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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO. 739 OF 1996
Cuttack, this the 5th day of May, 1997

SHRI S.K.KHANNA ..... Applicant

Vrs

UNION OF INDIA
& ors ..... 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.

Somnath Som
(SOM)
VICE-CHAIRMAN
5/5/97

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK.

ORIGINAL APPLICATION NO. 739 OF 1996
Cuttack, this the 5th day of MAY ,1997

CORAM:

HONOURABLE SRI S.SOM,VICE-CHAIRMAN

....

SHRI S.K.KHANNA,
Director,
South Eastern Circle,
Survey of India,
P.O-R.R.Lab.,
Bhubaneswar-13 (Orissa) .... Applicant

-versus-

1. UNION OF INDIA,
represented by the Secretary,
Ministry of Science & Technology,
Technology Bhawan,
New Mehrauli Road,
New Delhi-110 016.

2. The Surveyor General of India,
Surveyor General's Office,
Survey of India,
Dehra Dun - 248 001 (U.P.).

3. The Additional Surveyor General (EZ),
Survey of India,
13, Wood Street,
Calcutta-700 016 (W.B.) ..... Respondents

Advocates for applicant - Dr.V.Prithviraj & Mr.B.K.Nayak-3

Advocate for respondents - Mr.U.B.Mohapatra, Addl.Central Govt. Standing Counsel.

Somnath Som 5.5.97

S.SOM, VICE-CHAIRMAN

O R D E R

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for expunging the adverse entries made in his Annual Confidential Roll for the period from 1.7.1991 to 10.2.1992 on the ground of bias of the reporting officer. His second prayer is for restoring the A.C.R. grading for the second spell of the year 1991-92, from 11.2.1992 to 30.6.1992, as given by the reporting officer, as any

watering down of A.C.R. grading without assigning any reason amounts to adverse entry according to the applicant. The third prayer is for quashing the warning dated 14.5.1993 (Annexure 20) issued by respondent no.1. The facts of this case, as alleged by the applicant, are given below.

2. The applicant is a direct recruit in Class I service under the Survey of India, Ministry of Science & Technology. He got all his promotions in due course in his turn and after his promotion as Director/Deputy Surveyor General, he was posted at Jaipur during the period from 1.7.1991 to 10.2.1992 under Additional Surveyor General, Western Zone. During this period, the applicant worked under Additional Surveyor General, one Brig. S.N.Dimri, who has since superannuated. The applicant's point is that in course of his work under Brig. Dimri, he brought to the notice of respondent nos. 1 and 2 an instance of a false T.A. claim by Brig. Dimri, in his letter dated 21.1.1992 (Annexure 12). As a result, Brig. Dimri subsequently refunded Rs.180/-. According to the applicant, the excess drawal was to the tune of Rs.300/- and therefore, Brig. Dimri made refund of a lesser amount. It is further alleged that in his letter dated 2 .9.1992 addressed to respondent no.1, the applicant pointed out that Brig.Dimri, apprehending further complaint from the applicant, collected back from the Regional Pay & Accounts Officer, Jaipur, another T.A.Bill No.4/TA dated 5.2.1992, for Rs. 9,118/- and reduced the amount to Rs.8,394/-. Extract of his letter dated 2.9.1992 has been annexed to the application as Annexure H. The applicant has further alleged that bias of Brig. Dimri is borne out by the fact that even though the applicant came to Jaipur on promotion and in a higher grade of Deputy Surveyor General, his residential telephone was ordered to be disconnected and shifted to the residence

of another officer who was junior to him. The applicant's case is that Brig. Dimri, in exercise of his official work, was favouring certain officers, was not consulting the applicant in any matter, and there was exchange of notings between him and Brig. Dimri on several matters in the files. Brig. Dimri also refused the leave applied for by the applicant on one occasion. All this, according to the applicant, is the cause and manifestation of bias of Brig. Dimri, the reporting officer, for the relevant period from 1.7.1991 to 10.2.1992, and out of bias and prejudice, Brig. Dimri had given the adverse entries for the relevant period. The applicant has alleged that his confidential character rolls for the period prior to 1.7.1991 and after 10.2.1992 were much better and he could not have suddenly deteriorated within a short period of little over seven months. The adverse entries were communicated to the applicant in letter dated 16.2.1993 (Annexure-1). It is relevant to note that in the Survey of India, the year of writing confidential roll is from 1st July to 30th June. The communication of adverse entries vide Annexure-1 was for the entire year 1991-92. The applicant made a representation dated 12.4.1993 against the adverse entries (Annexure 2). In this representation, he pointed out tha bias of the reporting officer, Brig. Dimri and asked for documentary proof in support of the adverse entries and prayed for expunging those entries. It further appears that for the period from 20.2.1992 to 30.6.1992, after retirement of Brig. Dimri, the applicant worked under Brig. S.P.Mehta who also recorded his remarks as reporting officer for the said period. In this representation, the applicant made a further prayer that the possible toning down of the remarks given by the reporting officer, Brig. Mehta, for the later period by respondent no.2, Surveyor General of India, should be expunged. In reply to his prayer

asking for documentary proof of adverse entries, the applicant was informed in letter dated 25.6.1993 (Annexure 3) through Additional Surveyor General, Eastern Zone, under whom the applicant had been transferred by that time, that the applicant should give his representation on the basis of official correspondence available with him.Thereafter, the applicant sent a further representation dated 30.7.1993 addressed to respondent no.1 making the same allegation of bias against Brig. Dimri and the same prayer for expunging the adverse entries. In order dated 5.9.1994 (Annexure 5) the applicant was informed that his representation dated 17.6.1994 has been rejected.The applicant sent a further representation dated 10.11.1994 addressed to Minister, Science & Technology (Annexure 6) which was also rejected. He had made other representations dated 3.2.1994 addressed to respondent no.1 (Annexure D) and dated 30.4.1996 addressed to the Prime Minister, who was Minister in charge, Department of Science & Technology. These representations were again rejected in orders dated 13.12.1995 (Annexure 9) and dated 16.9.1996 (Annexure 11). From Annexures 18 and 20 to the application, it further appears that on 27.1.1992 respondent no.2, the then Surveyor General of India, issued a warning to the applicant directing him to refrain from using intemperate or vituperative language in official communication. On 27.11.1992 the next Surveyor General, Lt.Gen. C.B.Jhaldiyal issued a memorandum noting that the applicant had been intent upon retaliation against any order passed by his senior officer and communicated his defiance in a derogatory manner. It was noted in this memorandum that the earlier warning did not apparently have any effect on the applicant who persisted in defying the instructions of his higher authorities. In this memorandum, which is at Annexure 19, it was noted that recalcitrance exhibited by the applicant even on such routine matters was unbecoming. Subsequently, in order dated 14.5.1993 (Annexure 20)

respondent no.1 issued a warning to the applicant. In this communication it was noted that even though he was cautioned twice by the Surveyor General of India against using intemperate language, personal hearing was given to him by the Surveyor General, but the applicant had not improved himself. On those considerations, he was warned to refrain from using intemperate or vituperative language in official communicatio and defying orders passed by his senior officers. In his present application, the applicant has prayed for quashing this warning dated 14.5.1993.

3. The respondents in their counter have pointed out that after communication of the adverse entries for the year 1991-92, the applicant went on submitting one representation after another, even after his earlier representations had been rejected and orders communicated to him. The respondents have challenged the allegation of bias urged by the applicant against Brig.S.N.Dimri, the then Additional Surveyor General, the reporting officer and Sri V.K.Nagar, the then Surveyor General, the reviewing officer. They have also contested the allegation of the applicant with regard to non-provision of residential telephone at Jaipur. The respondents have contested all the reliefs asked for by the applicant.

4. In course of hearing, the learned counsels for both sides have strenuously urged their respective stands. The original confidential roll for the year 1991-92 was produced for perusal of the Court. This has given rise to a further controversy which has to be dealt with first before going into the main application.

5. On production of the confidential roll for the year 1991-92 it was urged by the learned lawyer for the applicant that copy of the confidential roll should be made available to him to enable him to make appropriate submissions to the Court. The

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learned counsel for the respondents, however, stated that copy of the entire confidential roll is not required to be supplied to the applicant under the law and this became a subject of controversy. The learned lawyer for the applicant has urged that even though the confidential roll is a confidential document, confidentiality or privilege cannot be claimed in respect of such a document when subject-matter of the confidential roll is the point of adjudication. In support of this contention, the learned lawyer for the applicant has taken me through several decisions of the Hon'ble Supreme Court. In the case of The State of Uttar Pradesh v.Raj Narain and others, AIR 1975 SC 865. It was held by the Hon'ble Supreme Supreme Court that documents can be withheld from the Court when disclosure of the contents would injure public and national interest which is to be weighed against the public interest in the administration of justice that Courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence of such documents can be excluded, but in such cases the practice is for the Secretary of the Department or even the Minister to file an affidavit claiming privilege and confidentiality. In the case of R.K.Jain v. Union of India and others, AIR 1993 SC 1769, this question of privilege claimed by Government was examined in greater detail and it was held that in respect of decisions taken by the Minister, or by the authorised Secretary, at the Secretariat level,such cases are not immune from judicial scrutiny. It was also held that immunity can be claimed only for valid, relevant and strong grounds and for the reasons stated in the affidavit in that behalf. I have looked into these cases at the urging of the learned lawyer for the applicant, but it looks to me that the legal propositions laid down by the Hon'ble Supreme Court are not relevant for the

purpose. In this case, the adverse entries recorded in the confidential roll of the applicant have been communicated in full. It cannot, therefore, be said that unless copy of the confidential roll in original is handed over to the learned lawyer for the applicant in course of the hearing, the applicant will be prejudiced in any way. The respondents have not claimed privilege in this case. They have produced the confidential roll. So the two decisions of the Hon'ble Supreme Court referred to earlier are not relevant for the present purpose. As the applicant has been communicated with the adverse entries in his confidential roll in full, the only additional information which he would derive by getting the copy of the confidential roll is the identity of the particular officer who has given a particular entry.This is not relevant for adjudication of the present dispute as the subsequent paragraphs of this order would indicate. This contention of the learned counsel for the applicant, therefore, is rejected.

6. Coming to the different prayers made by the applicant, his second prayer regarding expunction of the entries made by the reviewing officer, the then Surveyor General, Sri V.K.Nagar, can be taken up first. As earlier noted, the annual confidential roll for the year 1991-92 consisted of two parts. The first part was for the period from 1.7.1991 to 10.2.1992 where the reporting officer was Brig. S.N.Dimri, the Additional Surveyor General and the reviewing officer was Sri V.K.Nagar, the Surveyor General. The second part of annual confidential roll of the applicant was for the period from 20.2.1992 to 30.6.1992 where Brig.S.P.Mehta, the Additional Surveyor General, was the reporting officer, and Sri V.K.Nagar, Surveyor General, was the reviwing officer. Under the rules, the reporting officer

and the reviewing officer, who are retiring, must write their remarks within one month from the date of retirement. In this case, for the first part of the confidential roll, from 1.7.1991 to 10.2.1992, the reviewing officer, Sri Nagar has recorded his remarks on 3.8.1992, i.e., more than one month after his date of retirement on 30.6.1992. For the second part of the confidential roll, Sri Nagar has given his remarks only on 28.9.1992. Question to be considered, therefore, is whether the remarks given by Sri Nagar as reviewing officer for the two parts of the year 1991-92 should be allowed to stand. It is to be noted here that the applicant in this application has prayed for expunction of the remarks given by the reporting officer. The rule that a retiring officer must give his remarks within one month of his retirement is based on sound logic and administrative propriety. Originally the rules provided that such remarks should be given before the actual date of retirement. Subsequently, additional period of one month has been allowed to a retiring officer for recording his remarks. The requirement that a retiring officer must record his remarks within one month of his superannuation must be strictly followed because otherwise an officer who has retired long ago and who is no longer under the administrative discipline of being a Government servant, would be allowed to write confidential roll of his erstwhile subordinates. This may conceivably bring in distortions in his assessments. In this case, it is clear from the record that the Surveyor General has given his remarks more than one month after his retirement on 30.6.1992. His remarks, therefore, cannot be allowed to stand and must be expunged. Under the rules, beyond one month from retirement, the officer becomes disentitled to write the confidential roll and the remarks given by such an officer are without any authority. It is,

therefore, ordered that the remarks given by the then Surveyor General, Sri V.K.Nagar, on 3.8.1992 and 28.9.1992 be expunged.

7. Coming to the third prayer of the applicant, he has prayed that the warning issued to him in order dated 14.5.1993 should be quashed. Warning is not a punishment under the Central Civil Services (Classification,Control and Appeal) Rules,1965. It is also seen that before issuing the warning by the Secretary of the Department, earlier warning was issued to him by the Surveyor General in order dated 27.1.1992.The next Surveyor General had also issued a memorandum to him asking him not to use vituperative language and not to defy the orders of his superior officers. Notwithstanding this, the departmental authorities felt that his conduct had not improved and because of that, the impugned warning had been issued to him. The learned lawyer for the respondents has placed before me the copies of the notes of the concerned file of the Ministry in which his prayer to the departmental authorities for withdrawing the warning has been considered. From this, it appears that this warning has not been placed in his confidential roll. As such this warning is not a part of his service record and will not affect him adversely in any way when his confidential roll is considered for his future promotion. In view of this, no case is made out to my mind for quashing the warning. This prayer is, therefore, rejected.

8. The first prayer is about expunction of the adverse entries in the confidential roll for the period from 1.7.1991 to 10.2.1992. In support of his prayer for expunging the adverse entries given by Brig.Dimri, the applicant has made the

following submissions:

(i) The entries have been communicated to him only in February, 1993. Under the rules, the adverse entries should be communicated ordinarily within one month and therefore, because of the delay in communicating the adverse entries, the same should be quashed.

(ii) The order dated 5.9.1994 rejecting his representation does not give any reasons and on this ground, the order rejecting his representation should be quashed and adverse entries expunged.

(iii) The confidential roll of the applicant immediately prior to and after the period in question was much better and he could not have deteriorated in a period of seven months.

(iv) The adverse entries have been given mala fide by Brig. Dimri who was biased against him because of reasons earlier referred to in this order.

These contentions are taken up in seriatim.

9. The learned lawyer for the applicant has referred me to the case of D.R.Bhagat v. Union of India, 1989(1) A.T.J(Vol.6) 446, where it was held, in the case of an I.A.S. officer, that non-recording of C.R. in time is violative of rules. This case does not provide any authority in support of the contention that delay in communication of the adverse entries could be a ground for expunging the adverse entries. The next case cited by the

learned lawyer for the applicant is M.Karuppiah v.Government of India 1992(6) SLR 759 (C.A.T.,Madras Bench), where it was held that communication of adverse remarks after a delay of fourteen months from the close of the reporting period without any valid ground would vitiate the remarks which would be liable to be expunged. In this case, the Madras Bench of the Tribunal have referred to the decision of the Hon'ble Supreme Court in the case of State of Haryana v. P.C.Wadhwa, 1987(2) SLR 393 (SC) and paragraphs 13 and 14 of the judgment of the Hon'ble Supreme Court have been extracted. In P.C.Wadhwa's case, the Hon'ble Supreme Court held that normally the communication should be done within a period of seven months from the close of the reporting period taking into account the time given under the rules for the reporting officer and the reviewing officer to record their remarks. The Hon'ble Supreme Court held that this period cannot be stretched to twentyseven months, as apparently in the case of P.C.Wadhwa, simply because the rules are directory and not mandatory. In P.C.Wadhwa's case no order was passed for expunging the adverse remarks on this ground, but the Hon'ble Supreme Court merely observed that they did not approve of inordinate delay made in communicating the adverse remarks to the concerned officer. On the other hand, in the case of Bharat Bhushan v. Union of India and others, 1993(1) ATJ (Vol.14) 293 (C.A.T.,Chandigarh Bench), it was held that minor delay in adhering to the time schedule laid down for writing ACRs, conveying the adverse remarks, considering the representations, etc., does not have the effect of vitiating the ACRs, communication thereof, and the decision rejecting the representation. The Rules no doubt say that the adverse remarks should be communicated ordinarily within one month of the writing

of the C.R. But the use of the word 'ordinarily' does not give scope to departmental authorities to delay the writing of the C.R. and communicate the adverse remarks as they please. The use of the word 'ordinarily' merely means that there may be delay beyond the prescribed period only in exceptional and justifiable circumstances In the case of P.C.Wadha (supra) the petitioner being an All India Service officer, besides the reporting officer and the reviewing officer there was an accepting officer as well. In the case of the present applicant, there is no accepting officer. Thus it can be seen that there has been a delay of about five months in communicating the adverse entries. The question for consideration is whether this delay of about five months would result in vitiating the adverse entries. In this case, it is noted that both the reporting officer and the reviewing officer retired on 30.6.1992. The applicant worked under two reporting officers during the year 1991-92 who gave their remarks on different dates. The reviewing officer gave his remarks only by the end of September, 1992. It might have taken some more time for the paper to come back to the Department. Taking all these factors into account, it can be seen that the delay in communicating the adverse remarks here may be the order of little over four months. I have already quashed the remarks of the reviewing officer on the ground of these having been written beyond one month of his superannuation, but the reviewing officer did take time till September 1992 to record the remarks and therefore, in the circumstances of the case, where two officers are the reporting officers, it cannot be held that communication of the adverse entries to the applicant by the departmental authorities has been unreasonably delayed and on that ground the adverse entries cannot be expunged.

10. The second point urged by the learned lawyer for the applicant is that rejection of the representation has been made without giving any reason and on this ground, the rejection order should be quashed along with the adverse entries. In support of this contention, the learned lawyer for the applicant has cited a large number of cases decided by different Benches of the Tribunal. In the case of D.R.Bhagat v. Union of India, 1989(1) A.T.J. (Vol.6) 446 (Jabalpur Bench), it was held that where representation against adverse remarks has been rejected by a non-speaking order, such order cannot be upheld. In that case, the order of rejection was quashed and the matter was remanded to the departmental authorities to reconsider the case in accordance with the relevant Rules. In the case of S.Krishnadass v. Secretary, Central Board of Customs and Central Excise and another, 1992(2) ATJ (Vol.13) 360 (Madras Bench), it was held, following the decision of the Hon'ble Supreme Court in the case of Union of India v. E.G.Nambudiri, 1991 S.C.C. 813, that mere absence of any reason in the order rejecting the representation would not by itself vitiate the proceedings and that it would 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 same view was taken in the case of M.Karuppiah (supra) where the departmental authorities produced before the Tribunal only part of the file dealing with rejection of the representation and on that ground along with other grounds, the rejection order was quashed. The law on this point has been

authoritatively laid down by the Hon'ble Supreme Court in the case of Union of India & ors v. E.G.Nambudiri (supra) in which the following observation was made:

> "....But principles of natural justice do not require the administrative authority to record reasons for its decision as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority,which has no statutory or implied duty to state reasons or the grounds of its decision,is not rendered illegal merely on account of absence of reasons.It has never been a principle of natural justice that reasons should be given for decisions. See Regina v. Gaming Board for Great Britain ex p Benaim and Khaida 1970(2) QB 417 at 431.Though the principles of natural justice do not require reasons for decision, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution, an administrative decision is subject to judicial review if it affects the right of a citizen, it is therefore desirable that reasons should be stated."

In that case, the Hon'ble Supreme Court held that assuming that there was some defect in the order rejecting the representation against the adverse entry, the Tribunal was not justified in holding that the adverse entries awarded should be treated as having been expunged. Thus it is clear that even though no reason is given in the order communicated to the Government servant rejecting his representation against the adverse entries, it is open to the departmental authorities to produce records in the Court to show that the representation has been considered in a fair and objective manner and rejected on reasonable grounds. In this case, the learned lawyer for the respondents has shown me

the copies of the notings in the concerned file of the Ministry in which the applicant's repeated representations were rejected. It must be stated that from perusal of these records, it appears that different representations filed by the applicant against the adverse entries were elaborately examined every time. It was noted that even before the recording of the adverse entries, warnings had been given to the applicant for improving his conduct, but these have not borne any result. On these grounds, the matter was considered at different levels and in one case, the order of the concerned Minister was also obtained rejecting the representation. As a matter of fact, when the matter was first placed before the Minister, he had ordered a comprehensive note on the subject to be submitted to him. Accordingly, the matter was examined in detail and the order of the Minister was obtained rejecting the representation. The fact that the reasons for rejecting the representations were not communicated to the applicant cannot, therefore, be a ground for quashing the order rejecting his representations and much less, for quashing the adverse entries.

11. The next point urged by the learned lawyer for the applicant is that the applicant could not have deteriorated suddenly in a short period of seven months when the earlier and later remarks recorded in his confidential roll were much better. Going by the report of Brig. S.P.Mehta for the period from 20.2.1992 to 30.6.1992, it is seen that during this period, he has been noted in the C.R. as 'Good' for certain items and 'Average' for certain items and according to the peculiar practice in the Survey Department, as 'Good / Average' for certain items. It was submitted in course of hearing that it is the practice in the Survey Department

to record remarks such as 'Good/Average' and 'Very Good/Good'. I was told that the quality of the particular officer ranges from 'Average' to 'Good' or from 'Good' to 'Very Good'. This is a manner of writing C.R. which is quite out of tune with the manner of writing C.R. adopted in other Departments, but since this apparently is a long standing practice in the Survey Department, it is not necessary for me to further dwell on this. From the above recital of facts on this point, it is clear that the adverse entries do not show deterioration in the work in such a fashion as would merit expunction of adverse entries straightaway. This contention, therefore, also fails and is rejected.

12. The last point to be considered is the allegation of bias. This point has been urged very strongly by the learned lawyer for the applicant and has been contested equally strongly by the learned Additional Standing Counsel appearing on behalf of the respondents. Urging of mala fide in administrative action has been the subject-matter of several judicial decisions, some of which have been referred to by the learned lawyer for the applicant. In the case of D.N.Vaidya v. Union of India and others, (1987) 4 ATC 32 (Chandigarh Bench), it was alleged that the applicant was away from his headquarters after applying for casual leave, without the leave being sanctioned and when the superior officer turned up in the office, he found the applicant absent. The applicant alleged that because of his absence he was not able to arrange for the stay of the

superior officer and because of this, the superior officer got annoyed and recorded adverse entries mala fide. In the facts and circumstances of the case, it was held by the Tribunal that mala fide cannot be proved merely by general statements by the applicant and more cogent evidence is needed for proving mala fide. In the case of Shri Tejinder Singh v. Union of India and others, (1988) 6 ATC 666 (Principal Bench), it was noted that the legal position was well settled that allegation of mala fide against any person should be made in clear and categorical terms giving full details and the person should also be impleaded as a respondent in which case it would be possible for that person either to confirm or deny the allegation levelled against him. As in that case, the person against whom mala fide was alleged was not impleaded as a party, the plea of mala fide was rejected. In the case of Bharat Bhushan v. Union of India and others, 1993(1) ATJ (Vol.14) 293, (Chandigarh Bench), it was noted that allegations of mala fide have to be established not by conjectures but by cogent materials and that allegations of bias, prejudice, etc., are easier made than substantiated. From the above recital of earlier judicial decisions, it is clear that allegation of mala fide will have to be specific in nature and the person against hom mala fide is alleged will have to be impleaded as a party so that he would be in a position to reply to the allegation. In this case, the allegations against Brig. Dmiri, the reporting officer for the first part of the period of the impugned A.C.R. are no doubt specific, but he has not been made a party to this case, possibly on the ground that in the meantime he has superannuated. The respondents in their counter have specifically

denied some of the circumstances alleged as instances of bias and mala fide. As regards non-provision of telephone facility, it has been averred by the respondents in their counter that telephone lines for the residence of the Deputy Surveyor General of the Western Zone, where the applicant was serving, as also in Northern, Southern and Eastern Zones, were sanctioned by the competent authority only in their letter dated 14.11.1994 and therefore, at the relevant point of time, there was no sanction of a residential telephone for the applicant. Therefore, the action of Brig. Dmiri in withdrawing the residential telephone xxx is in accordance with the departmental rules and cannot be held to be an example of his bias. As regards submissions of false T.A. Bills by Brig. Dimri, the respondents have pointed out in their counter that Brig.Dimri issued a warning to the applicant as early as 12.12.1991 much before the submission of the alleged false T.A. Bill on 5.2.1992. It also appears from the letter issued by Brig.Dimri to the applicant on 3.12.1991 that even before the applicant took up the issue of false T.A.claim in his letter dated 21.1.1992, the reporting officer, Brig.Dimri found deficiency in his work and pointed out the same in his letter dated 3.12.1991. Therefore, the deficiency in the work of the applicant was noted by the reporting officer even before he brought out the question of alleged submission of false T.A.Bill by the reporting officer. Therefore, it cannot be said that because of his allegation of submission of false T.A.Bill, the reporting officer, Brig. Dimri was biased against him. From the perusal of the Annexures filed by the applicant and the respondents along with the application and the counter, it is clear that the applicant and his immediate superior, Brig. Dimri

were not pulling on well, but the applicant has failed to prove that because of this and particularly, because of his allegation of false T.A.Bill submitted by Brig.Dimri, the adverse entries have been given. Just because the adverse entries have been recorded by the reporting officer, Brig.Dimri, after he and the applicant had fallen out, it would not necessarily mean that the adverse entries had been given by Brig. Dimri because of such disagreement. To accept that would be to go by the proposition "post hoc, ergo propter hoc", a celebrated logical fallacy. Therefore, it is held that the applicant has not been able to prove the allegation of bias. The last contention of the learned lawyer for the applicant is rejected.

13. In the result, therefore, while disallowing the first and third prayers of the applicant, I allow his second prayer, as earlier ordered in paragraph 6 of this order. The Original Application is allowed in part. No order as to costs.

(S.SOM)
VICE-CHAIRMAN