

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:211/2000
DATED THE 27TH DAY OF JANUARY, 2004**

**CORAM: HON'BLE SHRI KULDIP SINGH, MEMBER(J)
HON'BLE SHRI S.K.NAIK, MEMBER(A)**

P.B.Baria,
Working as Assistant Engineer(G)
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 001.

... Applicant

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
The General Manager,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai - 400 020.

2. The Chief Engineer,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai - 400 020.

... Respondents

By Advocate Ms.Delilah Fernandes for
Shri Suresh Kumar

(ORAL ORDER)

Per Shri Kuldip Singh, Member(J)

The applicant has filed this case challenging the adverse remarks recorded in his confidential report for the year ending 31/3/1999.

2. The applicant is working as an Assistant Engineer in Western Railway. He alleges that he had never been conveyed any adverse remarks except for the impugned one dated 14/7/1999 wherein it has been recorded as under:-

"He had no control on supervisors working under him."

"...there was no proper supervision on the work of sleeper factories during the year."

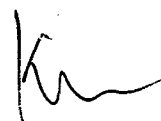
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3. The same was conveyed to the applicant vide letter dated 14/7/1999. Applicant made a representation against the same and it was rejected vide letter dated 11/8/1999 and the applicant was conveyed that the adverse remarks recorded in the CR for the year ending 31/3/99 has been considered by the Competent Authority, who has ordered that the adverse remarks should stand.

4. The applicant alleges that passing of adverse remarks in the Annual Confidential Report is arbitrary and without any cogent reasons. It is further stated that his representation has also not been considered properly so the adverse remarks are liable to be quashed.

5. The respondents are contesting the OA. Respondents in their reply pleaded that the present application of the applicant does not disclose any cause of action. They submit that the contents are not denied to the extent that the same are not contrary and inconsistent with the record maintained by the them. They submit that the communication of the adverse remarks noticed in the working of the officer recorded in the ACR cannot be considered as a punishment, on the contrary it is for helping the officer to know the shortcomings, try to eliminate them and bring about improvement in his future performance and earn better report. The respondents have also filed Miscellaneous Application for taking on record some further documents and submitted that during the period in question the applicant has also been issued charge sheet and was also

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suspended vide order dated 14/8/1998. Thus his performance was not up to the mark and that is why adverse remarks was recorded in his ACR.


6. Heard the learned counsel for the parties and have gone through the record.

7. The learned counsel appearing for the applicant submitted that para 1608 and 1609 of Indian Railway Establishment Code called upon the authorities to apprise the railway servants about the short comings before recording in the ACRs with a view of affording to give an explanation. In support of this Counsel for applicant has referred to judgement in OA No.639/1993 and relied upon the same. The applicant also submits that the applicant cannot be punished or adversely effected without giving cogent reasons or without disclosing the material on the basis of which the adverse entry is made.

8. Counsel for the respondents submitted that during the period for which the Adverse remarks in the ACRs have been recorded, a memorandum of charges was issued (Exhibit R-1) wherein there are allegations against the applicant even about his integrity. The applicant was also issued an order of suspension.

9. The recording of Adverse remarks in the ACRs in an objective manner and for which specific lapse/shortcoming on the

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part of the employee, the employee is not to be apprised of and in this case particularly when the applicant had been served with a charge sheet and he had been placed under suspension and there was an ^{implied} employee who noticed that his performance was not satisfactory.

10. The applicant's counsel had also contended that his representation has also not been considered properly. Since the applicant's representation had been rejected by non application of mind with one line order, the representation has been rejected and in reply the counsel for respondents has referred to the judgement reported in 1997(3) SC 361 Swatantar Singh V/s. State of Haryana & Ors wherein it has been held as under:-

Confidential report-Adverse entries-Representation to higher authorities rejected-Challenged on ground that representation required consideration and rejection must have been supported by reasons-Adverse remarks made were alleged vague and without any particulars-Entries indicateing that authority had assessed reputation of the officer, his honesty, reliability and general reputation gathered around the officer's performance and shortfalls in that behalf-It may be impracticable for reporting officer to give specific instances of shortfalls, supported by evidence-Remarks made in confidential report were not vague without any particulars-Appellate Authority only considered and rejected contention of petitioner-Rejection was neither arbitrary nor illegal.

11. As regards the plea of the applicant that para 1608 and 1609 require calling upon the railway authority to apprise the railway employee about the shortcomings so that the employee may improve himself. But in this particular case I find that the issuing of charge sheet itself is sufficient as the applicant has

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been informed about his performance. There is no rule to separately issue any memo to apprise the applicant about his performance when the ACR was recorded.

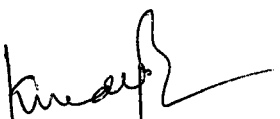
12. As regards the rejection of the representation is concerned, the applicant has referred to a judgement reported in 1991 SCC (L&S) 813 Union of India & Ors. V/s. e.G.Namboodiri wherein it is mentioned that Administrative authority is not required to record reasons while rejecting the representation against the adverse remarks but reasons must exist which can be shown to the Court in case it is required. Counsel for applicant submitted that even if the rules do not require conveying the reasons, before passing any order on representation, the reasons must exist on file. Since in this case the representation has been rejected by one line order so it should be held that the authority has not applied its mind before rejection of his representation.

13. To my mind this contention of the applicant does not have any force, because the letter of rejection of the representation only says that the representation has been considered by the Competent Authority and the order issued by the disciplinary authority stands, has been conveyed by the Secretary (Conf) For Chief Engineer. The comments of the Competent authority are passed separately in a file and the letter in question is only a letter conveying the order on the representation and not the order itself.



14. I do not find any ground to interfere with the impugned order. The OA is therefore dismissed. No costs.


(S.K. NAIK)
MEMBER(A)


(KULDIP SINGH)
MEMBER(J)

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