

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 755/97

28-1-99  
Date of Decision:

Dr. R.P.Rai

Applicant.

Shri S.P.Saxena

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.K.Shetty

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Bawaja, Member (A)

Hon'ble Shri.

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

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

*D.S.Bawaja*  
(D.S.BAWAJA)  
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA NO.755/97

this the 28th day of Jan

1998

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

Dr.R.P.Rai,  
Senior Lecturer in Mathematics,  
National Defence Academy,  
Khadakwasla, Pune-411 023.

By Advocate Shri S.P.Saxena

... Applicant

v/s.

1. Union of India  
Through The Secretary,  
Ministry of Defence,  
DHQ PO, New Delhi.
2. The Commandant,  
National Defence Academy,  
Khadakwasla, Pune.
3. The Deputy Commandant,  
National Defence Academy,  
Khadakwasla, Pune.
4. The Officiating Principal,  
National Defence Academy,  
Khadakwasla, Pune.
5. Dr.S.C.Joshi,  
Officiating Principal,  
National Defence Academy,  
Khadakwasla, Pune.
6. Mr.S.N.Maitra,  
Officiating HOD,  
Department of Mathematics,  
National Defence Academy,  
Khadakwasla, Pune.

By Advocate Shri R.K.Shetty

... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member(A))

This application has been filed seeking  
the relief of expunging the adverse entries in the  
Annual Confidential Reports (ACRs) for the years  
1993-94, 1994-95, 1995-96 and 1996-97 or in the  
alternative to declare that the same would not be  
taken into consideration for any purpose.

2. The applicant was appointed as a Lecturer in Mathematics in the National Defence Academy, Pune in 1980 after being selected through UPSC. The applicant was promoted as Senior Lecturer from 8.3.1987. The applicant submits that till the year 1992-93, since the date of appointment, he did not get any adverse remarks. However, for the years 1993-94 and 1994-95 he was conveyed the adverse remarks for both the years on the same date by the letters dated 6.12.1995. The applicant made separate representations against both the ACRs on 14.12.1995 but no reply had been received to the same till the filing of the present OA. Thereafter, the applicant was conveyed adverse remarks for the year 1995-96 as per letter dated 11.5.1996. The applicant made a representation against the same on 5.8.1996 and his representation was rejected by the order dated 8.8.1996. For the year 1996-97 the applicant was conveyed adverse entries as per letter dated 4.7.1997. The applicant made a representation against the same on 21.9.1997 but the same was also rejected as per order dated 31.7.1997. Being aggrieved by the adverse entries in the ACRs, the present OA. has been filed on 19.8.1997 seeking the above referred reliefs.

3. The applicant has challenged the adverse entries on several grounds. The main grounds are as under :-(a) It is apprehended that the ACRs for the years 1993-94 and 1995-96 had been initiated by Respondent No. 6 who was not empowered to initiate

the ACR of the applicant as he ~~was~~ also in the same scale as that of the applicant.

(b) The applicant resigned from the ~~membership~~ of the National Defence Academy Mess w.e.f.

15.9.1993. The applicant alleges that this was objected to by Respondents No. 2 to 5

~~who~~ did not accept his resignation and continued to bill the applicant for years and started issuing coercive/threatening letters of initiating disciplinary action

for the same. The Respondent No. 5 started the process of fault finding on day to day basis and started issuing letters to the applicant on petty matters with a view to harass and teach him a lesson ~~for~~ withdrawing from the ~~membership~~ of the Mess. The adverse entries in all the orders under challenged have been made with this background and therefore the adverse remarks are based on deliberate and malafide intentions with a view to damage the career of the applicant. (c) No specific instance as known to the applicant ~~have~~ been indicated based on which the adverse remarks conveyed to the applicant have been made and his work has been found lacking.

Even after making the request to convey the reasons and instances, nothing was communicated to the applicant. (d) While rejecting the representation of the applicant for the ACRs 1995-96 and 1996-97, no reasons have been conveyed and the points raised by the applicant in the representation have been not dealt with. The orders are non-speaking and made without application of mind.

Further, the representation for ACR of 1996-97 has been rejected by Deputy Commandant who is not the competent authority and therefore this rejection is patently illegal. (e) The guidelines regarding communicating of adverse remarks as laid down by the Department of Personnel and Training have been not complied with as only adverse entries have been conveyed to the applicant and not along with other good entries in the same ACR.

4. The respondents have strongly contested the application through the rejoinder affidavit filed by the officiating Registrar on behalf of the Commandant for National Defence Academy. Respondents have controverted all the grounds taken by the applicant. The respondents submit that the ACRs for the years 1994-95 and 1996-97 have been correctly initiated by Respondent No. 6 who is the Head of the Department. The respondents further submit that the adverse remarks conveyed to the applicant in the ACR under challenged are based on the assessment of the performance of the applicant and it has nothing to do with the resignation of the applicant from the membership of officers' Mess. The respondents totally deny the allegations of the applicant that he had been harassed on account of withdrawal from membership of the Mess with a view to teach him a lesson. The respondents contend that the applicant had been verbally advised to improve his performance on several occasions and written advice has also been conveyed from time to time as will be seen from the documents brought on

record. The respondents have further added that representations made against the adverse entries were rejected based on the facts and merits of the case and not with any vindictive attitude. The respondents submit that the representations for the years 1993-94 and 1994-95 are still pending disposal. The respondents plead that the applicant has not made out any case for expunging the adverse remarks conveyed to him in the ACR for various years under challenge and the OA. deserves to be dismissed.

5. Respondents No. 5 & 6 have been made party by name. Although notices were issued to Respondents No. 5 & 6, but they have not filed any affidavits.

6. The applicant has filed rejoinder reply to the written reply of the official respondents. The applicant while controve~~rt~~ting the submissions of the respondents has reiterated his grounds taken in the OA.

7. The respondents have filed ~~supplementary~~ reply to the rejoinder of the applicant and the various grounds taken in the written statement have been reiterated. The applicant has filed a Misc. Application to bring on record the copies of the letters which are referred to ~~in~~ the various documents brought on record by the respondents in the written reply and copies having been not brought ~~the~~ on record. These documents brought ~~on~~ record by the

are applicant to support his contention of harassment and vindictive attitude particularly of Respondents No. 5 & 6 after his withdrawal from the Officers' Mess. The respondents have filed reply to this Misc. Application also.

8. I have heard the arguments of Shri S.P.Saxena, learned counsel for the applicant and Shri R.K.Shetty, learned counsel for the respondents. The respondents made available the file containing the original Annual Confidential Reports of the applicant for perusal of the Bench.

9. The applicant has relied upon the following judgements in support of various grounds taken by him in seeking the reliefs :-

- (a) M.Sasidharan vs. Sri A.P.Sudir, Deputy Collector of Central Excise(Audit) Cochin & Ors., (1988) 6 ATC 385.
- (b) K.Radhakrishna Menon vs. The Collector of Central Excise, Cochin & Ors. 1989(2) S.L.J. (C.A.T.) 1.
- (c) Miss N.Girija vs. Director General, C.S.I.R., New Delhi & Anr., (1990) 12 ATC 653.
- (d) Anand Arjun Manjrekar vs. The State of Maharashtra & Ors., Mumbai High Court in Writ Petition No. 2243/88.
- (e) Sukhdeo vs. The Commissioner Amravati Division, Amravati & Anr. JT 1996 (5) S.C. 477.

10. The respondents have cited the following judgements to support their contentions :-

(a) State of U.P. vs. Yamuna Shanker Misra & Anr.

JT 1997 (4) S.C. 1.

(b) Air Vice Marshal S.L.Chhabra, VSM(Retd.)

vs. Union of India & Anr., 1994 SCC (L&S) 257.

11. The grounds on which the applicant has challenged the Annual Confidential Reports have been detailed in Para 3 above. The first ground of challenge is that the applicant understands that his Annual Confidential Reports for the years 1993-94 and 1995-96 had been initiated by Respondent No. 6, Shri S.N.Maitra who as per the applicant was not competent to report upon the applicant. I have gone through the file containing the annual confidential reports of the applicant and observed that the reports for the years 1995-96 and 1996-97 had been initiated by Shri S.N.Maitra while working as Head of Department and Reader. The main argument putforward is that the applicant and the Respondent No. 6 were in the same scale of pay. The respondents have strongly contested this stating that Respondent No. 6 Shri S.N.Maitra was working as Head of the Department and the applicant was under his direct administrative control and therefore he was competent to report upon the performance of the applicant. I have carefully considered the rival contentions and inclined to endorse the stand of the respondents. The applicant has not brought out any rules on record to substantiate his argument. It is not a matter of dispute that Shri S.N.Maitra was working as Head of the Department and the applicant was working as

a Senior Lecturer. Once the Respondent No. 6, Shri S.N.Maitra is designated as Head of the Department/Reader and the applicant/designated as Senior Lecturer/is working under him, the pay scale then/of no consequences. It is the administrative control which will determine whether the authority is competent to report upon the performance of the official working under him. Keeping this fact situation in focus, I do not find any illegality in initiating of the reports of the applicant by Respondent No. 6.

12. The second ground of attack is that the representations made by the applicant against the Annual Confidential Reports for the years 1995-96 and 1996-97 had been disposed of with non-speaking order. From the details furnished, it is an admitted fact that the representations made against the Annual Confidential Reports for the years 1993-94 and 1994-95 have not been yet disposed of by the respondents. The applicant has brought on record the copies of his representations against the report of 1995-96 dated 5.8.1996 at page 39 of the paper-book and dated 21.7.1997 at page 42 of the paper-book. The copies of the replies of the representations are brought on record at page 19 of the paper-book for the year 1995-96 and page 20 for the year 1996-97. The main contention of the applicant is that the representations of the applicant had been disposed of conveying no reasons and the points raised by the applicant in his representations had not been/dealt with and therefore these orders of the competent authority are non speaking.

The applicant therefore pleads that rejection of his representations is patently illegal and therefore these orders are not sustainable. The applicant has relied upon the orders of the Tribunal in the case of K.Radhakrishna Menon vs. The Collector of Central Excise, Cochin & Ors. and Miss N.Girija vs. Director General, C.S.I.R., New Delhi & Anr. to support his contention with regard to the non-speaking orders through which his representations had been rejected. I have gone through these orders. In the case of Miss N.Girija, relying upon the decision of Calcutta and Orissa High Court, the Tribunal has held that the bald order of the authority rejecting the representation against the adverse remarks is not sustainable as no reasons for rejecting the representation have been given in the order. The Bench while quashing the order rejecting the representation had remitted the case back to the concerned respondents for passing a speaking reasoned order with reference to the appeal made by the applicant. In the second order of K.Radhakrishna Menon also the Tribunal has held that the appeal of the applicant had been disposed of by a non-speaking order which cannot be sustained as it has a civil consequences and therefore in violation of principles of natural justice. The Tribunal quashed the order and directed to expunge the adverse remarks.

We note that in both the orders of the Tribunal the same view has been taken that the representation against adverse remarks in the Annual Confidential Report disposed of by a non-speaking order is not legally sustainable as it infringes the principles of natural justice. However, in this connection, I would refer to the judgement of the Hon'ble Supreme Court in the case of Union of India & Ors. vs. E.G.Nambudiri, 1991 SCC (L&S) 813, wherein the matter of rejection of the representation by a non-speaking order without giving reasons had been On an appeal against the order of the Tribunal dealt with, The Hon'ble Supreme Court has held in this judgement that where order does not adversely affect any vested right or involve civil consequences, administrative authority is not required to record his reasons in absence of any statutory provision requiring communication of reasons. The views expressed by their Lordships in Para 10 are reproduced below :-

"10. There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons.

No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons *ex facie* and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence *aliunde* before the court to justify its action."

I have carefully gone through the orders rejecting the representations of the applicant against adverse remarks against confidential report and inclined to endorse the submission of the applicant that the same do not cover the points raised by the applicant in his representations. The orders are cryptic and are certainly can be termed as non-speaking. However, as observed by Hon'ble Supreme Court above, these orders cannot be held to be bad in law, <sup>as such on this account</sup> Since these orders have been challenged, the respondents could place the reasons before the Tribunal with regard to the representation of the applicant. The respondents have filed written reply but have chosen not to disclose the reasons recorded by the competent authority in disposing of the representation. The

written reply only makes general statement with regard to the performance of the applicant. A number of documents have been brought on record to indicate that the applicant had been made aware of his shortfalls. However, these documents do not cover the points raised by the applicant in his representation. Keeping in view the facts of the case as emerging from the written reply and observations of Hon'ble Supreme Court, I am compelled to hold that the orders rejecting the representation of the applicant against the adverse remarks in the Annual Confidential Reports of the years 1995-96 and 1996-97 are not legally sustainable.

13. The 3rd ground which is the main thrust of the defence of the applicant is that the adverse entries in the Annual Confidential Reports have been made with malafide intention by Respondents No. 5 & 6 in particular with an intention to damage the career of the applicant. The applicant has made Respondents No. 5 & 6 as party by name. However, as indicated earlier, both Respondents No. 5 & 6 have not filed any affidavit. When malafides are alleged, it is necessary that the person against whom such allegations are made should come forward all or any through an affidavit refuting or denying of such allegations. In the event of non-filing of the affidavit when opportunity given, the allegations remain unrebutted. Court/Tribunal in such a case would be constrained to accept the allegations remaining unrebutted or unanswered on the test of probability. In the present case, in the absence of any affidavit from Respondents No. 5 & 6, the matter is to be looked at based on material brought on record by the applicant to determine whether the

allegations of malafide made against Respondents No. 5 & 6 could be sustained. The applicant has stated that since the date of appointment and till the year 1992-93 the applicant was never conveyed any adverse remarks with regard to his Annual Confidential Reports. During the year 1993-94, the applicant submits he resigned from the membership of the officers' Mess of National Defence Academy from 15.9.1993. The applicant contends that this was not taken kindly by the authorities and therefore the Respondents No. 2 to 5 started harassing the applicant by issuing letters through Respondents No. 5 & 6 finding fault in his day to day work on petty issues with a view to make adverse entries in his Annual Confidential Reports. The applicant has further submitted that no fault was found with his teaching work and the issues on which the letters were issued to the applicant to call for his explanation were extraneous in nature. The applicant also stated that the respondents went to the extend of initiating disciplinary action against the applicant for resigning from the membership of the Officers' Mess and he had to seek legal remedy by filing an OA. The applicant has also averred that as a result of his resignation from the Mess, adverse entries were made first time in his report of 1993-94 and thereafter the same attitude of the authorities continued and adverse entries have been made in the reports of subsequent years also. With this background, the applicant alleges that Respondents No. 2 to 5 and Respondents No. 5 & 6 in particular had acted malafidely, vindictively with the sole purpose of harming the interest

of the applicant and affect his chances of further promotion to the post of Reader of which he had become due. The official respondents, on the other hand, have strongly refuted the contentions of the applicant stating that his resignation from the membership of Officers' Mess have no consequences which have been reflected from the Annual Confidential Report. The respondents have further stated that the adverse entries have been made in the Annual Confidential Report and conveyed to the applicant based on the objective assessment of his performance both as a Teacher as well as in other functions related to training of the cadets. The respondents have also stated that the adverse remarks made in the Annual Confidential Report are supported by the documents through which the applicant had been made aware of his lapses and unsatisfactory performance and inspite of that he did not show any improvement. The respondents have brought on record a number of communications sent to the applicant starting from March, 1994 onwards and the replies received from the applicant to same for these communications. The applicant has not brought on record any documentary evidence to support his allegation of malafide intentions of Respondents No. 2 & 5 with the original application. However, subsequently, through a Misc. Application the applicant has brought on record the copies of the letters referred to by the respondents in the documents brought on record with the written statement.

14. Based on the averments made in the original application by the applicant and the documentary evidence brought by the respondents and the applicant on record, it is to be seen whether any inference with regard to malafide intention of Respondents No. 5 & 6 as alleged by the applicant could be drawn. On going through the documents brought ~~on~~ either party, it is noted that the letters issued to the applicant over the various years mainly concern with regard to punctuality, non-availability of the applicant in the office or class-room ~~at~~ a particular time, non-attending of the social functions and other related activities with the training of the cadets. These documents also reflect the dispute <sup>/difference</sup> of the applicant with Shri Maitra who was working as Head of Department and Reader with regard to dispute of teaching work load. It is conceded that the documents brought on record had originated in the beginning of 1994 after the applicant had resigned from the membership of the officers' Mess. The applicant has reacted to the various communications and had submitted the explanations where asked for. The competent authority in some cases had advised the applicant to be careful in future and resists from casting aspersion on the higher authorities in his correspondence. The communications from the department to the applicant and the replies received from the applicant thereon reveal that these are not fabricated incidents where the applicant had

been issued communications with a view to harass him. The communication appears to have been issued based on the day to day working as a part of the administrative control over the teaching staff. Though it may be agreed that these communications had started after the applicant had withdrawn his membership from the officers' mess but it is difficult to accept the contention that these communications pointing out lapses in the working of the applicant were with malafide intentions. The applicant himself has stated that he had become the member of the officers' mess and continued to so but decided to withdraw in September, 1993. The applicant has not come out as to why he withdrew from the membership. Perhaps the very withdrawal of his membership from the officers' mess signifies that all was not well between the applicant and administration and which probably was manifested in withdrawal from the membership from the officers' mess. Whether the teaching staff is required to be a member of officers' mess and also other functions though not directly linked with the teaching work is the issue within the domain of the officer incharge of the Mess. If the applicant had decided not to attend various functions and the authorities had questioned for the same, it cannot be said that the authorities have acted malafidely. In the same way, if the applicant had not been found in the office or class room when the checking was done, or the cadets were found sleeping during the classes, it cannot be inferred that such incidents were with a view to harm the pointed out

applicant. It may be that after the applicant had withdrawn from his membership, the concerned authorities might have become more strict to keep the watch on the performance of the applicant. Keeping these observations in view, I am not persuaded to accept the contention of the applicant that the Respondents No. 5 & 6 have acted with a malafide intention to spoil his career. In fact, on going through the confidential reports, I find that Respondent No. 6 had initiated the reports of the applicant during the year 1994-95 and 1996-97 and had given favourable remarks with regard to the working of the applicant and its reviewing and accepting authority have recorded the adverse remarks giving reasons thereof. Concludingly, the contention of the applicant with regard to making adverse entries in the confidential report for the years under challenge with malafide intention mainly on account of his withdrawal from the membership of the officers' mess cannot be accepted.

15. Hon'ble Supreme Court through catena of judgements has expressed its views with regard to the object of writing of confidential report of a Government servant and the communication of adverse remarks with a view to afford an opportunity to the officer concerned to improve his performance and thereby bring efficiency in public service. Two such judgements have been relied upon by the respondents and the reference of the same has been earlier given in Para 10 above. The applicant has also relied upon

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the judgement of Hon'ble Supreme Court in the case of Sukhdeo vs. The Commissioner Amravati Division, Amravati & Anr. wherein the need of objectivity, impartiality and fair assessment without any prejudice on the part of controlling officer in writing annual confidential report of a government servant has been stressed. From one of the cited judgements in the case of State of U.P. vs. Yamuna Shankar Misra & Anr., an extract from Para 7 is reproduced as under :-

"7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon the facts or circumstances. Though sometimes, it may not be part of record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgement, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite given giving such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself necessarily, the same may be recorded in the confidential reports and a copy thereof supplied to the

affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal."

In the present case as discussed earlier, the respondents have brought on record the communications sent to the applicant with regard to his performance in certain areas of his duties. There is no denial of receipt of these communications by the applicant as in most of the cases the applicant had reacted by giving replies to these communications. The main contention of the applicant in challenging the adverse remarks in the confidential reports is that the adverse remarks have been made with malafide intention. I have not been able to find merit in this contention as deliberated earlier. Through the communications brought on record, the applicant had been made aware of the deficiency in his working in certain areas and adverse remarks have been finally recorded after giving due opportunity to the applicant. As indicated by the Hon'ble Supreme Court as above, if the government servant feels aggrieved by the adverse remarks, it is open to him to have the same corrected through making representation against the same or agitating the matter for a judicial interference if so desired. In the present case, as brought out earlier, the applicant had made representations against the adverse remarks. It is for the competent authority to consider his representations and the points raised in the representation and come to the conclusion whether the adverse

(v)

remarks deserve to stand inspite of the representation made by the applicant. It is difficult for the Tribunal to go into the deficiencies/lapses in the work of the applicant as pointed out in the communications in reference to adverse remarks to determine whether the adverse remarks are warranted on these communications. In this connection, reference is made to the judgement of the Hon'ble Supreme Court in the case of Air Vice Marshal S.L.Chhabra, VSM (Retd.) vs. Union of India & Anr., in Para 7 the Hon'ble Supreme Court has indicated that while exercising the power of judicial review, a court shall not venture to assess and appraise the merit or grading of an officer. In the present case, applicant has been corrected based on his performance and even if the adverse remarks are expunged, the Tribunal cannot find what final order is passed based on the facts. As already held, the representations of the applicant for the years 1995-96 and 1996-97 have not been disposed of by a speaking order covering the points raised by the applicant. In respect of the confidential reports of the year 1993-94 and 1994-95, the representations have not yet been disposed of. Considering these facts, I am of the considered opinion that the matter should be remitted back to the competent authority.

16. The respondents in Para 29 of the written reply have stated that the applicant had been advised verbally to mend his ways and conduct himself as expected of a Group 'A' Gazetted officer on an off the job. The learned counsel for the applicant has contested this stating that such verbal advice cannot be taken as a base for conveying the adverse remarks. The applicant has relied upon the judgement of the

Hon'ble High Court of Mumbai in Writ Petition No. 2243/88 in the case of Anand Arjun Manjrekar vs. The State of Maharashtra & Ors. I have carefully gone through this judgement in context of the pleading made by the applicant. In this judgement, observations had been made that oral communication of the adverse confidential remarks is unknown to service jurisprudence. On carefully considering the facts and circumstances based on which these observations have been made, I am of the opinion that the ratio of these observations does not apply to the case of the applicant. It is noted in Para 10 of the judgement that the adverse remarks from confidential report for the year 1976-77 were orally communicated to the applicant and not in writing which was required as per the rules. In the present case, the adverse remarks in the confidential report have been communicated in writing. The oral advise which the respondents have referred to is in context of performance of the applicant from time to time apart from the various communications sent to the applicant and brought on record. Such oral advice will supplement the written communication. In the day to day working it may not always be possible and advisable to communicate the observations of the superior officer with regard to the performance of an employee and during the course of the year, the applicant may be advised orally <sup>of</sup> the lapses with a view to ~~represent himself~~ <sup>improve himself</sup> the present case, the respondents' case is not based only on the oral communications but on the written communications sent to the applicant from time to time. Keeping these facts in view, I am unable to find any merit in the contention of the applicant.

17. In the result of the above deliberations, the OA. is partly allowed with the following directions :-

- (a) The representations of the applicant pending with the administration for the confidential reports of 1993-94 and 1994-95 shall be disposed of by the competent authority within a period of three months from the date of receipt of this order through a speaking and reasoned order covering the various issues raised by the applicant in his representations.
- (b) The replies given to the applicant in response to his representations against adverse remarks for the years 1995-96 and 1996-97 by the competent authority are quashed. The competent authority shall consider the representations afresh and pass a speaking and reasoned order covering the issues raised by the applicant in his representations. This will be complied with within a period of three months from the date of receipt of the order.
- (c) The applicant is allowed an opportunity if he so wishes to make any further representation in addition to what he has made earlier with regard to the confidential reports of the various years made under reference. This additional representation <sup>will</sup> be sent within a period of one month from the receipt of the order.
- (d) No order as to costs.

*S. Bawej*  
(D.S.BAWEJ)  
MEMBER (A)