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**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 2005 205/03

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SECTION OFFICER (Judl.)

FORM NO.4  
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWALIATI BENCH

ORDERSHEET

Original Application : 205/03

Mise Petition No. : 96/03

Contempt Petition No. :

Review Application No. :

Applicants:- R. K. Banik

Respondents:- N. O. I. 9058

Advocate for the Applicants:- K. Paul, A. Samanta, J. P. Chakraborty

Advocate for the Respondents:- D. K. Dey  
Railway Counsel

Notes of the Registry	Date	Order of the Tribunal
<p>✓ This application is in form but not in time for Contempt Petition is filed, not in C. E. for 15 days. Dated 12.3.03.</p> <p>Ref No 59435570</p>	2.9.03	<p>Issue notice on the respondents to show cause as to why the delay for filing of O.A. should not be condoned. Returnable by three weeks.</p> <p>List on 25.9.03 for admission alongwith O.A. No. 205 of 03.</p>
<p>By, Registrar</p> <p>1m</p> <p>Step taken alongwith envelope.</p> <p>25.9.2003</p> <p>Notice prepared alongwith R.P. Wd. D/No. 18/99-1902 Dtd 4/9/03.</p> <p>4/9/03</p>		<p>K. P. Deka Member</p> <p>Vice-Chairman</p> <p>On the prayer made on behalf of Mr. S. Sengupta, learned Rly. Standing counsel the case is listed after ten days.</p> <p>List the case on 21.10.2003 for admission.</p>
	bb	<p>K. P. Deka Member</p> <p>Vice-Chairman</p> <p>Agreed. 6.30.10.03 B70</p>
	21.10.03	

(2)

30.10.2003

Heard Mr.K.Paul, learned counsel for the applicant and also Mr.S.Sengupta learned Standing counsel for the Railway

Adv. counsel has been heard appearance.

19/12/03

The application is admitted, call for the record.

Respondents are directed to file written statement within four weeks time

List the case on 3.12.2003 for written statement.

No written statement has been filed.

bb



vice-Chairman

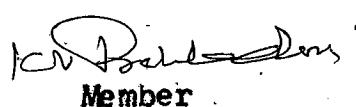
May  
23.12.03.

24.12.2003 Present : The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.

The Hon'ble Mr. K.V. Prah-  
ladan, Member (A).

Mr. S. Sengupta, learned counsel appearing on behalf of the Respondents prayed for time to file written statement. Let the written statement be filed within three weeks, failing which no such written statement will be accepted. Rejoinder, if any, be filed within two weeks after service of copy of the written statement to the counsel for the applicant.

Let the matter appear on 19.1.2004 for hearing.



Member



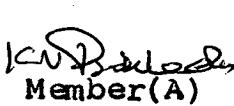
Vice-Chairman

mb

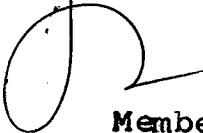
19.1.2004 Present: The Hon'ble Shri Bharat Bhushan Judicial Member.

The Hon'ble Shri K.V.Prahadan Administrative Member.

None for the applicant and Mr.S.Sengupta, learned Railway Standing counsel for the respondents. Mr.S.Sengupta seeks three weeks time to file written statement. <sup>Allow</sup> Accordingly list it on 13.2.2004 again for hearing.



Member (A)



Member (J)

bb

(3)

10.5.2004 present: The Hon'ble Shri Mukesh Kumar Gupta, Member (J).

The Hon'ble Shri K.V.Prahladan Member (A).

10/6/04

No written statement has been filed.

VS  
10/6/04

11.6.04

WS filed by the Respondents.

Phd

K. P. Dinesh  
Member (A)

M.S.  
Member (J)

bb

11.6.2004

Written statement has been filed by the Respondents. List on 30.6.2004 for hearing.

K.V. Sachidanand  
Member (A)

mb

20.7.2004 Present: The Hon'ble Shri K.V.Sachidanand, Member (J).

The Hon'ble Shri K.V.Prahladan Member (A).

Heard learned counsel for the parties.  
Order passed separately.

K. P. Dinesh  
Member (A)

V  
Member (J)

bb

29.6.04

Rejoinder filed by applicant.

Phd

16.8.04

Copy of the order has been sent to the office for issuing the same to the applicant as well as to the Adv. Advocate.

23. 12. 09

Compliance of indent

SD 20/3 July 2009. In  
64 205/03 has been  
received from the  
ASST, Personnel Officer/LC  
for General Manager (P)/MLG.

John

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. / RXX No. 111 205 of 2003

DATE OF DECISION 20.7.2004.

• R.K.Banik.....APPLICANT(S).

• Mr.K.Paul.. A.Sarma.. J.P.Chauhan & D.K.Dey.....ADVOCATE FOR THE  
APPLICANT(S).

-VERSUS-

• U.O.I... & Ors.....RESPONDENT(S)

• Mr.S.Sengupta.. Railway.counsel.....ADVOCATE FOR THE  
RESPONDENT(S).

THE HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER.

THE HON'BLE K. V. PRAHLADAN, 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 Member (J).

X

CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATTI BENCH.

Original Application No.205 of 2003.

Date of Order : This, 20th Day of July, 2004.

THE HON'BLE SHRI K. V. SACHIDANANDAR, JUDICIAL MEMBER.

THE HON'BLE SHRI K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Shri Rajib Kumar Banik  
S/o Shri Jagadish Chandra Banik  
Sr.Section Engineer/Bridge/Headquarters  
Office of the Deputy Chief Engineer/Bridge Line/Maligaon  
N.F.Railway, Guwahati. . . . . Applicant.

By Advocates Mr.K.Paul, A.Sarma, J.P.Chauhan & D.K.Dey.

- Versus -

1. The Union of India  
Represented by the General Manager  
Maligaon, Guwahati-11.
2. The General Manager  
N.F.Railway, Maligaon.
3. The Chief Engineer  
N.F.Railway, Maligaon  
(Redesignated as Principal Chief  
Engineer, N.F.Railway, Maligaon).
4. The Deputy Chief Engineer  
(Bridge Line), N.F.Railway  
Maligaon, Guwahati-11. . . . . Respondents.

By Mr.S.Sengupta, Railway counsel.

O R D E R (ORAL)

SACHIDANANDAN, K.V., MEMBER(J):

The applicant, now working as Sr. Section Engineer/Bridge/Headquarter in the Office of the Deputy Chief Engineer, Bridge Line, N.F.Railway, is aggrieved by Annexure-A dated 4.12.2001 and Annexure-C dated 12.6.2002 against the adverse remarks that has been drawn in his Annual Confidential Report for the year ending 31.3.2001.

 Contd./2

The applicant has filed this O.A. seeking the following reliefs:-

- i) To expunge the adverse remarks recorded in the ACR of the applicant for the year ending 31.3.2001 which was communicated to the applicant, vide communication No. CE/SS/13/ADV/2001 dated 04.12.2001, issued by the General Manager, (Works), N.F.Railway, Maligaon, and to grant all other consequential relief.
- ii) To set aside and quash the impugned order passed by the General Manager (Works), N.F.Railway and conveyed vide communication No. CE/SS/13/ADV/2001 dated 04.12.2001 (Annexure-'A') whereby certain adverse remarks were recorded in the ACR of the applicant for the year ending 31.3.2001.
- iii) To set aside and quash the impugned order passed by the General Manager, Works, N.F.Railway, and conveyed vide communication No. CE/SS/13/2001 dated 12.06.2002 (Annexure-'C') whereby the representation submitted by the applicant against the said adverse remarks, was rejected.
- iv) Any other relief or reliefs to which the applicant is entitled under the facts and circumstances of the case."

2. The applicant in the O.A. contended that he was never given an opportunity to improve upon himself in writing by the respondents and the ACR has been drawn against the facts of the case. He has pleaded that the observations made in the impugned orders that the bridge database have not been properly updated and prepared and bridge statistics is not proper and failed to convert bridge data to MS-Access as directed are not correct.

3. Respondents have filed detailed reply statement contending that the applicant was given sufficient counselling. In the circumstances, there is no need to give

a personal letter since the matter is within his personal knowledge, but the applicant never tried to improve his performance.

4. We have given due consideration to the materials placed on record. We have heard Mr.K.Paul, learned counsel for the applicant and also Mr.S.Sengupta, learned counsel for the Railways. Learned counsel for the applicant has taken us as to various pleadings and we have given due consideration. He has also drawn our attention to the circular issued by the General Manager under Section 161<sup>a</sup> of the Indian Railway Establishment Code in consonance with Article 309 of the Constitution. He referred to the Annexure-E dated 11.5.1988 as well as Annexure-F dated 24.1.1994 and submitted that they are binding on the respondents and such procedures have not been followed by them. Therefore, much prejudice have been caused to the applicant in recording adverse remarks in his ACR. Mr. S. Sengupta, learned Railway counsel, on the other hand, submitted that he has made clear in the reply statement that the applicant was not diligent in discharging his duties and having held a responsible position the deficiencies are to be seriously viewed, which affect the policy and safety of the organisation.

5. However, when the matter came up for hearing, learned counsel for the applicant submitted that he has made an appeal dated 18.9.2002 to the General Manager, which is yet to be disposed of. The version of the

respondents is that such appeal has not been received by them at all. On perusal of Annexure-E dated 11.5.1988 the circular we find that there is clear provision for filing appeal which is as follows on the subject "COMMUNICATION OF ADVERSE CONFIDENTIAL REPORTS":-

"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.

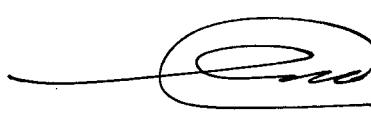
vi) No appeal against the rejection of the representation should be allowed six months after such representation."

6. Considering the entire aspects we find that the deficiencies that has been communicated in the impugned orders are exclusively technical/expertised matter and we are of the view that if the appeal dated 18.9.2002 i.e. Annexure-'D' is disposed of by the Chief Engineer, N.F.Railway, Maligaon, it will suffice ends of justice. We make it clear that the contention that the appeal has not been received by the respondents is of no consequence, and we direct the applicant to send a copy of the aforesaid appeal or he is at liberty to enlarge his prayers by submitting a fresh/comprehensive appeal to respondent No.3, within a time frame of one week from the date of receipt of this order. If such application is submitted, the 3rd respondent i.e.

the Principal/Chief Engineer, N.F.Railway, Maligaon or any other competent authority authorized by him shall dispose of the same within a time frame of two months thereafter with reference to rules, circulars, guidelines and precedence governing the subject, as if the appeal is filed within time.

With the above directions/observations, the O.A. is disposed of at this stage. In the circumstances no order as to costs.

  
( K.V.PRAHLADAN )  
ADMINISTRATIVE MEMBER

  
( K.V.SACHIDANANDAN )  
JUDICIAL MEMBER

BB

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: GUWAHATI Bench

(An application under section 19 of the Administrative Tribunals Act, 1985)

ORIGINAL APPLICATION NO. OF 2003

SHRI RAJIB KUMAR BANIK ..... APPLICANT

- Versus -

UNION OF INDIA & ORS ..... RESPONDENTS

I N D E X

SL. NO.	PARTICULARS OF DOCUMENTS	ANNEXURE NO.	PAGE NO.
01	App-lication		
02	Communication dated 04-12-2001 regarding the adverse remarks.	A	- 31
03	Representation Dated 04-01-2002 against the adverse remarks.	B	- 32-34
04	Communication Dated 12-06-2002 rejecting the representation against adverse remarks.	C	- 35
05	Appeal Dated 18-09-2002 against the rejection of representation.	D	- 36 -38
06	Circular No. E/54/CON/P-III. Dated 11-05-1988, regarding the communication of adverse Confidential report.	E	- 39 - 41
07	Circular No. E/54/1/CON/ Part-IV Dated 24-01-1994, regarding the writing of confidential report.	F	- 42-46
08	Circular No. E/54/1/CON/Part-IV Dated 28-05-1998, regarding grading on the basis of remarks in the ACR.	G	- 47-48

Contd... (2).

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-( 2 )-

SL NO.	PARTICULARS OF DOCUMENTS	ANNEXURE I NO.	PAGE NO.
09	Memorandum No. W/SS/CON/AWD/PT-III Dated 21-03-2001, announcing cash award.	H	— 49-50
10	Circular No. E(GP)87/2/123 Dated 19-09-1998 regarding marks to be awarded against record of service.	I	— 51-52

*Rajib Kumar Banik*

SIGNATURE OF THE APPLICANT

FOR USE IN TRIBUNAL'S OFFICE

Date of filing :-

Registration No:-

Registrar

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI:::BENCH

O.A. NO. OF 2003

Filed by -  
Rajib Kumar Banik

Through Advocate Jyoti Samanta  
Date 01/09/03

BETWEEN :- Shri Rajib Kumar Banik,  
Son of Shri Jagadish Chandra Banik,  
Sr. Section Engineer/Bridge/Headquarters,  
Office of the Deputy Chief Engineer/Bridge-line/  
Maligaon, N.F. Railway.

- APPLICANT - APPLICANT

3. - A N D -

1. The Union of India  
represented by the General Manager  
Maligaon, Guwahati-11.
2. The General Manager,  
N.F. Railway, Maligaon.
3. The Chief Engineer,  
N.F. Railway Maligaon.  
(Redesignated as Principal Chief  
Engineer, N.F. Railway, Maligaon)
4. The Deputy Chief Engineer,  
(Bridge Line), N.F. Railway,  
Maligaon, Guwahati-11.

- RESPONDENTS.

1) PARTICULARS OF THE ORDER AGAINST WHICH THE  
PETITION IS FILED :-

The instant application is directed against  
the communication No. CE/SS/13/ADV/2001 Dated 04-12-2001

Contd.....(2).

issued by the General Manager, Works, N.F. Railway, Maligaon whereby the applicant was informed that certain adverse remarks have been recorded in Annual Confidential Report for the year ending 31-03-2001, as well as the order conveyed vide communication No. CE/SS/13/ADV/2001 Dated 12-06-2002, whereby the representation submitted by the applicant against the adverse remarks, was rejected by the said authority.

**2) JURISDICTION OF THE TRIBUNAL**

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 he could not submit the application within the limitation period prescribed in section 21 of the Administrative Tribunal's Act 1985 as he prepared an appeal on 18-09-2002 to the Chief Engineer N.F. Railway, Maligaon, against the order rejecting his representation against the adverse remarks. The applicant has filed a miscellaneous 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 as such is entitled to all the rights, protection and privileges guaranteed under the constitution of India .

4.2. That the instant application has been filed by the applicant making a grievance against the recording of adverse remark in Annual Confidential Report for the year ending 31-03-2001, without issuing any warning to the

applicant as required under the provisions of Rule 1608 of the Indian Railway Establishment code and without observing the procedure as enumerated in the Circular No. E/54/CON/P-III Dated 11-05-1988 and No. E/54/I/CON/Part-IV Dated 24-01-1994. The applicant is also aggrieved by the non-speaking order rejecting his representation, against the recording of the adverse remarks.

4.3. That the petitioner states that he received a communication from the General Manager (Works) N.F. Railway Maligaon bearing No. CE/SS/13/ADV/2001 Dated 04-12-2001 whereby the petitioner was informed that the following adverse remark appear in his confidential Report for the year ending 31-03-2001:-

<p><b><u>"PART-IV</u></b> Do you agree with</p> <p>(3) the assessment of the officer given by the Reporting Officer ?(In case of disagreement, please specify the the reasons) Is there anything you wish to modify or add ?</p> <p>(5) General Remarks with specific comments about the General Remarks given by the reporting officer and remarks about the meritorious work of the officer including the grading.</p>	<p>The bridge data base have not been properly up-dated and prepared. Bridge Statistics is not proper.</p> <p>Lack of Initiative Leaves job half-done Failed to convert bridge data to MS ACCESS as directed."</p>
--	--

The petitioner was further informed that if he wished to file representation against this communication of adverse remark, he should do so within a period of one month.

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A copy of the aforesaid communication dated 04-12-2001 is annexed hereto and marked as Annexure - 'A'.

4.4. That the petitioner submitted a representation dated 04-01-2002 addressed to the Chief Engineer, N.F. Railway, Maligaon against the communication of Adverse remark in ACR for the year ending 31-03-2001. With regard to the first point of item No. Part-IV(3) of the adverse remark, the applicant ~~said~~ <sup>stated</sup> that the bridge list is updated/ corrected on computer on the regular basis and there was no short fall during that period on the part of the applicant. He explained that computerization of bridge list totally depends on the availability of the latest bridge data of the Head quarter. The bridge list was computerized on the basis of corrected data at Head Quarter which is done after checking the completion plan of bridges and other relevant bridge drawings in Office. The bridge data, as found at Head Quarter, are not sufficient to fill up all the fields in accordance with the RDSO's format. Besides, some more fields are added to the bridge list as per instruction of CBE and most of the field data are not available at Head Quarter level. As such, divisions had been advised number of times to furnish the latest corrected bridge list to Head Quarter filling up all the fields so that bridge list in Chief Engineer's office can be up-dated/corrected accordingly. In this context a number of correspondence have been made from Head quarter and telephonic instruction were also given

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from time to time (the relevant letters, documents and the statements were filed in the Bridge policy File) But unfortunately, minor action has been taken up after sending incomplete bridge list to Head Quarter in a hand copy and in a Computer Floppy. The corrected bridge data which are send partially are fully updated/corrected and stored in computer in proper time. The Assistant Engineer/ER, Assistant Engineer/BR/SPL and the Deputy Chief Engineer/BD are fully aware of the above facts.

Regarding the second point of item No. PART-IV(5) the applicant replied that the said allegation is totally wrong and unjustified. During his tenure in Chief Engineer's office, the applicant did all types of Computer works to the satisfaction of his superior. The applicant never left the job without finishing the work. The applicant personally finished his job without looking at the time if necessary. The applicant had to remain beyond office hours and it is almost regular feature to remain after Office hour so that the work can be finished in time. The applicant had to attend office almost on all saturdays and some times on Sunday also as and when his superiors called him. For this the applicant was rewarded several times in CE Level for good work in Computer.

The applicant further stated that he was never asked/warned and no explanation was called for what reasons the bridge list was not completed. With regard to storing of bridge data in MS-Access, the entire data of bridge list of N.F. Railway is converted in to MS-Access and a sample of this was shown to the Deputy Chief Engineer/BD for necessary changing of design /format. But the report was not possible to print out due to excess of fields in the bridge list.

Rajib Kumar Banik

However the bridge list in d base-III format~~s~~ were printed out and sent to all division in time.

Based on the aforesaid facts, the applicant requested the competent authority to expunge the adverse remarks made in this ACR.

A copy of the representation Dated 04-01-2002 is annexed hereto and marked as Annexure-'B'.

4.5. That with reference to the representation Dated 04-01-2002, the applicant was informed vide communication No. CE/SS/13/ADV/2001 Dated 12-06-2002 issued from the office of the General Manager (Works)N.F. Railway, Maligaon, that the deficiency were brought to the notice of the applicant with the sole ~~purp~~ purpose to make himself aware of the same so that he can work to improve his performance and earn better reports. It was also mentioned in this Communication that the applicant has been advised of his short coming not to discourage him.

A copy of the aforesaid communication dated 12-06-2002 is annexed hereto and marked as Annexure-'C'.

4.6. That the applicant states that paragraph 8.3 of the Master circular on Confidential Report on Non Gageted Railway Servants published by the Government of India, Ministry of Railways (Railway Board) allows memorial or appeal to be filed within 6(six) months against the rejection of representation against adverse remarks.

The applicant preferred an appeal dated 18-09-2002 before the competent authority against the communication dated

12-06-2002, rejecting the representation filed by the applicant against the adverse remarks. The said appeal was filed within the stipulated period of six months. The applicant stated that the order by which his representation against adverse remarks was rejected, is a non-speaking one. The adverse remarks were not based on facts and, therefore, the applicant requested the authority concerned to expunge them.

Copy

A copy of the said appeal dated 18-09-2002 is annexed hereto and marked as Annexure-'D'.

4.7. That the applicant states that the respondents are yet to consider and dispose of the appeal dated 18-09-2002 against the rejection of his representation, although it was filed within the stipulated period, as provided in paragraph 8.3 of the Master Circular on Confidential Report. This provision finds reference in the Railway Board's letters No. E(NG) II/75/CR1 Dated 06-01-1977, E(NG) II/78/CR/2 Dated 10-11-1978 and E(NG) I/81/CR/5 Dated 26/30-09-1981. The respondents did not pass any order on the appeal filed by the applicant even after the expiry of more than six months. It may be pertinent to mention here that the aforesaid provision is also referred to in the circular No. E/54/CON/P-III Dated 11-05-1988 at paragraph 5(VI), and the same has been annexed as Annexure-'E' to this application.

4.8. That the applicant states that the procedure for recording adverse remarks is laid down in chapter XVI of the Indian Railway Establishment Code, issued by the President in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution of India. Rule 1608 of the Indian Railway Establishment code stipulates that no unfavourable Confidential Report should be given 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 the Railway Servant the direction in which his work has been unsatisfactory or the faults of character or temperament etc. which require to be remedied. 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 broughtout.

In the present case, respondents did not give any opportunity to the applicant pointing out the direction in which his work has been unsatisfactory or the faults of character or temperament, etc. which required to be remedied, before making the Adverse confidential Report.

4.9. That Rule 1619 of the Indian Railway Establishment Code provides that General Manager may frame detailed rules for the preparation, submission and disposal of confidential reports on non-gazetted railway servants. Accordingly, the General Manager, personnel, N.F. Railway, Maligaon, Guwahati-11 issued a circular dated 11-05-1988 vide No. E/54/CON/P-III Regarding the communication of Adverse confidential Report. In Paragraph 2 of this circular, it is stated that while mentioning on the faults and 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. Paragraph-4 of the Circular stipulates that when Adverse Remarks are recorded in Confidential Reports without observing above procedure as well as the provisions of Rule 1608, the remarks have to be expunged. Paragraph 5(V) of the Circular stipulates that all the 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

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Rajib Kumar  
Barik

representation. Paragraph 5(VI) of the circular, quoting Railway Board's instructions in their letter No. E(NG)II/78 CR2 dated 10-11-1978, provides for an appeal against the rejection of representation against adverse remarks, within 6(six)months of such rejection.

In the present case, the reporting officer in the confidential Report did not give any indication what efforts he has made by guidance, admonition etc. to get the defects removed and with what results. Since the adverse remarks were recorded in the Confidential Report without issuing any warning, therefore these remarks have to be expunged, in terms of the above mentioned circular. It may also be noted that the respondents have failed to dispose of the representation against the adverse remark within the period of three months, in clear violation of the Circular. Moreover, the appeal dated 18-09-2002 filed against the rejection of the representation, is yet to be considered and disposed of by the respondents, notwithstanding the fact that it was filed within the period stipulated in the circular.

A copy of the aforementioned circular dated 11-05-1988 is annexed hereto and marked as Annexure-'E'.

4.10. That, the General Manager, personnel, N.F. Railway, Maligaon, Guwahati-II, issued another circular Dated 24-01-1994 vide No. E/54/1/CON/Part-IV, regarding writing of confidential Report and mention of warnings communication of adverse remarks and finalisation thereof. etc. Paragraph-3 of the Circular, issued by the General Manager under Rule 1619 of the Indian Railway Establishment code, stipulates that the officers/senior subordinates, who will be initiating the confidential Reports must from time

Rajib Kumar Banik

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 up to the mark and he requires improvement in any area, 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 cognizance of such warnings and can give him a good report as is warranted on his over all performance. If, however, the overall performance of the staff concerned to be reported is upon has not improved the adverse remarks can be recorded against the relevant items of the confidential report for which the warnings already given to the staff keeping a copy of such warning as a base report to avoid any complaint from the staff that during the year he had never been warned/reprimanded to improve himself and suddenly the adverse remark have appeared in the Confidential report. Paragraph 4.1 of this circular stipulates that any appeal/representation against the adverse remark should be finalised by the competent authority within three months from the date of submission of appeal/representation.

In the instant case, the respondents have failed to issue any warning to the applicant to improve himself before recording the adverse remarks in the Confidential report, in clear violation of the said circular.

A copy of the aforementioned circular dated 24-01-1994 is annexed hereto and marked as Annexure-'F'.

4.11. That, the office of the General Manager, Personnel, N.F. Railway, Maligaon, Guwahati-11, in yet another

circular dated 28-05-1998 vide No. E/54/1/CON/Part-IV, has ~~xxx~~ conveyed the~~s~~ decision of Railway Board, regarding adverse remarks in confidential report. According to the Railway Board's instruction, the grading should invariably be supported by remarks in the body of the report pointing out the deficiencies which should have been communicated to the ~~xx~~ concerned officer during reporting period to enable him to improve his performance. In case, such remarks are not communicated the grading should not be accepted as valid .

In the case of the applicant, since the respondents did not pointed the deficiencies during the reporting period before recording adverse remark in his C.R. therefore such remark can not be accepted as valid.

A copy of the aforementioned circular dated 28-05-1998 is annexed hereto and marked as Annexure-'G'.

4.12. That the applicant states that in his annual confidential report for the year ending 31-03-2001, adverse remarks, such as 'lack of initiative' and 'leaves job half-done' have been recorded. whereas, during the same period, the respondent authority has infact rewarded him by giving him a 'cash Award' in recognition of his devotion to duties and good service. This is evident from the Memorandum No. W/SS/CON/AWD/Pt-III Dated 21-03-2001, issued by the respondent No. 3 wherein the name of the applicant figures at serial No. 47, with a cash award of Rs. 700/- . Therefore, from the above it is clear that the adverse remarks recorded in the confidential report of the applicant , are not based on facts and the said adverse remarks could not have been recorded when in fact the applicant was rewarded in recognition of his devotion to duties and good service.

A copy of the Memorandum dated  
21-03-2001 is annexed hereto and  
marked as ANNEXURE- 'H'.

4.13. That the applicant states that the respondent authority also rewarded him with cash award of Rs. 500/- for his good work at the Computer on 21-01-2001. However the applicant was shocked and surprised to come across some adverse remarks in his annual confidential report regarding the use of computer, covering the same period when infact the applicant was rewarded.

4.14. That, a written examination was held for selection for the post of Assistant Executive Engineer/Group- 'B' . The applicant appeared in the written examination. Thereafter, the Office of the General Manager (P), N.F. Railway, Maligaon, vide communication/ No. E/254/17-Pt-XI(O) Dated 04-06-2003, published a list of 34 persons who have qualified in the written examination. The name of the applicant appears at serial No. 2, in order of merit . The applicant also appeared in the viva-voce test and his performance was ~~xt~~ satisfactory. Therefore, the applicant was under the legitimate expectation that he will be promoted as AEN/Group- 'B' , in view of his position at Serial No. 2 in the list dated 04-06-2003 as well as on the basis of his performance in the viva-voce test. However, the applicant was shocked and surprised to come an office order No. 27/2003(Engg) issued from the Office of the General Manager (P) vide No. E/283/31 Pt-XVIII(O) Dated 18-07-2003, whereby certain persons, who are junior to the applicant and whose names figure below that of the applicant in the merit list dated 04-06-2003, have been promoted as AEN (Group- 'B' ), without his case for promotion being considered.

4.15. That, under Para 204.1 of IREM-Vol-I the written test is designed to adjudge the ~~xxx~~ professional ability of the candidates and viva-voce for adjudging the personality, address, leadership and academic technical qualification and record of service. The distribution of marks are professional ability-50, personality, address, leadership and academic technical qualification-25 and records of service-25. Under 204.6 only in case where written test is not held the professional ability is also to be adjudged in the viva-voce. In terms of Para 204-7 of the IREM, the marks of the record of service should be given on the basis of confidential reports. The Railway Board in circular No. E(GP)87/2/123 Dated 19-09-1998 stipulated that the marks on the record of services would be 5 marks for outstanding, 4 marks for very good, 3 marks for good, 2 marks for average and 1 mark for below average grading. As such the entire 25 marks against record of service are allotted on the basis of grading in section-II of the ACR.

4.16. That the applicant personally met the Chief Engineer, N.E. Railway, Maligaon to ascertain why he was not promoted as AEN(Group-'B')whereas his juniors have already been promoted vide office order dated 18-07-2003. In the discussion that followed, it came to light that the applicant was given one mark less than others because of the adverse remarks in his annual confidential report for the year ending 31-03-2001. The applicant failed to understand as to how the respondent authority could award lesser marks for 'lack of initiative', etc. (as recorded in the confidential report)when covering the same period, the applicant, was infact rewarded in recognition of his devotion to duties and good service, etc.

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4.17. That, the Ministry of Railways (Railway Board) vide circular No. E(GP)87/2/123 Dated 19-09-1998, has notified that an employee to be clarified as 'Fit for promotion', must get a minimum of 15 marks from the last 5 CRS and should have been rated as 'Fit for promotion' in the last CR. Since, the ACR of the applicant for the year ending 31-03-2001 contains adverse remarks, the applicant was given lesser marks and therefore he could not secure his promotion as AEN(Group-B), although he obtained the 2nd position in the merit list prepared on the basis of the marks secured in the written examination. Since the assessment for promotion is based on the confidential report for the last five years, the applicant's chances for promotion will be adversely affected for the said period of five years.

A copy of the aforementioned circular dated 19-09-1998 is annexed hereto and marked as Annexure-'I'.

4.18. That the applicant states that remarks against Part-IV of Section-I of the Confidential Report are not considered while awarding grades for the purpose of promoting a particular Railway Servant. However, in case of the applicant, the remarks made in Part-IV of Section -I, have been taken into consideration and as a result his grading fell down. It may be pertinent to mention here that accordingly to the Railway Board's circular No. E(GP)/87/2/123 Dated 19-09-1998 and 20-04-1989 marks for record of service should be given on the basis of confidential reports for the last 5(five) years. For this purpose, the weighted average of the 5(five) attributes of section II of the ACRs of non-

gazetted staff in grades Rs. 1600-2660/- and above is to be taken . In case of staff where Section II is not available general grading will be taken into account.

4.19. That the applicant states that never in service life any adverse remarks regarding grading in section II of the ACR was communicated to the applicant. In respect of section-I only in the year 2000-2001 in respect item No-3 and 5 of Part-IV some adverse remarks of general nature had been communicated. These adverse remarks were recorded without any warning pointing out the direction in which the applicant's works had been found to be unsatisfactory or indicating the faults of character or temperament which require to be remedied. Besides, the basis of these general remarks were not indicated. The remarks were contrary to the facts, as during the very same financial year of 2000-2001 the applicant was given cash reward of Rs. 700/- vide memorandum dated 21-03-2001 in recognition of his devotion to duties and good service etc. The applicant also received ~~and~~ a reward of Rs. 500/- on 21-01-2001 for computer work.

4.20. That the applicant states that basically two BRIs (Bridge Inspectors) of CE's (Chief Engineer) office were entrusted to update the bridge list data in computer and each BRI was allotted two divisions each. The applicant who was one of the BRI , updated the bridge list in all respect on the basis of availability of bridge data. However, the other BRI could not complete the bridge list in respect of his divisions during the relevant period. Unfortunately, the respondents made adverse remarks in the ACR of the applicant of that particular year, while nothing adverse was recorded in the ACR of the other BRI.

4.21. That the applicant states that he had assumed charge of BRI/Technical during the year 2000-2001 and accordingly he was allotted duty of BRI/Technical, with additional work in the computer. In the ACR of the applicant, there was no adverse remark in respect of his technical duties connected with the bridge. The adverse remarks were recorded only with regard to the computer works which was his additional duty and not the main job.

4.22. That the applicant states that the respondent authority has recorded in the ACR of the applicant that he has failed to convert bridge data to MS-Access, during the period 2000-2001. Thereafter, the applicant was transferred from the Office of the Chief Engineer, Maligaon and posted elsewhere. However, it may be noted that even after the expiry of more than two years, the bridge list is yet to be converted to MS-ACCESS and no action has been taken against those officials who have failed to update the bridge list to MS-Access in computer, till date. Therefore, it can be concluded that the administration is not facing ~~any~~ any difficulty for want of bridge list in MS-Access as because the entire bridge list of N.F. Railway was already completed by the applicant in d base-III Plus during his tenure as BRI/Technical in the office of the Chief Engineer. From the above discussion it follows that the adverse remarks recorded in the ACR of the applicant, are not based on facts and the respondents have taken certain irrelevant and extraneous factors into consideration, while overlooking the relevant ones.

4.23. That the applicant states that at present he is holding the post of SSE (Bridge) (Senior Section Engineer/ Bridge) in the Office of the Deputy Chief Engineer/Bridge-Line,

Maligaon. The applicant joined in this post on 16-11-1998. He has attained stagnation after reaching the maximum in the pay-scale associated with the post of SSE (Bridge). Meanwhile, his juniors have been promoted as AEN (Group-B) (Assistant Executive Engineer, Group-'B') vide order dated 18-07-2003 whereas the applicant has been deprived from the promotional benefit because of the adverse remarks recorded in his ACR for the year ending 31-03-2001. The said adverse remarks are not based on facts rather, they are in contradiction to the official records. The respondents have recorded the adverse remarks in arbitrary and colourable exercise of power in total disregard of the provisions of Rule 1608 of the Indian Railway Establishment code and without observing the procedure enumerated in the circular(s) dated 11-05-1988, 24-01-1994 and other relevant provisions laid down in this regard. The impugned action of the respondents suffers from the vice of discrimination and has violated the fundamental rights of the applicant guaranteed under Articles 14 and 16 of the Constitution of India and the same is also violative of the principles of natural justice and administrative fairplay.

4.24. That the applicant could not approach the Hon'ble Tribunal earlier because he was overwhelmed by some personal tragedies. His elder brother died on 18-05-2003, leaving behind his wife and two minor children. The applicant was busy for their rehabilitation. The applicant's mother is suffering from Cancer and is at the terminal stage. His father who is 90 years old is also bedridden. Besides, the appeal dated 18-09-2002, which was filed by the applicant against the rejection of his representation against the adverse remarks, was also pending before the respondents.

5) GROUNDS FOR RELIEF :-

5.1. For that in view of the facts and circumstances stated above, the impugned orders, conveyed vide communication dated 04-12-2001 and 12-06-2002, are not sustainable.

5.2. For that the respondents have recorded adverse remarks in the annual confidential report of the applicant for the year ending 31-03-2001, without following the procedure laid down for recording the adverse remarks. They have not given any indication as to what efforts were made to remove the defects before recording adverse remarks in the ACR of the applicant. Besides, the respondents have also failed to dispose of the representation against the recording of the adverse remarks, within the stipulated period. The appeal filed by the applicant, against the rejection of his representation, is yet to be finalised. Persons junior to the applicant have been promoted to the higher level but the applicant is yet to be promoted notwithstanding the fact that he has secured the second position in order of merit in the ~~next~~ written examination. The applicant has failed to secure his promotion because his grading fell down due to the adverse remarks in his ACR.

5.3. For that the respondents did not give any opportunity, as required under Rule 1608 of the Indian Railway Establishment code, to the applicant pointing out the direction in which his work has been unsatisfactory or the faults of character or temperament, etc. which required to be remedied, before recording the adverse remarks. The impugned action of the respondents is in clear violation of Rule 1608 of the Indian Railway Establishment code and, is therefore, liable to be interfered with by this Hon'ble Tribunal.

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5.4. For that the respondent authority in the confidential report did not give any indication, as required under the circular dated 11-05-1988, what efforts he has made by guidance, admonition, etc. to get the ~~the~~ defects removed and with what results. Since the adverse remarks were recorded in the confidential report of the applicant, without issuing any warning, therefore, these remarks are to be expunged, in terms of the aforesaid circular. It may also be noted that the respondents have failed to dispose of the representation against the adverse remark within the period of three months, in clear violation of the circular.

5.5. For that the respondents have failed to issue any warning to the applicant to improve himself before recording the adverse remarks in his annual confidential report. This is repugnant to the procedure laid down in the Circular dated 24-01-1994 which stipulates that the officers initiating the ACR 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 up to the mark and requires improvement in any area, he should invariably be given written warning, 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 the warning and can give him a good report. If, however, the performance of the staff concerned has not improved, an adverse remark can be recorded against the relevant item for which the warning has been given to the staff. The circular further stipulates that the representation against the adverse remarks should be finalised by the competent authority within three months from the date of its submission. In the present case, the respondents took more than six months to dispose of the representation submitted by the applicant. Therefore, the impugned

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order(s) conveyed vide communication dated 04-12-2001 and 12-6-2002 are liable to be set aside and quashed and the adverse remarks, be expunged.

5.6. For that the Circular dated 28-05-1998 stipulates that the grading 'Average' should invariably be supported by the remarks on the body of the report pointing out the deficiencies which should have been communicated to the concerned officer during reporting period to enable him to enable him to improve the performance. In case, such remarks are not communicated to the concerned officer the grading of 'Average' should not be accepted as valid. The respondents in clear violation of the circular dated 28-05-1998, recorded adverse remarks in his confidential report without however, pointing out the deficiencies during the reporting period. Based upon such adverse remarks, the applicant's grading was lowered for which he was not promoted to the next higher post of Assistant Executive Engineer, Group-'B'. Therefore, such adverse remarks, recorded in gross violation of the procedure enumerated under the circular, cannot be accepted or valid and are liable to be expunged.

5.7. For that the adverse remarks, recorded in the ACR of the applicant for the year ending 31-03-2001, are not based on records and are contrary to the facts. In the said ACR, adverse remarks, such as 'lack of initiative', 'Leaves job half done', 'failed to convert bridge data to MS-Access as directed', etc., have been recorded. Whereas, during the same period, the respondent authority has infact rewarded him by giving him 'cash Award' in recognition of his devotion to his duties and good service. This is evident from the memorandum dated 21-03-2001 (Annexure-'H'). Moreover the respondent authority also rewarded the applicant with cash

award on 21-01-2001, for satisfactory performance with computer. Therefore, it is clear that the said adverse remarks are not based on facts and the same could not have been recorded when in fact the applicant was rewarded in recognition of his devotion to duties and good service. The impugned action of the respondents in recording the said adverse remarks in the ACR of the applicant, reveals total non-application of mind and an arbitrary and whimsical approach on the part of the respondents to the entire matter.

5.8. For that the respondents committed grave error in considering the remarks against section I Part-IV of the confidential report pertaining to the applicant and lowering the grade for the purpose of promotion based on the said remarks. The Railway Board's circular dated 19-09-1998 and 20-04-1989 make it clear that marks for record of service should be given on the basis of confidential reports for the last 5 years and for this purpose, the weighted average of the 5(five) attributes of Section II of the ACRs of non gazetted staff in grades Rs. 1600-2660/- and above is to be taken. The remarks in Section-I part-IV cannot be used as data of comparative merit when the question of promotion of the applicant arise. No adverse remarks & regarding grading in section II of the ACR has been communicated to the applicant. The impugned action of the respondents in taking into account the adverse remarks in item 3 and 5 of Part-IV of Section I which are of general nature and which have been recorded without any warning and without indicating the basis for recording the said adverse remarks, is repugnant to the circular of the Railway Board and therefore the adverse remarks are liable to be expunged.

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5.9. For that the impugned action of the respondents suffers from the vice of discrimination inasmuch as no adverse remark was recorded in the ACR of the other BRI (Bridge Inspector) in the office of the Chief Engineer, who was entrusted to update the bridge list data in computer in respect of his divisions during the relevant period whereas adverse remarks were ~~is~~ recorded in the ACR of the applicant although he had updated the bridge list in all respect on the basis of the available bridge data for both the divisions assigned to him. Therefore, the said adverse remarks recorded in the ACR of the applicant, is liable for expunction.

5.10. For that the adverse remarks recorded in the ACR of the applicant for the year ending 31-03-2001, are in respect of certain additional work relating to the use of computer. Whatever work, the applicant has been doing on computer is not his parent trade for which he was appointed in the Railways. The applicant had assumed charge of BRI/Technical during the year 2000-2001 and accordingly he was allotted duty of BRI/Technical. In the ACR of the applicant there was no adverse entry in respect of his technical duties connected with the bridges. Hence, the adverse remarks are uncalled for and are liable to be set aside and quashed.

5.11. For that even after the expiry of more than two years, the bridge list is yet to be converted to MS-Access and no action has been taken against those officials who have failed to update the bridge list to MS-Access in computer till date. Therefore, a conclusion ~~can~~ be drawn that the administration is not facing any difficulty for want of bridge list in MS-Access as because the entire bridge list of N.F. Railway was already completed by the applicant in ~~and~~ base-III plus during his tenure as BRI/Technical in the

Office of the Chief Engineer. From this, it follows that the adverse remarks recorded in the ACR of the applicant, are not based on facts and the respondents have taken certain irrelevant and extraneous factors into consideration while ignoring the relevant ones.

5.12. For that the respondents have recorded the adverse remarks in the ACR of the applicant for the year ending 31-03-2001. The said adverse remarks are not based on facts rather, the records of the case suggest that the adverse remarks are simply uncalled for. The respondents have recorded the adverse remarks in arbitrary and colourable exercise of power in total disregard of the provisions of Rule 1608 of the Indian Railway Establishment code and without following the procedure enumerated in the circular(s) dated 11-05-1988, 24-01-1994 and other relevant provisions laid down in this regard. As a result of the adverse remarks, the grading of the applicant fell down and he was not considered for promotion to the next higher post whereas his juniors have been promoted. Besides no adverse remark was recorded in respect of the other person who was responsible for updating bridge list data even though he could not complete the task. The adverse remarks recorded in the ACR of the applicant has seriously injured his prospects. The applicant has attained stagnation after ~~xxx~~ reaching the maximum in the pay scale of SSE (Bridge). The impugned action of the respondents suffers from the vice of illegality and discrimination and it has violated the fundamental ~~rights~~ rights of the applicant guaranteed under Articles 14, 16 and 21 of the Constitution of India. The action complained of is also violative of the principles of natural justice and administrative fairplay.

5.13. For that the respondents have acted unfairly in rejecting the representation dated 04-01-2002 filed by the applicant against the adverse remarks recorded in his ACR. No reasons have been recorded for rejecting the representation vide communication dated 12-06-2002. The impugned order conveyed vide communication 12-06-2002 is a non-speaking one and is not based on facts.

5.14. For that the respondents have acted illegally in failing to dispose of the appeal dated 18-09-2002 preferred by the applicant against the impugned order conveyed vide communication dated 12-06-2002, whereby his representation against the recording of adverse remarks in his ACR, was rejected. The said appeal dated 18-09-2002 is yet to be considered and disposed of by the respondents notwithstanding the fact that it was filed within the period of 6(six) months from the date of rejection of representation against adverse remarks, as prescribed under Paragraph 8.3 of the Master Circular on Confidential Report on Non Gazetted Railway Servants and paragraph 5(VI) of the Circular No. E/54/CON/P-III Dated 11-05-1988 (Annexure-'E').

5.15. For that the respondents have failed to consider relevant materials and have taken note of irrelevant aspects in issuing the impugned order (s) conveyed vide communication dated 04-12-2001 and 12-06-2002. The decision arrived at by the respondents have no nexus with the facts on record and therefore the same can be challenged on merits. The Hon'ble Tribunal may like to examine the decision of the respondents conveyed by the impugned orders, in exercise of the power of judicial review, and be pleased to set aside and quash the same.

5.16. For that the materials on record suggest that assessment of applicant's merit by the respondents is arbitrary and without any factual basis. Hence, the adverse remarks are liable to be expunged.

5.17. For that the adverse remarks recorded in the ACR of the applicant are inconsistent with the records of the case and the reasons ascribed by the authority concerned are self-evident of lack of bonafides in making these remarks. Under these, circumstances, it can be characterised that the remarks are not bonafide made in public interest but is a self serving statement to injure the applicant's prospects in service. The authority concerned has not used due diligence in making the adverse remarks. The power exercised is illegal and it is not expected of from that high responsible officer who made the remarks. He should have eschewed making vague remarks causing jeopardy to the service of the applicant and he ought to have collected all correct and truthful information and given necessary particulars when he seeks to make adverse remarks. Before writing the adverse remarks he should have given prior sufficient opportunity in writing by informing the applicant of the deficiency he noticed for improvement. In spite of the opportunity given if the applicant does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in writing for improvement and yet was not availed of so that it would form part of the record. The power exercised by the respondents is per se illegal and this Hon'ble Tribunal may be pleased to set aside and quash the impugned order(s) conveyed vide communication Dated 04-12-2001 and 12-06-2002 and expunge the adverse remarks.

Contd....(26).

Rajib Kumar Banik

5.18. For that the adverse remarks recorded in the ACR of the applicant is not consistent with law. The applicant received cash award in recognition of his devotion to duties and good service. Under these circumstances, the remarks "lack of initiative" and "leaves job half-done" must be pointed out with reference to specific instances in which he did not perform that duty satisfactorily so that he would have an opportunity to correct himself of the mistake. The applicant ought to have been given an opportunity in the cases where he did not work satisfactorily. No such opportunity was given. Even when the applicant displayed lack of initiative or left job half done, in such circumstances, he ought to have been guided by the respondents as to the manner in which he ought to have acted upon. Since this exercise was not done by the respondents, the said adverse remarks is not consistent with law. The respondents did not act fairly and objectively in assessing the performance of the applicant.

5.19. For that confidential reports are to be recorded objectively and dispassionately with a reformative purpose to enable the public servant to reform himself to improve quality of service and efficiency of the administration. Parochial, sectarian or nepotistic approach would be deleterious to the efficiency of administration and maintenance of discipline in service. In the present case, the adverse remarks in the ACR of the applicant for the year ending 31-03-2001, do disclose such deleterious tendency in writing the confidential report. For the same reporting year, the applicant was on one hand rewarded for his devotion to duties and good service while on the other hand certain adverse remarks were also recording in his ACR. They do demonstrate the lack of objectivity on the part of the respondents in writing the Confidential report. Therefore, the said adverse remarks are liable for expunction.

5.20. For that the officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statements of facts on an overall assessment of performance of the subordinate officer and it should be founded upon facts and circumstances. However, in the present case, the adverse remarks recorded in the ACR of the applicant, reveal non-application of mind on the part of the respondents to the attending facts and circumstances. Hence, the same is liable to be expunged.

5.21. For that the decision to record the adverse remark has not been taken objectively by the respondents and they have ignored the relevant materials before them while taking note of irrelevant ones. Therefore, the impugned action of the respondents in recording the adverse remarks in the ACR of the applicant for the year ending 31-03-2001, is vitiated on account of illegality and unfairness and having no nexus with the material on record.

6) DETAILS OF REMEDY EXHAUSTED :-

The applicant preferred an appeal dated 18-09-2002 against the rejection of his representation against adverse remarks, in terms of paragraph 8.3 of the Master circular on confidential Report on Non-Gazetted Railway Servants published by the Government of India, Ministry of Railways(Railway Board). The said appeal was filed within the period prescribed under the Rules. However, the same has not been finalised till the filing of this application.

7) MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:-

The applicant further declares that he had not previously filed any application, writ petition or suit,

regarding the matter in respect of which this application has been made, before any court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8) RELIEFS SOUGHT :-

Under the circumstances, the applicant respectfully prays that the Hon'ble Tribunal may be pleased to admit this case, call for the records of the case and upon hearing the parties on the cause/causes that may be shown and on perusal of records may be pleased to grant the following relief(s) to the applicant.

- i) To expunge the adverse remarks recorded in the ACR of the applicant for the year ending 31-03-2001 which was communicated to the applicant, vide communication No. CE/SS/13/ADV/2001 Dated 04-12-2001, issued by the General Manager, (Works) N.F. Railway, Maligaon, and to grant all other consequential relief.
- ii) To set aside and quash the impugned order passed by the General Manager (Works)N.F. Railway and conveyed vide communication No. CE/SS/13/ADV/2001 Dated 04-12-2001 (Annexure-'A') whereby certain adverse remarks were recorded in the ACR of the applicant for the year ending 31-03-2001.
- iii) To set aside and quash the impugned order passed by the General Manager, Works, N.F. Railway, and conveyed vide communication No. CE/SS/13/ADV/2001 Dated 12-06-2002 (Annexure-'C') whereby the representation submitted by the applicant against the said adverse remarks , was rejected.
- iv) Any other relief or reliefs to which the applicant is entitled under the facts and circumstances of the case.

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-( 29 )-

9) INTERIM ORDER, IF ANY PRAYED FOR :- NIL

10) THE APPLICATION IS FILED THROUGH ADVOCATES .

11) PARTICULARS OF THE INDIAN POSTAL ORDER

i) IPO No. 5G 43 55 70

ii) Date :- 12-03-03

iii) Payable at :- Guwahati .

12) LIST OF ENCLOSURES :-

As stated in the index.

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VERIFICATION

I, Shri Rajib Kumar Banik, Son of Shri Jagadish Chandra Banik, aged about 45 years, working as Senior Section Engineer/Bridge/Headquarter, Office of the Deputy Chief Engineer/Bridge-Line, N.F. Railway, Maligaon, Guwahati-11, Assam, do hereby verify that the contents of paragraphs 4.1 to 4.24 are true to my personal knowledge and paragraphs 5.1 to 5.21 are believed to be true on legal advice and that I have not suppressed any material fact.

Date : 01/09/03

place: Guwahati

*Rajib Kumar Banik*  
Signature of the applicant.

(CONFIDENTIAL)

N.F.RAILWAY

No.CE/SS/13/ADV/2001

Dated : 4.12.2001

To

Sri R.K.Banik,  
SSE/BR, Bridge Section.

(Through : CDM/(BR.)/MLG  
(SSE/Drg., Bridge Section)

Sub : Adverse remarks in Annual Confidential Report  
for the year ending 31.3.2001.

The following adverse remarks appear in your in your confidential report for the year ended 31.3.2001 :-

PART-IV

(3) Do you agree with the assessment of the officer given by the Reporting Officer? (In case of disagreement, please specify the reasons). Is there anything you wish to modify or add? The bridge database have not been properly updated & prepared. Bridge statistics is not proper.

(5) General remarks with specific comments about the general remarks given by the Reporting Officer and remarks about the meritorious work of the officer including the grading. Lack of initiative. Leaves job half-done. Failed to convert bridge data to MS-Access as directed.

These are being communicated to you not to discourage you in any way, but to enable you to know and rectify your shortcomings so that you may earn a better report next year.

Please acknowledge receipt of this letter on the extra copy enclosed, which should be returned to this office within a fortnight.

Representation, if any, should be preferred within a month of receipt of this letter.

  
for General Manager(Works)  
N.F.Railway, Maligaon

*Certified to be  
true copy -*

*A. Banerjee  
Advocate  
01/03/03*

(CONFIDENTIAL)

No. RKB/Conf/1/02

Date : 04-01-2002

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

Sub:- ACR FOR THE YEAR ENDING 31-03-2001

AS COMMUNICATION OF ADVERSE REMARKS

Ref:- YOUR L/NO. CE/SS/13/ADV/2001 DATED  
04-12-2001

Respected sir,

With due respect, I beg to furnish the para-wise reply of your letter under reference in favour of your information and consideration please.

That sir, in the first point of the item No. Part-IV(3) of the adverse remarks, I want to clarify the actual facts that the bridge list is updated/corrected in computer in a regular basis and nothing is short fall during that period on my part. The Computerization of bridge list totally depends on the availability of the latest bridge data in HQ. The bridge list is computerized on the basis of corrected data at HQ which is done after checking the completion plan of bridges and other relevant bridge drawings in office. The bridge data, as found at HQ are not sufficient to fill up all the fields in accordance with the RDSO's format. Besides, some more fields are added to this bridge list as per instruction of CBE and most of fields data are not available at HQ level.

*Certified to be  
true copy  
Ranjan  
01/09/03*

Contd....(2).

-(2)-

That sir, as such, divisions have been advised in nos. of time to furnish the latest corrected bridge list to HQ filling up all the fields so that bridge list in CE's office can be updated/corrected accordingly. In this context, a nos. of correspondences have been made from HQ and telephonically instructions are also given time to time. (The relevant letters, documents and the statement are filed in the bridge policy file). But unfortunately, a minor action has been taken up after sending incomplete bridge list to HQ in a hard copy and in a computer floppy. The sending corrected bridge data are fully updated /corrected and stored in computer in proper time. I do believe that above facts are fully aware of AEN/Br, AEN/Br/Spl. and Dy. CE/BD also.

That sir, in the second point of item No. Part-IV(5), I will say the allegation is totally wrong and unjustified. During my tenure in CE's office, I have done all types of computer works with the satisfaction with my superior. I have never left the job without finishing the work. I have personally finished my job without looking the time if necessary, I have to remain beyond office hours also and it is almost a regular basis to remain after office hour so that the work can be finished in time. I have to attend the office almost in all Saturday and sometimes in Sunday also as and when ~~xxxxxx~~ my superior asked for. For this, I have been rewarded several times in CE level for good working in computer.

That sir, basically two BRIs are entrusted to complete the bridge list in all respect but unfortunately I have got a confidential letter this time where my adverse remarks are reflected in my ACR. In this context, I will mention that I have never been asked/warned and not a explanation is served to me for what reason the bridge list is not

Contd... (3).

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completed. On the other hand, I have stored all the bridge data of new bridges of new sections constructed by the Construction organisation after getting all information at HQ during that period. There is no deficiency to store the data and in all respect the construction bridge list is computerized accordingly. Therefore, I earnestly request to you to review my adverse ~~x~~ remarks raised in my ACR and to give a suitable judgment in this regards please.

That sir, In case of storing of bridge data in MS-ACCESS, the entire data of bridge list of N.F. Railway is converted into MS-Access for which a sample of this is shown to Dy. CE/BD for necessary changing of design/format. But the report form is not possible to print out due to excess of fields in the bridge list. In practical, I have undergone a ~~xx~~ training in MS-access of 5 days only in NIC/Guahati which is not sufficient knowledge to work in MS-Access. As a result it could not able to prepare and to print out the final bridge list in MS-Access. But the bridge list in dbase-III format are printed out and sent to all divisions in time.

Based on the facts narrated above, I shall request you to kindly expunge the adverse remarks made in my ACR which are not judged properly and are not correct too.

Yours faithfully,

Date : 04-01-2002.

sd/- Illegible

( Rajib Kumar Banik )

SSE/Br/HQ

N.F. Railway..

N.F.Railway

Annexure-C

~~CONFIDENTIAL~~

Headquareters office  
(Works Branch)/Maligaon

No.CE/SS/13/ADV/2001

Dated 12.6.2002

To  
Shri R.K.Banik  
SSE/Br.  
Dy.CE/Br.Line's office  
NF Railway, Maligaon

Sub : Adverse Remarks in your Annual Confidential Reports  
for the year ending 31.3.2001

Ref : Your representation dated 04.01.2002

The Competent Authority has gone through your above representation and has passed the following remarks :

"Deficiencies are brought to the notice of the official with the sole purpose to make aware of the same so that he can work to improve his performance and earn better reports. I am satisfied that the deficiencies communicated are based on the performance observed by IO & RO.

Official has been advised of his shortcomings not to discourage him. He should take note of and improve for earning better reports and contribute actively for enhancing efficiency, quality of output in his field."

*12/6/02*  
( J.Chakraborty )

AEN/BD  
for General Manager(Works)  
N.F.Railway, Maligaon

*Certified to be  
true copy  
John  
Advocate  
01/09/03*

ANNEXURE - 'D'

No. RKB/2/CON/02

Date : 18-09-2002

To

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

Through

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

Sir,

Sub:- Adverse remarks in Annual Confidential  
Report for the year ending 31-03-2001.

Ref:- Your letter No. CE/SS/13/ADV/2001 Dated  
12-06-2002

With reference to your letter quoted above  
which unfortunately is not a speaking reply to my appeal  
dated 04-01-2002, I beg to submit the following points in  
defence of my working ability and the resultant expunging  
of the concerned adverse entries made in the ACR ibid.

That sir, at the outset I would like to draw  
your administrative attention to the fact that though  
hitherto I am officially known as SSE/Br., the duties and its  
nature are totally different from that of a person doing the  
duties on computer, which I have been subjected to do  
unofficially for long 18 years continuously in exigencies of  
service. So whatever work I have been doing on computer is  
not my parent trade work for which I was appointed in Rly  
service through Rly recruitment system. Nevertheless, since  
I have been doing the computer work continuously since the  
inception of computer sets in CE's Office as back as in March,  
1985 or thereabout, I have naturally been more adaptable in  
computer work than in anything else. This impression of my

*Certified to be  
true copy  
Rakesh  
01/09/02*

Contd....(2).

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good working is substantiated by the fact that I have neither been pulled out for any short coming nor, as an extreme measure, have been proposed to be shifted out of computer work and put to other work because of inefficiency.

In this connection ~~sir~~, not only as a matter of common sense but more particularly with reference to the existing Rule, it was for initiating ~~short~~ authority to bring to my knowledge through caution order about the shortcomings in my working, which ultimately might tantamount to reflect as adverse entries in the annual CR at the end of the reporting year. But in the instant case, the initiating authority maintained a ~~pushed~~ silence in the matter and suddenly burst out with adverse remarks in the ACR in question, in total ~~defia~~ defiance of both judiciousness and most importantly the extant rules, as referred to above.

As regards the adverse entries, it is to mention that I always, in response to my natural instinct, keep myself widely awake to the quantum of work that I am entrusted with and with such a positive frame of mind gauging with the time I accomplish my task. Such being the trademark of my working I have always succeeded in completing my work ~~so far~~ to the full satisfaction of my superiors.

As such, keeping the work incomplete or showing lack of initiative in doing the work, as alleged in the ACR has emanated from mere hypothesis only twisting my actual platform of my working ability. My devotion to duty is also evident from the fact that whenever felt necessary I work overtime not only during the working days but also on holidays, only to derive job satisfaction by completing the work successfully.

Contd.....(3).

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Moreover sir, the adverse entries in the ACR on me for the year ending 2000-01, as mentioned above, have given rise to some doubt as to the correct assessment of my working ability. As a matter of a very plain fact, it is merely because of my satisfactory working during the year 2000-01 itself that I was given cash award of Rs. 700/- along with others by GM(W)/MLG's Memorandum No. W/SS/CON/AWD/Pt-III

Dated 21-03-2001.

Sir, in the light of what are explained above in a logical pattern, it boils down to the fact that the adverse entries in the ACR are based on absolute fallacy only, I therefore, earnestly pray to you to kindly expunge the adverse entries so as to bring about justice in the matter and arouse impetus in essential technical official like me as SSE/Br/HQ.

Yours faithfully,

( Rajib Kumar Banik )  
SSE/Br/HQ

Confidential

Office of the  
General Manager, Personnel  
Northeast Frontier Railway,  
Maligaon, Guwahati-781011

No. E/54/CON/P-III

Date : 11-5-88.

To,  
All Heads of Department.

Sub : COMMUNICATION OF ADVERSE CONFIDENTIAL REPORTS.

It was decided in the 49<sup>th</sup> PNM meeting at item-26 to reiterate the extent 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. E55 CR 3 3 dt. 9-8-55-communicated under GM(P)/N.E.Railway's No. E(SS)19-75 dt. 21-11-55 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

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Bhattacharya  
01/09/03*

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 communicated. Where the Superior Officer so decides, a specific order to this effect should be recorded by him.

3. Further to the above, instruction on the above subject communicated under this office Confdl Letter No. E/54/Con/Pt.II dated 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 onfdl. 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/78CR2 dt. 10-11-78 circulated under this office letter No. E/54/Con/ Pt.III dated 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 record to that effect should be kept in the CR dossier of the Railway servants concerned.

IV) Only one representations against adverse remarks (including reference to 'warning' or communication of displeasure of the Railway Administration or 'reprimands' which are recorded in the confidential report of the Railway servants) 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.

8. Any remarks describing as "Adverse" wither the performance or any other quality of the Railway servant should not be treated as adverse remarks.

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

Sd/-

( S.P.S Jain )

C.P.O/T&M

N.F.Railway/MLG,

Confidential

Office of the  
General Manager, Personnel  
Northeast Frontier Railway,  
Maligaon, Guwahati-781011

No. E/54/1/CON/P-IV

Dated January 24, 1994.

All PHODs/HODs/DRMs/ADRMs,  
All Dist. & Asstt. Officers of Non-Divr.sd. Officers,  
All Sr.DPOs/DPO,  
All Controlling Officers of Rly. Schools/NJP, SGUJ, APDJ,  
LMG and BPB, MLG.  
All Principals, Rly. Schools/SGUJ, NJP, APDJ, MLG, LMG, TSK,  
BPB, NVP/MLG.  
All Dy.CPOs, SPOs, APOs in Hdqrs. Office,  
N.F.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  
E/54/Con/Pt. III dated 28-7-81, 20-7-83, 13-3-84,  
16-4-85, 11-5-88 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 finalized 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

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Dhruv  
01/09/03*

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 3.1.81). 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 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 prescribed time limit of one month, such appeal/ representation should be finalized 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.
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 grade Rs. 1400-2300/- or in similar scale both at Headquarters and at divisions/ units.

7.2 Fy. Heads of Department.

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

7.3 HOD/ADRM/DRM

For staff in scale Rs. 1600-2660/- and above.

7.4 PHOD/HOD/DRM/ADRM

For staff who are directly attached to them and where the PHOD/DRM/HOD/ADRM himself is the accepting authority, the CR can be initiated and finalized 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. PAs/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.

DA : As above.

Sd/-  
for General Manager (P)  
N.F.Railway, Maligaon

Copy of Board's letter No. E(NG) 1-81-CR-8 dated 31.8.81/22.9.81 circulated under GM/P/Maligaon's letter No. E/54/Con/Pt-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/- D.D. Aggarwal,  
Jt. Director, Establishment,  
Railway Board/New Delhi.

Copy of Ministry of Home Affairs' O.M 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 criticize 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 found satisfactory. If, however, the reporting authority ~~comes to the conclusion that~~ <sup>comes to the conclusion that</sup> 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, <sup>✓</sup> of the warning/

Officer hasn't  
improved

disposition/ 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.

A N N E X U R E - 'G'

(Confidential)

N.F. RAILWAY  
OFFICE OF THE GENERAL MANAGER (PERSONNEL) : : : : : MALIGAON  
GUWAHATI 781 011

No. E/54/1/CON/PT-IV/

Dated 28-05-1998

To  
All PHODs  
All DRMs

Sub:- ADVERSE REMARKS ON CONFIDENTIAL REPORTS  
ON OFFICERS.

Instructions contained in Shri D.P. Tripathi, Secretary, Railway Board's Confidential D.O. letter No. 98/209/SECY/ADMIN Dated 06-04-1998 are appended below for your information and guidance.

"..... Board have noted that in most cases existing instructions regarding communication of adverse remarks have not been properly followed and the Average' grading is either not supported by remarks given in the body of the report or if supported by adverse remarks in the report the said remarks are not communicated.

Board have now decided that the grading 'Average' should invariably be supported by remarks in the body of the report pointing out deficiencies which should have been communicated to the concerned Officer during reporting period to enable him to improve his performance. In case such remarks are not communicated to the concerned officer, the

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Recd. date  
03/09/03*

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grading of 'Average' should not be accepted as valid.

Sd/- Illegible

18-05-1998

( N. Misra )

E.A. to CPO,

For General Manager (P)

Copy to:-

- 1) Dy. CPOs- IR, HQ
- 2) Sr. DPOs - KIR APDJ
- 3) DPOs- LMG TSK SPOs - HQ PQ RP T M W S
- 4) APOs- DBWS NBQS C M E G & S Gaz

Sd/- Illegible

For General Manager (P)

N. E. RAILWAY

MEMORANDUM

Chief Planning & Design Engineer, N. E. Railway, Maligaon has accorded his sanction to the grant of Cash Award of Rs. 26,200/- (Rupees twenty six thousand two hundred) only in favour of the following 49 Nos. of staff of CE's office, Maligaon in recognition of their devotion to duties and good service etc.

SN	NAME	DESIGNATION	AMOUNT RECOMMENDED (RS.)
1	Sri T. Roy Sutradhar	CI	1000/-
2	Smt. Kaushalya Swargiary	OS/I	750/-
3	Sri I.M. Kakati	Hd. Clerk	500/-
4	Sri Puran Bahadur	Hd. Clerk	750/-
5	Sri Pradip Kr. Dey	Hd. Clerk	750/-
6	Sri P. D. Deka	Hd. Clerk	500/-
7	Smt. Loni Borah	Hd. Clerk	500/-
8	Sri D.P. Bhattacherjee	Hd. Clerk	750/-
9	Sri H.K. Das	Hd. Clerk	500/-
10	Sri J.L. Sahani	Jr. Clerk	750/-
11	Sri Banamali Debnath	Jr. Clerk	500/-
12	Sri K.R. Sharma	R/S	500/-
13	Sri Banamali Nayak	Jr. Peon	500/-
14	Sri B.K. Chakraborty	DEO	500/-
15	Sri Ashish Achherjee	DEO	500/-
16	Sri Manash Majumder	DEO	500/-
17	Sri Rasuan Ali	Hd. Clerk	500/-
18	Sri Kartik Das	Jr. Clerk	500/-
19	Smt. Sipra Dutta	OS/II	500/-
20	Shri Ratneswar Swargiary	Hd. Clerk	500/-
21	Smt. Purnima Mukherjee	JE/I	350/-
22	Smt. Runni Das	JE/II	350/-
23	Sri T.K. Kalita	JE/I	350/-
24	Smt. Malabika Debidoloi	ADM	350/-
25	Smt. Sumita Saiba	JE/II	350/-
26	Sri Nirupama Pathak	JE/II	350/-
27	Sri S. Talukder	JE/II	350/-
28	Sri Dilip Seal	JE/II	700/-
29	Sri S.K. Dey	JE/I	700/-
30	Smt. Meenakshi Pujari	JE/II	350/-
31	Smt. Rinkuani Das	JE/II	350/-
32	Sri Jayanta Chakraborty	SE/Br. Sec.	700/-
33	Sri Hemanta Das	SE/Br. Sec.	700/-
34	Sri Jatin Deka	JE/Br. Sec.	700/-

Certified to be

True Copy

Amrit  
(Signature)

(Date)  
02/09/2023

35	Smt. Mousami Roy	CDM/Estt.	700/-
36	Smt. Arun-Dasgupta	SE/clone	350/-
37	Sri Manoj Patgiri	JE/II	500/-
38	Sri Arindam Sengupta	JE/II	500/-
39	Sri S. Bose	SE/Planning	700/-
40	Sri S.K. Roy	JE/I	500/-
41	Sri T. Swargiary	SE	500/-
42	Sri Bhuban Ch. Das	JE/I	500/-
43	Sri P.K. Singha	JE/I	500/-
44	Sri Bipul Kr. Das	SE/Track	500/-
45	Sri R.N. Chaudhury	SE/TM	500/-
46	Sri M.C. Pawgam	ADM	350/-
47	Sri R.K. Banik	SE/Br.	700/-
48	Sri Manoranjan Rajbongshi	St.Clerk	500/-
49	Sri Sadhan Ghosh	OS/II	500/-
		TOTAL	26,200/-

(Rupees twenty six thousand two hundred) only

Necessary Fund is available in the existing allotment under Demand No. 12(K-681-99) during 2000-2001.

for Chief Engineer  
N. E. Railway, Maligaon

Dated: 21/03/2001

No. W/SS/CON/AWD/PL/III

Copy forwarded for information and necessary action to :-

1. FA & CAO/Maligaon
2. Secy. To CE
3. Chief OS/W/Maligaon
4. OS/W-5 section in CE's office/Maligaon

for Chief Engineer  
N. E. Railway, Maligaon

ANNEXURE - 'I'

GOVT. OF INDIA  
(MINISTRY OF RAILWAYS )  
(RAILWAY BOARD)

NO. E(GP)87/2/123

New Delhi , Dated 19-09-1998

The General Manager,

All Indian Railways including CLW, DLW, ACF,  
and wheel & Axle Plant.

Sub:- PROMOTION FROM CLASS III TO  
CLASS II SERVICE-AWARDING MARKS  
AGAINST RECORD OF SERVICE

The Board have issued instructions from time to time bearing on the procedure to be followed in regard to class II selections on Railways. They have recently had under consideration the question of ~~as~~ simplifying these instructions so as to ensure that there are no material variations in the practices followed on various Railways awarding marks for records of service. They have accordingly decided that the undermentioned procedure should be followed:-

Assesement :-

- i) Assessment should be based on confidential report for the last five years.
- ii) Marks should be given as under for maximum of 25 marks covering five CRS.

Outstanding : 5 Marks

Very good : 4 "

Good : 3 "

Good/Not fit : 2.5 "

Average : 2 "

Below average : 1 "

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John  
01/09/03

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Note :

- i) The classification not fit/not yet fit in the last 3 CRS will earn 2.5 points but in the first two CRS such classification will earn 3 points.
- ii) The above criteria/procedure for awarding marks is applicable to the selections against 75% of the vacancies. For others the marks will be doubled.
- 3) In order to be classified as 'fit for promotion' an employee must get a minimum of 15 marks from the last 5 CRS and should have been rated as 'Fit for promotion' in the last CR. Also 'average or Not fit' rating in the last CR should be treated as 'Grey Arms' irrespective of the points obtained.
- 4) It has also been decided that the mark should not be allotted just based on the final gradings given but the whole C.R. should be read by the committee and the gradings arrived at for giving the marks.

Please acknowledge receipt.

Sd/- P.R. Kohli,

Joint Director, Establishment  
(Con) Railway Board.

VAKALATNAMA

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

ORIGINAL APPLICATION NO. OF 2003.

Shri Rajib Kumar Banik. .... APPLICANT.  
-Vs-  
Union of India & Ors. .... RESPONDENTS.

Know all men by these presents that the above named applicant Sri Rajib Kumar Banik do hereby nominate, constitute and appoint Sri K. Paul., A. Sarna, J.P. Chauhan, D.K. Dey Advocate and such of the undermentioned Advocates as shall accept this Vakalat nama to be my true and lawful Advocates to appear and act for me in the matter noted above and in connection therewith and for that purpose to do all acts whatsoever in that connection including depositing or drawing money, filing in or taking out papers. Deeds of composition etc. for me and on my behalf and I agree to ratify and confirm all acts to be done by the said Advocates as mine for all intents and purposes. In case of non-payment of the stipulated fee in full, no Advocate will be bound to appear and act on my behalf.

In Witness Whereof I hereunto set my hand on this 1<sup>st</sup> Day of September, 2003.

Received from the executant,  
satisfied and accepted

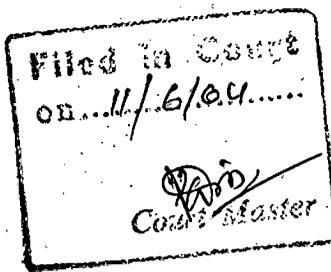
Krishnendu Paul  
Advocate 1.9.2003.

Accepted

Amwarappa Sarna  
Advocate  
1<sup>st</sup> Sept. 2003,

Accepted  
Dipak Dey  
Advocate.

Accepted  
Joyprakash Chauhan  
Advocate.



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File No. 106  
Central Administrative Tribunal (A)  
P. O. Box No. 1, Wellington  
D. M. 1, Guwahati - 781 001  
Ph. No. 0361-2222222  
Fax. No. 0361-2222222

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI

OA NO. 205/2003

Sri Rajib Kumar Banik ..... Applicant.

- Versus -

1. Union of India
2. The General Manager, N.F. Railway, Maligaon, Guwahati-11.
3. The Chief Engineer, N.F. Railway, Maligaon,  
(Redesignated as Principal Chief Engineer, Maligaon)
4. The Deputy Chief Engineer, Bridge Line, N. F. Railway, Maligaon, Guwahati-11.

- AND -

IN THE MATTER OF:

Written Statement for and on behalf of the respondents.

The answering respondents most respectfully beg to sheweth as under:

1. That, the answering respondents have gone through the copy of the application filed by the applicant and have understood the contents thereof.
2. That, save and except those statements of the applicant which are specifically admitted herein below and those which are borne on records, all other allegations/averments made in the application are denied herewith and the applicant is put to strictest proof thereof.
3. That, the applicant has got no valid cause of action or right for filing this application.

4. That, for the sake of brevity, the respondents have been advised to confine their reply only to those averments of the applicant which are relevant and material for a proper decision in the case. All other allegations to the contrary in the application are denied herewith.
5. That, the application suffers from infirmities on ground of limitation. It is already barred under Law of Limitations as well as section 21 of the Administrative Tribunal Act 1985.
6. (a) That, the application suffers from mis-representation of the facts and mis-interpretation of rules and the applicant has mis-construed the law and rules on the subject. It is quite a wrong representation that the Railway Board's Circulars or instructions etc. were not observed etc.  
(b) The instant application is a vexatious one and is not maintainable under law and fact of the case.
7. That, the entire case is based on the assumptions and presumptions etc. of the Applicant and is the out-come of his after-thought as will appear from following aspects as well :-
  - (i) The remarks in the ACR of the applicant are based on the performance aspect of the applicant while discharging his assigned official duties.
  - (ii) The applicant has been trying to add colour to the matter after such a long period only after he could not qualify for the post of Assistant Engineer in Group 'B' selection in which selection he participated without protest, especially when the fact of adverse Confidential Report etc. were in his knowledge. The applicant did not also approach the Hon'ble Tribunal etc. either prior to or during the period while the selection was under process or immediately after also when his juniors about whom he is now alleging were promoted superseding his seniority etc.

(iii) He has also filed the instant application in September 2003 or so while the ACR for the year ending 31.3.2001 was already communicated to him and his representation filed against the above said ACR was already disposed of by the Competent Authorities much earlier with speaking orders after going thoroughly in to his case' vide letter No.CE/SS/13/ADV/2001 dated 12.6.2002.

8. That with regard to averments made at paragraphs 4.2, 4.3 and 4.4 of the application it is submitted that the allegations of the applicant as made in these paragraphs are not correct and hence these are denied herewith.

The applicant failed to up-date the Bridge list as per the proforma during the financial year and it is a fact that the applicant has also acknowledged in his application that the Bridge list was not completed. In the representation dated 4.1.2002 submitted by the applicant to the Chief Engineer, N.F. Railway (Who is the Head of the Department) ( Annexure 'D' to the application) he submitted inter alia as under:-

" That Sir, in case of storing of bridge data in MS-ACCESS, the entire data of the Bridge list of N.F. Railway is converted into MS- ACCESS for which a sample of this is shown to Dy.CE/BD for necessary changing of design/format. But, the report form is not possible to print out due to excess of fields in the bridge list.

In practical I have gone a training in MS- access of 5 days only in NIC/Guwhati which is not sufficient knowledge to work in Ms- Access.

As a result it could not able to prepare and to print out the final Bridge list in MS-Access. But the Bridge list in d Base-III format are printed out and sent to all divisions in time.... "

The incidents stated/pleas taken by the applicant at paragraph 4.4 and at paragraph 4.22 are not relevant to the period of ACR (i.e. Annual Confidential Report) or for preparation of the bridge list as per required

proforma. The recorded comments in the ACRs are on the basis of the performance of the applicant. Prior to recording the remarks in CR all aspects were duly considered and taken into account. It is well evident that the Applicant was given training in MS – Access program and was asked to convert the Bridge data from MS-DOS to MS-Access format, which he failed to do.

It is also quite a wrong allegation that the respondents did not point out to the applicant about his unsatisfactory performance etc., or, did not give him any opportunity for improvement etc. as alleged. It is submitted that the applicant was counselled several times during the period of ACRs by the Assistant Bridge Engineer/Head Quarters/Maligaon himself and by the Controlling officers in presence of ABE himself and necessary guidance was given to the applicant from time to time to improve his performance. As the requirement of personal interview/ personal contact was already fulfilled, the question of issuing any fresh personal letter etc. does not arise in the circumstances of the case.

9. That, with regard to averments at paragraphs 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 and 4.13 of the application, it is submitted that the allegations are quite unfounded and hence not admitted. As the allegations relates mostly to Railway Board Circulars/ instructions etc. which are only matters of record, the answering respondents have been advised to confine their reply only on those points/allegations/averments in these paragraphs which are relevant for the purpose of a proper decision in the case.

It is submitted that the applicant was counselled several times during the period of ACR's in the presence of Assistant Bridge Engineer/Head Quarters/ Maligaon and necessary guidance was given to him from time to time. The remark in the ACR was recorded as per performance of the applicant. It is submitted that all relevant formalities as required prior to recording the ACR were already observed and the applicant was already

replied in response to his representation against the ACR mentioning that the deficiencies were brought to the notice of the applicant with the sole purpose to make himself aware of the same so that he can improve his performance and earn better reports and the same are not intended to discourage him.

It is also to mention herein that the Applicant was posted and working under the Chief Engineer/Bridge. The award as mentioned by the applicant has no relationship with the normal duties/ rostered work of the applicant and it was sanctioned by Chief Engineer(Planning & Design) for some other work not connected with his normal duties/work and without knowledge of his superiors under whom who was working & posted, and, the nature of work for which the applicant was awarded by the Chief Engineer/Planning & Design was also not indicated by the applicant in his self appraisal for his ACR for the period in question, and, the same can not be the cause or excuse to cover up the deficiencies in his normal work/duties in Chief Engineer/Bridge's office where he was posted. Facts on the basis of which the ACR was issued were clearly spelled out in the ACR in question dated 4.12.01 i.e. Annexure 'A' and counselling and verbal warnings were given to the Applicant prior to recording the remarks in ACR.

10. That, with regard to averments at paragraph 4.14, 4.15, 4.16, 4.18 and 4.19 of the application it is submitted that the allegations of the applicant are unfounded and hence denied herewith. It is to state herein that if applicant had any grievance regarding the AEN's selection etc. he could represent about same in proper time and before proper forum/Court/Tribunal etc. Rather, he participated in the selection process without protest. He is put to strict proof of all the allegations brought by him. Such allegations have got no relevance with the case.

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-  
application are

11. That, the allegations made at paragraphs 4.20 and 4.21 of the application are not correct and hence denied. The applicant was given training on MS Access programs. He failed to convert bridge data to MS- Access as directed. The entries in the ACR are based on the actual performance of the applicant. It is also to submit herein that the job of the BRI/Technical in Head Quarter office involves the work to assist the Assistant Bridge Engineer/Head Quarter (ABE/HQ) and Deputy Chief Engineer (Bridge Design) and he was also given the training on MS-Access programs. The work to be done by the BRI/Technical are varied and not limited to a single job. As the applicant had undergone training for computer programme, it was essential to do work on Computer as are required from time to time. The applicant has shown his negative attitude to work by stating that the Computer works were additional to his duties. It is also to mention herein that the applicant never raised such question previously and it is apparent that he wants to take shelter of such plea only to shield his drawbacks/ deficiencies which is not expected from Supervisory/ responsible staff like him.
12. That, the allegations brought in paragraphs 4.22 of the application are unfounded and baseless and hence denied. It is emphatically denied that the adverse remarks recorded in the ACR of the applicant are not based on facts and the respondents have taken certain irrelevant and extraneous facts in to consideration over- looking the relevant cases. The issues raised by the applicant are not relevant to his performance as noted in the ACR in question and are quite un-called for/ unwarranted. His performance during his period of work was only reflected in his ACR.
13. That, the allegations as made in the paragraphs 4.24 of the application are quite baseless and unwarranted and hence denied herewith.

It is emphatically denied that there has been any violations of the principles of natural justice or administrative fair play or any of the Fundamental Rights as enshrined in Articles 14,16 and 21 of the Constitution

of India or there has been any discrimination in his case or the applicant has been deprived from the promotional benefit because of the Adverse remarks in question or that the adverse remarks were recorded arbitrarily and in colourable exercise of power disregarding extant rules/code provisions etc. as alleged.

14. That, with regard to averments at paragraph 4.24 of the application it is submitted that the present application is time barred and reply to his representation against the adverse remark was furnished to him with speaking orders/observations furnishing specific reasons as to why such remarks had to be given for the year 2001-2002. It is not also correct that he submitted any appeal as now contended by him.
15. That, with regard to grounds for relief etc. as stated at paragraphs 5 & 8 of the application, it is to submit that in view of what have been submitted in the foregoing paragraphs of the written statement, none of the grounds as put forward by the applicant are sustainable. The relief as prayed for in paragraphs 8 & 9 of the application are also not admissible under the fact of the case. However, it is also to reiterate herein that:
  - i) The impugned orders dated 4.12.2001 and dated 12.6.2002(i.e. Annexure 'A' & 'C' respectively to the applicant) are quite legal, valid and proper.

The confidential report embodies the assessment regarding the work and conduct of the employee which is based on the day to day observations and the assessment has been made objectively and bonafide and such cases are beyond the scope of the present application.
  - ii)That, all the action taken in the case are quite in consonance to the rules and procedure in vogue and all actions are quite legal, valid and proper and have been taken after due application of mind and thorough investigations into the case and as the merit and fact of the case

demanded/ warranted, and, there has been no irregularity, illegality and/or arbitrariness in the case as alleged.

iii) That, the applicant never agitated about the selection for the post of AEN which was held long back and present plea for same is nothing but an outcome of his after-thought action and to prejudice the Hon'ble Tribunal in order to derive illegal and undue benefit and as such not entertainable. It is not correct to say that the applicant failed to secure his promotion due to the adverse remarks in the ACR. It is to state that in selection process besides record of service records various other factors are also taken into consideration.

iv) That, it is submitted that the whole process of recording ACR is a non-statutory and administrative in nature and the administrative instructions are in the nature of guidelines for the internal consumption by the officer at the time of recording Annual Confidential Reports, and, since all actions have been taken bonafide and after due observance/investigation, these are supposed to be not matters for agitation before the Hon'ble Tribunal. Further, all the requirements as required under extant rules/procedures etc. have been fulfilled by the respondents.

v) That, the applicant was given due opportunities to represent his case and the representation filed by him was duly considered by the respondents and the speaking orders rejecting the pleas taken in the application was also duly intimated to the applicant, even before recording the ACR. The applicant was counseled verbally by ABE/Head Quarter and by Controlling Officers on several occasions and no improvement could be perceived during the period of ACR inspite of ample opportunity given to him. The comments in the ACR are based on the performance of the applicant.

(b) That, on search in office records no such appeal dated 18.09.2002 for same (Annexed as Annexure 'D' to the application), or any reminders for

same, could be found and hence receipt/submission of such appeal is denied herewith. However, the applicant was clearly intimated in Railway's reply dated 12.06.2002 about the cause for which his representation filed against ACR was rejected.

vi) That, if he had any grievances, he should have come on much earlier date before the Hon'ble Tribunal instead of agitating the 2001-2002 matters now, when the matter has already become time barred.

Further, the cash awards as contended by the Applicant can not be the index about his discharging his assigned job satisfactorily since such award might have been granted by CPDE for some other job unconnected with his rostered duties in Chief Engineer(Bridge)'s office and the same was not granted by Chief Engineer (Bridge) under whose administrative control he was posted and had been working.

vii) That, the applicant had been getting training in the Computer applications while working as Console Operator during his posting in the office of the Chief Engineer. His allegations that computer work was an additional work is not tenable. Working in the computers is an integral part of the duties of BRI/Technical in discharging their duties/functions.

viii) That, the remarks in the ACR of the Applicant are based on his performance and the applicant's attempt to put the blame on others for the job not completed by him, is not proper and acceptable. He never raised such pleas earlier.

ix) That, the remark on the ACR clearly reflects about his deficiencies in performance and mode of discharge of his assigned work/job. The remarks in the ACR were recorded mainly to give the applicant an opportunity to improve his performance etc. in the following years.

In the reply given to the applicant by the General Manager(Works)/NF Railway, Maligaon it was also clearly informed to the applicant inter-alia as under :

A/

"Official has been advised of his shortcomings not to discourage him. He should take note of and improve for earning better reports and contribute actively for enhancing efficiency, quality of output in his field."

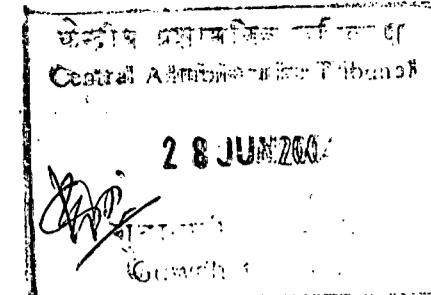
16. That, the answering respondents crave leave of the Hon'ble Tribunal to permit the respondents to file additional written statement in future, in case the same is found to be necessary for the ends of justice.
17. That, under the facts and circumstances of the case as stated above, the instant applicant is not maintainable and is also liable to be dismissed.

#### VERIFICATION

1. Sri R. AAIYU S/O Kate Choi S. Ramaswamy aged about.....33..... years, by occupation Railway service, at present working as DY. CPD (H&R) of the NF Railway at Maligaon, Guwahati-11, Assam, do hereby solemnly affirm and state that the statements made at paragraphs 1 & 4 are true to my knowledge and those made at paragraphs 7,8,11,12 and 14 are true to my information as gathered from records which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal and I sign this on 10.06.2004.

  
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 DY. Chief Personnel Officer (A&S)  
CL. P. Div./ Maligaon  
Guwahati-11

for and on behalf of Union of India



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:GUWAHATI BENCH:::

GUWAHATI

O.A. No. 205/2003

Shri Rajib Kumar Banik ... Applicant.

-Versus-

Union of India & Ors. ... Respondents.

REJOINDER FILED BY THE APPLICANT TO THE WRITTEN STATEMENT  
FILED BY THE RESPONDENTS :

- 1) That the applicant has received a copy of the written statement filed by the respondents in the aforementioned O.A. The applicant has gone through the same and having understood the meaning of the contents thereof begs to file his rejoinder as follows :
  
- 2) That the statements made in paragraphs 3 and 6 of the written statement are hereby denied by the applicant.
  
- 3) That with regard to the statements made in paragraph 5, the applicant begs to state that delay in filing the original application has already been condoned by this Hon'ble Tribunal.
  
- 4) That the statements made in paragraph 7 of the written statement are hereby denied by the applicant. In this connection, the applicant begs to state that no warning/reprimand has ever been issued to the applicant before recording the adverse remarks in his ACR.

Filed by Rajib Kumar Banik  
through, Krishnendu Paul, Advocate  
29-06-2004.

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Besides, the respondents have failed to dispose of the appeal filed by the applicant against rejection of the representation against adverse remarks.

5) That the statements made in paragraph 8 of the written statement are not correct and hence they are denied by the applicant. The applicant was never given any verbal counselling before recording the adverse entries in his ACR. It is merely an after-thought on the part of the respondents in stating that the applicant was counselled several times during the period of ACR. The applicant was also not given any written warning by way of a personal letter, etc. and this fact has been admitted by the respondents in their written statement. The rules contemplate issuance of a written warning before recording any adverse entry in the ACR and the respondents have failed to do so, therefore, the said adverse remarks recorded in the ACR of the applicant are liable to be expunged.

6) That with regard to the statements made in paragraph 9 of the written statement, the applicant begs to state that he was never given any warning - oral or written - before recording the adverse remarks in the ACR. The adverse remarks are not based on facts because for the period mentioned in the ACR, the applicant was rewarded in recognition of his devotion to duties and good service. He was also rewarded with cash award for his good work at the

computer. The order sanctioning the award has been signed by the Chief Engineer himself. Therefore, he cannot say that the award was sanctioned for some other work not connected with his normal duties/work. The award referred to above, pertains to the bridge portion of the works programme under the control of Chief Planning and Design Engineer.

7) That with regard to the statements made in paragraph 10 of the written statement, the applicant states that the adverse remarks have been recorded in his ACR without following the provisions of law. Because of the adverse remarks, the applicant was not promoted as AEN. Therefore, the statements made in paragraphs 4.14, 4.15, 4.16, 4.18 and 4.19 of the original application, have relevance with the case.

8) That the averments in paragraph 11 of the written statement are hereby denied by the applicant and he begs to reiterate the statements made in paragraphs 4.20 and 4.21 of the original application. The respondents while recording the adverse remarks in the ACR of the applicant have failed to comply with the provisions for recording adverse remarks which clearly stipulate that prior warning/reprimand should be issued which must be got acknowledged by the staff. If, however, the performance of the staff concerned has not improved the adverse remarks can be recorded for which the warning 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.

In the instant case, the respondent have neither issued any warning/reprimand before recording the adverse remarks nor could they produce any copy of such warning/reprimand (base report).

- 9) That with regard to the statements made in paragraph 12 of the written statement, the applicant reiterates that the adverse remarks recorded in his ACR are not based on facts and the respondents have taken certain irrelevant and extraneous factors into consideration, while overlooking the relevant ones.
- 10) That with regard to the averments in paragraph 13, the applicant reiterates what he has stated in paragraph 4.23 of the original application.
- 11) That with regard to the averments in paragraph 14 of the written statement, the applicant states that the delay in filing the original application has already been condoned by this Hon'ble Tribunal, therefore, it is not time barred. The appeal dated 18.9.2002 was received in the office of the Chief Engineer, N.F.Railway, Maligaon, vide docket No.63 dated 18.9.2002. Therefore, the respondents cannot deny the receipt of the same, at this stage.

12) That with regard to the averments in paragraph 15(i) of the written statement, the applicant states that the impugned orders dated 4.12.2001 and 12.6.2002 are illegal and invalid. The order dated 4.12.2001 has been issued without any prior warning/reprimand. The order dated 12.6.2002 is time barred and is a non-speaking one.

13) That the averments in paragraph 15(ii) and (iii) are hereby denied by the applicant.

14) That with regard to the averments in paragraph 15(iv) of the written statement, the applicant states that the process of recording ACR cannot be termed as non-statutory and administrative in nature. The Government has got a right to issue executive instructions in the spheres which are not covered by the rules. If any administrative instructions are issued, those are supposed to be followed by the Government. If it fails to do so, it may be violative of Articles 14 and 16 of the constitution. This has been held in the case of D.P. Pathak and Anr. -Vs- State of Punjab and 3 others, reported in (1980) SLJ 305 (P&H) as well as in 1980 Lab. I.C.676.

In the instant case, the adverse remarks have been recorded without any prior warning, reprimand or admonition, as required under the rules and statutory guidelines in force. Therefore, the said adverse remarks are liable to be expunged.

15) That the statements made in paragraph 15(v) of the written statement are hereby denied by the applicant. The applicant was never counselled verbally. Besides, verbal counselling is not contemplated under the rules. The rules stipulate that before recording adverse remarks, warning/reprimand should be given which must be in writing and which must be got acknowledged by the staff. The respondents did not follow these provisions in the case of the applicant. The adverse remarks in the ACR of the applicant are not based on the performance of the applicant. The representation filed by the applicant against the recording of the adverse remarks in his ACR, was not duly attended to and in a most casual fashion it was turned down without assigning any reason.

16) That with regard to the averments in paragraph 15(v)(b), the applicant states that the appeal dated 18-9-2002 was duly received by the respondents. However, the respondents have failed to dispose of the same and now they are trying to establish that it was never even filed, which is not true. The reply dated 12-6-2002 by which the applicant's representation was rejected is a non-speaking one and no cause has been cited for rejecting the said representation against adverse remarks.

17) That with regard to the statements made in paragraph 15(vi) of the written statement, the applicant states that the subject matter involved is not time barred. The applicant was given cash award for his rostered

duties in Chief Engineer (Bridge)'s office and the award was signed by the Chief Engineer.

18) That the statements made in paragraph 15(vii) of the written statement are hereby denied by the applicant. Working in the computers is not an integral part of the duties of BRI/Technical.

19) That with regard to the statements made in paragraph 15(viii), the applicant states that he is not blaming anybody but the discriminatory and biased attitude of the respondents towards the applicant is evident from the fact that no adverse remarks were entered in the ACR of the other BRI who was associated with the work. It is also not a fact that the work allotted to the applicant was not completed by him.

20) That with regard to the averments in paragraph 15(ix) of the written statement, the applicant states that the remarks in his ACR are not based on facts. They are not based on the actual performance and mode of discharge of his assigned work. The adverse remarks have been recorded without any prior warning as required under the provisions of law. Therefore, the said adverse remarks are liable to be expunged.

21) That with regard to the averments in paragraph 17 of the written statement, the applicant states that the instant original application is very much maintainable.

The respondents have failed to disclose any valid reason as to why the original application should not be allowed. In fact, they have supported the case of the applicant by admitting that no prior warning in writing, as required under the rules, was given to the applicant before recording the adverse remarks in his ACR. Therefore, the said adverse remarks are liable to be expunged.

Contd.....9

Rajib Kumar Banik

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Rajib Kumar Banik

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VERIFICATION

I, Shri Rajib Kumar Banik, son of Late Jagadish Chandra Banik, aged about 45 years, working as Senior Section Engineer/Bridge/Headquarter, in the office of the Deputy Chief Engineer/Bridge-Line, N.F. Railway, Maligaon, Guwahati-11, Assam, do hereby verify that the statements made in paragraphs 1 to 21 are true to my knowledge and I have not suppressed any material facts.

And I sign this verification on this the day of June, 2004.

Rajib Kumar Banik  
Signature of the applicant