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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 1220/02 & 366/2003
Cuttack this the 29th day of April 2005

IN BOTH THE OAS

G. Jaya

...

Applicant(s)

- VERSUS -

Union of India & Ors.

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches
of the Central Administrative Tribunal or not ? *Yes*

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 1220/02 AND 316/03
Cuttack this the 29th day of April 2005

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

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IN BOTH THE OAs

G.Jaya, aged about 55 years,
S/o.Potti Raju, At/PO-D.No.39-4-24,
Murali Nagar, Dist-VISAKHAPATNAM-7(A.P.)
At present working as Deputy Chief Engineer
(Con/Coordination) South Eastern Railway
Chandrasekharpur, Bhubaneswar, Dist-Khurda

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Applicant

By the Advocates

M/s.J.K.Tripathy
P.K.Chand
B.P.Tripathy
D.Satapathy

- VERSUS -

1. Union of India represented through the Chairman Railway Board, Railway Bhawan, New Delhi
2. The General Manager, South Eastern Railway Garden Reach, Kolkata (W.B.)
3. The Chief Engineer, South Eastern Railway Garden Reach, Kolkata-700043 (West Bengal)
4. The Chief Safety Officer, South Eastern Railways Garden Reach, Kolkata (W.B.)
5. The Chief Engineer, South Eastern Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda

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Respondents

By the Advocates

Mr.R.C.Rath, S.C.
Mr.B.Pal, C.R.Mishra

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Applicant, Shri G.Jaya,
working as Deputy Chief Engineer (Con/Coordination)
under the South Eastern Railway, Chandrasekharpur,
Bhubaneswar has moved this Tribunal in both the
Original Applications seeking redressal of his grievance.

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Whereas in O.A.No.1220/02 he has assailed the adverse entries made in his Annual Confidential Report (in short A.C.R.) for the year ending 31.03.2000 by the General Manager, S.E.Railway, Garden Reach, Kolkata (Res.No.2) under Annexure-1 dated 8.8.2000, in O.A.No.366/03, he has assailed the adverse remarks in his A.C.R. for the year ending 31.3.2001 given by the said General Manager under Annexure-1 dated 19.06.2001. In both the O.As, he has also challenged the manner of disposing and rejecting the representations of the applicant made to the General Manager, S.E.Railway, (Res.No.2) against those adverse entries vide Annexures-2 (to both the OAs. It is in this background, the applicant has prayed for ^{expunction} ~~removal~~ of adverse made in his ACRs for the year ending 31.3.2000 and 31.3.2001 and to quash the orders passed by Res.No.2 on his representations under Annexures-1 and 2 respectively of both the O.As. Since in both the OAs, the prayers made by the applicant are common, for the sake of convenience, the facts of the O.A.No.1220/02 as set out by the applicant, are being referred to.

2. The grievance of the applicant is that the Reporting Officer (Res.No.4) has made adverse remarks in the A.C.R. of the applicant for the year ending 31.3.2000 under Pt. Part-III, Part-III and Part-IV.
Item (B) (3) Item-(B) (4) Item (3)
These adverse remarks were communicated to him vide letter dated 8.8.2000 of Respondent No.2. It is the case of the applicant that these adverse remarks are liable to be set aside as those have been made without

any basis. It is the further case of the applicant that those adverse entries have been made in his ACRs in gross violation of the rules laid down in the matter of writing ACRs and that the representations made by the applicant to the competent authorities did not yield any fruitful result. The applicant has stated that the order dated 15.9.2002 passed by the Res.No.2 in pursuance of the order dated 23.7.2000 in O.A.No.26/01 of this Tribunal is arbitrary and unreasonable. The applicant has alleged that his ACR was not maintained as per the prescribed norms and procedures laid down in this regard as well as the rules codified in Indian Railway Establishment Code, Vol.I. He has also alleged that the reasons disclosed by Respondent No.2 or the Reporting Officer in support of the adverse remarks made in his ACR are unfounded, because, never during the period under report, the Reporting Officer had ever counselled or made him aware of his short-comings and thus had violated the codified procedure in writing the ACR. It has been submitted by the applicant that the very objective of writing ACR which in term of item 2 of 'instruction' appended to the ACR/forms should be used as a tool for human resource development and not meant to be^a fault finding process. He has also argued that the areas of alleged failures on the part of the applicant were never identified and therefore, only vague expressions have been used in recording the ACRs. It is the further case of the applicant although he had raised those points/

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lacunae in his appeal/representations, the same were ignored by Res.No.2, as a result of which, order under Annexure-2 of the O.A. is liable to be quashed. In support of his contentions, he has stated that he used to accompany his senior officers whenever they used to inspect the major accident spots in company of the General Manager and that he did never display any unwillingness to any type of work at any time throughout his service career. As such recording of adverse remarks in his ACRs is illegal, arbitrary and inhumane disposition of the General Manager, as well as an outcome of non-application of mind on his part. The applicant has also taken the position that as the Reporting Officer had never set any qualitative/physical/financial targets in the beginning of the said year(s) under report as per Items 6 and 7 of the instructions, he could not have assessed his performance as 'Average'.

3. The Respondents-Department have filed a detailed counter by resisting the prayers of the applicant in the O.A. They have submitted that the O.A. is not maintainable as no illegality has been committed by them in issuing Annexures-1 and 2. They have also rebutted the other allegations made by the applicant. In the first instance, they have submitted that the adverse remarks recorded in the ACR of the applicant by the Reporting Officer were based on his assessment of work and conduct during

the period under report, as he had advised him on many occasions as supervisory officer. No codified rule regarding writing of ACR has been violated in disposing of the representation filed by the applicant. The General Manager (Res.2) has given the detailed reasons for sustaining the adverse remarks in his ACR. He has observed that the claim of the applicant that he had carried out intensive inspection is not borne by the facts on record. He has also found that the applicant on several occasions had not cared to issue inspection note after carrying out the inspection, thereby defeating the very purpose for which the inspection is undertaken and those, in few cases, where inspection notes have been issued, they are superficial in nature. He has, thereby found that the work and performance of the applicant when he was in charge of the safety were not impressive and definitely short of the desired expectations of his controlling authority. On the facts of the case, they have also submitted that the applicant was ^{advised} during a number of meetings held with the Reporting Officer, to improve his performance. However, no written counselling was made considering his health problem. The Respondents have also submitted that the statement made by the applicant that he was attending major accidents along with his superior officers and General Manager is absolutely false. It is their stand point that the applicant was quite reluctant to go to accident sites and on most of the occasions only the

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Reporting Officer had to accompany the General Manager and other principal Head of the Department to accident sites. They have reiterated that the targets/^{now/no}productivity like, safety inspections, night inspections, etc. have been circulated to all concerned including the applicant and nothing was to be done ~~separately~~ by the Reporting Officer with the applicant.

4. I have heard the learned counsel of both the sides and have also perused the records placed before me. The sole question to be answered in this O.A. is whether the adverse remarks recorded in the A.C.R. of the applicant for the year ending 31.3.2000 merits ~~expulsion~~.

A.C.R. is an important instrument of man-management and organisational build up. For the sake of ensuring objectivity in the area of man-management and to ensure better productivity, Government Departments like the Respondents-Department have laid down elaborate procedure and guidelines in this regard. Duty has been cast on the Reporting Officer to keep tab on the officers/officials under his control and for this purpose, no hard and fast or no water tight compartment has been prescribed/established. It depends upon each manager/functionary to formulate the data collection system. Be that as it may, A.C.R. is also an important tool for management of human resources in an organisation and in these days, human resources available in an organisation are called human capital and like financial

audit, personal audit is also carried out to ensure organisation development through better productivity and resource development. In the matter of ACR, both the parties, i.e., reportee and the management have got huge stake to shoulder. For the reportee, A.C.R. is the most important vehicle of his career progression, and for the management, it is the tool of human resource\$ management. Unless those stakes of both the parties are properly understood, any settlement of controversy with regard to writing of ACR or assessment of ACR is likely to go hey wire. Admittedly, the administration has got right to assess its officials' performance to know whether they have performed as per norms or they have been utilised fully. The reportee officer, on the other hand, ^{has the obligation} to project his output in the right and proper way, so that his role/achievement during the year will not go unnoticed or un-recognized for his career progression. In the instant case, the fact of the matter is that the applicant was found deficient in his performance under Pt.III/Item(B) (3) - 'Initiative' - i.e., capacity and resourcefulness in planning and handling unforeseen situations, willingness to take additional responsibility and new areas of work. Similarly, in Part-III/Item(B) (4) - Ability to guide, inspite and motivate, i.e., capacity to guide, motivate, review performance, obtain willing support by own conduct and to inspire confidence he rated average. The applicant has challenged that such

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a comment was not based on records of his performance, but was bald and unreasonable. During oral hearing, the learned counsel for the applicant has repeatedly canvassed before me that the comment 'Average' is a non-speaking expression and therefore, the same has to be ignored. The fact of the matter is that under the A.C.R. form, the Reporting Officer has been called upon to characterize the attributes regarding attitude or initiative or ability to inspire or motivate with aphorisms like, excellent, very good, good, average etc. It is not that the applicant has ever represented to the administration that it would be unfair to describe the attributes by using aphorisms as given at Item B(4) Part-III. The employer is of the conscious view that as the attributes have been defined in full under each trait, it would suffice if each trait/each attribute is given a rating, like -'excellent', 'very-good', 'good' ^{as} and ~~such~~, there is not much scope on the part of the applicant to make much ado about this.

5. Another adverse entry that has been made against him is that 'he is not hard-working'. Both the sides have given their view points to substantiate their respective stand. Here, the question is that on the basis of the facts placed before me by the Respondents and the facts submitted by the applicant ^{and} both in his O.A./during oral hearing, the scope of judicial scrutiny appears to be limited. Whether an individual is hard-working or not, surely it can be

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proved or disproved with the facts and figures.

Respondent No.2, while disposing of the representation of the applicant, as per the direction of the Tribunal in O.A.No.27/2000, has assigned reasons in the penultimate para of his order. The learned counsel for the applicant was not convinced and he canvassed before me that that was not enough; upon which I had called upon the Respondents to place before me the records of inspections carried out by the applicant. I had also given an opportunity to the applicant to place before me from the inspection note that he had issued. The applicant did not supply any more record than what he had already submitted with his O.A. However, he disputed the statement made by the Respondents in their counter that the number of inspections that he had carried out during the financial year under consideration.

6. I have perused the record and find that was not too many. On an average, he had carried out three inspections per month and as the Res. No.2 had observed in his order at Annexure-2 that in most of the cases, the inspection notes were superficial and the number of inspections were also not intensive. In the face of the above facts of the case, I am unable to persuade myself to disagree with the conclusion arrived at by Res.2. Over a period of nine months, i.e., from April, 1999 to 3.1.2000, the applicant had spent 28 days, in all on, inspection and this can, by no stretch of imagination, be called as

intensive rate of inspection. In this view of the matter, I find it difficult to agree with the submission of the applicant that the adverse remarks made by the Reporting Officer that the applicant was not 'hard working' is not sustainable or a baseless remark. The fact of the matter is that if the Reporting Officer feels that inspection of 28 days spreading-over to 9 months does not constitute hard working, the Court cannot substitute his decision, being based on ^{hard} ~~hand~~ facts.

7. The learned counsel for the applicant, to buttress his stand point, referred to the following case laws:

- i) Sukhdeo vs. Commissioner Amravati Division
Amaravati & Another (1996) 5 SCC 103
- ii) M.A. Rajasekhar vs. State of Karnataka
(1996) S.C.C. 369
- iii) P.K. Shastri v. State of Madhya Pradesh
AIR 1999 Supreme Court 3273
- iv) Amrik Singh v. State of Haryana (Pg. & Hry.)
1995(2) S.L.R. 769

8. I have perused those case laws. The decision in the case of Sukhdeo (supra) is not of great help to the case of the applicant as the issue answered in that case was disability of affording prior opportunity before writing adverse remarks. The Respondents in their counter have stated that the applicant was given verbal instructions to overcome his shortcomings. By filing rejoinder the applicant has sought to argue that it is an after-thought and on the plea of his bad health, they should not be allowed to avoid their

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statutory obligation. However, whether he was hard-working or not, that question having been decided on the basis of the records of his inspections and since he has not been able to prove that he did submit inspection notes on time and the inspections were meticulous and qualitative, onus is on the applicant to prove that he was hard-working, which he has failed to do.

In the case of M.A.Rajsekhar (supra) the Court held that without giving specific instances of working unsatisfactorily and without affording any opportunity to correct himself, adverse remarks should not be recorded. The Respondents have, however, in their counter, given examples of his unsatisfactory work with regard to inspection in safety matters. Therefore, it cannot be alleged that he was not given an opportunity to correct himself for the mistake.

9. In the case of E.K.Sashtri (supra), the Apex Court has set the law that entries in the confidential record of an officer must be made objectively, after careful consideration of the matters before it. The Respondents cannot be faulted on this ground also, as they have placed before the Tribunal the materials based on which the Reporting Officer as well as the Reviewing Officer had made assessment about the performance of the officer during the relevant year.

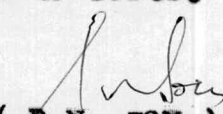
10. Reliance placed by the applicant on

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Amrit Singh case (supra) is not relevant as the entries in the A.C.R. of the officer did not involve matters concerning his integrity.

11. As the applicant has not been able to prove that the adverse remarks made in his ACR were the result of arbitrariness on the part of the Respondents, reliance placed by the applicant on Ranjit Singh Griwal case (supra) is of no avail.

12. Having regard to the discussions held above, I find that the adverse remarks recorded in the ACR of the applicant were based on factual analysis of his performance and as the procedure adopted was in consonance with the guidelines, there is hardly any scope for intervention by the Tribunal. In the circumstances, both the OAs (O.A.Nos.1220/02 and 366/03) being devoid of merit are dismissed. However, there shall be no order as to costs.


(B.N. SOM)
VICE-CHAIRMAN

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