

30/100
S
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

M.P-270/01 ordered sheet Pg-1 to 2 INDEX

allowed date-21/8/02

O.A/T.A No. 474/2001

R.A/C.P No.....

E.P/M.A No. 270/2001

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allowed
2. Judgment/Order dtd. 8/10/2003 Pg. 1 to 8 allowed
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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Application No. 474 /2001

Applicant(s) :- Narayan Borah

Respondent(s) :- U.O.I. Govt

Advocate for the Applicant :- R. Dutta

Advocate for the Respondent:- Railway Counsel

Notes of the Registry	Date	Order of the Tribunal	
This application in form C. S. for Re. 50/- deposited vide P/ 69 290 368	21.12.01	List on 8.1.2002 for order.	
Dated ... 16.12.2001		I C C Ushary Member	Vice-Chairman
Dy. Registrar XN2	mb		
	8.1.02	Respondents are yet to file reply. List again on 28.1.2002 for admission.	
		I C C Ushary Member	Vice-Chairman
	mb		
	28.1.02	Heard Mr. R. Dutta, learned counsel for the applicant and also Mr. S. Sarma, learned counsel appearing on behalf of Mr. B. K. Sharma, learned Rly. counsel.	
		The application is admitted. Call for the records.	
		List on 26.2.2002 for order.	
		I C C Ushary Member	Vice-Chairman
	mb		

(2)

26.2.02 List on 1.4.2002 to enable the respondents to file written statement.

IC Usha
Member

Vice-Chairman

mb

1.4.02 At the request of Mr. S.Sarma, learned counsel for the Respondents four weeks time is allowed to the Respondents to file written statement.

List on 2.5.2002 for orders.

3
1.5.02

IC Usha

Member

mb

2.5.02 No written statement so far filed. List on 24.5.02 to enable the respondents to file written statement.

IC Usha
Member

Vice-Chairman

lm

24.5.02 List on 21.6.2002 to enable the Respondents to file written statement as prayed by Mr. S.Sarma, learned counsel for the Respondents.

3
23.5.02

Vice-Chairman

mb

21.6.2002 No written statement is forthcoming. Mr. S.Sarma, learned counsel for the respondents again prayed for time to file written statement. List on 19.7.2002 for written statement. No further extension will be granted for written statement.

3
18.7.02

IC Usha
Member

Vice-Chairman

mb

(3)

O.A. 474/2001

Notes of the Registry	Date	Order of the Tribunal
No written statement has been filed.	19.7.02	Despite opportunity granted the Respondents did not file any written statement. By order dated 21.6.2002, the Respondents were granted last opportunity for filing written statement. In the circumstances, the case shall now be posted for hearing on 21.8.2002.
<i>By 20.8.02.</i>		<i>I C Usha Member</i>
<i>mb</i>		<i>Vice-Chairman</i>
No. wts has been filed.	21.8.	on the prayers of Mr. S. Sarma, learned counsel for Railway, two weeks time is allowed for filing of writs. No further adjournment will be granted, <u>list on 10.9.2002.</u> <i>No A.K. Jha 21.8.</i>
<i>By 30.9.02.</i>	10.9.02	Heard Mr. R. Dutta learned counsel for the applicant and also Mr. S. Sarma learned counsel for the respondents. The respondents are yet to file written statement though time was granted. We have already granted numerous time. The matter be posted for hearing on 1.10.02.
<i>lm</i>		<i>Vice-Chairman</i>
No. wts has been filed.	1.10.02	Heard Mr. R. Dutta learned counsel for the applicant and also Mr. S. Sarma learned counsel for the respondents at length. Mr. Sarma learned counsel may produce the relevant records by 4.10.02.
<i>lm</i>		<i>Vice-Chairman</i>

Notes of the Registry	Date	Order of the Tribunal
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4.10.02		
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Hearing concluded. The Respondents was allowed to produce records in support of their plea. No such records ^{are so far} produced. List on 9.10.02 for judgment.

I C Usha
Member

Vice-Chairman

5/11/2002
Copy of the Judgment
has been sent to the
D/sec. for issuing the
same to the applicant
as well as to the Rly.
Advocate.

1m

8.9.02		
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Judgement delivered in open Court,
kept in separate sheets. The application
is allowed in terms of the order. No order
as to costs.

I C Usha
Member

Vice-Chairman

mb

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / ~~XXX~~ No. 474 of 2001. . . . ~~XXX~~

DATE OF DECISION. 8th october 2002

Shri Narayan Brahma

APPLICANT(S)

Mr.R.Dutta.

ADVOCATE FOR THE APPLICANT(S)

VERSUS

Union of India & Others

RESPONDENT(S)

Mr.S.Sarma.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR.K.K.SHARMA, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches . . .

Judgment delivered by Hon'ble Vice Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.474 of 2001.

Date of Order : This the 8th Day of October, 2002.

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

Shri Narayan Brahma
S/o Late D.N.Brahma, residing in Rly.
Bungalow No.42A Adarsha Colony
Maligaon, Guwahati-11. . . . Applicant.

By Adocate Mr.R.Dutta.

- Versus -

1. The Union of India,represented through the General Manager, N.F.Rly. Maligaon, Guwahati,781011
2. The General Manager, N.F.Railway, Maligaon, Guwahati-781011.
3. The Chief Personnel Officer, N.F.Rly, Maligaon, Guwahati 781011.
4. The Chierf Electrical Engineer, N.F. Railway, Maligaon, Guwahati-11,781011.
5. The Deputy Chief Electrical Engineer, HQ N.F. Railway, Maligaon, Guwahati-11, 781011.

. . . . Respondents.

By Advocate Mr. S.Sarma.

O R D E R

CHOWDHURY J. (V.C.) :

The legitimacy in the preparation of the confidential report for the year ending 31.3.2000 in respect of the applicant is the subject matter raised in this application.

1. The applicant is serving under the respondents and presently working as Divisional Electrical Engineer/con., N.F.Railway, Maligaon. While serving as such he was communicated with the following adverse remarks in the annual confidential report for the year ended 31.3.2000 vide memo No.EL/CON/20(0)/58 dated

29.5.2000:-

"Part III(2) Task-relevant knowledge - Specific comments on (i) level of knowledge of functions (ii) related instructions; and their application.

'(i) Level of knowledge of function is not adequate.

(ii) Understands the instructions but sincerity of application is lacking'.

2. Please acknowledge receipt of this letter on the extra copy enclosed which should be returned to this office in a week's time and any representation against this should be made within a month from the date of receipt of this letter."

On receipt of the aforementioned adverse remarks, the applicant submitted his representation before the authority on 14.6.2000, wherein he indicated that he handed over the charges of SEE/HQ on 28.4.1999 to Shri N.Sarkar. Thereafter he worked for 45 days in leave vacancy under DY.CEE/CON. After that he was either on leave or sick for whole year except for a few days worked at New Jalpaiguri. He also mentioned that he did not work more than 45 days under any officer during the year 1999-2000. The applicant questioned the legitimacy of the action in recording the ACR. By memo dated 14.7.2000 the applicant was informed that the competent authority, on examination of his representation, was not inclined to change the remark. He was informed that his performance was judged by the Reporting officer based on the period he was on that working post. The applicant thereafter submitted further representations before the General Manager vide letter dated 7.11.2000 and 25.9.2001. In the representation dated 7.11.2000 the applicant cited the periods of working under CEE's office, where he worked

under the respective officers. According to the applicant, under no CEE's office he worked more than 28 days. The applicant also contended that recording of ACR was partial and at any rate the adverse remark in ACR was done ex parte without applying its mind. Failing to get appropriate remedy from the respondents the applicant moved this application before this Tribunal under section 19 of the Administrative Tribunals Act, 1985.

2. Though opportunities ^{were} granted, the respondents did not file any written statement. The matter was listed for hearing on 1.10.2002. Mr.S.Sarma, learned counsel appearing on behalf of the respondents prayed for time to file written statement. Already by order dated 10.9.2002 the matter was posted for hearing. On overall ^{consideration} we did not find any justification to adjourn the case.

3. We have ^{also} heard Mr.R.Dutta, learned counsel for the applicant at length. At the instance of Mr.S.Sarma, learned counsel for the respondents, we allowed the respondents to submit the records by 4th October, 2002.

4. The issue relates as to the fairness in action on the part of the respondents in performance appraisal of the applicant. ACR is a vital input in the career of an employee. It serves as an index of the officer's performance appraisal. ACRs are to be prepared with objectivity, impartiality and assessments are to be made fairly without prejudice, whatsoever with the

highest sense of responsibility. In the Railway, the guidelines for preparation of confidential report are statutorily delineated in the Indian Railway Establishment Code Vol-I. The relevant provisions in Para 1607, 1608, 1609 are reproduced below :-

"1606.

1607. Confidential reports on gazetted railway servants must contain a full and frank appraisal of his work during the year, the traits of character whether pleasant or unpleasant, aptitude, personality and bearing, &c. which contribute to quality of his work as a gazetted railway servant and his fitness for shouldering larger executive and administrative responsibilities. The reports must not be confined merely to general marks and off hand impressions so brief and casual as to convey little or no real meaning and the assessment must be based on failure or excellence in the workd entrusted to the gazetted railway servant.

1608. A gazetted railway servant shall not ordinarily be given an unfavourable confidential report before an opportunity has been taken, preferably at a personal interview or, if that is not practicable, by means of a personal letter pointing out to him the direction in which his work has been unsatisfactory or the faults of character or temperament, &c. which require 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, inspite 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.

1609. As a general rule, in no circumstances, should a gazetted railway servant be kept in ignorance for any length of time that his superiors, after sufficient experience of his work, are

dissatisfied with him; where a warning might eradicate a particular fault, the advantages of prompt communication are obvious. On the other hand, the communication of any adverse remarks removed from their context is likely to give a misleading impression to the gazetted railway servant concerned. The procedure detailed in rule 1610 should, therefore, be followed.

5. We have already indicated in details as to the adverse remarks made against the applicant. Apparently the recording of ACR lacked objectivity. The observations were made in a sweeping fashion. The observations are seemingly comprehensive and indiscriminative. The object of recording an ACR is to inculcate discipline, devotion of duty, honesty and integrity and to improve the excellence of the officer. It must specifically indicate the area of weakness where the applicant can bring improvement. It is not to be used as a vehicle of oppression. In the case of State Bank of India vs. Kashinath Kher reported in (1996) 8 SCC 762 the Hon'ble Supreme Court observes as follows :-

"The matter officer should show objectively, impartiality and fair assessment without any prejudice whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer, Lest the officers get demoralised which would be deleterious to the efficacy and efficiency in public service, they should be written by a superior officer of high rank."

6. The very object or recording adverse remarks is to assess the merit and competence of the officer

and to give him the grading accordingly. Both the competent authority and the reviewing authority is to act objectively and fairly in assessing the character, integrity and performance of the officer concerned. The Hon'ble Supreme Court in the case of P.K.Shastri vs. State of M.P. and Others reported in (1999) 7 SCC 329 held :-

" The CRs of an officer are basically the performance appraisal of the said officer and go to constitute vital service record in relation to his career advancement. Any adverse remark in the CRs can mar the entire career of that officer. Therefore, it is necessary that in the event of a remark being called for in the confidential records, the authority directing such remark must first come to the conclusion that the fact situation is such that it is imperative to make such remarks to set right the wrong committed by the officer concerned. A decision in this regard must be taken objectively after careful consideration of all the materials which are before the authority directing the remarks being entered in the CRs."

This Bench in O.A.127/2002 disposed on 11.9.2002 in S.P.Singh Jadav vs. N.R.Roy & Others. made the following observations :-

"Needless to state that the ACR is the document of significance, it offers primary and credential information on officer. It also carries essential datas for career advancement of officers. Such task is to be undertaken with high degree of responsibility. It is not to be used as a vehicle of punishment. It may also be mentioned that the report of the Investing officer need to go through different channels or

different authorities and thereafter only cases are finalised. The comments must be made on objective assessment of the available materials. Such remarks must be founded upon facts and circumstances. It must be free from subjectivity, indiscriminate, over drawing sludgy comments will not come to assist the officer correct his errors sought to be remedied. An omnibus remarks of this fashion also deprives the officer to assail the remark before the higher authority.

Writing of the Confidential Report on the one hand provides the officer concerned to make up his deficiency and to inculcate discipline and the other is to improve the quality and excellence in efficiency of public servant. In recording ACR of an officer the higher officer requires to show objectively."

7. In the case in hand, the statutory rules which regulates the recording of the ACR, were not followed. Before giving unfavourable confidential report the concerned authority is to take the way of incumbent into confidence either by /a personal interview or by means of personal letter. Pointing out the directions in which the officer faulted it must proceed by a prior notice if despite such opportunity the officer faulters and that there is no appreciable improvement, inevitably the adverse remarks is to follow. None of the essential steps indicated in the rules were seemingly followed in the instant case. The applicant submitted his representation which was also not duly attended to and in a most casual fashion the said representation was turned down without assigning any reason.

On consideration of all the aspects of the matter, we are of the opinion that the impugned adverse remarks recorded against the applicant for the year ending 31.3.2000 communicated vide order dated 29.5.2000 as well as the communication rejecting the representation of the applicant vide memo dated 14.7.2000 are liable to be set aside and accordingly the same are set aside and quashed. The impugned adverse remarks thus stands expunged.

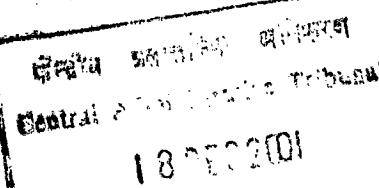
The application ^{is} accordingly allowed.

There shall, however, be no order as to costs.

K. K. Sharma
(K.K. SHARMA)
ADMINISTRATIVE MEMBER

D. N. Chowdhury
(D.N. CHOWDHURY)
VICE CHAIRMAN

bb



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

(An application U/s 19 of A.T Act. 1985)

O.A. No. 474/2001

Shri N. Brahma ... Applicant

Versus

Union of India & Others .. Respondents.

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4.	Circular dated 24.1.94	A/3.	14 to 17
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Narayan Brahma
Signature of the applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI.

(An application under section of the A.T. Act)

O.A. No. 474 of 2001

Shri Narayan Brahma s/o late
D.N.Brahma, residing in Rly.
Bungalow No. 42A Adarsha Colony,
Maligaon, Guwahati-11. 781011 ...Applicant

VERSUS

1. The Union of India, represented through the General Manager, N.F.Rly, Maligaon, Guwahati-11. 781011
2. The General Manager, N.F.Railway, Maligaon, Guwahati-11. 781011.
3. The Chief Personnel Officer, N.F.Rly, Maligaon, Guwahati-11. 781011.
4. The Chief Electrical Engineer, N.F. Railway, Maligaon, Guwahati-11. 781011.

5. The Deputy Chief Electrical Engineer, HQ N.F.Railway, Maligaon, Guwahati-11. 781011.

Respondents.

1. Particulars of the order against which this application is made:

(1) Letter No EL/CON/20(0)/58 dated 29th May

(29th May) 2000 communication the adverse remarks in the annual confidential report for the year ending 31.3.2000, issued by Respondent No.4. (Annexure A/1)

(ii) Letter No.EL/CON/20(0)/63 dated 14.7.2000 for disposing the representation of the applicant against the adverse remarks. (Annexure A/5).

2. Jurisdiction of the Tribunal.

The applicant submits that the subject matter of the application is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation:

That the applicant submits that he could not submit the application within the prescribed period of limitation as he preferred an appeal to the General Manager, N.F.Railway, Maligaon against the decision of the Chief Electrical Engineer, N.F.Railway (Respondent No.4) and pursued the same with remainder. The applicant has filed a Misc. Petition for condonation of the delay in filing this application before the Hon'ble Tribunal.

4. Facts of the case:

4.1 That the applicant is a citizen of India and is therefore entitled to the rights and privileges guaranteed to the citizen of India.

4.2 That the applicant is at present working ^{as} Divisional Electrical Engineer/Con, N.F.railway and is posted at

Maligaon.

4.3 That, during the year commencing from 1st of April 1999 and ending on 31st of March 2000 the applicant didnot work more than 47 days in any single post and also didnot work under any one junior administrative officer so that none of the junior administrative officer of the Electrical branch could be acquainted with his working to be in a position to initiate the annual confidential report of the applicant. As such it was only the Chief Electrical Enginee, Respondent No.4, who is the head of the Electrical branch in N.F.Rly could have initiated the annual confidential report of the applicant for the year 1999-2000.

4.4 That, vide letter No. EL/CON/20(0)/58 dated 29.5.2000 the Chief Electrical Engineer, N.F.Railway, Maligaon (Respondent No.4) communicated to the applicant the adverse remarks recorded in ~~xx~~ the annual confidential report of the applicant in respect of the year ending on 31.3.2000.

A copy of the letter dated 29.5.2000 communicating the adverse remarksis annexed as Annexure A/1.

4.5 That, provision for writing the Annual Confidential report for the railway servants have been made in the Indian Railway Establishment Code Vol.I,1971 , a statutory rule framed by the President of India under Article 309 of the Constitution of India . Rule 1608 to 1610 provides how to write the annual

dr

confidential report. Rule 1608 of the Indian Railway Establishment Code Vol. I provides that a gazetted Railway Servant shall not be ordinarily given an unfavourable confidential report before an opportunity has been taken preferably in a personal interview or by a personal letter pointing to him direction in which his work has been unsatisfactory or faults of character or temperament temperament which requires to be remedied. If ,inspite of this , there is no improvement and an adverse confidential report has to be made, the facts on which the remarks are ~~made~~ based should be clearly brought out. Rule 1609 of the said Indian Railway Establishment Code provides that as a general rule, in no circumstances, a gazetted railway servant be kept in ignorance for any length of time that his superiors,after sufficient experience of his work, are dissatisfied with ~~him~~ him.

4.6 That, the Chief Personnel Officer, N.F.Railway vide circular No. ~~E/54/1/CON/54/Pt.III~~ E/CON/54/Pt.III dated 11.5.88 issued,inter-alia, for following the provisions of rule 1608 in writing confidential reports.

A copy of the circular dated 11.5.88
is annexed as Annexure A/2.

4.7 That, the General Manager(P),N.F.Railway, Maligaon, vide circular No. E/54/1/CON/IV dated 24.1.94 instructed that adverse entries at the end of the year should not be automatic as a matter of ~~use~~ routine. The reporting officer,from time to time, during the reporting year review the working of

Contd ...P/5.

AB

of staff working under him and if it is found that his working is not upto the mark and requires improvement in any areas, he should be invariably be given written warnings which must be got acknowledged. If at the end of the year it is found that his workings has considerably improved the reporting authority may not take cognisance of such warnings if however the overall performance of the staff concerned to be reported upon has not improved the warning already given may be kept as base report to avoid complaints that during the year he had never been warned /reprimanded to improve himself and suddenly the adverse remarks have appeared in the confidential report. It was also instructed that the adverse remarks recorded in the confidential report is to be communicated along with the substance of the favourable reports of the review authority.

A copy of the circular dated
24.1.94 is annexed as Annexure A/3.

4.8 That, neither any warnings or reprimand was ever communicated to the applicant before recording the adverse report recorded in the annual confidential report for the year ending 31.3.2000. The applicant was never given any indication that his superior officers were dissatisfied with his workings . The applicant also was not communicated any adverse remarks earlier.

4.9 That, the applicant preferred a representation to the Chief Electrical Engineer, N.F.Railway, Maligaon

(Respondent No.4) in respect of the adverse remarks on 14.6.2000.

A copy of the said representation dated 14.6.2000 is annexed as Annexure A/4.

4.10 That, the Deputy Chief Electrical Engineer/HQ (Respondent No.5) for Chief Electrical Engineer, N.F. Railway, Maligaon, communicated the decision of the competent authority rejecting the ~~app~~ representation and upholding the adverse remarks vide letter No. EL/CON/20(0)/83 dated 14.7.2000.

A copy of the said letter dated 14.7.2000 is annexed as annexure A/5.

4.11 That against the rejection of his representation, in respect of adverse remarks, as communicated under letter No. EL/CON/20(0)/83 dated 14.7.2000 the applicant preferred an appeal to the General Manager N.F. Railway, Maligaon on 7.11.2000 and as no response was received the applicant again submitted another appeal to the General Manager, N.F. Railway on 25.9.2001. Both these appeals were submitted through proper channel.

Copies of these two appeals dated 7.11.2000 & 25.9.2001 are annexed as Annexure A/6 & A/7 respectively.

4.12 That, the Chief Electrical Engineer (Respdt. No.4) vide letter No. EL/CON/20(0)/185 dated 12.11.2001 informed the applicant that accepting authorities remarks on the applicant's representation has already been communicated vide letter No. EL/CON/20(0)/83 dated 14.7.2000.

5. Grounds for relief :

5.1 That the annual confidential reports of the applicant for the year has been initiated by an officer under whom the applicant ^{worked} only about 28 days and therefore no sufficient time to make any opinion about the habits and working of the applicant.

5.2 That the adverse remarks recorded in the annual confidential report of the applicant for the ~~year~~ 1999-2000 is violative of the instructions issued by the General Manager in circular No.E/54/1/CON/PT.IV dated 24.1.94 as no warning was issued to the applicant as is required to be issued before recording adverse remarks under instructions mentioned above.

5.3 That the adverse remarks were recorded in the annual confidential reports of the applicant pertaining to the year 1999-2000 violating the provisions of rule 1608 to 1610 of the Indian Railway Establishment Code Vol.I (1971 edition).

5.4 That no instances to substantiate the adverse remarks have been stated by the reporting officer as is required to be given under law laid down by the Hon'ble Supreme Court of India in respect of recording adverse remarks in confidential reports.

5.5 That the adverse remarks are only of general nature without any basis as no such remarks ever appeared in the annual confidential reports of the applicant in any earlier occasion.

6. Details of the remedies exhausted:

The applicant filed a representation to the Chief Electrical Engineer, N.F.Railway, Maligon on 14.5.2000 which was rejected on 14.7.2000 against which the applicant filed appeal to the general Manager, N.F.Railway on 7.11.2000 and reminders on 25.9.2001 without any relief.

7. Particulars of previous application if any :

The applicant submits that he has not filed any application/suit/ writ petition in any Tribunal or any court nor any such application/suit/writ petition is pending before any Tribunal or any court in the subject matter of this application.

8. Relief sought:

Under the circumstances stated in the application the applicant humbly prays to the Lordships of the Tribunal to be pleased to:

call for the records and after hearing the parties set aside the adverse remarks communicated to the applicant under letter No. EL/CON/20(0)/58 dated 29.5.2000 (Annexure A/1) and the letter No. EL/CON/20(0)/83 dated 14.7.2000 (Annexure A/5) and to direct the respondents to correct the records accordingly and or such other orders as the Lordships of the Hon'ble Tribunal deem fit.

And for this act of kindness the applicant as duty bound shall always pray.

9. Interim relief:

NIL

10. Particulars of the application fee:

Indian Postal Order No 69790368
dated 10.12.01 for Rs. 50/- (fifty/-)
is enclosed.

11. List of enclosures:

As in index.

VERIFICATION

Contd ... P/10.



VERIFICATION

I, shri Narayan Brahma son of late D.N.Brahma, aged about 55 years, residing in Railway Bungalow No 42 A Adarsha colony, Maligaon dohereby verify that the statements made in para 3,4.1 to 4.4 and 4.8 to 4.12 are true to my knowledge and those made in paras 4.5 to 4.7 are true to my information which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal and I have not supressed any material facts.

And I sign this verification on this 14th day of December 2001.

Date 14.12.2001

Place-Guwahati

Narayan Brahma
Signature of the applicant.

.....

NORTHEAST FRONTIER RAILWAY

Annexure A/
25

CONFIDENTIAL

Office of the
Chief Electrical Engineer
Maligaon

NO.EL/CON/20(0)/58

Dated: 29th May, 2000

Shri N. Brahma,
DEE/DBWS
N.F.Railway.

THROUGH: DY.CME/DBWS

Sub:-Adverse remarks on the Annual Confidential Report for the year ended 31.03.2000.

.....

Adverse remarks as appeared in your ACR for the year ended 31.03.2000, is reproduced below:-

Part III(2) Task-relevant knowledge- Specific comments on (i) level of knowledge of functions (ii) related instructions; and their application.

*QTBK
g/t
In Long Island
Remarks*

- (i) Level of knowledge of function is not adequate.
- (ii) Understands the instructions but sincerity of application is lacking".

2. Please acknowledge receipt of this letter on the extra copy enclosed which should be returned to this office in a week's time and any representation against this should be made within a month from the date of receipt of this letter.

Enclo: One extra copy of this letter (to be returned duly acknowledged.)

R K. D. B.
16.09
VOL
T R E M

BS DUNGRIYAL
(BS DUNGRIYAL)
CHIEF-ELECTRICAL ENGINEER
N.F.RAILWAY: : MALIGAON.

*Attended
T D. B.*

*E. Datta, Advocate
Counsel, Jyoti, 4-701010*

Dt. 11-5-88.

No. E/54/CON/P.III

To
All Heads of Department.

Sub:- COMMUNICATION OF ADVERSE CONFIDENTIAL REPORTS.

It was decided in the 49th PNM meeting, at Item 26, to reiterate the extant instructions regarding communication of adverse remarks in the confidential reports to the staff concerned.

2. In this connection the instruction of the Railway Board contained in para-IV of their letter No. E/55/CR 3/3 dt. 9-8-55 communicated under GM(P)/N.E.Railway's No. E/SS/19-75 dt. 2-11-55 are reproduced below:

"(IV) Communication of adverse remarks:

On the question whether adverse entries in confidential reports should be communicated to the employee, one view is that the 'unpleasantness' likely to be caused by the communication of adverse entries would tend to discourage the reporting officers from expressing their opinion freely and frankly, the opposite view is that failure to communicate adverse entries may enable unscrupulous reporting officers seriously to injure the prospects of an employee whom they dislike and that it is unfair to the employee to deny his promotion on account of defects of which he may well be unaware, and which he could have removed had he been informed of them. Quite apart from the point of view of the employee himself, it is evidently in the interest of the State that every employee should know what his defects are and how he can remove them. Different solutions have been tried at different times to resolve this conflict. As a result of experience, it is considered that the best result will only be achieved if every reporting officer is made conscious of fact that it is his duty not only to make an objective assessment of his subordinates' work and qualities, but also to see that he gives to his subordinates at all times the necessary advice, guidance and assistance to correct their faults and deficiencies. If this part of the Reporting Officer's duty has been properly performed, there should be no difficulty about recording adverse entries, because they would only refer to defects which have persisted despite the Reporting Officer's efforts to have them corrected. Accordingly, in mentioning only faults or defects in the report, the Reporting Officer should also give an indication what efforts he has made by guidance, admonition, etc. to get the defects removed and with what results. Every such entry after it is confirmed by the superior officer should normally be communicated to the officer concerned either verbally or in writing considering the nature of the remarks and the personality and the record of the officer and the fact of such communication recorded in the report itself. It should, however, be open to the Superior officer to whom the remarks of the Reporting Officer are put up for acceptance to decide that the report need not be ~~so~~ so communicated. Where the Superior officer so decides, a specific order to this effect should be recorded by him".

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R. Datta, Advocate
Mysore, Karnataka - 570013

3. Further to the above, instruction on the above subject communicated under this office Confdl. letter No.E/54/Con Pt.II dt. 24-12-63 may also be kept in view with regard to communicating the adverse report.

4. It has been brought to the notice of this office that some Reporting Officers are submitting Confidential Reports without observing the procedures as enumerated above and the provisions of Rule 1608 RI. It is clarified that where adverse remarks are recorded in Confdl. reports without observing the above procedure, these remarks may have to be expunged and as such, the Reporting Officers are advised to ensure that the above instructions are adhered to before recording adverse remarks, if any.

5. Bd's further instructions contained in their letter No. E(NG)II/78/CR2 dt.10-11-78 circulated under this office letter No.E/54/Con Pt.III dt. 9-4-79 are as under:

iii) All adverse remarks in the Confidential Reports of Railway servants, both on performance as well as on basic qualities and potential, should be communicated along with a mention of good points within one month of their being recorded. The communication should be in writing and a record to that effect should be kept in the CR dossier of the Railway servants concerned.

iv) Only one representation against adverse remarks (including reference to 'warning' or communication of the displeasure of the Railway Admin. or 'reprimands' which are recorded in the confidential report of the Railway servant) should be allowed within one month of their communication. While communicating the adverse remarks to the Railway servant concerned, this time limit should be brought to his notice.

v) All representations against adverse remarks should be decided expeditiously by the competent authority and in any case, within three months from the date of submission of the representation. Adverse remarks should not be deemed as operation, if any representation filed within the prescribed limit is pending. If no representation is made within the prescribed time, or once this has been finally disposed of, there would be no further bar to taking notice of the adverse entries.

vi) No appeal against the rejection of the representation should be allowed six months after such rejection."

6. Regarding para(iii) above, it may be noted that the communication of Adverse remarks should be done by the accepting authority within one month of the acceptance of the confidential report.

7. Any remarks describing as 'Average' either the performance or any other quality of the railway servant should not be treated as an Adverse Remarks.

Adverse remarks regarding 'Integrity' in Section-II should not be communicated to the employee under any circumstances.

Sd/-
(SPS Jain)
CPO/TGM
N.F.Rly/MLG.

CONFIDENTIAL

Office of the
General Manager, Personnel,
Northeast Frontier Railway,
Maligaon, Guwahati 781 011.

No. E/54/1/Con/P.IV

Dated January 24, 1994.

- AII PHODs/HODs/DRMs/ADRMs;
- AII Dist. & Asstt. Officers of Non-Divisional offices,
- AII Sr.DPOs/DPO,
- AII Controlling Officers of Ry. Schools/NJP, SGUJ, APDJ, LMG and BPB, MLG.
- AII Principals, Ry. Schools/SGUJ, NJP, APDJ, MLG, LMG, TSK, BPB, NVP/MLG.
- AII Dy.CPOs, SPOs, APOs in Hdqrs. office, NFR Railway.

Reg: Writing of CRs - Mention of warnings -
Communication of adverse remarks and
finalisation thereof etc.

Ref: This Office Circular Letter Nos. E/54/Con/Pt.III dated 28-07-81, 20-07-83, 13-03-84, 16-04-85, 11-05-88 etc.

It is observed in many cases that confidential reports on Class III staff are not being written as per procedure and in prescribed time limit, causing inordinate delay in finalisation of selection/promotion etc. To finalise the Confidential Reports on all eligible staff in time, the following important points are reiterated again for information, guidance and necessary action of all concerned:

1. The Confidential reports on all eligible staff should be finalised within the time frame given by GM/CPO to avoid inordinate delay in finalisation of selection/promotion etc.
2. It has come to the notice that in a few cases, after the initiation of confidential report, the confidential report has not been reviewed/accepted by the higher authority.
3. Adverse remarks are recorded without following the laid down procedure for recording the adverse remarks. It should be noted that adverse entries at the end of the year should not be automatic as a matter of routine. The officers/senior subordinates, who will be initiating the CRs must, from time to time, during the reporting year, should review the working of the staff working under him and if it is found that his working is not upto the mark and he requires improvement in any areas, he should invariably be given written warnings which must be got acknowledged by the staff. If at the end of the year it is found that the staff has considerably improved, the reporting authority may not take cognisance of such warnings and can give him a good report as is warranted on his overall performance.

If, however, the overall performance of the staff concerned to be reported upon has not improved the adverse remarks can be recorded against the relevant items of the CRs for which the warnings already given to the staff keeping a copy of such warning as a base report to avoid any complaints from the staff that during the year he had never been warned/reprimanded to improve himself and suddenly the adverse remarks have appeared in the CR, which is not desirable. (Authority: Board's letter No.E(NG)I-81/CR-8 dated 31.8.81/22.9.81 circulated under GM/P/Maligaon's letter No.E/54/Con/P/III dated 3.11.81). A copy of the same is again attached for ready reference.

4. The adverse remarks recorded in the confidential reports of staff should be communicated along with the substance of the favourable remarks by the Reviewing authority or any other authority specified by the General Manager in this behalf within a period of one month of acceptance of the confidential report, keeping a copy of such communication in the CR folder of the staff concerned without disclosing the identity of the officer making the adverse remarks as per para 8 of Master Circular No. 28 circulated under this office letter No. E-195-G/2-28/ (MS)/ (C)/B dated 18.3.93 circulated to all concerned.
- 4.1 While communicating the adverse remarks, the staff concerned should be given a month's time to submit appeal/representation. If any appeal/representation is received within the prescribed time limit of one month, such appeal/representation should be finalised by the competent authority i.e. normally the authority next above the Reviewing authority within 3 months from the date of submission of appeal/representation. The competent authority in consultation with the Reporting and/or Reviewing authority, if such consultation is necessary, should consider the appeal/representation and pass orders on the representation either expunging the adverse/critical remarks in toto, toning down the adverse/critical remarks or rejecting the representation. Pending final disposal of the representation, if submitted within the prescribed time limit, the adverse remarks should not be treated as operative for the purpose of any consideration including promotion. If no representation/appeal has been submitted, there is no bar to the adverse remarks being taken note of. The orders passed on the representation shall be final and the staff concerned should be informed suitably of the decision keeping a copy of the order in his CR folder.
5. As per para 5.2 of Master Circular No.28 circulated under this office letter dated 18.3.93 quoted above, the confidential reports on railway staff working in scale below Rs.1600-2660/- should be initiated by supervisors working in scale Rs.2000-3200/- and above. For those working in scale Rs.1600-2660/- and above, the report should be initiated by a gazetted officer.

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6. As regards Section II of the CR which is required to be filled, for the staff working in scale Rs.1660-2660/- and above, should be initiated by the Senior Scale Officer unless the Asstt. Officer concerned is working direct under a Dy.HOD/DRM/HOD. This instruction is not being followed scrupulously.

7. To facilitate submission of confidential reports in time, the level of acceptance is again reiterated for your guidance.

7.1 Senior Scale Officer
For staff upto and above Rs.1400-2300/- or in similar scale both in Headquarters and in Divisions/Units.

If there is no Senior Scale Officer and review is made by Asstt. Officer working directly under a JH grade officer.

7.2 Dy. Heads of Department.
For staff upto and above Rs.1600-2660/- and above.

7.3 HOD/DRM/DRM
For staff upto and above Rs.1600-2660/- and above.

7.4 PHOD/HOD/DRM/DRM
For staff who are directly attached to them, and where the PHOD/DRM/HOD/NDRM himself is the accepting authority, the CR can be initiated and finalised at his level itself.

8. The above instructions may kindly be brought to the notice of all concerned so that there may not be any misunderstanding for initiating/reviewing/accepting the confidential reports on staff, giving more emphasis on following the procedure laid down for recording the adverse remarks, communication of adverse remarks and finalisation of appeal/representation etc.

9. POs/CAs/CSs in each department/division/unit should be made responsible for bringing these points to the notice of the concerned officers before the initiation of Confidential Reports starts every year.

DO: As above.

General Manager
Bharat Railway, Maharashtra

A. K. D. T.
D. T.

B. Datta, Advocate
Mumbai, dated 10/10/2010

Copy of Board's letter No.E(NG)I-81-CR-8 dated 31.8.81/22.9.81 circulated under GM/P/Maligaon's letter No. E/54/Gen/P-III dated 3.11.81.

Sub: Writing of confidential reports - Mention of warnings therein.

A copy of the office memorandum No.21011/1/81-Estt(A) dated 5.6.81 received from Ministry of Home Affairs (Department of Personnel and Administrative Reforms) on the above subject is sent herewith. The instructions contained therein shall apply to all concerned.

Please acknowledge receipt.

Sd/- DD Aggarwal,
Jt. Director, Establishment,
Railway Board/New Delhi.

Copy of Ministry of Home Affairs' DM No.21011/1/81-Estt(A) of 5.6.81.

Sub: Writing of confidential reports - Mention of warnings therein.

The undersigned is directed to say that questions have been raised from time to time regarding the stage at which a mention about warnings, admonitions, reprimands etc, administered in the course of normal day to day work by supervisor officers should be mentioned in the Confidential report of the official to whom the warning, reprimand etc. has been administered. As there seems to be some doubt in this regard the position is clarified in the following paragraph.

2. There may be occasions when a supervisor officer may find it necessary to criticise adversely the work of an officer working under him or he may call for an explanation for some act of omission or commission and taking all circumstances into consideration it may be felt that while the matter is not serious enough to justify the imposition of the formal punishment of censure, it calls for some formal action such as the communication of a written warning, admonition or reprimand. Where such a warning/displeasure/reprimand is issued, it should be placed in the personal file of the officer concerned. At the end of the year (or period of report), the reporting authority, while writing the confidential report of the officer, may decide not to make a reference in the confidential report to the warning/displeasure/reprimands, if, in the opinion of that authority, the performance of the officer reported on

after the issue of the warning or displeasure or reprimand as the case may be, has improved and has been found satisfactory. If, however, the reporting authority comes to

Annexe A/3 contd

the conclusion that despite the warning/displeasure/reprimand, as the case may be, in the relevant column in Part III of the form of confidential report relating to assessment by the Reporting Officer; and, in that case, scope of the warning/displeasure/reprimand referred to, in the confidential report should be placed in the CR dossier as an annexure to the confidential report for the relevant period. The adverse remarks should also be conveyed to the officer and his representation, if any, against the same disposed off in accordance with the procedure laid down in the instructions issued in this regard.

3. Ministry of Finance etc. are requested to bring the above clarifications to the notice of all the administrative authorities under their control.

AIUBK
RDBH

2. Dated 12/12/1988
S. Dutt
Secretary

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- 19 -

(CONFIDENTIAL)

To
The Chief Electrical Engineer
N.F.Railway,
Maligaon.

Sir,

Sub :- Adverse remarks on ACR for
the year ended 31-3-2000.

Ref :- Yours L/No.EL/CON/20(0)/58
dt. 29-5-2000.

I have handed over the charges of SEE/HQ on 28-4-99 to Shri N. Sarker. Then I worked for 45 days in leave vacancy under DY.CEE/CON. After that I was either on leave or sick for whole year except for a few days worked at NJP. At a stretch I did not work for more than 45 days under any officer during the year 1999-2000.

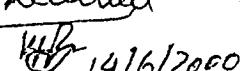
In the above circumstances, 'Who' and 'How' some one has evaluated lacking of my knowledge and function is beyond my imagination. Whoever has done he did it being motivated by wrong intention. Whether he is eligible or not may please be checked. His remarks against both the points (I) & (II) are not agreeable. I am proud of my knowledge and can say that I did not do any mistake.

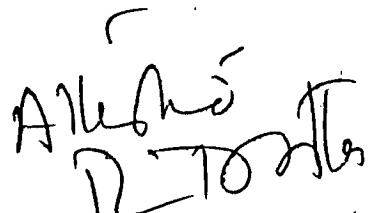
Thanking you,

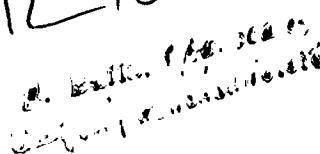
Yours faithfully,


(N. Brahma)
DEE/DBWS

Dated, Maligaon,
the 14th June, 2000.

Received

14/6/2000


A. T. S.
RTO/2000


A. T. S.
RTO/2000

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CONFIDENTIAL

Office of the
Chief Electrical Engineer
NF Railway, Maligaon.

No. EL/CON/20(0)/83

Dated : 14.07.2000.

Sri N. Brahma,
DEE/DBWS,
NF RAILWAY

Sub : Your representation dated 14th June, 2000
regarding adverse remarks on the ACR for
the year ended 31.03.2000.

Your representation dated 14.06.2000 against
adverse remarks on the ACR for the year ended 31.03.2000
has been carefully considered by the Competent Authority.
The Competent Authority has given his decision as under :-

" Your representation dated 14.06.2000 has been
considered. It is observed that you have not submitted
any resonable explation for the adverse remarks to enable
considering any change in these remarks. Your performance
has been judged by the Reporting officer based on the period
you were on the working post. The remarks remain unchanged."

B. Hazarika
(B. HAZARIKA)
Dy.CEE/HQ
for Chief Electrical Engineer.

Copy to : PS/GM- for information.

R. D. Thomas
for Chief Electrical Engineer.

R. D. Thomas
B. Hazarika (Advocate)
(21/6/2000) 0912241761018

Anasme Afb

To,
The General Manager,
N.F.Rly. Maligaon.

N.Brahma,
DEE/DBWS,
Dated: 7.11.2000.

(Through proper channel)
Sir,

Sub:- ACR for 1999-2000.

Ref:- CEE/MLG's L/No.EL/CON/20(0)/83 dt. 14.7.2000.

The following few lines of my grievances are laid down before you for your kind and sympathetic consideration please.

1. That, the adverse remarks on CR communicated to me by CEE/MLG on 14.7.2000 is not impartial. The allegation is a personal out barst of views. If the fault was actual, it should have been clearly mentioned. I have never committed such mistake for which my performance can be down graded.
2. My superior officers never communicated their warning, charge sheet or displeasure to me. I am supresed to see that all on a sudden my performance has been dropped.
3. The period of working in CEE's office is very small. It was only 28 days, which is not enough for initiating my CR. The working periods of the year furnished below.

1.4.99	to	28.4.99	SEE/HQ
28.4.99	to	13.6.99	DEE/CON
14.6.99	to	26.7.99	LAP for cadre adjust.
27.7.99	to	7.8.99	Sick for cadre adjust.
8.8.99	to	22.9.99	DEE/NJP.
23.9.99	to	27.1.2000	sick
28.1.2000	to	31.3.2000	waiting for posting.

The adverse remarks on my CR without any fault has caused severe damage to the working spirit of mine. It is vindictive and not for the interest of the Rly.

I would, therefore, request your honour kindly look into the matter and take necessary action, so that I can get proper justice from the Rly. Administration.

With regards.

A. N. Brahma
Yours faithfully,

N. Brahma
(N. Brahma)
DEE/DBWS.

R. Dutta, Advocate
Mumbai, dated 7.11.2000

Anscome A/7

To,
The General Manager,
N.F.Rly. Maligaon.

N.Brahma,
DEE/CON/MLG
Dated: 25.9.2001.

(Through proper channel)
Sir,

Sub:- Adverse remarks on CR (1999-2000).

Ref:- My appeal dated 7.11.2000.

I beg to draw your kind attention to the following facts for your kind and sympathetic consideration please.

That, the adverse remarks on my CR (99-2000) communicated by CEE/MLG vide his L/No.EL/CON/20(0)/83 dt 14.7.2000 is not impartial. So far I have discharged my duties with full satisfaction of my superior officers and have never received any warning/displeasure letter from them. I am very much surprised and it has been very painful to me also that all-on-a sudden how my level of knowledge and sincerity to work has been dropped drastically. The following few points therefore laid before you for your justice please.

1. That the remarks against me in the CR is not specific. The reporting officer did not indicate the exact fault of mine, which is required to be rectified.
2. That I have worked under him only for 28 days in the reporting period. Whereas, as per standing circular, minimum 3 months working is required to initiate CR.
3. That, no warning, chargesheet, counseling or displeasure has been communicated to me before recording the adverse remarks.
4. That the reporting officer violated the provisions rule 1607 to 1610 of the establishment codes.

In view of the above it appears that the evaluation has been done with ill motive and out of personal grudge for which I am going to suffer for the rest of my service life. In my reply, I have already stated that the remarks is not impartial and is not acceptable to me.

I would, therefore, request your honour kindly look into this so that I can get proper justice from the administration. In this respect I may remind you that my previous appeal dated 7.11.2000 addressed to you from DBWS through proper channel has not yet been replied. A copy of that letter is enclosed herewith.

With regards.

Yours faithfully,

A. Brahma
R. Datta

N. Brahma 857
A. Datta, Advocate
MADRAS, GUWAHATI-781013
DEE/CON/MLG