

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 500 of 2011

FRIDAY, this the 27th day of July, 2012

CORAM:

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Fasuludeen Kunju, I,
Aged 56 years, S/o. Hydrosekunju,
Passenger Guard, Southern Railway,
Quilon, Residing at : 194/F, Railway
Colony, Kollam

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. The Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai : 3
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14
3. The Divisional Operations Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14
4. Shri P.L. Ashok Kumar,
Divisional Operations Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14

... Respondents.

(By Advocate Mrs. K. Girija)

This application having been heard on 23.07.2012, the Tribunal on
27.07.12 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Aggrieved by the adverse entries in his Annual Performance Appraisal Report (APAR) for the year ending 31.03.2009, the applicant, a Passenger Guard at Quilon Railway Station of Southern Railway, Trivandrum Division,



has filed this O.A for the following reliefs :

- (i) Call for the records leading to Annexures A-1 and A-2 and quash the same;
- (ii) Direct the respondent to ignore the adverse entries for the year ending 31.03.2009 recorded in Annexure A-1 and to consider the applicant for all future promotions on that basis;
- (iii) Award costs of and incidental to this application;
- (iv) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. Annexure A-1 is a copy of the APAR for the year ending 31.03.2009, with a forwarding letter dated 20.01.2010 calling for his representation, if any, and Annexure A-2 dated 03.01.2011 is the order rejecting his appeal against the adverse remarks.

3. The applicant contended that Annexures A-1 and A-2 are issued without proper application of mind. The adverse entries have been made by the 4th respondent out of ill will and unsupported by any adverse incidents mentioned either in Annexure A-1 or any of his service records and are not based on factual matrix. The incidents referred to by the Appellate Authority occurred well prior to the reporting year and well prior to the applicant's promotion as Senior Goods Guard and later as Passenger Guard.

4. In the reply statement, the respondents submitted that, the fact that the reporting officer has not failed to take note of the positive qualities of the applicant is itself proof of the fact that the assessment made is very objective. The assessment made by the reporting officer has been accepted by both the accepting authority and the reviewing authority. The applicant managed to avoid goods train by any means throughout the reporting year causing

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obstructions to train operations. The average grading for one year does not deprive the applicant's promotion if he is graded 'good' in one of the previous or succeeding years. The APAR of the applicant was recorded purely on the basis of his work performance during the reporting year.

5. In the rejoinder statement, the applicant submitted that there is no accepting authority involved in this case. The averment of the 4th respondent without indicating even one single instance of train detention or inconvenience caused to the Railway administration indicates the malice, bias and prejudiced mind of the 4th respondent. If the assessment is recorded based on facts, the facts should have been reflected in the APAR.

6. I have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mrs. K. Girija, learned counsel for the respondents and perused the records.

7. It is contended that the 3rd / 4th respondent, who is the reporting officer, has made an objective assessment of the applicant because he has taken note of both positive and negative qualities. The Annual Confidence Report (now APAR) is expected to be an objective, impartial and transparent appraisal of the performance of the officer reported upon during the relevant year. At its best, it is an effective tool for human development. It can become a tool to destroy the career of an officer if it is written with bias and malice. Mere mentioning of certain positive qualities in an otherwise negative ACR will not make it an objective, impartial and transparent assessment of the officer in the relevant year, as is the case here. The entire assessment should be based on relevant factors that have factual basis in the relevant year.



The applicant was marked absent on 21.08.2006 when he allegedly fell sick. Later his absence was regularized by granting leave. It is the case of the applicant that in 26 years of service, not even a single day he was absent unauthorizedly. If such is the case, the reporting that "non regular in attendance" in the year 2008-09 should have been supported by evidence. It is not necessary to give a long list of evidence to substantiate each and every remark in the ACR. But it was absolutely necessary to have mentioned in the ACR at least a few dates of unauthorized absence in the relevant year to make it an objective assessment of attendance of the applicant. Similarly, if there was any complaint mentioned in the ACR to substantiate the assessment that he was 'not tactful and ill tempered', it could have been justified. Likewise, other adverse entries should have been based on relevant facts in the relevant year. Such factual base alone could have enabled the applicant to make an effective representation to expunge the adverse entries or for upgradation of rating. Objectivity and principles of natural justice demand it. The respondents have not shown that the adverse entries in the ACR of the applicant for the year 2008-09 are based on objective consideration of the relevant facts in the year under reporting.

8. In the Annexure A-2 order dated 03.01.2011 rejecting the appeal of the applicant dated 03.03.2010, 5 DAR cases are listed to establish that the applicant is an obstructive worker and lacks loyalty to the administration. None of the cases pertains to 2008-09, the relevant year for the ACR under dispute. The penalty imposed in two cases have been set aside by this Tribunal. The cases relied upon by the respondents would demonstrate that the adverse remarks made against the applicant in the ACR for the year 2008-09 were not based on relevant facts pertaining to that year. It is not feasible to



list out each and every mistake in writing to all employees and keep a running record of all of them for the sole purpose of the justification of the APAR at the end of the year. It is also not possible to give detailed justification for each and every remark in the ACR. But it is absolutely necessary in the interest of objectivity, impartiality and transparency, to indicate how so ever briefly the basis for making the adverse remarks in the ACR to make it a tool for development of human resource.

9. In the light of the above, there is merit in the contentions of the applicant.

10. The ACR has been replaced with APAR wherein the grading is numerical. A copy of the whole APAR is forwarded to the concerned employee for his representation, if any, for any change in the grading. In this scenario, the ACR of the applicant, being the last vestige of a bye gone era, I do not think it fit to remit the case to the Appellate Authority for reconsideration. Instead, the O.A. is allowed as under so as to end the litigation.

11. The respondents are directed to ignore the adverse entries in the ACR for the year ending on 31.03.2009 and to consider the applicant for all future promotions on that basis. No order as to costs.

(Dated, the 27th July, 2012)



(K GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

cvr.