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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

OA No.502 of 2011

Cuttack, this the 10th day of December, 2013

CORAM:

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDICIAL)

.....

Shri Bichitrananda Jena, aged about 57 years, So of Late Bhagabat Jna resident of Plot No. 3624, Palasuni, Po.GGP Colony, Bhubaneswar-751 025 Dist. Khurda State-Odisha presently working as Draughtsman Division I in Odisha Geospatial Data Centre, Survey of India, Bhubaneswar-751 013, Dist. Khurda, State-Odisha.

.....Applicant

(Legal Practitioner – M/s.K.C.Kanungo, H.V.B.R.K.Dora)

Versus

Union of India represented through -

1. The Additional Surveyor General, Eastern Zone, Survey of India, 15, Wood Street, Kolkata-700 016, West Bengal.
2. The Director, Jharkhand GDC at present the Director, Odisha GDC, Survey of India, 2nd Floor, Survey Bhawan, PO. IMMT, Bhubaneswar-751 013, Dist. Khurda, Odisha.
3. The Officer in charge, Bhubaneswar Wing, Jharkhand GDC at present the Superintending Surveyor (Technical), Odisha GDC, Survey of India, 02nd Floor, Survey Bhawan, PO: IMMT, Bhubaneswar-751 013, Dist. Khurda, Odisha.
4. Secretary to Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of personnel & Training, Lok Nayak Bhawan, Khan Market, New Delhi-110 003.

.....Respondents

(Legal practitioner – Mr. *L. Jena*)

O R D E R

(Oral)

A.K.PATNAIK, MEMBER (JUDICIAL):

The Applicant in this OA assails the grading of 'Average' which is construed as below Bench Mark in his Annual Confidential Reports

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in short 'ACRs' for the year 2004-05 communicated to him vide letter No. C-123/18-L-3 dated 18.05.2011 and the letter dated 24.6.2011 rejecting his representation. The main ground taken in support of the challenge is that the grading 'average' is contrary to the material evidence on record which defeats the objective assessment of the ACRs. The rejection of the representation of the applicant reflects complete non application of mind as the respondents rejected the representation without paying any heed to the points raised by the applicant in support of his prayer for expunction/up-gradation of the grading made in his ACR for the year 2004-2005. Hence by filing the instant OA, the Applicant while praying to quash the grading 'average' recorded in the ACRs of the applicant for the year 2004-05 as communicated in Annexure-A/1 and the letter of rejection dated 24.6.2011 has prayed to direct the Respondents to up grade the bench mark of the applicant as per pre-requisite to promotion in the interest of justice.

2. Respondents filed their counter in which it has been submitted that as the grading of the applicant was found to be average for the year 2004-05 which did not meet the Bench Mark for promotion as per Rules, in terms of the DOP&T OM dated 13.4.2010, the same was communicated to the applicant vide letter dated 18th May, 2011 giving him an opportunity to represent the appropriate authority. Accordingly, the Applicant submitted his representation dated 25.5.2011. The competent authority after considering the documentary proof and records placed before him did not thought it

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proper to interfere in the grading given in the said ACR. Accordingly the representation of the applicant was rejected and communicated to him vide letter dated 24.6.2011.

3. Heard Mr. K.C.Kanungo, Learned Counsel appearing for the Applicant and Mr. L.Jena, Learned Additional CGSC appearing for the Respondents and perused the records.

4. Before proceeding to deal with the instant case, it is worthwhile to state that the confidential character Roll of a Government servant is just like a mirror which reflects his performance, which is a mile stone of progress of an official in the hierarchy of service. Though statutory Rules and Administrative Instructions are framed to operate the field of writing confidential reports and it is on the basis of a self appraisal of an official which is on the basis of watching the performance of the concerned for a statutory period with intent to reform him/her. For this reason, a three tier system in the writing of CCR/ACR of an employee i.e. reporting, reviewing and accepting authority has been devised to put necessary checks and balance so as to remove the unwanted arbitrariness. Therefore, as per the settled law, if the performance of Government servant is not found to be satisfactory/up to the mark and any remark which partakes a character of an adverse remarks, has to necessarily, be recorded only complying with the condition precedent of informing the concerned official pointing out the deficiency in performance of duties so that he/she can rectify own



shortcomings. If it is not done, then the ACR/CR recorded which lacks in affording of opportunity in case of failing performance would not be sustainable in judicial scrutiny.

Law of the land on the subject, *inter alia*, provides that report, which is annually recorded in confidential record, has some purpose. In fact the performance of an employee, the opinion about his individuality, personality, status and role played, performance, activates attitude, devotion, diligence, honesty, integrity; faithfulness etc has to be assessed. Confidential character reports should be written by superior officers objectively, impartially and without any prejudices. Such Annual Confidential Report (ACR) has to be recorded with confidentiality and with two objectives i.e. firstly to give an opportunity to the concerned official to remove deficiencies and to inculcate discipline. Secondly it seeks to serve improvement of quality responsibility and efficiency of the official for public service. Sometimes the ACR is called or acknowledged as character roll entry where the characteristic of an individual values as a human being relatable to morality preserve in him, once personality is also assessed relatable to the work assigned and post held by him. Moral and Morality connote the entire virtues of human being, in short justice, discipline, self control, tolerance, benevolence, generosity, honesty, compassion, devotion to duty and willingness to self sacrifice one's own interest and benefit for the welfare of people or society. All these virtues cumulatively may be taken as



covered in morality. It may also be said that these virtues are essential components of good conduct and collectively known as morality. The basic foundation of good personality of an individual may also be kept in mind while making ACR of an employee. The entries are not objective and dispassionate with a reformatory purpose to enable the applicant to reform himself to improve quality of the service and efficiency of the administration. Before forming the opinion to be adverse, the reporting officer writing confidential report should share the information with the concerned official and then make it part of the record. This is part and parcel of the principle of natural justice.

5. I find that against the grading 'Average' the applicant submitted appeal and the appellate authority has rejected the appeal in letter dated 24.6.2011. Last paragraph i.e. paragraph 5 is most vital to determine whether such rejection has been done with due application of mind. In this connection the relevant paragraph 5 of the letter is extracted herein below:

"5. I, the undersigned, have gone through the acts of the case in depth and considered the appeal of the representation dated 25.05.2011 made by Shri Bichitrananda Jena, D/Man Div.I. I am of the opinion that overall "Average" grading have been awarded by the then Reporting/Reviewing Officers to Shri Bichitrananda Jena, D/Man Div.I upon his performance during the years 2005, 2006 and 2007. The points raised by him at para 10, 11, 12, 13, 14 and 15 of the representation against the Reporting/Reviewing Officers are baseless because the grading were awarded upon the performance of the Officer during the year under report."



6. In the counter it has been stated that the competent authority after considering the **documentary proof and records placed** before him did not thought it necessary to interfere in the grading given in the said ACR. But what are those documents which enabled the authority to reject the representation has not been filed along with the counter nor has it been dealt into in the order of rejection. No document has been filed showing that at any point of time the Reporting or Reviewing Authority informed the shortcomings to the Applicant but in spite of the same the applicant did not improve. The Appellate Authority has stated that the points raised by the applicant in his representation at para 10, 11, 12, 13, 14 and 15 are baseless without stating how according to him they are baseless. Law is well settled in a canon of pronouncements that the authority is under obligation to meet/answer all the points raised by an employee in his representation/appeal. Further neither the counter nor the order of rejection shows that the opinion of the then Reporting and Reviewing Officers were called for considering the representation submitted by the Applicant against the Average grading in his ACR/CR.

7. The Ahmedabad Bench of the Tribunal in the case of **Mr.Mohanlal Atwal-Vrs- Union of India & Others**, 2001 (1) ATJ 152, quashed the grading in the ACRs which was based on no material and the rejection of representation in a non speaking order, in flagrant violation of guidelines issued by the Govt. for writing the ACRs and dealing with the

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representation against the adverse entries. In the case of **S.Thiagarajan – Vrs-Union of India & Ors** (1991) 15 ATC 349 the Calcutta Bench of the Tribunal quashed the order of rejection of representation against adverse remarks holding that any representation against the adverse remarks cannot be disposed of peremptorily without assigning any reason. The bald communication that his representation had been carefully considered by the competent Authority and rejected is not enough and cannot be called as a speaking order. In the case of **Alphonse Louis Earayil –Vrs- Secretary to Government of India & Anr**, (1992) 19 ATC 210 the Ernakulam Bench of the Tribunal quashed the order of rejection of representation submitted against ACR holding that representation against the adverse remarks if rejected by non speaking order the same is bad in law as such order does not disclose application of mind and is unsustainable and in the case of **S.T.Ramesh, IPS, Superintendent of Police, Bangalore Vrs State of Karnataka**, (1998) 7 ATC 820 (CAT), the Bangalore Bench of the Tribunal quashed the order of rejection of representation against adverse remark holding that if a representation against adverse remarks is rejected by non-speaking order, it is invalid.

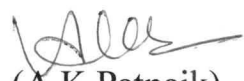
8. Going through the representation submitted by the applicant, order of rejection of his representation vis-à-vis the decisions of the coordinate Benches of the Tribunal I am of the considered view that the consideration given in the letter dated 24.6.2011 is no consideration in the



eyes of law. Hence the order of rejection dated 24.6.2011 is hereby quashed and the matter is remitted back to the Appellate Authority to consider the appeal of the applicant afresh keeping in mind the observations made above and communicate the result thereof to the Applicant in a well reasoned order within a period of 60 (sixty) days from the date of receipt of copy of this order.

9. In the result this OA stands allowed to the extent stated above.

There shall be no order as to costs.


(A.K. Patnaik)
Member (Judicial)