

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH.

Original Application No.433/2003.

Jaipur, this the 11th Day of January, 2005.

CORAM : Hon'ble Mr. M. L. Chauhan, Member (J).

Vijay Kumar Sharma
S/o Shri Laxmi Narayan Sharma
R/o C/o Mr. L. K. Arora,
E-55, Govind Puri Sodala,
Jaipur.

... Applicant.

By Advocate : Mr. Shailendra Shrivastava.

Vs.

1. Union of India
through General Manager,
North West Railway,
Jaipur.
2. Divisional Railway Manager,
North West Railway,
Jaipur.
3. Additional Divisional Railway Manager,
North West Railway,
Jaipur.
4. Sr. Divisional Mechanical Engineer,
North West Railway,
Jaipur.

... Respondents.

By Advocate : Shri N. C. Goyal.

: O R D E R :

By M. L. Chauhan, Judicial Member.

The applicant while working on the post of Section Engineer under the Railway authorities was communicated adverse remarks vide communication dated 11.09.2002 (Annexure A/1) for the year ending 31.03.2002. Against the adverse entries made in the Annual Confidential Report (for u/

short, ACR) for the year ending 31.03.2002, he made a detailed representation to the ADRM, Western Railway, Jaipur division, Jaipur, vide his representation dated 18.10.2002, which representation was rejected vide order dated 29.11.2002 (Annexure A/6). It is against these orders, the applicant has filed this OA thereby praying for quashing the impugned order dated 11.09.2002 (Annexure A/1) and order dated 29.11.2002 (Annexure A/6) with a further prayer that the said adverse remarks may be expunged and the applicant be extended all consequential benefits.

2. The case of the applicant is that his performance during the entire period of service was satisfactory. Adverse entries in the ACRs for the relevant period has been recorded at the instance of Mr. A. S. Gautam, against whom he has filed a complaint in the year 1994 and once again in the year 2000. The applicant has placed on record the copy of such complaints as Annexure A/2 and A/3. It is further stated that before recording the adverse remarks for the aforesaid period no warning or censor was issued to the applicant, in order to, improve his work. At least an opportunity should have been provided to the applicant by informing about the areas of work where applicant was required to improve. Had there been any dereliction on the part of the applicant or deficiency in services rendered by the applicant, he would have been given instructions or suggestions in writing by the authority to point out flaw and fault and to remove the same. Having not been done so, adverse entry in the ACRs for the aforesaid relevant period has been incorporated malafide at the instance of Mr. A. S. Gautam and the same cannot be legally sustained. It is

further stated that even the representation made against the adverse entry has been arbitrarily rejected by Respondent No.3 without any cogent reasons. It is on these basis, the applicant has prayed that the impugned orders may be quashed.

3. The respondents in their reply have submitted that the working performance of the applicant was deteriorating year after year and his working was totally unsatisfactory. The adverse entries were made in the ACR for the period ending 31.03.1999, 31.03.2001 and 31.03.2002. These ACRs of the applicant shows that the working performance of the applicant is totally unsatisfactory. The applicant is taking risk with the safety of the Mail/Express Trains, in which the public is travelling, for this act the applicant was served with the charge sheets vide Memorandum No. E/C&W/308/2000/5 dated 05.05.2000 and No. E/C&W/308/2000/20 dated 14.02.2001. The applicant remained unauthorized absent even though he was slated for working and ensuring certificate of Mail/Express Trains. For this the applicant was charge sheeted vide Memorandum No. E/C&W/308/2000/5 dated 05.05.2000. All these above submissions of the replying respondents establishes that there is no body against the applicant but the act of the carelessness working of the applicant and becoming threat to the travelling public is against him.

3.1 It is further stated that the applicant himself in Para 4.8 has stated that "Mr. A. S. Gautam who was immediate incharge of the petitioner for the period from

27.05.1998 to 18.07.2002 had a ill feeling against the petitioner since beginning for the reasons best known to him". It is submitted by the respondents that as per averment made by the applicant himself Mr. A. S. Gautam was having ill feelings against the applicant for the period from 27.05.1998 to 18.07.2000 and now it is not understandable how the applicant filed the complaint before the competent authority on dated 15.03.1994 about four years before the immediate incharge has taken over the duty. It is further stated that the complaint dated 15.03.1994, which the applicant is referring in this Para is one sided complaint and the same was related with alteration during the course of working. It is further stated that the incidents of punishment awarded to the applicant since 1989 are as follows :-

S.No.	N.I.P.No.	Punishment awarded	Description of evidences offence	Whether enhanced by Higher Authority
1.	E/C&W/308/89/5 Tr.A/C	Stoppage of one year increment	Careless in examining the special train	Enhanced three years increment by DRM
2.	E/C&W/308/98/25 dated 22.09.1998	Stoppage of one set privilege pass	Careless working	-
3.	E/C&W/308/98/49 dated 08.01.1999	Stoppage of one year increment	Careless working	-
4.	E/C&W/308/98/54 dated 19.02.1999	Stoppage of one set privilege pass	Careless working	-
5.	E/C&W/308/2000/5 dated 05.05.2000	Stoppage of one year increment	Careless working	-
6.	Letter No.M377/8/9 JP dated 17.4.2001	Warning Letter	For Careless working	-

letter dated 17.04.2001 (Annexure R/3), it has been stated that the same is not related to the work and performance pertaining to the assessing year in question and moreover, the applicant was not responsible for the incident took place inasmuch as the applicant checked the said Train No.9769 on primary basis on 28.01.2001 and the Train reached the terminal point safely. Duty of secondary maintenance was of the concerned official at Purna Station from where said train makes its return journey. Thus, it is quite evident from the said letter itself that the incident took place in return journey at Mahow Station for which applicant should not have been blamed and reprimanded. It is further stated that the performance of the applicant was not deteriorating but in fact deterioration has deliberately been reflected by the respondents through adverse remarks for the assessing years 31.03.1999, 31.03.2001 and 31.03.2002, out of which one of the ACR was made corrected on 21/12.03.2001. It is a period when Mr. A. S. Gautam was working as immediate in charge of the applicant against which the applicant has made serious complaints.

6. I have heard the learned counsel for the parties and gone through the material placed on record.

7. It is no doubt true that the object of writing ACR and making entry in them is to give an opportunity to public servant to improve excellence. The object of writing of ACR is twofold, i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of

letter dated 17.04.2001 (Annexure R/3), it has been stated that the same is not related to the work and performance pertaining to the assessing year in question and moreover, the applicant was not responsible for the incident took place inasmuch as the applicant checked the said Train No.9769 on primary basis on 28.01.2001 and the Train reached the terminal point safely. Duty of secondary maintenance was of the concerned official at Purna Station from where said train makes its return journey. Thus, it is quite evident from the said letter itself that the incident took place in return journey at Mahow Station for which applicant should not have been blamed and reprimanded. It is further stated that the performance of the applicant was not deteriorating but in fact deterioration has deliberately been reflected by the respondents through adverse remarks for the assessing years 31.03.1999, 31.03.2001 and 31.03.2002, out of which one of the ACR was made corrected on 21/12.03.2001. It is a period when Mr. A. S. Gautam was working as immediate in charge of the applicant against which the applicant has made serious complaints.

6. I have heard the learned counsel for the parties and gone through the material placed on record.

7. It is no doubt true that the object of writing ACR and making entry in them is to give an opportunity to public servant to improve excellence. The object of writing of ACR is twofold, i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of

id

27.05.1998 to 18.07.2002 had a ill feeling against the petitioner since beginning for the reasons best known to him". It is submitted by the respondents that as per averment made by the applicant himself Mr. A. S. Gautam was having ill feelings against the applicant for the period from 27.05.1998 to 18.07.2000 and now it is not understandable how the applicant filed the complaint before the competent authority on dated 15.03.1994 about four years before the immediate incharge has taken over the duty. It is further stated that the complaint dated 15.03.1994, which the applicant is referring in this Para is one sided complaint and the same was related with alteration during the course of working. It is further stated that the incidents of punishment awarded to the applicant since 1989 are as follows :-

S.No.	N.I.P.No.	Punishment awarded	Description of evidences offence	Whether enhanced by Higher Authority
1.	E/C&W/308/89/5 Tr.A/C Stoppage of one year increment dated 12.12.1989	Stoppage of one year increment	Careless in examining the special train	Enhanced three years increment by DRM
2.	E/C&W/308/98/25 dated 22.09.1998	Stoppage of one set privilege pass	Careless working	-
3.	E/C&W/308/98/49 dated 08.01.1999	Stoppage of one year increment	Careless working	-
4.	E/C&W/308/98/54 dated 19.02.1999	Stoppage of one set privilege pass	Careless working	-
5.	E/C&W/308/2000/5 dated 05.05.2000	Stoppage of one year increment	Careless working	-
6.	Letter No.M377/8/9 JP dated 17.4.2001	Warning Letter	For Careless working	-

4

4. It is further stated that the carelessness of the applicant has resulted in the train accident. The Controling Officer of the applicant awarded stoppage of one increment vide NIP No.E/C&W/308/89/5 Tr.A/C dated 12.12.1989 and the same reviewed and enhanced by the then Divisional Railway Manager, Jaipur, to the effect that stoppage of one increment for three years without future effect vide NIP No.E/C&W/308/89/5 Tr. A/C dated 11.09.1990. As such the act of the applicant was at risk to the public travelling in train. According to the respondents, the applicant was a risk to the Railways and the public travelling in it. The applicant is hiding his inefficiency by blaming the controlling supervisor. It is further stated that the representation of the applicant was considered by the competent authority and the authority observed that there is no need for any change of adverse remarks contained in the applicant's ACR for the year ending 31.03.2002 and the same was conveyed to him vide letter dated 29.11.2002 (Annexure A/6). It is further stated that the applicant was served warning vide letter dated 17.04.2001 (Annexure R/3). It is on these basis, the respondents have justified the recording of adverse entries in the ACRs of the applicant for the aforesaid period.

5. The applicant has filed rejoinder thereby reiterating the submissions made in the OA. It is further stated that the adverse entries in the ACR, pertaining to the year ending 31.03.2002, has been made only to deprive the applicant from promotional avenues to the post of Senior Section Engineer, which post has to be filled up on the basis of seniority. Regarding warning issued vide

quality and excellence and efficiency of public service. 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 performance of the subordinate officer. It should be founded upon facts and circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within the knowledge of such officer. If despite giving such an opportunity, the officer fails to perform the duty or correct his conduct or improve himself, necessarily the same is to be recorded in the confidential report 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 for him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. This is what the Apex Court has held in the case of State of U.P. vs. Yamuna Shanker Misra and Another, 1997 SCC (L&S) 903. Further the Apex court in this judgement has also held that where malice and arbitrariness have been attributed to a reporting/reviewing officer, it is necessary to implead him as party. Such officer ^{if not impleaded} had no opportunity to explain his conduct, hence allegation against him could not be accepted. Viewing the matter on the basis of law laid down by the Apex Court in the case of U. P. vs. Yamuna Shanker Misra and another (supra), *I am* of the view that the applicant has not made out any case for my interference.

8. The very basis for quashing the expunction of the adverse remark is based on the plea that such adverse remarks have been reported upon by Shri A. S. Gautam, against whom he has filed two complaints Annexure A/2 and Annexure A/3. Admittedly, the applicant has not impleaded Mr. A. S. Gautam as party in this OA. Thus, in view of the law laid down by the Apex Court in the case of State of UP vs. Yamuna Shanker Misra & Anrs. (supra), allegations against him cannot be accepted. Thus, the very foundation that the adverse entry was recorded at the behest of Shri A. S. Gautam, against whom he has filed complaints cannot be sustained. The complaint against Shri A. S. Gautam was filed in the year 1994 and second in July 2000. From the material placed on record, it is clear that even prior to 1994 punishment of stoppage of one year increment which was subsequently enhanced to stoppage of three years increment ^{vide NIP dt 12-12-1989} by DRM was awarded to the applicant for his carelessness in examining the special train.

9. Respondents have also placed on record sufficient material to show that the applicant has been found consistently careless in his working since 1998 till 2001 and for that matter punishment of stoppage of one set privilege pass was imposed on 22.09.1998 followed by stoppage of one year increment on 08.01.1999, Stoppage of one set privilege pass on 19.02.1999 and stoppage of one increment ^{vide} Memorandum No.E/C&W/308/2000/5 dated 05.05.2000. All these facts shows that the working of the applicant was not up to the mark, despite the fact that he was advised to show improvement, as can be seen from the ^{lly}

adverse report for the year ending 31.03.1999, which was conveyed to him vide letter dated 21.07.1999 (Annexure R/2). Thus, it is not a case where the applicant was found lacking in his working for the first time and he was informed about his work ~~entry~~ and conduct only when adverse entry for a period ending up to 31.03.2002 was conveyed vide letter dated 11.09.2002 (Annexure A/1). Even during the relevant period the applicant was also issued warning vide letter dated 17.04.2001 (Annexure R/3) whereby he was reprimanded for careless working in ensuring the safe and reliable maintenance of the Mail/Express train. Learned counsel for the applicant submits that such lapse was committed on 28.01.2001 prior to the period under report, though communicated during the relevant year under report ^{by such contention} has to be ignored, cannot be accepted. The facts remains that the applicant was reprimanded vide letter dated 17.04.2001 (Annexure R/3) and he was advised to be more careful in future itself indicates that the applicant was apprised about his carelessness in performing the duties and he was asked to improve himself shows that he has been given opportunity to know about his work and conduct. Thus, it cannot be said that the assessment made by the Assessing Authority in the ACR is without basis and the same has been made ~~entry~~ in order to deprive the applicant for his promotion to the post of Senior Section Engineer.

10. Had it been the isolated case of making entry for the first time in ACR ending for the year 31.03.2002, the matter would required to be considered on different footing as it would have been only one entry during the entire service period of the applicant that where the applicant

16

has been found warning about the work and conduct but as already stated above, it is not the case of such nature. Here the performance of the applicant since 1998 is consistently ~~unsatisfactory~~ and not up to the marks. He has been continuously awarded punishment in the nature of stoppage of one set privilege pass as also stoppage of one year increment. Further the applicant has not made out any case of malice on behalf of Shri A. S. Gautam, in the light of ratio laid down by the Apex Court in the case of U.P. vs. Yamuna Shanker Misra (supra). Thus, according to me, the applicant is not entitled to any relief. Further I see no infirmity in the ~~order~~ passed by the DRM (Annexure A/6) whereby representation of the applicant against the adverse remarks has been rejected. The reliance made by the learned counsel for the applicant to the judgement of this Tribunal in the case of A. K. Yadav vs. Union of India & Ors. 2002 Vol.II CAT 357, is not attracted in the facts and circumstances of the case. In that case, the Reporting Officer during the course of enquiry did not make any attempt to bring notice to the applicant any short coming on his part whereas in the instant case the warning was issued to the applicant during the relevant period vide letter dated 17.04.2001 (Annexure R/3) and he was also advised to be careful in future, otherwise appropriate action will be taken against him. Thus the decision relied upon by the learned counsel for the applicant is of no assistance to the applicant.

11. In view of what has been stated above, the OA is dismissed with no order as to costs.



(M. L. CHAUHAN)

MEMBER (J)