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24/9/08

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

O.A.Nos.575/2001, 402/2003, 403/2003, 404/2003, 407/2003 & 408/2003.

Dated this Wednesday the 24th day of September, 2008.

Shri G.S. Rathore

....

Applicant.

(By Advocate Shri D.V. Gangal)

Vs.

Union of India & another

....

Respondents.

(By Advocate Shri V.S. Masurkar in O.A.575/2001 and
Shri S. Ravi in O.A.Nos.402/03, 403/03, 404/03, 407/03
and 408/03)

CORAM: HON'BLE SHRI JOG SINGH, MEMBER (J)
HON'BLE SHRI SUDHAKAR MISHRA, MEMBER (A)

(1) To be referred to the Reporter or not ?

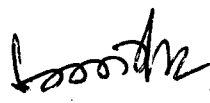
yes

(2) Whether it needs to be circulated to other Benches
of the Tribunal?

yes

(3) Library.

yes


(Sudhakar Mishra)
Member (A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.**

O.A.Nôs.575/2001 402/2003, 403/2003, 404/2003, 407/2003
and 408/2003.

Dated this Wednesday the 24th Day of September, 2008

Coram : Hon'ble Shri Jog Singh, Member (J)
Hon'ble Shri Sudhakar Mishra, Member (A).

G.S. Rathore,
Project Manager (Elect.),
22, Rly. Officers' Flats,
Grant Road (W),
Mumbai - 7.

.. Applicant in all the OAs.

(By Advocate Shri D.V. Gangal)

Versus

1. Union of India, through
The Secretary,
Railway Board, Rail Bhavan,
New Delhi.

2. General Manager,
Western Railway,
Churchgate,
Mumbai.

.. Respondents in all the OAs.

(By Advocate Shri V.S. Masurkar in O.A.575/2001 and
Shri S.Ravi in 402/03,403/03,404/03,407/03 & 408/03).

O R D E R

{ PER : SUDHAKAR MISHRA, MEMBER (A) }.

While working as District Electrical Engineer, Western Railway, the applicant has filed all the six OAs under consideration. He has since been promoted to the Junior Administrative Grade, as per order dt.02.05.2008 of the SEC Railway, following Railway Board's order dt.25.4.2008. Since the OAs involve common grievance they have been heard together and are being disposed of through this common order.

2. In the Annual Confidential Reports (herein after ACR) for 6 years, adverse remarks were given against the applicant by the Reporting Officers

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concerned. Through the procedure of communication of adverse remarks, consideration of the applicant's representation against the remarks and eventual decision thereon, either some or all of the remarks have eventually stuck against the applicant. Through these OAs, the applicant seeks quashing of the respective ACRs and direction for re-writing of the same.

3. Before turning to the facts of these cases, we would record a brief account of the service litigation undertaken by the applicant. To begin with we would recount the earlier history of litigation.

(i) O.A. 411/1992

This O.A. was directed against the adverse remarks given in the ACR for the period 1990-91. As per the orders dated 12.1.1993 of a co-ordinate Bench of this Tribunal situated at Jabalpur, some of the adverse remarks were directed to be deleted, while some other adverse remarks were not directed to be deleted.

(ii) O.A. 45/1995

This O.A. was directed against the transfer of the applicant from Mumbai (then called Bombay). Pending consideration of the O.A., the Tribunal had granted stay against operation of the transfer order. However, before final disposal of the O.A. the respondents therein cancelled the transfer order and retained the applicant at Mumbai. Eventually, therefore, that O.A. became infructuous and was dismissed as such per the

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orders dated 13.8.1999 of this Tribunal.

(iii) O.A.629/1995

Through this O.A., the applicant had prayed for expunction of adverse remarks in the ACR for the period 1993-1994. The O.A. was dismissed by a Single Member Bench of this Tribunal on 25.4.1996 with the following observation:-

"The applicant has placed heavy reliance on the malafide on the part of the Dy. Chief Electrical Engineer, who wanted to favour a contractor but no factual foundation had been laid to establish allegations of bias."

(iv) O.A.203/1997

Through this O.A. the applicant had challenged his non-promotion to the Junior Administrative Grade with retrospective effect from 4.3.1996. The O.A. was disposed of as per orders dated 10.12.2001 of this Tribunal. The Tribunal noticed the above mentioned decision dated 12.1.1993 in O.A.411/1992 and the decision dated 25.4.1996 in O.A.No.629/1995 which were not shown to have been stayed or set aside by any higher forum. The Tribunal also noticed filing of the O.A.575/2001 (which is presently under consideration) and observed that till such time as the adverse remarks for the period 1990-1995 are not expunged the O.A.No.203/1997 did not merit any interference by the Tribunal. Accordingly, the O.A. was disposed of.

(v) O.A.475/1998

Effectively at the behest of this Tribunal a fresh O.A. bearing No.486/2001 (discussed infra) was

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filed for amelioration of the same grievance as aired in this O.A. Therefore, the O.A.No.475/1998 was rendered infructuous and hence was dismissed.

(vi) O.A.138/2000

This O.A. was directed against the Appellate Authority's order dated 8.12.1999 rejecting the applicant's appeal against the penalty of censure imposed upon him by the Disciplinary Authority. Vide orders dated 14.12.2001 of this Bench, the O.A. was dismissed.

(vii) O.A.486/2001

This O.A. was directed against the penalty order dated 26.7.1997 of the Disciplinary Authority and the Appellate Order dated 21.6.2000 reducing the penalty to that of censure from withholding of increment. As discussed in the orders dt.9.6.2005, this Tribunal noticed that the Appellate Authority came to the conclusion that the charge against the applicant was not fully established and yet that authority did not exonerate the applicant. The Tribunal held that the impugned order therein was not sustainable in law and accordingly quashed it.

4. Next we would mention about the OAs under consideration. Through the OA.No.575/2001 filed on 10.8.2001 the applicant sought quashing of the ACRs for the periods 1992-93, 1994-95, 1995-96, 1996-97 and 2000-01 and direction for re-writing of the same. As per orders dated 19.3.2003 of this Bench, the applicant

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was directed to consider seeking relief in respect of the ACR of any one year only. Thereafter, the applicant opted to confine O.A.575/2001 to the ACR for year 1992-93 and he filed four separate OAs on 31.3.2003 bearing Nos.O.A.402/2003, 403/2003, 407/2003 and 408/2003 in respect of the years 1994-95, 1995-96, 1996-97 and 2000-01. On the same date; i.e. on 31.3.2003; the applicant also filed the O.A.No.404/2003 in respect of the ACR for the year 2001-02, which is also under consideration.

5.Facts:The short facts of the case are that the applicant, a qualified Engineer, successfully competed at the Indian Engineering Service Examination of 1985 conducted by the UPSC. Thereafter, he was appointed as Assistant Electrical Engineer in the Indian Railways. In due course he was promoted to the rank of District Electrical Engineer. However, some time in between his performance drew repeated adverse comments in the ACRs of several years. The applicant's claim is that he all along worked to the best of his ability. While he considers himself a competent worker taking initiative in his work, he thinks his superior officers have thought otherwise because of considerations other than professional ones.

6. The applicant alleges that while he has been working honestly and sincerely, some of his peers and superior officers were not of the same discipline. He alleges that interests of private gain prompted such

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persons to take wrong decisions and do wrong things at the cost of the Railway administration. Since the applicant himself never became a party to such; as he puts it; "shady deals", he became the target of his superior officers and that is the basic reason for which he has been meted out such shabby treatment. Not only he has been given adverse remarks in the ACRs, he has otherwise been "persecuted, harassed, humiliated and mentally tortured".

7. Before proceeding further with the narration of facts, we would like to deal with the allegations made by the applicant against his colleagues; both, peers and superiors. It is settled law that the person alleging malafides is obliged to establish such allegations. Only after he discharges that burden the onus shifts to the opposite party to dislodge the allegation so established. We must clearly and firmly put it on record that the applicant has not advanced any material to establish the allegations. In respect of the adverse remarks for the year 2001-02, the applicant had made similar allegations in a series of letters written by him to his superior authorities. Certain contractors with whom the applicant had dealt with during that period had also made certain complaints against the applicant. The applicant's allegation was that some of those contractors were the illegal benefactors of his corrupt colleagues. But at no stage the applicant has named any colleague.

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7.1 The applicant's superior authorities had appointed a Fact Finding Committee which eventually submitted a factual report. A copy of that report has been placed on record by the applicant himself and the applicant relies on that report in support of his own professional good conduct. But in that report there is absolutely no corroboration of the allegations made by the applicant that his colleagues were corrupt and that he was persecuted for not joining hands with such corrupt colleagues. The report does mention about pendency of vigilance proceedings in respect of one of the points enquired into, but nothing beyond it. As has been briefly mentioned under Para 3(iii) above, the applicant had made similar allegations in O.A.No.629/1995 pertaining to the ACR for the period 1993-1994 but had failed to lead any material evidence in support thereof. Under these facts and circumstances, at the very outset we decide to ignore the allegations made by the applicant against the character and professionalism of his colleagues while dealing with the OAs under consideration.

8. Condonation of Delay:

While the applicant has filed petitions for condonation of delay in filing of the OAs under consideration, the respondents have vehemently objected to condonation of delay. For facilitating consideration we would first set down the relevant factual information in a tabular form. (See page 8)

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ACR Period	Dt. of communication of adverse remarks	Dt. of representation by applicant	Date of communication of decision on representation	O.A. No. and dt. of filing	Remarks
1992-93	16/04/93	07/06/93	15.09.93	<u>575/2001</u> 10.8.01	The relevant confidential records have been produced before us. It does not contain any evidence or information as to the date of service of the letter dt.15.9.1993 on the applicant. The applicant claims to have reminded on 16.12.1994 through his representation to the General Manager, Western Railway craving consideration of his representation dated 7.6.93. Further, there is no evidence of actual receipt of that representation dated 16.12.94 by any of the respondents.
1994-95	11/07/95	04/10/95	18.1.96	<u>402/03</u> 31.3.03	The applicant's representation dated 4.10.95 was rejected and the adverse remarks were confirmed. The letter of rejection was received by the applicant on 29.1.96.
1995-96	28.6.96	05/09/96	11/02/97	<u>407/03</u> 31.3.03	The applicant's representation dt.5.9.96 was rejected and the adverse remarks were confirmed. The letter of rejection was received by the applicant on 25.2.97.
1996-97	11/08/97	--	--	<u>403/03</u> 31.3.03	The adverse remarks communicated on 11.8.97 were received by applicant on 18.8.97. The confidential records furnished by the respondents do not contain any representation of the applicant against those remarks. In their reply the respondents say that no such representation was received against adverse remarks for the year 1996-97. The applicant further claims to have sent a representation on 22.9.97 and has furnished a copy of the representation so claimed to have been sent, but without evidence as to its receipt by the respondents.
2000-01	31.7.01	03/08/01	07/11/01	<u>408/03</u> 31.3.03	The applicant's representation dt.3.8.01 was rejected and the adverse remarks were confirmed. The letter of rejection was received by the applicant on 8.11.01.
2001-02	06/05/02	20.5.02	06/09/92	<u>404/03</u> 31.3.03	The applicant's representation dated 20.5.02 was rejected and the adverse remarks were confirmed. The letter of rejection was received by the applicant on 13.9.92.

9. Before considering the rival arguments as to condonation of delay, we would mention two OAs which merit to be kept outside the purview of operation of the provisions of Section 21 of the AT Act. One is the O.A.No.404/2003 in respect of the ACR for the year 2001-02. For that year the respondents made final order on 06.09.2002, which was received by the applicant on 13.9.2002. Since the OA concerned has been filed on 31.3.2003, we find that the same has been filed within time.

9.1 The other is the ACR for the period 1996-97. We find no credible evidence of the applicant having made any representation against the adverse remarks given in it although the same were communicated to the applicant on 11.8.1997 and that communication was received by the applicant on 18.8.1997. Under the circumstances the O.A. No. 403/2003 for this period cannot be admitted for consideration since it is hit by the provisions of Section 20(1) of the AT Act and thereby has become incompetent for admission.

10. For considering condonation of delay with regard to filing of O.A.575/2001, 402/2003, 403/2003, 407/2003 and 408/2003, we may look at the explanation given by the applicant. As has been mentioned under Paragraph 4 above, through O.A.No.575/2001 filed on 10.8.2001 the applicant had sought relief against the adverse remarks for 5 years. Through the M.P. No.893/2001 to that O.A. seeking condonation of delay

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the applicant had stated the following:-

(i) That he had filed 5 OAs bearing Nos. 203/1997, 138/2000, 475/1998, 486/2001 and 575/2001 questioning his non promotion and the legality of the ACRs responsible for such non promotion. Through those OAs he claims to have legally questioned the propriety, legality and constitutional validity of the ACRs for the periods ending 31.3.1993, 31.3.1995, 31.3.1996, 31.3.1997 and 31.3.2001, though there was no specific prayer for quashing of those ACRs in the said OAs.

(ii) The applicant's superiors are biased against him, due to which they have not been assigning him with any duties and have given adverse remarks which are baseless.

(iii) The applicant who had filed the earlier OAs in person was not conversant with the legal procedures but in his own way had questioned non granting of promotion by the respondents. Under the circumstances, the delay should be condoned.

11. In support of his prayer the applicant cites the decision of the Hon'ble Supreme Court of India in the case of Collector of Land Acquisition, Anantnag Vs. Katiji (AIR 1987 SC 1353) and also points out the significant guidelines laid down by the Hon'ble Apex Court during the course of decision in that case.

12. On behalf of the respondents condonation of delay has been vehemently objected to. It is submitted that the cause of action for the applicant arose during

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the years 1993 to 1997 and, therefore, the OAs under consideration suffer from delay and laches and hence deserve to be dismissed. In support of this contention several decisions of Hon'ble Apex Court have been cited in the reply of the respondents, though without the relevant texts. The decisions cited are:

- (i) P.S. Sadasivaswamy V/S S/O Tamil Nadu AIR 1974 SC 2271,
- (ii) Jacob Abraham and others A.T. Full Bench Judgements, 1994-96,
- (iii) Ram Chandra Samanta V/S UOI 1994(26)ATC 228,
- (iv) S.S. Rathore V/S S/O M.P. 1989(2) ATC 521,
- (v) Bhoop Singh V/S UOI IR 1992 SC 1414,
- (vi) Secretary to Govt. of India V/S Shivram M. Gaikwad (1995) 30 ATC 635 = 1995(6) SLR (SC) 812,
- (vii) Ex.Capt.Harish Uppal V/S UOI 1994(2)SLJ 177,
- (viii) L. Chandrakumar V/S UOI 1997(2) SLR(SC)1,
- (ix) AIR 199 SC 564 Dattaram V/S Union of India
- (x) 1996 LLJ 1127(SC) UOI V/S Bhagnoar Singh
- (xi) (1999)8 SCC 304 Ramesh Chand Sharma V/S Udham Singh Kamal & Ors.

13. As has been mentioned under Paragraph 3 supra, OA. Nos.138/2000, 475/1998 and 486/2001 were directed against the orders of penalty. Though O.A.No.203/1997 was directed against non promotion to J.A.G., the Tribunal as per its decision dated 10.12.2001 noticed that the adverse remarks in the ACRs for the periods 1991-92 and 1993-94 had become final. In respect of the other years i.e.1992-93 and 1994-95 the applicant had already filed O.A.575/2001. (It may be mentioned that no dispute as to the ACR for the period 1991-92

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has been brought to your notice). That is why this Tribunal declined interference. From this we find that the linkage between O.A.203/1997 and O.A.575/2001 (presently under consideration) is rather too tenuous so as to merit consideration. This aspect is discussed at length under paras 21.3 and 21.4 below.

14. The above decision is prompted by another consideration as well. The applicant claims to have filed the O.A.575/2001 in person and further claims that he was not conversant with the legal procedures and only "now"; i.e. in the year 2001; he had the assistance of an Advocate. This claim, however, appears to have no substance. In O.A.No.411/1992, the applicant was represented by a Counsel before the Coordinate Bench of this Tribunal situated at Jabalpur. That O.A. directed against the adverse remarks given in the applicant's ACR for the period 1990-91 was decided on 12.1.1993. It is only in connection with O.A.No.629/1995 that the applicant had represented himself before this Tribunal. Otherwise, he has all along been represented by an Advocate. So much so that O.A.No.575/2001 under consideration has also been filed under the supervision of an Advocate.

15. While considering the prayer for condonation of delay, it has to be borne in mind that the provisions of Section 21 of the AT Act raise a question of jurisdiction and not a matter of exercise of discretion in so far as it relates to condonation of delay. In

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that aspect exercise of jurisdiction under the provisions of Section 21 of the AT Act is distinguishable from consideration of questions of delay and laches by Hon'ble High Courts while exercising writ jurisdiction under Article 226 of the Constitution of India.

15.1 In the case of Mohammed Hasnuddin v. State of Maharashtra, (AIR 1979 SC 404) the Hon'ble Supreme Court considered the question as to whether a reference to it, under Section 18 of the Land Acquisition Act was made within the period prescribed under that section, and on being found that it was not made within the prescribed period, whether it did not have the jurisdiction to decide the reference? The relevant portion of the Judgment is reproduced hereunder:

"The court functioning under the Act being a Tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector under Section 18 complies with the conditions laid down therein so as to give the court jurisdiction to hear the reference.....Every Tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limits of its special jurisdiction and whether the jurisdiction of such Tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exists to invest it with jurisdiction, and where a Tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the Tribunal can function, it goes without saying that before that Tribunal assumes jurisdiction in a matter, it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen

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Wherever jurisdiction is given to a court by an Act of Parliament and such jurisdiction is only given upon certain specified terms contained in that Act it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not arise."

15.2 The jurisdiction and powers of the High Courts under Article 226 to issue writs are derived from the Constitution. No bar or condition or limitation, except those incorporated in any of the constitutional provisions would affect the amplitude of the power conferred on the High Court under Article 226. In the case of Hari Vishnu Kamat v. Election Commission (AIR 1955 SC 233, 238) the Supreme Court declared:

"If we are to recognise or admit any limitation on the power, that must be founded on some provisions of the Constitution. No Act of legislature can prescribe any period of limitation for the exercise of the said power."

15.3 Thus, the principle of delay and laches regulates the exercise of discretion to entertain or not to entertain a writ petition. When a writ petition is dismissed on the ground of delay and laches, it is done in exercise of the discretion of the court and not on account of want of jurisdiction.

16. Pressing the application for condonation of delay, the counsel for the applicant has claimed support from the decision of the Hon'ble Supreme Court of India in the case of Collector Land Acquisition Anantnag & Another vs. Mst. Katiji & Others (AIR 1987 SC 1353). In that case their Lordships of the Apex Court dealt with the circumstance of condonation of delay

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under Section 5 of the Indian Limitation Act of 1963. Relevant portion of the provisions of that Section is reproduced hereunder:-

"Any appeal or any application may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

(emphasis supplied)

The counsel has submitted that sub-Section (3) of Section 21 of the AT Act providing for condonation of delay similarly empowers the Administrative Tribunals. Provisions of the said sub-Section (3) are reproduced hereunder:-

"(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

17. Our attention has been drawn to the observation of the Hon'ble Apex Court that in matters of condonation of delay Courts must adopt a liberal approach keeping in mind the following principles:-

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

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4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

18. We find that in Katiji's case (supra) decided by the Hon'ble Supreme Court, the State had made delay of only 4 days in filing appeal before the Hon'ble High Court of Jammu & Kashmir. That delay was not condoned. In this factual background of non condonation of delay of only 4 days that the Hon'ble Supreme Court have cautioned against a pedantic approach and have favoured adoption of a rational approach tempered with common sense and pragmatism.

19. A seven-Judge Bench of the Hon'ble Supreme Court in the case of S.S. Rathore Vs. State of Madhya Pradesh (AIR 1990 SC 10), while dealing with the provisions of Section 21 of the AT Act have held in the following manner:-

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy, has been availed of, a six month's

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period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

19.1 In the case of Administrator of Union Territory of Daman and Diu and others V. R.D. Valand (1995 Supp. (4) SCC 593), their Lordships of the Hon'ble Supreme Court quashed the order passed by this Tribunal which had entertained a claim for retrospective promotion and held as under:-

"The Tribunal was not justified in entertaining the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28.9.1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when

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he made representation to the Administration. The said representation was rejected on 8.10.1986. Thereafter, for four years the respondent did not approach any court and finally he filed the present application before the Tribunal in March, 1990. In the facts and circumstances of the present case, the Tribunal was not justified in putting the clock back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way."

20. On perusal of the decisions as referred to supra and several other decisions on the subject, we are of the view that the following principles would guide us in dealing with a circumstance of condonation of delay.

(i) Condonation of delay under the AT Act involves a question of jurisdiction and not a matter of discretion.

(ii) The applicant concerned has to state the reasons causing delay.

(iii) The applicant concerned has to satisfy the Tribunal that the reasons so stated constituted sufficient cause in his case for not filing the application within the prescribed period of limitation.

(iv) After the applicant discharges the onus as at (ii) and (iii) above, the Tribunal is to decide as to whether it is a fit case to condone the delay and in doing so would be guided by the principles laid down by the Hon'ble Supreme Court in Katiji's case and in their landmark decisions referred to under paragraphs 19 and 19.1. supra.

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21. From out of the ACRs under consideration herein, the adverse remarks in the ACRs for the period 1992-93 and 1994-95, as has been discussed under paragraph 3 above, were brought up before this Tribunal in O.A.203/1997. While seeking the relief of promotion to J.A.G. with retrospective effect from 04.03.1996 the applicant had adverted to the said adverse remarks.

21.1 Confirmation of adverse remarks for the period 1992-93 was communicated to the applicant on 15.9.1993. In the confidential records produced before us there is no evidence of receipt of this communication by the applicant. On behalf of the applicant it has been argued that the said communication has never been received. On the contrary, on 16.12.1994, the applicant had represented once again for consideration of his representation dated 07.06.1993 against the adverse remarks for the relevant year.

21.2 The admitted position, thus, is that within 6 months of making representation the applicant did not receive any order on that representation. As per the provisions of Section 20(2)(b), the cause of action arose in respect of the ACR for the period 1992-93 on 07.12.1993; i.e. on expiry of six months after making the representation dt. 07.06.1993. Therefore, any application before this Tribunal ought to have been filed by 07.12.1994. The O.A.No.203/1997 was actually filed on 05.02.1997. Even if for arguments sake it is taken that the O.A.No.203/1997 covered the adverse

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remarks for the period 1992-93, the delay between the period 07.12.1994 to 05.02.1997, the latter being the date of filing of the O.A.No.203/1997, has not at all been explained. Therefore, the question of condonation of the delay in accordance with the provisions of sub-Section (3) of Section 21 of the AT Act does not arise.

21.3 So far as the adverse remarks for the period 1994-95 are concerned, communication as to confirmation of the same was received by the applicant on 29.1.1996. Since the O.A.No.203/1997 was filed on 05.02.1997, arguably the delay in agitating against those adverse remarks was only 7 days. But it would be worthwhile to reproduce the prayers of the applicant in O.A.203/1997 as to relief sought therein.

(i) The applicant should be promoted to Junior Administrative Grade with retrospective effect dt.04.03.96 and be compensated with pecuniary losses the applicant had suffered due to supercession. Further promotion to JA Grade be stayed till finalisation of this case.

(ii) The chargesheet memo No.E/DAR/307/7/64 dt.10.01.95 and Memo No.E/DAR/307/7/60 dt.27.9.94 issued with the malafide intensions are wrong, illegal and has been issued with a motive to implicate the applicant on the verge of his eligibility to get promotion to JA grade, should be quashed.

(iii) As R-2 and other controlling officers have passed wrong, vague, baseless remarks in Annual Confidential Reports of the applicant with an intension to spoil his career. Therefore, these adverse remarks should not have any effect for the consideration of granting promotion to the applicant."

Put in condensed form, the prayers were (i) promotion to J.A. Grade be granted retrospectively with effect from 04.03.1996, (ii) disciplinary proceedings

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initiated against the applicant be quashed and (iii) adverse remarks in the ACR should not become obstacle against granting of promotion.

21.4 Careful perusal of the records pertaining to O.A.203/1997 shows that the applicant had not sought leave of this Tribunal for amending the relief clause of the application. It is, therefore, clear that in O.A.203/1997, the applicant had not sought expunction or quashing of the adverse remarks given in any of the ACRs. Mere general reference to the adverse ACRs for the periods not actually mentioned in the prayer clause nor anywhere else in the O.A.No.203/1997, as already observed earlier, was too tenuous a link to construe agitation against the adverse remarks for the period 1994-95. Therefore, it is only on 10.8.2001, the date on which the applicant filed O.A.No.575/2001, that he has raised any objection against the adverse remarks for 5 of the years including the year 1994-95.

21.5 To be fair to the applicant it must be mentioned that he had filed the O.A.No.203/1997 in person but soon he had adequate legal assistance in representing that matter (with effect from September, 1997 onwards). We are, therefore, of the considered view that the applicant has not explained the delay between the period 29.1.1997 and 10.8.2001 in agitating against the adverse remarks for the year 1994-95.

22. As regards the adverse remarks in the ACR for the period 1995-96 communication as to confirmation of

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the same was received by the applicant on 25.2.1997. Till filing of O.A.No.575/2001 on 10.8.2001 the applicant had not taken any step to agitate against those remarks. The delay of about 3 ½ years has not been explained.

23. With regard to adverse remarks in the ACR for the period 1996-97, as has been already mentioned under paragraph 9.1 above, the applicant has not made any representation against those remarks although the communication of the adverse remarks was received by the applicant on 18.8.1997. Under the circumstances, as already observed, the O.A.No.403/2003 in respect of this period becomes incompetent as per the provisions of Section 20(1) of the AT Act. It is not a matter of condonation of delay under Section 21 of the AT Act.

24. So far as the adverse remarks in the ACR pertaining to the period 2000-01 are concerned, communication dated 07.11.2001 as to confirmation of the same was received by the applicant on 08.11.2001. In respect of that year the applicant had made the representation on 03.08.2001. Even before receipt of the said communication dated 07.11.2001, the applicant agitated against those adverse remarks in the O.A.No.575/2001.

24.1 As has been mentioned under paragraph 4 above, O.A.575/2001 originally sought "quashing of the ACRs" (language actually used in the relevant clause) for 5 years including the year 2000-01. On behalf of the

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respondents, a preliminary objection was raised that the applicant was not competent to seek multiple reliefs in contravention of Rule 10 of the CAT (Procedure) Rules. It would be worthwhile to reproduce the orders passed by this Tribunal on that objection as per roznama dated 19.3.2003:-

"19/3/2003 - 21

Heard Shri D.V. Gangal, Counsel for Applicant.
Shri V.S. Masurkar, Counsel for Respondents.

The applicant has claimed for re-writing of the ACRs of the applicant for the years ending 31/3/93, 31/3/95, 31/3/96, 31/3/97 and 31/3/2001.

The respondents have taken the preliminary objection that the applicant is claiming multiple reliefs which is not maintainable in view of Rule-10 of CAT Procedure Rules unless they are consequential reliefs.

In our view, each ACR is an independent cause of action and accordingly it be difficult for this Tribunal to consider granting relief in respect of ACRs of each year. The applicant is, therefore, directed to consider confining his relief to one particular ACR. Time of one weeks is granted accordingly to modify the relief." (emphasis supplied)

The applicant thereafter filed 4 separate OAs on 31.3.2003 in respect of the years other than the year 1992-93. The O.A.No.408/2003 pertains to the ACR for the period 2000-01.

24.2 Thus, the factual position is that inclusion in O.A.No.575/2001 of grievance pertaining to the period 2000-01 was premature since the communication as to confirmation of adverse remarks for that year was yet to be received by the applicant. Further, the applicant was not given liberty to file separate OAs in

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respect of the . years concerned and yet he filed separate OAs. However, as per orders of this Tribunal, as is evident from roznama dated 22.8.2003 the then Bench viewed it as a case of liberty to file separate OAs. That roznama is reproduced hereunder:-

"Shri D.V. Gangal counsel for the applicant. Shri V.S. Masurkar counsel for the respondents.

This OA has been filed questioning the entries regarding the ACRs for the years 1993, 1995, 1996, 1997 and 2001. It appears that the Tribunal by earlier order directed the applicant to file separate OA in respect of each year of entry in the ACRs. The applicant has already filed applications in respect of each year of entry in the ACRs. The learned counsel for the applicant submits that he is confined to only one ACR of 31.3.1993 in this OA. However it would be proper if all the OAs are heard by a common order by the Single Bench." (emphasis supplied)

24.3 Being guided by the principles enunciated by the Hon'ble Apex Court in Katiji's case, we would consider ourselves obliged to take up the O.A.408/2003 for consideration. Besides as has been mentioned under paragraph 9 above, the O.A.No.404/2003 pertaining to the ACR for the period 2001-02 has been filed within time. Therefore, these two OAs will be taken up for consideration. The remaining 4 OAs being OA Nos.575/2001, 402/2003, 403/2003 and 407/2003 are liable to be dismissed.

25. Privilege

Before proceeding further some discussion on the issue of claim of privilege in this case becomes imperative. The discussion on the issue of privilege in

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this case has an interesting background. During the course of his representation against the adverse remarks in the ACR for the period 2000-01, the applicant raised a 21- point questionnaire and stated that on receipt of reply to that questionnaire he would make a final representation in the matter. Such reply was never given. Instead it was communicated to him that the adverse remarks had been confirmed. Subsequently, the applicant petitioned this Tribunal to make enquiry through an elaborate set of interrogatories put up for consideration of the Tribunal. As per its order dated 14.8.2006 this Tribunal dismissed the MPs concerned.

25.1 In those MPs, the applicant had also sought that the ACRs concerned should be shown to him and as whether the ACRs can be shown to him was the question to be decided first. In due course, on behalf of the respondents affidavit was filed by the HOD concerned claiming privilege under Section 123 of the Indian Evidence Act, but at the same time submitting that the documents concerned would be produced for perusal of the Tribunal. Privilege has been claimed on the ground that the disclosure will cause injury to the public interest and would materially affect the freedom and candour of expression of opinion in determination and execution of bonafide duties of reporting, reviewing and accepting officers.

25.2 On this aspect of privilege this Tribunal

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passed separate orders as per roznama dated 14.8.2006.

Relevant portion thereof is reproduced hereunder:-

"We are of the view that in conformity with the order that was passed by this Tribunal on 15.9.2004, only during the final hearing the ACRs need to be perused by the Tribunal if considered necessary and thereafter relevant portions may be disclosed to the applicant as may be required in the interest of justice."

Against both these orders of the Tribunal the applicant had filed Writ Petition No.2920/2006 before the Hon'ble Bombay High Court. Per its order dated 21.6.2007, the Hon'ble High Court disposed of the Writ Petition. The operative part of the Hon'ble High Court's Judgment is reproduced hereunder:-

"...We may also notice that the impugned order of the tribunal also shows that it had adopted the practice of declining such a request even in other cases. Thus, the tribunal has followed it as a practice to decline the request for discovery by interrogatories and we see no reason to interfere with such practice, more so when the practice adopted by the tribunal is in conformity with law.

16. The learned counsel for the respondents in fact has no objection in allowing the request of the petitioner that the entire confidential record of the petitioner may be looked into by the tribunal while deciding the case on merits. We also see no jurisdictional or other error in the direction of the tribunal that the contention of the respondents in relation to the claim of privilege would be decided along with the main application.

We have no doubt in our mind that the tribunal would keep these observations in mind while deciding the Original Application of the petitioner on merits..."

25.3 In considering the claim of privilege under Section 123 of the Indian Evidence Act, two questions are to be addressed:-

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(i) Whether the document in respect of which privilege is claimed is really a document relating to any affairs of state?

(ii) Whether disclosure of the contents of the documents would be against public interest?

The settled position of law is that it is for the Court to decide as to what is the just answer to the first question; whereas, it is for the Head of the Department concerned to decide the answer to the second question.

25.4 The matters before us concern the adverse remarks in ACRs. The remarks considered adverse have already been communicated to the applicant. The applicant seeks to see the entire remarks. Whether disclosure of the entire remarks would be undesirable because it relates to any affairs of state? Because of the decision dated 12.5.2008 of the Hon'ble Supreme Court of India in the case of Dev Dutt v. Union of India and others (Civil Appeal No.7631/2002), we consider it unnecessary to provide a direct answer to the question. Instead, we would reproduce relevant portions of the judgment of the Hon'ble Supreme Court in Dev Dutt's case.

"19. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve

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his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution of India, 1950."

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution of India, 1950."

25.5 In view of the above decision of the Hon'ble Supreme Court, our decision in principle is that in the matter of disclosure of entries in ACR privilege under Section 123 of the Indian Evidence Act cannot be claimed.

26. Theory and Practice of writing ACRs:

Before dealing with the adverse comments given in the ACRs for the periods 2000-01 and 2001-02 it would be worthwhile to briefly mention the very purpose behind writing of ACRs. We are saved of the effort by a "Brochure on Confidential Reports" brought out by the Railway Board which is meant only for official use of Indian Railways. Certain portions of the Chapter I dealing with "Performance Appraisal-Philosophy and Approach" and portions of other chapters basically containing excerpts from instructions on the subject already issued either by the Railway Board or statutory

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instructions as per the Indian Railway Establishment Code, are reproduced here after:-

"CHAPTER - I

PERFORMANCE APPRAISAL-PHILOSOPHY AND APPROACH

1.2 The system of Confidential Reports on the performance of Government servants is a means to an end and not an end in itself. The ultimate goal is to optimize the achievement of organisation's objectives and programs. This is possible only if the Confidential Reports lead to the optimization of the performance of the concerned Reportee officer. The main focus of the Reporting system should, therefore, be developmental rather than judgmental. A Confidential Report should be a true indicator of the achievement of the Reportee officer; and should not be merely to control or discipline him.

1.3 The main purpose of a reporting system is to serve the interest of organisation by ensuring that the Administration knows the officers and makes optimum use of their capabilities. This implies that the officers showing promise are spotted and assigned higher responsibilities. Postings are done in a manner that the organisation gets the best from its members. It gives them job satisfaction and the officers are apprised of weaknesses for further professional development. Hence, the reporting system has an important bearing on the efficiency of the individual and the organisation as a whole."

"Chapter-II

2.7 Although performance appraisal is a year end exercise, in order that it may be a tool for human resource development, the Reporting Authority and the officer reported upon should interact during the course of the year at regular intervals to review the performance and to take necessary corrective steps.

(No.95/289-B/Secy./Admn. dt. 5.5.95)"

"Chapter-III

3.2 The Reporting Officer shall, as far as possible, in the beginning of year, set targets/goals preferably in quantitative and financial terms, in consultation with each of the officers with respect to whom he is required to report upon. In the case of an

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officer taking up a new post in the course of the reporting year, such targets/goals shall normally be set at the time of assumption of the new charge. The tasks/targets/goals set should clearly be known and understood by both the officers concerned. While fixing targets/goals, priority should be assigned item-wise taking into consideration the nature and area of work of the officer to be reported upon. Objectives and targets with reference to the job content may be set by the Reportee officer himself also.

(DOP&T's O.M.No.12/2/84-PP dated 17.12.86)
(Item 6 of instructions in ACR format & Para 2 Part-II thereof).

3.18 Where the Reviewing Officer/Accepting Officer is not sufficiently familiar with the work of the Government servant reported upon, so as to be able to arrive at a proper and independent judgement of his own, it should be his responsibility to verify the correctness of the remarks of the Reporting Officer after making such enquiries as he may consider necessary. Where necessary, he should also give a hearing to the gazetted railway servant reported upon before recording his remarks.

(DOP&T's O.M. No.51/3/74-Estt.(A) dated 22.5.75)."

"Chapter IV

4.1 A gazetted railway servant shall not ordinarily be given an unfavourable confidential report before an opportunity has been taken, by means of a personal interview and/or, by means of a personal letter/memo pointing out to him the direction in which his work has been unsatisfactory or the faults of character or temperament, which are required to be remedied. The manner and method of conveying to the gazetted railway servant that his work needs improvement in certain directions must be such that the advice given and the warning or censure administered, whether orally or in writing, shall, having regard to the temperament of the gazetted railway servant, be most beneficial to him. If, in spite of this, there is no appreciable improvement and an adverse confidential report has to be made, the facts on which the remarks are based should be clearly brought out in the confidential report itself.

(Para 1608 of IREC)

4.13 The following procedure may be adopted in dealing with representations from Railway servants against adverse remarks communicated to them:-

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(i) All representations against adverse remarks should be examined by an Authority superior to the Reviewing Officer, in consultation, if necessary, with the Reporting and Reviewing Officers.

(No.69/289-B/Secy./Admn. dt.05.12.60 & DOP&T's O.M.No.51/5/72 Estt.A dt.20.5.72)

(ii) If the said Authority finds that:-

(b) there is no sufficient ground for interference, the representation should be rejected and the Railway servant informed accordingly;"

(DOP&T's O.M.No.51/5/72-Estt.A.dt.20.5.72).

26.1 While dealing with the subject matter of the two OAs actually taken up for consideration we would keep in view the professed theory and practice of writing of ACRs by the Railway Administration.

27. O.A.404/2003

This application is directed against the adverse remarks confirmed in the ACR for the period 2001-02. During this period the applicant was appointed as Project Manager (Electrical), Churchgate upto 02.11.2001. Thereafter he was transferred and posted as District Electrical Engineer, Dahod. In that capacity he had worked from 05.11.2001 till the end of the reporting period. As required, Part II of the ACR proforma was filled in by the applicant. The particulars given therein by the applicant pertain only to his second spell of posting during the year.

27.1 In his comments in Part III A, the Reporting Authority while dealing with the nature and quality of work has obviously reacted to the particulars given by the applicant in Part II. Another segment of Part III

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B deals with the attributes wherein gradings are given as to various attributes pertaining to work. The gradings are given in a scale of 4 being Average, Good, Very Good and Excellent. Part-IV of the ACR captioned "General" is also to be reported upon by the Reporting Officer. Part V contains the remarks of the Reviewing Authority. The Reviewing Authority agreed with the assessment given by the Reporting Authority.

27.2 In Part VI the Accepting Authority accepted the remarks given by the Reporting and Reviewing Authorities. He, however, noticed the adverse remarks of the Reporting Officer which he ordered to be communicated. Such communication was made through the letter dated 06.05.2002 of the Accepting Authority wherein the remarks of the Reporting Authority as given in Part III (A) and Part IV were communicated. The comments given in Part III(B) were not communicated.


27.3 The applicant gave an elaborate representation dated 25.2.2002 against the adverse remarks, enclosing copies of certain official documents supporting his averments against the adverse remarks. The Reporting Officer did not relent in his comments dated 08.08.2002 on the representation of the applicant and stuck to his observations.

27.4 The Accepting Authority expunged only the adverse remarks given against the particulars filled in by the applicant in Part II of the ACR proforma, while he allowed the other adverse remarks to stand.

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27.5 The applicant's contention is that there was no material on record in support of the adverse remarks as has been allowed to stand. On the contrary, there is enough material on record to prove that he had done outstanding work in adverse conditions although faced with punitive actions and frequent transfers. Through M.P.No.77/2008, the applicant has brought on record report of the Fact Finding Committee (hereinafter FFC) which was obtained by him from the Respondents through a petition under the RTI Act. As it appears from that report, certain contractors had made complaints against the applicant. The applicant had also made complaints against the contractors. The FFC constituted of very senior Engineers was appointed for the purpose. It made site visits. Statements of the applicant and also the complainants were recorded. Enquiries were made. On the basis of the enquiries the FFC submitted a report on 31.7.2003. The Accepting Authority as per his orders dt. 04.02.2004 has directed that the FFC's report be sent to the Reporting Authority for "necessary suitable follow up action".

27.6 On behalf of the respondents it has been argued that the applicant has made wild allegations and accusations against his seniors and supervisory officers without any basis. He has neither impleaded any of them as private respondents nor even has named any of them. The Reporting Officer of the applicant noticed certain deficiencies in the latter's



functioning and pointed out those deficiencies in the ACR. Those remarks were communicated, as was very clearly stated in the letter dated 06.05.2002, not to discourage the applicant but to enable him to overcome the shortcomings and improve his performance in the right direction. The representation given in the matter by the applicant has duly been considered and certain portions of the adverse remarks have been expunged. Since proper procedure as laid down by the governmental rules has been followed, the OA. deserves to be dismissed.

28. We have carefully perused the confidential records produced before us, other documents and pleadings on record and the submissions made by either side. The bedrock of effective performance evaluation is its objectivity. That is what clearly comes through from the initial chapters of the Brochure on Confidential Reports, portions of which have been reproduced herein before. That is what has been observed by their Lordships of the Hon'ble Supreme Court in their decision in the case of S.Ramachandra Raju vs. State of Orissa (AISLJ 1994-3-95) in the following words:-

"...It is needless to emphasise that the career prospect of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the concerned officer/employee during the relevant period

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for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy..."

28.1 The Accepting Authority himself found that the Reporting Officer was not quite objective in assessing the particulars given by the applicant in Part II of the ACR for the year. The comments given under other heads in Part III (A) are totally divergent from the scope of giving comments as delineated in the head notes under items 2,3 & 4 of Part III(A). The comments given under columns 3 and 4 of Part IV are also similarly out of focus. The overall grading done as per item 5 of Part IV does not synchronize with sectorwise grading of attributes as given under Part III (B) of the report.

28.2 In his representation against the adverse remarks the applicant has brought out several instances of having taken keen interest in his work and also of having taken initiative in proceeding against wrong steps detected or taken in the past. On several counts FFC's report dated 31.7.2003 corroborates the contentions of the applicant. But while considering the representation of the applicant his averments have been given summary treatment, without being meted out the objective treatment that was due to be given.

28.3 Follow up action on some of the recommendations of the FFC have been concluded as late as in 2007. Therefore, the applicant's submissions as to his taking

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interest in work and his complaints against some contractors having acted against the interest of the Government needed objective appreciation and follow up and not summary rejection.

28.4 The FFC has of course alleged laxity on the part of the applicant on some counts but on those specifics it is desirable that the applicant's version is taken into account while finally settling his ACR for the year.

28.5 We are, therefore, of the considered opinion that the applicant's ACR for the year 2001-02 has neither been reported nor finalised in an objective manner following the procedure laid down, including the directives as given in the ACR proforma. We would, therefore, expunge all the remarks given in the ACR for the period 2001-02 and would direct the respondents to reconsider the remarks in question and to give remarks afresh following due procedure after taking into consideration all materials on record and having due regard to the decision of the Hon'ble Apex Court in Dev Dutt's case (supra).

29. O.A. 408/2003.

This OA. is directed against the adverse remarks in the ACR for the period 2000-01. In Part II of the report to be filled in by the applicant with specific data and the related write-up, he had stated that since no duties were assigned to him during the year he was sitting idle and had nothing to report.

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What has been mentioned in the preceding sentence is an understatement in as much as the applicant has used his own brand of vituperative against his superiors as well. After receipt of that ACR the Reporting Officer mailed two blank ACR forms to the applicant and advised that the self assessment portion in Part II be filled appropriately unlike in the manner in which it was already done. The applicant, however, did not act as advised.

29.1 In Part III (A) of the report requiring comments to be given on the nature and quality of work the Reporting Officer did not agree that no work was assigned to the applicant but did not make any reference to the factual aspect as to whether any work was indeed assigned to the applicant. In the same way the Reporting Officer gave certain other adverse remarks under items 2 and 3 of Part III(A) and also under items 3,4 & 5 of Part IV. The summary categorization in Part III(B) was also made in respect of attributes of the applicant. The Reviewing Authority agreed with the remarks of the Reporting Officer. The Accepting Authority also accepted the remarks and grading given by the Reviewing Authority. He, however, communicated the adverse remarks to the applicant.

29.2 Through an elaborate representation dated 03.08.2001 the applicant reiterated that since 1997 after assuming charge as Project Manager (Electrical)

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he has not been assigned any work. In the ACRs for the earlier 3 years he had given phoney data of targets and performance which perhaps suited the superior authorities; for, he had not received any adverse remarks. But being tired of inaction he decided to state the truth and did so in his self assessment in Part II of the ACR proforma for the year 2000-01. He even specifically claimed that no staff were posted under him. Under the circumstances, while he had stated the truth in his self appraisal, adverse remarks given by the Reporting Officer are totally without any basis because he did not have any scope to do any work. This representation was termed by the applicant as a preliminary one and he proposed to send a final representation after the Accepting Authority answered a 21-point questionnaire which the applicant had incorporated in his representation.

29.3 The Accepting Authority was of the view that the applicant was assigned specific work which he continued to do during the period 1997 to July, 2001 and that after the completion of that work the post was surrendered on 31.7.2001. Therefore, if the applicant claims that he has been idling that was more on account of his own non-performance than anything else. The Accepting Authority confirmed the adverse remarks.

29.4 On behalf of the applicant it has been submitted that because of his honesty and integrity no work was assigned to the applicant and that was the

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truth. Since the applicant had no scope to perform he had no other go but to report non-performance. In this background the adverse remarks are totally baseless and are malicious.

29.5 The arguments advanced on behalf of the respondents are an extension of the comments given by the Reporting Officer. It has been further argued that for the previous so many years the applicant was given adverse remarks by different Reporting and Reviewing Officers. That unmistakably indicates that the applicant's abilities were far short of the acceptable norms. So far as the year 2000-01 is concerned, the applicant chose to remain idle and he cannot project that idleness as virtue. The O.A. must be dismissed.

30. We have carefully perused the confidential records produced before us by the respondents, documents and pleadings on record and the arguments advanced by the parties hereto.

30.1 As has been mentioned earlier under Paragraph 27 above, in the self assessment part of the ACR for the period 2001-02, the applicant had mentioned about his performance during the last 5 months of that year. There was absolutely no mention about his activity during the first 7 months of the year, during which he held the same post of Project Manager (Electrical) which he had continuously held during the period 2000-01. At times silence can be eloquent. The silence of the Reporting Officer for the period 2001-02 as to the

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applicant's activity during the first 7 months of the year is indeed revealing. The applicant had not done any work during those 7 months and yet there was no comment possibly because no work was assigned to him.

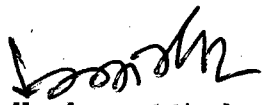
30.2 In the self assessment part of the ACR for the period 2000-01 the applicant has categorically stated that no work was assigned to him. As he subsequently claimed, no staff were posted under him although he was a senior Group A officer. From the Annual Confidential Records for the year ending 31.3.1997, it is found that one of the adverse remarks given there in was that because of non performance by the applicant, work allotted to him "had to be withdrawn one after other". If that is so, then is it that a senior officer who otherwise has been judged as knowledgeable about his work was sidelined into inactivity? Such a step is normally resorted to in the private sector to compel an unwanted executive to leave on his own. But the applicant is in Government service. He is well qualified, was recruited through a tough examination, had got promotion as DEE by virtue of his ability and, though, belatedly, has since been promoted to J.A.G. Therefore, as it appears, some where along the line germinated circumstances of personality clash due to which the applicant was not assigned any work. But as soon as he was assigned work in November, 2001 he performed with zeal.

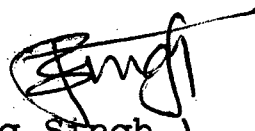
30.3 Under these circumstances, we are of the

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considered opinion that the ACR for the period 2000-01 in the case of the applicant has not been written in an objective manner. The required objectivity can be achieved only on factual verification as to whether any work was assigned to the applicant and if so what was his performance during the year in discharging his duties. If no work was assigned, as is the claim of the applicant, then his ACR will have to be settled in the same manner as the ACRs of officers in compulsory wait and without work for a whole year or any other rules of Government covering such circumstance. We would, therefore, expunge all the remarks from the ACR for the period 2000-01 in the case of the applicant and would direct that it be re-written/finalised/settled in accordance with the prescribed governmental rules and procedure and the directions given herein above in connection with O.A.404/2003.

31. In the result O.A.No.404/2003 and 408/2003 are allowed, while O.A.Nos.575/2001, 402/203, 403/2003 and 407/2003 are dismissed in limine. No costs.


(Sudhakar Mishra)
Member (A)


(Jog Singh)
Member (J).

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.**

R.P.Nos.20/2008, 21/2008, 22/2008 & 23/2008 in
O.A.Nos.575/2001, 403/2003, 402/2003 & 407/2003.

Dated this Monday, the 2nd Day of March, 2008.

Coram : Hon'ble Shri Jog Singh, Member (J)
Hon'ble Shri Sudhakar Mishra, Member (A).

G.S. Rathore

... Applicant.

VERSUS

1. Union of India, through
The Secretary, Railway Board,
Railway Bhavan, New Delhi.
 2. General Manager,
Western Railway,
Churchgate, Mumbai.
- ... Respondents.

TRIBUNAL'S ORDER (In circulation)
Per : Shri Sudhakar Mishra, Member (A).

These Review Petitions have been filed seeking review of this Tribunal's consolidated order dated 24.9.2008 in O.A.Nos.575/2001, 403/2003, 402/2003 and 407/2003 alongwith two other OAs filed by the petitioner herein. In these petitions the applicant makes identical prayer as under:-

"(a) The Hon'ble Tribunal be graciously pleased to review the order 24.9.2008 and set aside the same and it may be held that delay in filing OA is condoned.

(b) The OA may please be allowed on merits.

(c) The consequential benefits of holding review DPC may please be ordered."

2. The four OAs. as mentioned earlier were dismissed in limine for being unconscionably delayed in being filed. On careful perusal of the above mentioned order dated 24.9.2008, it is seen that all relevant factual aspects brought before this Tribunal alongwith all legal submission made by the parties to the O.A. were duly taken into consideration. The factual mistake in the order as alleged by the petitioner is not an error of omission nor any erroneous mention of facts. The petitioner, instead, would have his own analysis of facts as set out in that order as against the analysis as made in the order. The petitioner also does not point out any apparent mistake of law. Instead, he contends that the decision arrived at is erroneous in law. Such a contention is unacceptable basis for making review.

3. The Hon'ble Apex Court in Ajit Kumar Rath Vs. State of Orissa & Ors. 1999(9) Supreme 321 has held:

"Section 22(3)(f) indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the fact of the record or for any other sufficient reason. A review cannot be

claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which states in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

4. In our considered opinion there is neither any error apparent from the record nor any new fact within the meaning of Order 47 of Rule 1 of CPC is discovered. As such the grounds stated in the review petition do not come within the purview of review as provided under Section 22(3)(f) of the Administrative Tribunals Act, 1985. We find no merit in the review petition^s and the same ^{are} ~~is~~ dismissed. No costs.

R.P.NO. 20/08 IN.

NO.CAT/MUM/JUDL/OA.NO. 575/2001

DATE:

COPY TO:

1. Shri D. V. Gangal, counsel for the applicant.
2. Shri V. S. Masurkar, counsel for the respondents

SECTION OFFICER