of legitimate union activity. He has also mentioned that no reprimand and admonition were administered during that period. He has also mentioned that the remarks are vague. The last point mentioned by him in this representation is that the Superintending Engineer, Shri K.S.Khandarpur has deliberately given the remarks which are vague and damaging out of malice and ill-will. For the second part of the year 1994-95 in his representation dated 29.8.1995 he has made averments which are exactly identical to the representation dated 15.9.1995 and therefore, it is not necessary to mention the submissions made in the representation dated 29.8.1995 because this is a copy of the representation dated 15.9.1995. We have considered some of these submissions in our discussions made earlier. The only point made which has not been considered is that the remarks are vague and general in nature and have been given by Shri

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K.S.Khandpur out of malice because of the incident of 18.2.1995. We note that for both parts of C.R. for 1994-95 adverse remarks have been given by the Reviewing Officer. The contention that Shri K.S.Khandpur has given the adverse remarks because of malice against the applicant is obviously without any basis. As regards the adverse entries for the later part of 1994-95, these adverse entries have not been given by Shri K.S.Khandpur. From this it also appears that for the year 1994-95 two different Reviewing Officers have given adverse entries in the CR of the applicant for their part. This controverts the contention of the applicant that Shri K.S.Khandpur has given the adverse entries as he was biased against him. As regards the contention that the remarks are general in nature, the Reporting Officer or Reviewing Officer is entitled to give general remarks about the work and conduct of the officer about whom the report is being written and just because the remarks are general in nature, it would not mean that such remarks cannot be given.

13. In consideration of all the above, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him. The Original Application is, therefore, held to be without any merit and is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Sim.
(SOMNATH SOM)
29-1-2000
VICE-CHAIRMAN

29th September, 2000/AN/PS