

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FORM NO.4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWATI BENCH ::::: GUWAHATI

Original ORDER SHEET
APPLICATION NO

142 OF 2001

Applicant (s) *Parvin Konkey*

Respondent(s) *V.O.P*

Advocate for Applicant(s)

M. Chanda, A. Chakravarty

Advocate for Respondent(s) *Cast*

Notes of the Registry Date

Order of the Tribunal

App. is in order.

11.4.01

Heard learned counsel for the parties.

Application is admitted. Call for records. Issue notice on the respondents. Returnable by 4 weeks. List on 21.5.01 for orders.

Vice-Chairman

1m

NS
11/4/2001

21.5.01

List on 20.6.01 to enable the respondents to file written statement.

K.L.Usha
Member

Vice-Chairman

"counsel for" Mr. J. L. Sarkar, learned/Railways, ~~counsel~~ has accepted notice on behalf of Respondent Nos. 1 to 4 and 6. He prays for and granted four weeks time to file written statement. The applicant will have two weeks thereafter to file rejoinder.

List on 22-8-2001 for further order

K.L.Usha
Member

Vice-Chairman

*My
T9.6.01*

No. written statement
has been filed.

21.8.01

22.8.01 List on 25/9/01 to enable the respondents
to file written statement.

I.C.Ushan

Member

Vice-Chairman

No. written statement
has been filed.

24.9.01

mb 25.9.01 No written statement so far been filed.
List on 13/11/01 to enable the respondents to
file written statement.

I.C.Ushan

Member

Vice-Chairman

13.11.01 Pleadings are complete. The case
may now be listed for hearing. The
applicant may file rejoinder ~~within two weeks~~
~~before the~~ next date from today.
List for hearing on 13.12.2001.

13.11.2001

W/S chm

been intimated
to the respondents.

bb

I.C.Ushan

Member

Vice-Chairman

13.12. There is no District Court today.
The case is adjourned to 26.1.2002.

M.K.Raj

13.12

Rejoinder at
page 38-40.
13.1.02

24.1.02 On the prayer of Mr. M.Chanda,
learned counsel for the applicant, the
case is adjourned. List on 18.2.2002
for hearing.

The case is ready
for hearing.

mb

I.C.Ushan

Member

Vice-Chairman

18.2.02

On the prayer of Mr.M.Chanda
learned counsel for the applicant case is adjourned to 26.3.02 for hearing

I.C.Ushan

Member

Vice-Chairman

lm

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M
O.A.No.142 of 2001

Notes of the Registry	Date	Order of the Tribunal
	26.3.02	Heard learned counsel for the parties. Hearing concluded. Judgment delivered in open Court. Kept in separate sheets. In terms of the order the application is allowed. No costs.

G. I. Shetty
Member

Vice-Chairman

1m

Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 142 of 2001

Date of Decision..... 26.03.02

Sri Tarun Kr. Dey

Petitioner(s)

Mr. M. Chanda, Mr. A. Chakraborty

Advocate for the
Petitioner(s)

Versus-

Union of India & Others

Respondent(s)

Mr. J. L. Sarkar, Railway Standing counsel

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 : CHOWDHURY J. (V.C.):



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 142 of 2001.

Date of Order : This the 26th Day of March, 2002.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman

The Hon'ble Mr K.K.Sharma, Administrative Member.

Sri Tarun Kr. Dey,
Working as SEN/Flood Control/Maligaon
Office of the Chief Engineer, N.F.Rly,
Maligaon, Guwahati-11. . . . Applicant

By Advocate Sri M.Chanda, A.Chakraborty.

- Versus -

1. Union of India
represented by the General Manager,
N.F.Railway,
Maligaon, Guwahati-11.
2. The General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
3. Chief Engineer,
N.F.Railway,
Maligaon.
4. Chief Bridge Engineer,
N.F.Railway,
Maligaon, Guwahati-11.
5. Sri Balbir Singh,
Chief Bridge Engineer,
N.F.Railway,
Maligaon, Guwahati-11.
6. Dy.CE/Bridge Design,
Office of the Chief Engineer,
N.F.Rly, Maligaon, Guwahati-11. . . . Respondents.

By Sri J.L.Sarkar, Railway standing counsel.

O R D E R

CHOWDHURY J. (V.C)

This application under Section 19 of the Administrative Tribunals Act 1985 has arisen and is directed against the communication of the adverse remarks vide letter No.CE/SS/13/O/ADV dated 12.10.2000 as well as the order passed by respondent No.3 rejecting the representation of the applicant vide letter No.CE/SS/13/O/ADV dated 22.1.2001 in the following circumstances.

2. The applicant was first appointed as Bridge Inspector Grade-III (Apprentice) with effect from 14.5.76. He was promoted to the post of Bridge Inspector Grade-II with effect from 29.6.79 and Bridge Inspector Grade-I with effect from 27.12.84, as Assistant Works Manager on 14.3.90 and thereafter promoted as Senior Engineer, Bridge Design with effect from 26.10.95. The applicant was subsequently promoted to Indian Railway Service of Engineers (IRSE) Group 'A' with effect from 3.8.2000 on the strength of recommendation made by the DPC that was held in UPSC office. Vide communication dated 12.10.2000 the applicant was communicated the adverse entries for the year ending 31.3.2000. The full text of the said adverse entries are re-produced below :

"

- (1) Not fully agreed. The progress report on adoption of RAW Manual is not being sent to RDSO regularly and also not put up till March, 2000. The review of water-way of Br. No. 93 was delayed badly; protection scheme for Br. 331 was prepared in a most non technical way.
- (2) (i) Level of knowledge of functions inadequate & poor.
(ii) Application is lacking on his part.
(iii) Technical input in the plan & preparation is lacking.
- (3) (i) Quality of output is very poor. There is poor initiative.
(ii) Minutes of the SCES/Assam, Tripura & Arunachal Pradesh were highly inadequate and had to be redrafted entirely. Lack of application is evident in working as noted by CE himself."

• • • • •

The applicant submitted his representation before the authority against the said order. He gave reasons in support of his stand for expunction of the adverse remarks. The authority by letter dated 22.1.2001 rejected the representation of the applicant and upheld the ACR. The applicant

preferred an appeal before the appellate authority. The appeal was not disposed of the applicant submitted remainder to the authority for disposal of the appeal. Since the same was also not disposed of, the applicant moved this Tribunal assailing the legality and validity of the adverse entries.

3. The respondents submitted its written statement. In the written statement the respondents mentioned that the appellate authority by its order dated 18.4.2001 communicated to the applicant the effect that the adverse remarks against the Column No.2 and 3 were sustained and that expunged the adverse remark against the Column No.1. It was stated and contended that the adverse entries against Column No.2 and 3 were lawfully made on assessment of the work of the applicant. Mr.M.Chanda, learned counsel for the applicant stated and contended that none any of the adverse entries made against the applicant are not sustainable in law. According to the learned counsel the respondents authority recoded the adverse entries in a most casual manner without considering the materials on record. The learned counsel submitted that the entire adverse remarks is based on the item No.1 of the communication dated 12.10.2000. When No.1 was expunged the other two entries also ought to have expunged. The learned counsel further submitted that the authority while recording the adverse remarks overlooked the main object of recording adverse remarks. Learned counsel also submitted that ACRS are written for improvement of performance of an officer and they are not to be used as a vehicle of oppression. Mr.J.L.Sarkar, learned Railway standing counsel for the respondents submitted that the concerned authority after careful examination of the service record of the applicant made the adverse remarks. Paragraph Confidential report are required to be made by the authority in the proper form indicating the quality and contribution of the officer. The entire object is to

improve the quality of the officer. It is not meant to be used as a dose of retribution. Indian Railway Establishment Code indicated methodology of recording of the Confidential Report. Para 1606 of the same indicates that confidential report shall be submitted annually in respect of a gazetted railway servant for the period ending 31st March of the year so as to reach the authorities by the second week of May. 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 etc. which contribute to quality of his work as a gazetted railway servant and his fitness for shouldering larger executive and administrative responsibilities. The report 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 work entrusted to the gazetted railway servant. Para 1608 and 1609 of the IREC are reproduced below :

"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 etc. 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,

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the communication of any adverse remarks removed from 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."

The entire exercise is for improving the quality of the officer. We have already indicated the nature of the entries mentioned in item 2 and 3. In item No.2, level of knowledge of functions inadequate and poor, application and technical input in the plan & preparation are lacking and so also mentioned about quality of output is very poor and poor initiative. The ACR for the year ending 31.3.2000 was communicated to the applicant on 12.10.2000. At any rate by that time the applicant was promoted to higher post and therefore the ACR has lost its sting and is weak piece of material. The adverse entries are not associated with any dis-honesty and lack of integrity of the officer. In recording ACR basic elements of fairness is not to be disregard. That apart the authority while passing the remarks only gave his conclusion by rejecting the representation. As alluded the whole exercise is for the improvement of the officer concerned, so that it can guide and improve the career performance of the officer. This exercise is totally missing in this case. On consideration of all aspects of the matter we are of the opinion that the impugned adverse entries referred to in memo dated 12.10.2000 and the order dated 22.1.2001 to the extent mentioned is not sustainable in law and thus quashed. Therefore the adverse remarks on the basis in our view are not sustainable.

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

केन्द्रीय प्रशासन अधिकारी
Central Admin. Officer, Tribunal

10 APR 2001

गुवाहाटी न्यायालय
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

Title of the case : O.A. No.: 162/2001

Sri Tarun Kr. Dey : Applicant

---- versus ----

Union of India & ors. : Respondents

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Filed by
A. K. S. Dey
Advocate
5/4/2001

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In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

File No. 4 of the Application
M. O. T. S. P. C. Ch. 100/105
6/11/2001

Fee

O.A. No. /2001

BETWEEN

Sri Tarun Kr. Dey,
Working as SEN/Flood Control/Maligaon
Office of the Chief Engineer, N.F.Rly
Maligaon, Guwahati - 11.

_____Applicant

AND

1. Union of India represented by the
General Manager, N.F.Rly,
Maligaon, Guwahati-11.
2. The General Manager,
N.F. Rly, Maligaon,
Guwahati-11.
3. Chief Engineer,
Office of the Chief Engineer,
Maligaon, Guwahati-11.
4. Chief Bridge Engineer,
Office of the Chief Engineer,
Maligaon, Guwahati-11.
5. Sri Balbir Singh,
Chief Bridge Engineer,
Office of the Chief Engineer,
Maligaon, Guwahati-11.

6. Dy. CE/Bridge Design

Office of the Chief Engineer,
Maligaon, Guwahati-11.

Respondents

Details of the Application :

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

The application is made against :

i) The letter No.CE/SS/13/0/ADV dated 12.10.2000 (Annexure --'A/5') issued by the respondent No.3 communicating the adverse remarks in the Annual Confidential Report for the year ending 31.03.2000.

ii) The letter No. CE/SS/13/0/ADV dated 22.01.2001 (Annexure-'A/7') issued by the respondent No.3 disposing the representation of the applicant against the adverse remarks communicated.

2. Jurisdiction:

The applicant declares that the subject matter of the application is within the jurisdiction of the Hon'ble tribunal.

3. Limitation:

The applicant declares that the application is within the period of limitation under section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:

4.1 That the applicant is a citizen of India and as such is entitled to the rights and privileges guaranteed by

the constitution of India.

4.2 That the applicant is LME and AMIE(Civil Engineering). He was appointed as Bridge Inspector/ Grade-III (Apprentice) w.e.f. 14.5.76 in N.F.Rly and thereafter was promoted to the post of Bridge Inspector/ Grade-II w.e.f. 29.6.79 and Bridge Inspector/ Grade-I w.e.f. 27.12.84. He was promoted to Group 'B' service of the engineering department and posted as Assistant Works Manager, Bongaigaon on 14.3.1990. Thereafter he was promoted as Senior Engineer, Bridge Design w.e.f. 26.10.95 and posted at Maligaon.

4.3 That the applicant has been promoted to IRSE (Indian Railway Service of Engineers) (Group 'A') w.e.f. 3.8.2000. At present he is working as Senior Engineer/ Flood Control, Maligaon. In this connection it is stated that for promotion to Group 'A' service (IRSE) DPC is held in association with UPSC where Annual Confidential Reports (for short ACRs) for the last five years are considered. It is also stated that gradation of marks is such that only 'Good' ranking for 5 years will not entitle any officer for promotion to Group 'A' service. There must be 'Very Good' or 'Outstanding' ranking in some years.

4.4 That the respondent No.5, the Chief Bridge Engineer (for short CBE) on number of occasions called the applicant in his chamber and used humiliating words. There have been occasions also when the languages used and behaviour of the CBE were unbearable and the applicant had to politely protest and request him not to humiliate the applicant by such words and behaviour and instead put his

views in official notes and communicate him by serving letters. The applicant had to make such a request because the issues raised by the respondent No.5 had no relation with the reality of the works and factual position of the progress. The respondent No.5 became very much annoyed and wanted to find faults with the applicant and made some communications through notes and letters. These letters and notes reflected wrong position and the applicant replied to the same representing the correct position.

4.5 That the applicant received communication dated 12.10.2000 communicating adverse remarks in the ACR for the year ending 31.03.2000. It is stated that if there was anything adverse during the said year ending it was to be communicated under the rules of the Indian Railway Establishment Code (Rule under Article 309 of the Constitution of India) by the second week of May, 2000. It is stated that on 2.5.2000 the respondent No.5 wrote a letter to the applicant and advised him to improve in the matter of disposal in a workman like manner. The applicant submitted a letter dated 29.8.2000 to the CBE, Maligaon i.e. respondent No.5 explaining the position and wrote that "as such your observation vide reference above that the case has been put up on 2.5.2000 is wrong". Most unfortunately the respondent No.5 was very much annoyed on the applicant. The respondent No.5 also wrote a letter to the applicant expressing displeasure in connection with the monthly progress report regarding adoption of manual of instruction for Railway affecting works by the State Govt. The applicant submitted a detailed information by his letter dated 29.8.2000 explaining the total position that there was no lapse on the part of the applicant and stated that issuing letter by the

respondent No.5 on 29.5.2000 to the applicant stating that his instructions had not been complied with was not appropriate. This caused more annoyance to the respondent No.5. Ultimately the adverse communication for the year ending 31.3.2000 was communicated to the applicant.

Copy of the letters dated 2.5.2000 and 29.8.2000 are enclosed as Annexure - 'A/1' and 'A/2' respectively.

Copy of the letters dated 29.5.2000 and 29.8.2000 are enclosed as Annexure- 'A/3' and 'A/3A' respectively

Copy of the adverse communication dated 12.10.2000 is enclosed as Annexure- 'A/4'

4.6 That the applicant submitted representation dated 6.11.2000 to the Chief Engineer, Maligaon against the adverse communication dated 12.10.2000 where he has explained the total position including the humiliating behaviour by the respondent No.5. By letter dated 22.1.2001 the applicant has been informed by the respondent No.3 that the adverse remarks would stand. No reason was given nor a speaking order was passed. The applicant thereafter submitted a representation dated 24.01.2001 to the General Manager, N.F.Rly requesting for his kind intervention.

Copy of the representation dated 6.11.2000 is enclosed as Annexure- 'A/5'.

Copy of the letter dated 22.01.2001 is enclosed as Annexure- 'A/6'

Smt

Copy of the representation dated
24.01.2001 is enclosed as Annexure-
'A/7'.

4.7 That in the letter dated 2.5.2000 the respondent No.5 wrote that compliance with the direction and implication in respect of the schemes forwarded by the West Bengal Flood Control Board by 1st May,2000 have not been done as desired and advised him (applicant) to improve in the matter of disposal in a workman like manner. The applicant in his letter dated 29.8.2000 to the CBE, Maligaon, i.e. respondent No.5 explained that the schemes received from West Bengal Flood Control Board were submitted to the CBE, Maligaon after examining them properly with his(applicant's) certificate that "none of the schemes submitted for 96th meeting belongs to N.F.Rly", and also wrote that for the above reason the observations of the CBE, Maligaon in his letter dated 2.5.2000 that the case has been put up on 2.5.2000 without the schemes received was 'wrong'. This reflected the correct position, and CBE made no further communication on the subject.

4.8 That the respondent No. 5 in his letter dated 29.5.2000 wrote that the monthly progress report regarding adoption of manual of instructions for Railway affecting works by the state Government for the month of January to March, 2000 have been issued without approval. He also expressed his displeasure in the said letter in respect of sending final copy of the draft manual of instructions for RAW Tripura state after incorporating the addition and alteration upto the 3rd meeting of the State Committee of Engineers Tripura State. The said respondent in his said

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Draft
Copy

letter also advised the applicant to improve his working so as to bring about a qualitative change in his(applicant's) approach and attitude therefrom. The applicant in his letter dated 29.8.2000 categorically replied on the above to the respondent No.5 and wrote that the monthly progress report for RDSO was lastly despatched to RDSO under the signature of the said respondent for Nov'98 and thereafter from Dec'98 it was sent under the signature of SEN/FCW. In this connection it is stated that the aforesaid progress reports were sent to RDSO as per the direction of the said respondent -

" May be issued under signature of SEN/FCW,
letter/progress being a matter of routine."

As regards the sending of draft manual the applicant wrote that the same has been duly handed over by him to the Chairman of the committee during the 2nd meeting which was held on 5.5.99. As regards obtaining the approval of the said manual the applicant wrote a letter to the Chairman, State Committee of Engineers and after getting confirmation the details were recorded in the case file and the file was put up to the said respondent for his appraisal on 26.5.2000. The said respondent on being satisfied with the information passed remarks - "SEN/FCW to peruse and obtain the copy of notification for keeping on records,". The applicant also wrote that the approach to any work assigned to him was always complied with in time. Thereafter the CBE, Maligaon being satisfied did not communicate anything to the applicant on the above subject.

4.9 That the adverse remarks communicated under letter No.CE/SS/13/0/ADV dated 12.10.2000 contains 3 items of adverse remarks. The 1st item reads as under :

"(1) Not fully agreed. The progress report on adoption of RAW Manual is not being sent to RDSO regularly and also not put up till March,2000. The review of water-way of BR.No.93 was delayed badly; protection scheme for Br.No.331 was prepared in a most non-technical way."

It is stated that the subject in reference to which the communicating officer is not fully agreed is not known to the applicant nor the same has been communicated to him and hence the above view of the communicating officer is vague. The manner of the communication indicates abruptness and non application of mind. As regards further remarks it is stated that the applicant has always sent the progress report of adoption of Manual for RAW to RDSO during the year 1999-2000 in time. The following will indicate the correct position more clearly :

Month	Case No.	Signed by SEN/FCW/MLG on	Despatched on
April '99	W/FCW/MLG/G-35/Pt.I	10.5.99	12.5.99
May '99	-Do-	9.6.99	9.6.99
June '99	-Do-	13.7.99	14.7.99
July '99	-Do-	12.8.99	14.8.99
Aug. '99	-Do-	8.9.99	8.9.99
Sept. '99	-Do-	12.10.99	13.10.99
Oct. '99	-Do-	5.11.99	5.11.99
Nov '99	-Do-	13.12.99	13.12.99
Dec. '99	-Do-	6.1.2000	7.1.2000
Jan., 2000	-Do-	17.2.2000	17.2.2000
Feb., 2000	-Do-	7.3.2000	7.3.2000
March, 2000	-Do-	7.4.2000	10.4.2000

With regards to the delay in review of water-way of Br.No.93 it is stated that there was no delay on the part of the applicant. In fact the case file No.W/29/AJRA-DMAL/93/W-1 has been held by the applicant for only 25 days out of its total holding of 587 days (from 18.3.99 to 24.10.2000) by the different officials. It is stated that the CBE, Maligaon i.e. the respondent No.5 himself held the file for 76 days. (Enclosed Annexure -A/8).

With regards to the preparation of protection scheme for Br.331 it is stated that the protection works were designed under the guidance of CBE. The preliminary plan was prepared showing Guide Bund (for short GB) reduced in length due to space constraints (hill, high land etc.) and T-spur was shown in full length/size as per design as there was no space constraints and while giving final shape of the plan the CBE approved the GB but expressed his anguish for not reducing the size of T-spur which according to him was wastage of money. In this connection it is stated that the CBE is the final authority for approval of the proposal and any addition or alteration was subject to his satisfactions.

The 2nd item of adverse remarks reads as under:

"(2) (i) Level of knowledge of functions in inadequate & poor.

(ii) Application is lacking on his part.

(iii) Technical input in the plan & preparation is lacking."

That the above remarks does not signifies the fields and instances where the applicant has the inadequate

and poor knowledge and also where application is lacking or how technical input is lacking on the part of the applicant but are contrary to the factual position as stated here-in-before.

The 3rd item of adverse remarks reads as under:

"(3)(i) Quality of output is poor. There is poor initiative.

(ii) Minutes of the SCEs/Assam, Tripura & Arunachal Pradesh were highly inadequate and had to be redrafted entirely. Lack of application is evident in working as noted by CE himself".

It is stated that what CE has written/noted is a subjective view of the CE and is not known to the applicant. The above remarks are contrary to the factual positions and actual works done by the applicant during the year 1999/2000. As regards the statement that the minutes had to be redrafted entirely the applicant begs to state that the allegation speaks of hostility against the applicant. The applicant had worked as the Secretary of the committee and recorded the base materials for the minutes and discharged his functions with proper interactions with the members of the committee which includes high officials of the states and these base materials were submitted to the Dy.CE/BD duly processed through computer and final minutes prepared after thorough discussion with concerned officers including the applicant. This is the factual position and in the above circumstances recording adverse remarks on such allegation as communicated is beyond the scope and objective of

communicating ACR. The applicant begs to reiterate that he had no lapse in duty in this respect and the respondents were also fully aware of the same and as such without any communication, show cause notice, charge sheet etc resorted to acting behind the back and purportedly damage the ACR of the applicant. Malice is explicit in the matter.

4.10 That the adverse remarks communicated under the said letter dated 12.10.2000 are not based on the factual position of the progress of works and the performances of the applicant during the year 1999-2000. The remarks are vague and abstract. It is written in the said communication that " The above is conveyed to you so that you are made aware of the deficiencies for improving your performance in the desired direction." But the same does not specify the nature of the work or areas of the work where the applicant has deficiencies or requires improvement. It is evident from the above that the ACR has been written in sloth shod manner for damaging the service record of the applicant. Whereas the case file of water way review for Bridge No.93 was with the CBE, Maligaon for 76 days out of 587 days, it was with the applicant for 25 days which is the shortest possible period for working and movement of the file. This file was with the Dy.CE/BD (respondent no.6) for 251 days.

4.11 That the applicant had protested against the humiliating behaviour of the respondent No.5 which caused annoyance to the said respondent for which the adverse remarks have been given in the ACR of the applicant for the year ending 31.03.2000. It is stated that the annoyance and personal displeasure of the respondent No.5 with the applicant without any nexus with the works done in fact, resulted in giving adverse remarks in the said ACR which is

nothing but the malafide exercise of power and position. Malice in facts and malice in law is explicit in the facts and circumstances of the case.

4.12 That the applicant never before in his service life has any communication of adverse remarks rather his performances and achievements were incredible.

5. Grounds for reliefs with legal provisions:

5.1 For that the communication of the adverse remarks to the applicant pertaining to the year ending 31.03.2000 is violative of the rules and procedures.

5.2 For that giving adverse remarks in the ACR of the has not been given bonafide but is the result of malafide exercise of power.

5.3 For that the adverse communication is vague and abstract in nature.

5.4 For that the contents of the communication are self explanatory and do not reflect positions.

5.5 For that the adverse remarks have been give for the shake of adverse communication only without any intention to give the applicant scope of improvement.

5.6 For that the points and facts raised by the applicant in the different letters and representations being reflection of factual position have not been rebutted by the respondents.

5.7 For that the respondent No.5 was misbehaving with applicant against which the applicant had protested, as a result the applicant has been given adverse remarks in the ACR which was communicated to him.

5.8 For that malice in fact and malice in law is the reason of such adverse remarks in the said ACR.

5.9 For that the adverse remarks are not based on the facts and performances of the applicant.

5.10 For that the disposal of the representation dated 06.11.2001 has been made in a perfunctory manner and without dealing any point raised by the applicant.

5.11 For that the disposal by the letter dated 22.01.2001 is the result of non application of mind.

5.12 For that the disposal of the representation is unreasoned and is by non speaking order.

5.13 For that the disposal of the representation by the respondent No.3 has not given any reason as to why the adverse remarks would stand although a detailed representation was made pointing out the unreasonableness of the adverse remarks.

6. Details of remedies exhausted:

The applicant has represented to the respondent No.3 but the same has been rejected.

There is no other remedy under any rule and this Hon'ble Tribunal is the only forum for redressal of the grievance.

7. Matters not previously filed or pending before any other Court:

The applicant declares that he has not filed any other case in any tribunal, Court or any other forum on the subject matter. However, the applicant states that he has filed an application against his transfer to Bongaigaon before this Hon'ble Tribunal which has been numbered as OA No.108/2001 and is pending.

8. Reliefs sought for :

Under the facts and circumstances of the case, the applicant prays for the following reliefs :

8.1 The adverse remarks communicated under letter No.CE/SS/13/0/ADV dated 12.10.2000 (Annexure- 'A/5') and the order of the respondent No.3 rejecting the representation of the applicant communicated under letter No.CE/SS/13/0/ADV dated 22.01.2001 be set aside and quashed.

8.2 Cost of the case.

8.3 Any other relief/reliefs the Hon'ble tribunal may deem fit and proper.

The above reliefs are prayed for on the grounds stated in para 5 above.

9. Interim relief prayed for :

During the pendency of this application the applicant prays to restrain the respondents to act upon the ACR of the applicant for the year ending 31.03.2000.

The above relief is prayed for on the grounds stated in para 5 above.

• 15 •

10. This application has been filed through Advocate.

11. Particulars of Postal Order :

i) I.P.O. No. : 56422925
ii) Date of issue : 22/3/2001
iii) Issued from : Guwahati
iv) Payable at : Guwahati

12. Particulars of Enclosures :

As stated in the index.

Verification.....

24
:: 16 ::

Verification

I, Tarun Kr. Dey, Son of Late B.K. Dey, resident of Maligaon, Guwahati -11, aged about 50 years do hereby verify that the statements made in para 1,4,6 and 7 are true by my personal knowledge and those made in para 2,3 and 5 are true to my legal advice and the rests are my humble submission. I have not suppressed any material facts.

And I, sign this verification on this
5th day of April ,2001.



Guwahati

Signature

N. F. RAILWAY.

CONFIDENTIAL

Office of the
General Manager(Works),
Maligaon, Guwahati-11.

No. CSE/Confld/Misc.

Dated 02. 05. 2000.

To

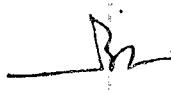
SEN/FCW/MLG.

(Through DY.CE/BD)

Sub:- 96th meeting of the Technical
Committee of West Bengal Flood
Control Board.

Vide endorsement on Memo. No. 3F-1/ 407(18)
dated 24.4.2000 at SN-9 of Case No. W/FCW/MLG/G-13/Pt. V,
it was directed to apprise the position and implication
in respect of the schemes forwarded by the West Bengal
Flood Control Board by 1st May, 2000. It is noted that the
compliance have not been done as desired. The case has
been put up on date (2.5.2000) without the schemes
received.

You are advised to improve and take necessary
action for disposal of the matter in a workman like
manner.


2.5.2000
(Balbir Singh)
Chief Bridge Engineer,
Maligaon.

Confidential.

29

N.F.Railway

No:- TKD/Confd./Misc/1

Dt. 29-8-2000.

To,
CBE/MLG
N.F.Railway.

(Through Dy.CE/BD/MLG)

Sub:- 96th meeting of the Technical committee of the W.B/F.C.B
Scheduled to be held on 4th May'2000.

Ref:- Your L/No. CBE/ Confld./Misc Dt. 2-5-2000.

ir,

Vide memo no. 3 F-1/407(18) dt. 24-4-2000 at SN/9 of case No. W/FCW/MLG/G-3/Pt.-V your endorsement on 27/4/2000 was as under -

"Please go through and apprise the position and implication in respect of any item concerning us by 1st May' 2000."

The schemes received from WB/FCB after properly examining were submitted back to you on 28/4/2000 with a certificate by me that "none of the schemes submitted for 96th meeting belongs to N.F.Rly".

As such, your observation vide reference above that the case has been put up on 5/2000 is wrong.

It is further communicated by you under the letter reference above that - "the case has been put up without schemes".

It is clarified here that - once the schemes have properly gone through, examined and certificate (as quoted above) given thereof it may be presumed that the scheme would not be required for further checking at the higher level for time constraint.

However, in case of any doubt or for cross check, calling schemes by you was hardly a matter of 10 seconds only on inter-com and that was produced too, on being asked to submit.

In this connection, issuing letter of displeasure is not only extending injustice to the concerned but it appears to be full of prejudice.

Yours Sincerely,

(T.K.Dey)
SEN/FCW/MLG
N.F.Railway.

By to:-

PA to CE - may please arrange to put up the letter to CBE through Dy.CE/BD.

Dy 25/18
(T.K.Dey)
SEN/FCW/MLG
N.F.Railway.

CONFIDENTIAL

Office of the
General Manager(Works),
Maligaon.

No. CBE/Confld./Misc.

To

✓ Shri T.K. Dey,
SEN/FCW/MLG.

Dated 29. 5. 2000.

(Through DY.CE/BD)

Sub:- Adoption of Manual of Instructions
for Railway Affecting Works by the
State Government - Monthly Progress
Report.

Ref:- Director(B&S) CB-II/RDSO/LKO's letter
No. RBF/SCA dated 15.9.1998.

Monthly Progress Report on the subject is to be submitted to RDSO. Progress Report for the month of Dec'99 was put up for perusal last on 24.1.2000. Progress Reports for the month of Jan, Feb, March & April, 2000 have been issued without approval and putting up it to DY.CE/BD or the undersigned.

2. Also in respect of the Draft Manual of Instructions for RAW Tripura State I had instructed several times verbally to send a final copy of the Manual of Instruction duly incorporating the addition and alteration as discussed upto the 3rd Meeting of the State Committee of Engineers Tripura State, when the manual was finally recommended unanimously for adoption, to enable the Secretary, Transport(Chairman, SCE/Tripura) to process and obtain the approval of the Govt. and arrange for its publication in the Gazette. However, the instructions have not been complied inspite of repeated discussion on the matter.

3. Displeasure is hereby expressed for such lackadaisical approach to work and in compliance of the clear instructions. You are advised to improve your working so as to bring about a qualitative change in your approach and attitude hitherto.

Br
29.5.2000
(Balbir Singh)
Chief Bridge Engineer,
N.F.Railway, Maligaon.

....

Confidential.

N.F.Railway

Dt. 29 8-2000.

- TKD/Confld./Misc/2

E/MLG
F.Railway.

(Through Dy.CE/BD/MLG)

**Sub:- Adoption of Manual of Instruction for RAW
(Monthly Progress Report)**

Ref:- Your L/No:- CBE/Confld./Misc Dt. 29-5-2000.

In terms of your letter under reference the para wise reply is furnished below.
Monthly progress report for RDSO was lastly despatched to RDSO under your signature for Nov'98. Thereafter, from DEC'98 it was sent under the signature of SEN/FCW (predecessor) observing your remarks that-
"May be issued under signature of SEN/FCW, letter/progress being a matter of routine,"

During the period from Jan'99 to Jan'2000 (13 months) the case file has been put up for many occasions, but it has never been advised to take approval of CBE/Dy.CE /BD prior sending the progress report to RDSO.

Further, on advising (verbally) to put up the case file time to time, so to be conversant with the on going progress, it was put up on 21-1-2000 for perusal only but not for approval. Besides, it was not desired / advised at that point of time also to put the progress file for approval on wards.

More over, on putting up the case file to you on 26-5-2000 with a reply letter, against Rly. Bd's letter, querying about the progress, instead of signing the letter, you passed the following remarks -

" Monthly progress report has been discontinued to be put up for approval before despatching since Jan'2000. This is not appreciated."

It is clarified here that, the progress report has neither been put up for approval of CBE or Dy. CE/BD, in the past nor there was any instruction for taking approval before despatch. As such, the question of discontinuity of taking approval dose not arise.

Contd.

As regard to item (2) ie. sending final copy Draft Manual duly incorporating the two new items, I have always replied that the final copy had been personally handed over by me to the Chairman of the committee during the 2nd meeting held on 5-5-99.

Further, to confirm the action regarding the putting of manual to the Govt of Tripura for obtaining approval, a letter was issued to Chairman State Committee of Engineers by the undersigned. Besides, on confirming from Chairman later, on phone, details was recorded on the PP side of the case file and was put up to you for appraisal on 26-5-2000. On being satisfied with the information you passed the following remarks –

“SEN/FCW to pursue & obtain the copy of notification for keeping on records,”

There after, issuing letter by you on 29-5-2000 to the undersigned stating that your instruction have not be complied is not appropriate.

It is stated that the approach to any work assigned to the undersigned was complied always in time. It is right place to mention it here that there had been no meeting of SCE/Assam since May'96 for three & half years. After I assumed charge in Jan'99 as SEN/FCW, all the meetings of all the States of Assam, Arunachal Pradesh & Tripura have been organised alone and conducted well in time. Besides, all the routine works viz. Monsoon observation works, bridge review, survey of rivers and preparing plan there of, also sending reports to all concerned(RDSO etc.) have been done in time.

Further, apart from above, a huge no of additional works viz. Monsoon observation 4 bridges, Survey- 4 bridges with preparing plan , design guid bund, protection work, review water way etc. Br. No. 93 & 331, Protection work- 2 bridges etc. have been done without interrupting the 3 nos of routine works of rivers observations nominated by RDSO with a very negligible staff (30 nos) only under different IOW's / BNGN, SGUJ, LMG & MLG.

In perspective it appears that the displeasure expressed by you is again not proper and fraught with prejudice.

Yours Sincerely,

(T.K.Dey)
SEN/FCW/MLG
N.F.Railway.

to:-

PA to CE - may please arrange to put up the letter to CBE through Dy.CE/BD.

(T.K.Dey)
SEN/FCW/MLG
N.F.Railway.

(Confidential)

ANNEXURE - A/4

Northeast Frontier Railway

Headquarters office,
(Works Branch)/ Maligaon

No. CE/SS/13/0/ADV

12.10.2000

Shri T.K.Dey,
SEN/FCW/MLG

Sub : ACR for YE 31.3.2000 – communication of adverse entries.

The following adverse remarks have appeared in your ACR for year ending 31.3.2000 :

(1) Not fully agreed. The progress report on adoption of RAW Manual is not being sent to RDSO regularly and also not put up till March, 2000. The review of water-way of Br. No. 93 was delayed badly; protection scheme for Br. 331 was, prepared in a most non-technical way. (Voter)

(2) (i) Level of knowledge of functions in inadequate & poor.
(ii) Application is lacking on his part.
(iii) Technical input in the plan & preparation is lacking.

(3) (i) Quality of output is very poor. There is poor initiative.
(ii) Minutes of the SCEs/ Assam, Tripura & Arunachal Pradesh were highly inadequate and had to be redrafted entirely. Lack of application is evident in working as noted by CE himself.

The above is conveyed to you so that you are made aware of the deficiencies for improving your performance in the desired direction.

Please acknowledge receipt of this letter on the duplicate copy and send the same to the undersigned within 15 days time. Please note that representation, if any, has to be preferred within one month's time of receipt of this letter after which no representation will be considered.

 (B.K. Agarwal)
Chief Engineer

Copy to : PS to GM, NF Railway.

(B.K.Agarwal)
Chief Engineer

N.F.Railway

Confidential

NO. T.K.D/Cofd./ 3/2000

Dt. 6-11-2000.

To,
The CE /Maligaon,
N.F.RLY

Sub:- ACR for YE. 31.3.2000 - Communication of adverse entries.

Ref:- CE's Confidential letter No. CE/SS/13/0/ADV dtd. 12.10.2000

Sir,

In terms of your letter under reference I firmly deny and disagree with the adverse remarks which has been communicated to me vide your letter cited above. The remarks are not based on my performance rather it is due to biasness of reporting/reviewing officer(s) for the reasons lying else where. I beg to furnish the parawise reply for favour of your kind information and sympathetic consideration please.

(1) 1st part:- "The progress report March'2000".

In this connection may kindly see my reply at Ann. - 1 where in it was clarified to CBE that the charges brought vide his letter No. CBE/Confld/Misc dt. 29.5.2000 (Annexure -2) was not correct.

(1) 2nd part : "The review of water way badly delayed".

In this connection a chart prepared to show the movement of the concerned file Annexure-3 which will speak the truth whether the delay was on my part.

That Sir, From the summary of the above chart (at bottom) it may kindly be seen that , out of total 587 days since the Ist endorsement on 18.3.99 till 24-10-2000 the file was held by me for 25 days only i.e. 4.25 %.

It is brought out here that the water way of Br.No. 93 (9 X 100 ft.) was already finalised on 11.1.2000 & duly approved by CBE with further instruction to process the tenders etc. (Annexure-4). But while furnishing the information to GM by CBE the water way already finalised was mentioned as 700 ft. instead of 900 ft for which GM remarked as under.

"The waterway is being practically halved. Pl.have the calculations etc. re-checkedetc". (Annexure-5)

Contd.

Received
Parul S
PAFC
6/12/2000

To comply GM's note the calculations were re-checked and found that the water way ----- 900(ft) as calculated earlier was correct.

It is however not known at what point of time , water way was further reduced down from 900(ft) to 700(ft) against the existing 1380(ft) as no record of this is available in any of the concerning case files.

After GM's intervention on 14.7.2000 , the finalisation of the W/way took a new turn and the case delayed further. AEN/FCW has been instructed by CBE to re-calculate the w/way based on old survey records etc. and the case file duly re-calculated is lying even to day with DY/CE/BD since 29.9.2000 and the review is still being done on trial & error method and final decision is yet to be taken by CBE. As such question of delay in review of water way on my account dose not arise.

(1) 3rd part :- "Protection scheme for Br. 331most non-technical way".

During the restoration of this bridge, CBE, DY/CE/BD and AEN/FCW were closely attached to this bridge work and they were fully familiar with the site conditions. The protection works (guide bund, T/spur etc.) were designed under the guidance of CBE. However, AEN/FCW was always consulting me for design /calculation etc.

On completion of the design , the preliminary plan was prepared showing GB reduced in length due to space constraints (hill ,high land etc) and the T-spur was shown in full length/ size as per design as there was no space constraints.

While giving final shape of the plan, CBE approved the GB but expressed his anguish for not reducing the size of T-spur also which in his opinion was wastage of money.

You may like to appreciate that the case is put up to the CBE being the final authority for approval of the proposal for any suggestion, additions/alteration if any before giving the final shape for which he is only competent dose not show that every body other than him is technically poor who are connected with design. These remarks made in the ACR are not based on facts rather due to prejudice.

2 (i), (ii), (iii) & 3(i)

For better appreciation, prior replying to the above, it is necessary to furnish the present set up of FCW in brief. The position is shown through Annexure-6.

May kindly appreciate Sir, how with a skeleton gang only all the programmed works (col-2) along with huge additional works too, (col-3) have been completed within the specified period of time absolutely with my initiative alone.

Contd.

Sir, in the most important part of my representation I would like to bring out here that ---- the design staff like CDA, SDA etc. who used to work under the control of SEN/FCW were with-drawn in 1992 and merged with DYCE/BD. There after all the river protection works were done in the Bridge section.

As a SEN/BD in 95-96, I have also designed protection works of river Simen, Kumatia etc.

However, for a certain period of time Sri S. Sarkar who worked all along as AEN/BD, on getting promotion as SEN/FCW in April'96 was asked to continue design works also to assist the then SEN/BD, Mr. Rajib Kumar as there was shortage of AENs.

After departure of Sri Sarkar, (Aug.'97) his successors were also being assigned the job of river protection works whenever the post SEN/BD remained vacant.

It is brought out here that Sir, for extending this assistance to bridge design section, FCW section had to suffer much as there had been no ASCE's meetings for consecutive three & half yrs. (3 1/2 yrs) and considerable part of this period present CBE was the HOD/Br. section. After I joined in Jan'99, I again started the meeting absolutely with my initiative alone.

Unfortunately, on joining as SEN/FCW in Jan'99, since the post of SEN/BD was lying vacant, all the protection works were again thrown on FCW stating that one AEN/FCW was posted newly after a gap of 8 yrs. and quoting his old duty which was to be updated after merging the design section of FCW with BD. section in 1992. due

With submission, Sir, by highlighting all the above, I don't mean to point out that I have been compelled to shoulder extra duty although not reflected in the duty list but I want to point out here, that while discharging extra duties, unlike my predecessors, I have conducted all the nominated meetings of all the states, completed all the works as programmed in 99-2000 and also have done huge extra works all well within scheduled time as already mentioned above.

In perspective, the charges brought vide item 2(i), (ii), (iii) above & 3(i) below are not only base-less, but being not specific in nature are considered as "WILD CHARGES" and brought against any body with malafied intention only.

3(ii)

Minutes of the SCE redrafted entirely.

To arrive at the fact why this re-drafting, I shall request your honour to kindly call for your memory regarding the positive remarks (Good, V.good etc) made by you on the cover page of minutes booklet of SCE's meeting held in the post monsoon '99 and send back the booklet to CBE.

Contd.

This was prepared and submitted by me wherein contribution of the officers above me was not much. It is pointed out here that Sir, the above booklet was not further sent down to the level below by CBE for record, instead it was said that it would be kept by him for his personal record.

Here after, on completion of the pre- monsoon meeting in April '2000 when draft minutes duly prepared and submitted by me with in 10/ 11 days of completion of meeting through DYCE/BD to CBE, he drained down the full brain holding the file for more than one month to make the minutes April '2000 some thing special to impress upon you, perhaps to achieve more positive remarks this time, but this time, unfortunately, the booklet was returned to me with your remarks "Thanks" only.

It is pointed out here that while making addition/alteration in the minutes one important column "Committees decision" was completely eliminated by CBE and instruction has been included without being discussed and resolved in the meeting that - " Statement & Inspection report (RAW) shall be tabled in the next meeting". This may affect sentiment of the officers /members and thus the future meeting also.

Further , claim by CBE "re-drafted entirely" indicates that there was no materials at all in the draft minutes prepared and submitted by me to DYCE/BD and onwards making further addition/alteration submitted to CBE by DYCE/BD. It can well be understood how baseless charge can this be that officers below him failed to produce any material .By this CBE wants to say rather show that all in the bridge wing are useless except him and thereby grab the full credit alone.

Item – 3 (ii) Last line- "Lack of ----- by CE himself".

In this regard, Sir, I sincerely believe that the charges do not require be given clarification from my side as you know me personally. Yet I shall quote 2/3 works which were required to be done very fast in face of ensuing and full monsoon which are as under –

(a) Protection works of left G. bund of river Diana (Rly Br. No. 180 , MG under Sr. DEN/APDJ.

As instructed by you all the works right from inspection of the site, suggesting boulder sausage bed bars etc. making drawing plan estimate worth Rs. 46 lakh were completed and submitted to you with in 2 days. Later DEN/IV/APDJ informed after monsoon that the work was completed before monsoon and proved to be very effective in saving the Rly. embankment.

Contd.

(b) Taking sounding as per your instruction (by- echo sounder) personally by a country boat round the piers 4 to 7 in the river Brahmaputra in the full flood (AUG' 99) and the detailed report there of with sketches on graph paper showing erosion round the piers was put up to you on the very next day.

Thus, it is evident from the above that there is no lack in working with me. Instead, the lack what is noticed in the bridge wing after I joined is lack of leadership, improper instruction, incomplete guide line, very poor feeling for the fellow officials. Besides extending humiliating behaviour and finding faults all the time to create mental pressure.

Now, Sir, in the 2nd and final part of my representation I would like to communicate the reason for which CBE made an attempt to spoil my ACR inspite of completing all programmed works of 99 – 2000 with huge extra work well within the specified time and fully initiated by me alone.

The reason behind this was his unbearable increasing humiliating behavior. This development was noticed in him little after he was promoted to SAG.

In few consecutive occasions calling me in his chamber he misbehaved with me using unparliamentary words which I protested and requested him, instead of ill behaving he may put PP notes and serve letters.

As a result of the above development in April'2000, CBE started finding loop holes against me and communicating through PP notes of the respective case files, supported with displeasure letters.

Two such displeasure letters have been communicated to me in the month of May'2000. The reply of the one is available at Annexure-1, details already narrated in item 1(i) above.

The reply to the 2nd letter (Annexure-7) if compared with the PP notes (Annexure-8) it will be found that the charge is not only wrong but false also. (CBE's letter is available at Ann. -9)

It is a matter of regret that all these above occurrence took place in the month of April, May'2000 and communicated to me through ACR YE. March'2000.

It is worth mentioning here that I have very recently been inducted into Group- A by Railway Board. Obviously, my performances as reflected in my successive ACRs, must have carried very good gradings which were favourably taken into consideration. On the face of it, such adverse remarks in the ACR-2000 speaks volume about the prejudice and bias which were predominant in the mind of Initiating as well as Review Authority.

Contd.

I, therefore, request you to kindly have the perspective view of the above fact and expunge the adverse remarks made in my ACR which are not based on fact rather based on personal grudge, false ego to misconstrue my sincerity and honesty which I have maintained till date.

Yours faithfully,

T.K.Dey

(T.K.Dey)
SEN/FCW/MLG
N.F.Railway

(Confidential)

v6

NORTHEAST FRONTIER RAILWAY

Headquarters office,
(Works Branch)/Maligaon

No. CE/SS/13/0/ADV

22nd Jany/2001

Shri T.K.Dey,
SEN/FCW
NF Railway

Sub : *ACR for YE 31.3.2000 – disposal of representation
against adverse entries.*

Ref : *Your defence against adverse entries - No. TKD/Cofd/3/2000
dt. 6.11.2000.*

After carefully going through your above representation, it has been decided that the remarks recorded in your ACR for YE 31.3.2000 would stand and no modification is called for.

Danp

(B.K.Agarwal)
Chief Engineer,
NF Railway

Copy to : PS to GM, NF Railway, Maligaon.

(B.K.Agarwal)
Chief Engineer,
NF Railway

*Aftered
B.K.Agarwal
Paroakti*

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

(Through Proper Channel)

Sub:-ACR for Y.E. 31/3/2000 – Communication of adverse entries.

Ref:-CE's Confidential Letter No. CE/SS/13/O/Adv dt. 12/10/2000.

Respected Sir,

With profound respect and humble submission I beg to furnish the following few lines for your kind information and sympathetical consideration please.

That Sir,- My representation against adverse report communicated to me for Y.E 31/3/2000 (letters with annexures enclosed) has yet another scope for expunging the adverse remarks if gone through by you personally with perspective view and open mind as the remarks made in my ACR are not based on fact at all rather false ego to misconstrue my sincerity and honesty which I have maintained without any spot till date.

I, therefore, request your honour to kindly intervene and extend justice to me as the entries made in my ACR by superiors are all irrelevant and only to harm my career without maintaining any norms with an intention to debar my promotion and to keep me in mental agony to spoil the peace of mine.

I, therefore, earnestly request your honour to kindly communicate your favorable view with in 15-2-01 so that, I do not require to knock the Royal door for natural justice.

DA- As above.

Advance Copy:-

GM/N.F.Rly.,MLG.
Secy. POA/N.F.Rly./MLG.

Yours faithfully,

T.K. Dey – IRSE(P)
LME, AMIE (Civil)
SEN/FCW/MLG/N.F.Rly.

*Recd. and
S.K. Dey
(Stamp 751)*

PC

Br. No. 93 Kopili - Review of Water Way.

Table showing below the movement of Case File No. W/29/AJRA-DML/93/W-1 with time consumed by each officials.

Sent to	Date	Holdin g No. of Days	Sent to	Date	Holdin g No. of days	Sent to	Date	Holding No of days.
AEN/FCW	18.3.99	1	AEN/FCW	28.7.99	-	DY.CE/BD	11.7.2K	3
SEN/FCW	19.3.99	-	CDA/BR.	28-7-99	5	ABE/SPL	14.7.2K	2
Dy.CE/BD	19.3.99- 23.9.99	5	DY.CE/BD	2.8.99	67	Trans. Pd.	16.7.2k	1
Trans. Pd.	24.3.99	1	OS/W-1	8.10.99	-	AEN/FCW	17.7.2K	-
AEN/FCW	25.3.99	-	DY.CE/BD	8.10.99	26	SEN/FCW	17.7.2K	-
SEN/FCW	25.3.99	-	AEN/FCW	3.11.99	-	AEN/FCW	17.7.2K	-
Dy.CE/BD	25.3.99	5	SSE/FCW	3.11.99	12	SEN/FCW	17.7.2K	-
JE/I/DRG.	30.3.99	14	CDM/FCW	15.11.99	-	AEN/FCW	17.7.2K	1
AEN/FCW	13.4.99	6	AEN/FCW	15.11.99	-	SEN/FCW	18.7.2K	1
SEN/FCW	19.4.99	-	CDA/BR.	15.11.99	14	AEN/FCW	19.7.2K	1
CBE	19.4.99	2	AEN/FCW	29.11.99	2	SEN/FCW	20.7.2K	-
SEN/FCW	21.4.99	1	SDA/BR.	1.12.99	5	AEN/FCW	20.7.2K	-
AEN/FCW	22.4.99	5	AEN/FCW	6.12.99	3	SEN/FCW	20.7.2K	-
SEN/FCW	27.4.99	1	DY.CE/BD	9.12.99	29	AEN/FCW	20.7.2K	-
CBE	28.4.99	5	CBE	7.1.2k	4	OS/W-1	20.7.2K	3
AEN/FCW	3.5.99	18	DY.CE/BD	11.1.2K	6	Trans. Pd.	23.7.2K	1
SEN/FCW	21.5.99	10	ABE/HQ	17.1.2K	1	AEN/FCW	24.7.2K	-
DY.CE/BD	31.5.99	-	CBE	18.1.2K	2	SEN/FCW	24.7.2K	-
AEN/FCW	31.5.99	-	ABE/HQ	20.1.2K	1	DY.CE/BD	24.7.2K	7
OS/W-1	31.5.99	1	ABE/HQ	21.1.2K	19	CBE	31.8.2K	4
AEN/FCW	1.6.99	1	Trans. Pd.	9.2.2k	1	SEN/FCW	4.9.2K	-
DY.CE/BD	2.6.99	-	CBE	10.2.2K	-	AEN/FCW	4.9.2K	7
CBE	2.6.99 &3.6.99	2	DY.CE/BD	10.2.2K	18	Trans. Pd.	11.9.2k	1
Trans. Pd.	4.6.99- 8.6.99	6						
OS/W-1	9.6.99	-	ABE/SPL.	28.2.2K	1	AEN/FCW	12.9.2K	-
DY.CE/BD	9.6.99	2	Trans.Pd.	29.2.2k	1	SEN/FCW	12.9.2K	1
OS/W-1	11.6.99	-	AEN/FCW	1-3-2K	-	AEN/FCW	13.9.2K	1
SEN/FCW	11.6.99	3	ABE/HQ	1.3.2K	-	SEN/FCW	14.9.2K	1
OS/W-1	14.6.99	1	SDA/BR.	1.3.2K	13	AEN/FCW	15.9.2K	-
SEN/FCW	15.6.99	1	AEN/FCW	14.3.2K	9	SE/FCW	15.9.2K	4
CBE	16.6.99	8	SEN/FCW	23.3.2K	-	SEN/FCW	19.9.2K	-
Trans. Pd.	24.6.99	1	DY.CE/BD	23.3.2k	4	AEN/FCW	19.9.2K	2
SE/W/FCW	25.6.99	13	SEN/FCW	27.3.2K	-	SEN/FCW	21.9.2K	-
SEN/FCW	7.7.99	1	AEN/FCW	27.3.2K	-	CBE	21.9.2K	1
DY.CE/BD	8.7.99	12	CDM/FCW	27.3.2K	16	SEN/FCW	22.9.2K	3
SEN/FCW	20.7.99	1	AEN/FCW	12.4.2K	-	AEN/FCW	25.9.2K	-
AEN/FCW	21.7.99	-	SEN/FCW	12.4.2K	-	OS/W-1	25.9.2K	3
OS/W-1	21.7.99	7	DY.CE/BD	12.4.2K	42	AEN/FCW	28.9.2K	-
SEN/FCW	28.7.99	-	CBE	24.5.2K	48	SEN/FCW	28.9.2K	1
						DY.CE/BD	29.9.2k	25
						Up till	24/10/2	

SUMMERY :- From 18-3-99 to 24-10-2000 = 587 days.

Holding file by --- AEN/FCW = 57 days.

---- do ---- --- SEN/FCW = 25 days.

---- do ---- --- Dy. CE/BD = 251 days (and still at his disposal).

केन्द्रीय प्रायुक्तिक बहिकाल
Central Administrative Tribunal

13 NOV 2001

In the Central Administrative Tribunal
Guwahati Bench :: Guwahati.

Chikliy Gaon
Dibrugarh
Assam
12/11/2011

O.A. NO. 142/2001

Sri T. K. Dey

- vs. -

Union Of India & Ors.

In the matter of :

Written Statement on behalf of
the respondents.

The respondents in the above case most respectfully beg to state as under :

1. That the respondents have gone through the original application and have understood the contents thereof.

2. That the respondents do not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied.

3. That in reply to the statements in para 4.4 it is stated that the performance of the applicant being not satisfactory, shortcomings and deficiencies were pointed out and brought to the notice of the applicant verbally, first counseling him at the same time for necessary improvements. All counseling used to be made in presence of the respondent No.6 to whom the applicant reported. The applicant displayed a nonchalant attitude of insubordination towards his immediate superior (respondent No.6).

Communication in writing had to be made in the 2nd step as the applicant failed to improve his performance. It is also stated that false and baseless allegation levied by the applicant against Respondent No.5 have no bearing whatsoever.

4. That in reply to the statements in para 4.5 it is stated that the competent authority communicated the adverse entries in the ACR of the applicant for the period ending 31.3.2000 after due verification. Letters referred dated 2.5.2000 and 29.8.2000 are not relevant to the ACR for the period ending 31.3.2000. However, delay in responding to letter dated 2.5.2000 by the applicant after nearly 4 months by his letter dated 29.8.2000 reflects the level of promptness and efficiency being observed by him.

5. That in reply to the statements in para 4.6 it is stated that the respondent no.3 considered the representation dated 6.11.2000 of the applicant and communicated upholding of the adverse remarks. Respondent No.2 considered representation dated 24.1.2001 of the applicant and communicated by confidential letter No.Z/SS/CR/W/5 dated 18.4.2001 -

i) expunging of adverse remark communicated vide item no. 1 in CE/MLG's letter No.CE/SS/13/0/ADV dated 12.10.2000, and

ii) upholding the remaining two adverse items communicated.

6. That in reply to the statements in para 4.7 it is stated that letters referred dated 2.5.2000 and

29.8.2000 are not relevant to the ACR for the period ending 31.3.2000. It is also to state that SEN/FCW is to examine the schemes technically and furnish his comments. Respondent No.5 was to attend the meeting. Participants of Technical Advisory Committee are required to examine, suggest and make technical contribution in finalisation of the schemes. Schemes necessarily should have been put up. mere certification that the schemes submitted did not concern N.F. Rly at the level of SEN/FCW is not enough. In fact, there were schemes pertaining to other railways viz. Eastern Railways and South Eastern Railways. The applicant did not make a mention of this while putting up the case without schemes. While superficial handling of the matter is obvious, it also reflects lack of depth and knowledge in working of the applicant who has chosen to make irrelevant allegations rather than taking note of the shortcomings pointed out and making positive efforts to improve.

7. That in reply to the statements in para 4.8 the respondents reiterate the statements made in para 4 above.

8. That in reply to the statements in para 4.9 it is stated that the contention presented by the applicant is far away from the facts. Clear instructions were given to send the progress report to RDSO under the signature of SEN/FCW. The applicant however stopped putting up the progress report for approval before despatch although no such instruction was given. Progress report for the month of January, February, March and April, 2000 could not be seen in the case file resulting in issue of communication dated 29.5.2000. Further a perusal of the case file referred

reveals that the applicant signed the forwarding letter and report on 16.2.2000 and not on 17.2.2000. There is no Sl. No. on the forwarding letter and report for January, 2000. Copy of progress report for December, 1999 sent as report for January, 2000. It is also stated that collection of data for review of water-way from CWC required some time. Collection of data and review of water-way of bridges is one of the task to be carried out by SEN/FCW. There has been considerable delay in finalisation of the waterway. the applicant cannot absolve himself of the responsibility by simply tabulating the movement of case file. Also, items and fields of shortcomings involving lack of application, and technical input at the level of applicant pointed out are on record. Verbatim remarks recorded by the Chief Engineer (respondent no.3) in case file No.W/273/0/Pt.XI/W-7 at PP-14 on 30.6.1999 in reference to noting put up are reproduced below which speak of the performance of the applicant-

"There has to be objectivity in one's working. Here object is to minimize charges for wagons used/needed for monsoon reserve. SEN/FCW is not able to appreciate this and apply himself in this direction."

It is further stated that SEN/FCW is responsible for collection of key gauging and scour data at bridge sites of nominated rivers during the monsoon. Data collected is to be submitted to Research Design and Standard Organisation of Ministry of Railway, Lucknow after the monsoon every year. RDSO by their letter No. RRF/F0/2000 dated 15.1.2001 intimated lot of deficiencies in the data submitted for the year 1999-2000. The above fact also reflects lack of

initiative and poor performance on the part of the applicant.

9. That in reply to the statements in para 4.10 and 4.11 it is stated that performance appraisal of the applicant for the year ending 31.03.2000 was verified initially by Respondent No.3. Having verified, adverse entries were allowed to remain in the ACR which were subsequently communicated to the applicant. The respondent no.3 considered the representation dated 6.11.2000 of the applicant dispassionately and disposed the same upholding the adverse remarks. The respondent No.2 considered the representation dated 24.1.2001 of the applicant dispassionately and expunged one item of adverse remarks while upholding other two adverse items. In the light of the material presented in the two representation of the applicant, respondent no.3 and respondent no.2 considered independently the veracity of the adverse remarks appearing in the ACR and upheld the same. Contention of the applicant that the remarks communicated are vague and abstract is baseless and not correct. Performance appraisal is based on the quality of disposal and technical contribution made and not on the number of days of holding of the case files by an individual.

10. That in reply to the statements in para 4.12 it is stated that the applicant has not substantiated any record in the form of appreciation/commendation letter and award etc for his past incredible performances and achievements.

11. That in the facts and circumstances of the case the application deserves to be dismissed with cost.

Verification

I, SUNIL KUMAR SINHA, working as Dy. Chief Personnel Officer (Gaz), N.F.Rly, Maligaon, do hereby verify that, the statements made in the paragraphs 1 to 11 are true to my knowledge.

Guwahati

R.K. Sinha
Signature

6.11.2001

सूनिल कुमार सिंह (टीपू)
Dy. Chief Personnel Officer (Gaz)
पू. द्वीप रोड, गुवाहाटी-781011
E. P. Bld., Guwahati-781011

In The Central Administrative Tribunal

Guwahati Bench :: Guwahati.

O.A. No. 142/2001

Sri T.K. Dey

Vs.

U.O.I. & Ors

In the matter of :-

Rejoinder in reply to the
Written Statement

The humble applicant most respectfully beg to state as under :-

1. That the applicant has gone through the Written Statement filed by the respondents and understood the contents thereof.

2. That in reply to the statements in Written Statement the applicant reiterates the statement in the O.A. and does not admit any statement which are not supported by records.

3. That in reply to the statements in para 3 the applicant reiterates the statements in para 4.4 of the O.A. It is stated that performance of the applicant was quite satisfactory as all the targeted works were completed efficiently well in time. As such question of counseling for improvement does not arise. It is denied that shortcomings and deficiencies were brought to the notice of the applicant verbally. The respondents have brought baseless and false allegation that the applicant displayed a nonchalant attitude of insubordination towards his immediate superior.

Filed by us to opposition
Chhota Bazaar
16/01/2002

2/01/2002

4. That in reply to the statements in paragraph 4 the applicant reiterates the statements made in para 4.5 of the OA.

5. That in reply to the statements in paragraph 6 it is stated that the respondent No.5 issued displeasure letter stating "Compliance desired by 1.5.2000 has been put up on 2.5.2000" i.e. one day late. But the records will reveal that compliance was done on 23.4.2000 i.e. 4 days before the target date.

6. That in reply to the statement in paragraph 8 the applicant humbly submits that the Hon'ble Tribunal may be pleased to call for the File No. W/273/0/Pt.XI/W-7 and cross examine the noting between the applicant and respondent no.3 to arrive at the fact that if the applicant was at all standing on the way of minimising the charges of wagon as quoted by respondent No.3. The Hon'ble Tribunal may also call for the letter of RD60 to know the depth of truthness behind it.

7. That in reply to the statements in paragraph 9 the applicant reiterates the statements in para 4.10 & 4.11 of the OA.

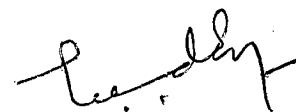
8. That in reply to the statements in paragraph 10 the applicant submits that his performance and achievements were acknowledged and encouraged by General Manager giving award of "OUTSTANDING" performances.

** 3 **

Verification

I, Tarun Kr Dey, Son of Late B. K. Dey, resident of Maligaon, Guwahati-11, do hereby verify that the statements made in the above rejoinder are true to my knowledge and belief.

And I, sign this verification on this 15th day of January, 2002.



Signature