

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER: 23/10/2009

OA 378/95

G.P. Meena son of, Shri Sampat Ram Meena aged around 46 years resident of outside Delhi Gate, Alwar. Presently posted as Assistant Engineer (Est.), Office of Telecom District Engineer, Alwar.

....Applicant

VERSUS

1. Union of India through Secretary, Ministry of Telecommunications, Department of Telecommunications, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecommunications, Rajasthan Circle, Jaipur.

....Respondents.

Mr. Rajendra Soni, Counsel for the applicant.

Mr. Bhanwar Bagri, Counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)

Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL)

In this OA filed u/s 19 of the Administrative Tribunal's Act, applicant makes a prayer that adverse remarks in the APAR for the year 1993-94 be expunged and respondents be directed to consider the applicant for promotion on the post of Senior Assistant Engineer without taking into consideration the adverse remarks against which representation has not been decided.

2. Following adverse remarks for the year 1993-94, pertaining to the applicant, were communicated to the applicant:-

"Part III - Assessment of Reporting Officer.

1(b) General Comments on the results Poor
achieved and the quality of performance and application of knowledge, delegated authority and conceptual and professional skills on the job.

2(i) Commitment to the tasks Lack of initiative.
assigned.

(ii) Devotion to duty. Poor

3. Please indicate if on any of the items in this part, the Reporting Office administered any written or oral warning or, counselling and how the officer reacted thereafter. Oral counsellings were given, the results were not positive.

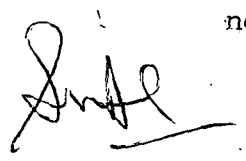
Part IV - Remarks of the Reviewing Officer

4. Is the Officer reported upon specially suited for particular job ? If so, the nature of placement should be suggested. Not suitable for any job.

3. The facts of the case, in brief, as stated by the applicant are that in the APAR of the applicant for the year 1993-94, the aforesaid adverse entries were made, which were communicated to the applicant vide letter dated 2.8.94. The applicant submitted representation against the aforesaid adverse remarks vide representation dated 5.9.94, which is still pending. It is stated that applicant put in more than 12 years of service as Assistant Engineer but due to these adverse remarks, promotion to the applicant on the post of Sr. Assistant Engineer was denied

in the year 1994. It is stated that adverse remarks given in the APAR of the applicant for the year 1993-94 are wholly unjustified and without any basis. The Reviewing Authority's remark that applicant is not suitable for any job is wholly unjustified and unfair and thus the Reviewing Authority has usurpt the function of the Screening Committee. It is also stated that applicant resumed duty at Sikar on 1.2.93. He was transferred from Sikar to Alwar vide order dated 25.3.94. During his posting at Sikar, applicant remained on duty only for 25 days and he remained mostly on leave because Department has differently interpreted the interim directions given by Additional & District Session Judge, Alwar. It is stated that applicant was not having good relations with Shri R.D. Gupta, District Telecom Engineer, Sikar, who was the reporting officer of the applicant and applicant has challenged the transfer order, Shri Manjeet Singh, General Manager Telecom, respondent no. 2, had become biased against him and hence as a Reviewing Authority, he has reported adverse remarks, as above. It is also stated these adverse remarks do not depict the true and correct picture of the assessment of work as Reporting officer or Reviewing Authority are supposed to write APAR based on objective considerations. The adverse remarks recorded must be supported at least with two instances, therefore, are all unjustified and unreasonable. No advice, guidelines/assistance was provided to the applicant to correct the fault and deficiencies and these adverse remarks were given with view to prepare a case against the applicant to deny him the promotion. Therefore, are liable to expunged.

4. Reply was filed. It is stated in the reply that applicant was found unfit for promotion on the post of Sr. Assistant Engineer by the Screening Committee on the basis of record and hence he was not promoted. It is denied that action of the respondents is unreasonable and arbitrary. It is admitted that representation filed by the applicant is subjudice. It is also stated that applicant has failed to establish bias against his Reporting Officer/Reviewing Authority. It is stated that applicant remained absent for 466 days, which is self explanatory and shows lack of devotion of duty. It is denied that adverse remarks, as recorded in the APAR of the applicant are without any basis or are unjustified/unreasonable. Hence it is stated that applicant is not entitled to any relief sought for. An Additional Affidavit



was also filed on 17.1.96 stating that representation filed by the applicant on 5.9.94 was disposed of by the Competent Authority vide order dated 9.1.96 (Annexure AA-1).

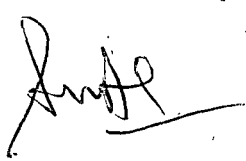
5. Heard the learned counsel for the parties and also perused the whole record.

6. The purpose of ACR is to help the individual to recognise the areas of deficiencies and makes efforts to overcome his deficiencies. The ^{career} remarks in the ACR have direct bearings of the growth of the individual. These are required to be recorded with great care without prejudice. The Reporting Officer is required to write down the ACR of the official subordinate to him according to rules and regulations provided for the purpose. He must have a definite base to write adverse remarks against the concerned officer with certain instances and he should also ensure that an opportunity was given to the applicant to rectify those shortcomings which he has noticed from time to time. Instead of giving vague and general remarks, the Reporting Officer while making adverse entries must indicate specific instances where the Officer reported upon, in the assessment of the reporting officer, has been found wanting.

7. In State Bank of India & Others vs. Kashinath Kher & others (1996) 8 SCC 762, Hon'ble Supreme Court pointed out that the object of writing the CR is two fold i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service.

8. In Sukhdeo Vs. Commissioner, Amravati Division (1996) 5 SCC 103, it is also laid down that attribution of malice and arbitrariness to reporting and reviewing officers who are not impeached as respondents and who have no opportunity to explain their conduct, could not be accepted.

9. In U.P. Jal Nigam Vs. Prabhat Chandra Jain, (1996) 2 SCC 363 their Lordship held that for down grading the ACR, the authority has to record the reasons and inform the applicant in the form of advice.

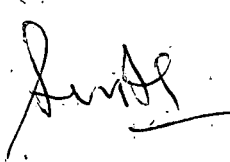


10. In M.A. Rajasekhar vs. State of Karnataka (1996) 10 SCC 369 their Lordship stated that the superior authority is obliged to guide the subordinate by pointing out his deficiency and since this exercise has not been done, the said adverse remarks was stated to be not consistent with law.

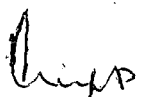
11. In State of U.P. vs. Y.S. Misra, 1997 4 SCC 7, it is laid down by the Apex Court that a confidential report is written to enable an employee to improve his performance in public service. This should be a good input and catalyst to enable the employee to strive towards excellence in accordance with Article 51-A of the Constitution as a fundamental duty in all spheres of individual collective activity. The second guideline laid down was that there should be complete objectivity in writing a confidential report because it is primary responsibility of the reporting and reviewing Officer. The third guideline was that the confidential report needs to be written accurately on the basis of facts. The reporting and reviewing officer should confront the reported officer with the facts and the adverse inference before forming an opinion to make an adverse remark so that the reported officer gets an opportunity either to improve himself or to explain his conduct.

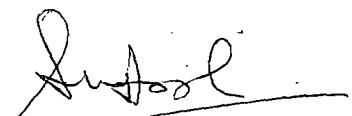
12. On the basis of above legal position, it can be said that ACR must have been written according to rules & regulations provided for the purpose and there must be a definite base to record the adverse remarks in the ACR of the officer concerned with certain instances and the officer concerned must be given opportunity to rectify those shortcomings which have been noted by the reporting & reviewing officer.

13. In the instant case, Reporting/Reviewing Officer did not have any basis for the adverse remarks as communicated to the applicant. No opportunity was given to the applicant to rectify the deficiencies as noticed by the competent authority. No specific instance has been made a basis for these adverse entries. While recording adverse entries, it was the duty of the authority concerned to record reasons which has been alleged by the applicant that unjustified & unreasonable remarks are given in the ACR of the applicant so that promotion can be denied to him. We are constrained to observe that these adverse remarks had without any basis with a view to deprive the applicant from the fruits of promotion, which are liable to be expunged.



14. As the promotion to the applicant was denied on account these adverse remarks against him. If these adverse remarks are declared as nonest, the applicant will be entitled for promotion when his juniors have been promoted in the year 1994. In the light of discussion, as above, we direct the respondents to treat the adverse entries recorded in the ACR of the applicant for the year 1993-94 as nonest and direct them to expunge. Respondents are also directed to consider them candidature of the applicant for promotion on the post of Sr. Assistant Engineer from the date his juniors were promoted and for this purpose a Review DPC be convened within a period of three months from the date of receipt of a copy of this order and if applicant is found suitable, he is entitled to all consequential benefits. In the facts and circumstances of this case, applicant is also entitled to a special cost of Rs. 1000/- which shall be recovered from the officer who has entered the adverse remarks in the ACR while conducting review and which remarks were taken into account for denying promotion to the applicant.


(A.P. NAGRATH)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)