

01/00

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No...230/2003.

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: 230/03

Misc Petition No: _____/

Contempt Petition No: _____/

Review Application No: _____/

Applicants: - Bipragit Dutta

Respondents: - U.O.T. Gons

Advocate for the Applicants: - Mr. R. Dutta

Advocate for the Respondents: - Railway Counsel.

Notes of the Registry	Date	Order of the Tribunal
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Application is admitted but set for hearing. Returnable by four weeks or six weeks if any record is required. Dated 16.10.03. 96702460
Dated 16.10.03.

Done
Mr. Registrar

21.10.2003 Heard Mr. R. Dutta, learned counsel for the applicant.

The application is admitted, call for the records, returnable by four weeks.

Set the case be listed on 25.11.2003 for order.

Vice-Chairman

Steps taken alongwith envelope.

bb

25.11.03 No Bench today.
Advised to 12-12-03.

12/12/03

Pl. comply with date
21/10/03.

✓
21/10/03

23.1.2004

Present: Hon'ble Shri Bharat Bhusan, Member (J)
Hon'ble Shri K.V. Prahladan, Member (A).

Mr R. Dutta, learned counsel for the applicant is present. Four weeks for reply and two weeks thereafter for rejoinder. List it on 27.2.04 for orders.

KV Prahladan
Member (A)

Member (J)

27.2.2004 Present: Hon'ble Shri Shanker Raju,
Judicial Member

Hon'ble Shri K.V. Prahladan-
ADministrative Member.

Respondents are allowed four
weeks time to file reply as a last
chance, failing which their right
to file reply will be forfeited.
List before the Single Bench on
29.3.04.

No written statement
has been filed.

Zy
26.2.04

KV Prahla
Member (A)

Member (J)

nkm

No W.S. has been
filed.

Zy
29.3.04

30.3.04 Miss U.Das, learned counsel appearing
on behalf of the Railway standing
counsel prays for four weeks time to
file written statement. Allowed.
Three weeks time thereafter also
allowed to the applicant to file
rejoinder, if any.

List on 10.5.2004 for hearing.

KV Prahla
Member (A)

KV
Member (J)

7.5.04
No W.S. has been
recd. so far.
I am

10.5.2004 Present: Hon'ble Shri M.K. Gupta,
Judicial Member
Hon'ble Shri K.V. Prahladan,
Administrative Member

A request is made on behalf of
the respondents to adjourn the matter
till 12.5.2004, which is opposed by
the learned counsel for the applicant
by stating that on the last two
occasions time was granted for filing
of reply which has not been complied
with. In the interest of justice the
matter is adjourned till 12.5.04. It

10.5.2004

is made clear that in case reply is not filed the matter will be heard without the reply as arranged earlier by order dated 27.2.2004.

List for hearing on 12.5.04.

Member(A)

Member(J)

nkm

12.5.2004

Adjourned on the request made by the learned counsel for the respondents. He has stated that he has taken consent from the counsel for the applicant. List before the next Division Bench.

Member (A)

Member (J)

mb

14.6.04

Present: Hon'ble Mrs. Bharati Roy, Judicial Member and Hon'ble Mr. K. V. Prahladan, Administrative Member.

The learned counsel for the applicant submits that the documents mentioned in the counter affidavit not include in the records. The learned counsel for the Respondents submits that he will ~~serve~~ these documents alongiwith the affidavit and he will also serve the copy of the documents to the counsel for the applicant within three days. The applicant may also file rejoinder if any within 10 days.

Member(A)

Member(J)

lm

order dt. 14/6/04
sent to D/Section
for issuing to
learned Advocate
of both the parties.

15/6/04.

23-6-04

Rejoinder
filed by the
applicant -

Prabir

20.7.04

Passed over list on
21.7.04

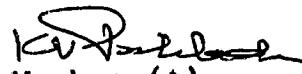
21.7.2004 Present: The Hon'ble Shri K.V.Sachidanandar
Member (J).

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

Heard Mr.K.Paul, learned counsel for
the applicant as well as Mr.S.Sarma, learned
counsel for the respondents.

Mr.S.Sarma submitted that he would
like to produce the service records with
special reference to the AGRs commencing
from 5 years prior to year ending 31.3.
2003. Let the same be produced positively
on 22.7.2004.

Post on 22.7.2004 for production of
records.


Member (A)

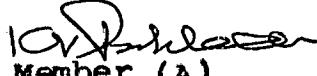

Member (J)

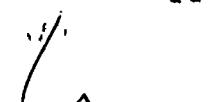
bb

22.7.2004 present: The Hon'ble Shri K.V.Sachidanandar
Member (J).

The Hon'ble Shri K.V.Prahladan

Heard the parties. Reserved for
orders. As prayed by Mr.S.Sarma, learned
Railways counsel, Registry is directed to
keep the photocopies of AGRs of the appli-
cant in safe custody.

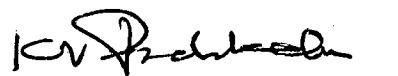

Member (A)


Member (J)

bb

24.09.2004 present : The Hon'ble Sri K.V. Prahladan,
Administrative Member.

Judgment delivered in open Court,
kept in separate sheets. The application
is allowed. No order as to costs.


Member (A)

mb

28.9.04
Copy of the
judgment has been
sent to the Dsec.
for issuing the
same to the applicant
as well as to the
lly. counsel

48.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / XXX. No. . . . 230. of 2003.

DATE OF DECISION 24.9.2004

Shri Biprajit Dutta APPLICANT(S).

Mr. R. Dutta & Mr. K. Paul ADVOCATE FOR THE
APPLICANT(S).

- VERSUS -

Union of India & Others RESPONDENT(S).

Mr. S. Sarma, Railway Advocate ADVOCATE FOR THE
RESPONDENT(S).

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

THE HON'BLE MR. 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 (A).

par

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 230 of 2003.

Date of Order : This, the 24th Day of September, 2004.

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

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

Shri Biprajit Dutta
Assistant Executive Engineer/PL3
General Manager/Con's office
N.F.Railway, Maligaon - 781 011. Applicant.

By Advocates Mr.R.Dutta & Mr.K.Paul.

- Versus -

1. Union of India
Represented through
the General Manager
N.F.Railway, Maligaon - 781 011.
2. The General Manager/Con
N.F.Railway, Maligaon-781 011.
3. The Chief Engineer/Con
N.F.Railway, Maligaon - 781 011.
4. The Deputy Chief Engineer/Con
N.F.Railway, Agartala. Respondents.

By Mr.S.Sarma, Advocate for Railways.

O R D E R

K.V.PRAHLADAN, MEMBER(A):

The applicant has been working as an Assistant Executive Engineer at Maligaon in the N.F.Railway since 1.2.2003. The Chief Engineer, Construction, Maligaon vide letter dated 9.7.2003 communicated certain adverse entries in the Annual Confidential Report of the applicant for the period 1.4.2002 to 31.3.2003 at Annexure-A/l. The adverse remarks were as follows at Page 25, Annexure-A/l:

Contd./?

"(i) Lack of technical knowledge and appreciation of the same leading to delay in work due to setting out a faulty alignment.

(ii) Does not make effort to standardise the work.

(iii) Lack of initiative and avoid responsibility."

2. The applicant has filed this O.A. praying for setting aside the aforesaid communication dated 9.7.2003 as well as the letter dated 4.9.2003 rejecting the applicant's representation to expunge the adverse remarks for the year ending 31.3.2003. The applicant claims that for the period concerned he was never told anything orally or by way of writing "pointing out to him the direction in which his work has been unsatisfactory or faulty of character or temperament which requires to be remedied".

This, says the applicant, is a requirement under Rule 1607 to 1610 of Indian Railway Establishment Code Vol I, 1971 Edition (Annexure A/4. The applicant also claims that no warning or reprimand was communicated to him regarding his lack of technical knowledge or initiative or inability to standardise work during the year 2002-2003. The applicant claims that in his career of over two decades he was never told that he lacked technical knowledge, lacks initiative, avoids responsibility, and does not make efforts to standardise the work. He could not have developed all these traits in one year.

3. The respondents say that the applicant was communicated warning/reprimand as at Annexures 1 to 5. These Annexures pertain to a period that predate the

b/w

period under consideration in the ACR for 1.4.2002-31.3.2003. The Accepting authority after careful consideration rejected the representation of the applicant.

4. We have heard Mr.K.Paul, learned counsel for the applicant as well as Mr.S.Sarma, learned counsel for the Railways. Under "Nature and quality of work" in "Part III Remarks of the Requesting Authority" for the Annual Report for the year 2002-2003, the Reporting Officer is "not fully satisfied" with the applicants claim under "Objections/Targets and "Achievements". The applicant claim 100% achievement of targets and Reporting Officer claiming to be "not fully satisfied" and the objectives "delayed badly due to faulty alignment". If the Reporting Officer disagrees with the self-assessment he should be ready to back it up with factual details and put them on record. In this connection the "Instructions" contained at page 7 of the ACR are reproduced below:-

"6. The Reporting Officer shall, in the beginning of the year, set quantitative/physical/financial targets in consultation with each of the officers with respect to whom he is required to report upon. Performance appraisal should be a joint exercise between the reported upon and the Reporting Officer. The targets/goals shall be set at the commencement of the reporting year, i.e. April. In case an officer takes up a new assignment in the course of the reporting year, such targets/goals shall be set at the time of assumption of the new assignment.

7. The targets should be clearly known and understood by both the officers concerned. While fixing the targets, priority should be assigned item-wise, taking into consideration the nature and the area of work and any special features that may be specific to the nature or

bwp

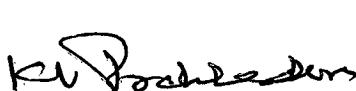
the area of work. As far as possible, the indices used should be relevant and measurable.

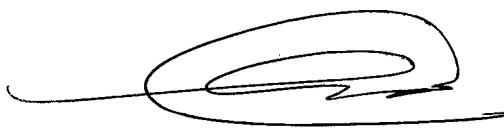
8. Although performance appraisal is a year-end exercise, in order that it may be tool for human resource development, the Reporting Officer and the officer reported upon should meet during the course of the year at regular intervals to review the performance and to take necessary steps. Review should confirm understanding of goals and targets."

5. There is no evidence that the Reporting Officer at any time made an attempt to implement the above instructions. Being the Reporting Officer, it was his duty to fix targets, as far as possible on available data and ^{periodically} review the performance of the officer reported upon. This apparently was never done by the Reporting Officer. The Reviewing Officer should have given his own objective and independent assessment on the remarks of the Reporting Officer and express clearly his agreement or disagreement with the adverse remarks. The Reviewing Officer instead has just recorded that "I agree with the assessment of the Reporting Officer". The Appellate Authority has at Annexure A/5 disposed of the representation of the applicant with the remarks that "I have gone through the representation of the officer. I find no reason or justification why the adverse entry in the ACR should be expunged. The same stands." There is no elaborate explanation offered by the Appellate Authority in coming to this conclusion. The applicant's Annual Confidential Report also does not mention that any warnings, ~~admonitions~~ or reprimands were issued to the applicant for ~~law~~ the period 1.4.2002-31.3.2003.

6. Considering all the above factors we find that the adverse remarks communicated to the applicant can in no way be justified. Therefore, the adverse remarks for the year ending 31.3.2003 as communicated to the applicant vide letter dated 9.7.2003 stands expunged.

The O.A. is thus allowed. No order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER

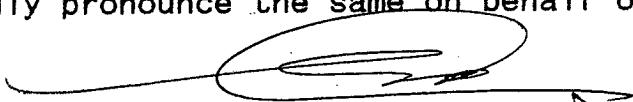

(K.V.SACHIDĀNANDAN)
JUDICIAL MEMBER

bb

Dated, 15th Sept., 2004.

Dear brother,

I agree with the order dictated by you in O.A.
No. 230/2003. Kindly pronounce the same on behalf of
the Bench.



(K.V. SACHIDANANDANO
JUDICIAL MEMBER

Hon'ble Mr. K.V. Prahladan,
Administrative Member,
Guwahati Bench,
GUWAHATI.

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STATE OF ASSAM
 General Administration Department
 16 OCT 2003
 District Republic
 Gauhati Bench

Decd by
B. D. Datta

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI.

O.A. No. 230 of 2003.

Shri Biprajit Dutta Applicant

VERSUS

the union of India and Others .. Respondents

LIST OF DATES.

Date		para/Anx	page
9.7.03	Communication of adverse entries by the Chief Engineer/Con, N.F. Railway, Maligaon.	Para 4.3 and Anx. A/1.	2 9
4.8.03	Applicant's representation to the Chief Engineer/Con, N.F. Railway, Maligaon in respect of adverse entries.	para 4.12 Anx. A/4.	5 17 to 20
4.9.03	Rejection of the representation of the applicant was communicated by the General Manager/Con, N.F Railway.	Para 4.13 Anx. A/5.	5 21

Biprajit Dutta *16/10/03*
 Signature of the applicant.

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Ch 16

*Filed by
Biprajit Dutta
B. 10/10/2003*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

(An application u/s 19 of the A.T. Act, 1985)

OA NO 230 of the 2003

Shri Biprajit Dutta Applicant

Vs

Union of India and others Respondent

Index

Sl. No.	Particulars of document	Annex No.	Page
1.	Application		
2.	Letter No. Z/SS/CON/Adv/GAZ	A/1	
	dated 9.7.03		
3.	Circular No. E/54/I/CON/Pt III	A/2	
	dated 11.5.88		
4.	Circular No. E/54/I/CON/P IV	A/3	
	dated 24.1.94.		
5.	Applicant's representation		
	dated 4.8.2003	A/4	
6.	Letter No. Z/SS/CON/CR/Adv	A/5	
	Gaz. dated 4.9.03.		

Biprajit Dutta 16/10/03

Signature of the applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : : GUWAHATI

(An application u/s19 of the A.T. Act, 1985)

OA NO 230 of the 2003

Shri Biprajit Dutta

Assistant Executive Engineer/PL3

General Manager/Con's office

N.F.Railway, Maligaon – 781011

Applicant

Versus

1. The Union of India,

repented through the General Manager,

N.F. Railway, Maligaon – 781001

2. The General Manager /Con,

N.F.Railway, Maligaon , 781011.

3. The Chief Engineer/Con,

N.F.Railway, Maligaon – 781011.

4. The Deputy Chief Engineer/Con,

N.F.Railway, Agartala.

Respondents

1. Particulars of the orders against which this application is made.

1.1. The Chief Engineer/Con/N.F.Railway, Maligaon's letter No. Z/SS/CON/CR/Adv/GAZ dated 9.7.03 communicating some advance remarks in the Annual confidential report of the applicant for the year 2002 - 2003 (Annexure A/1)

File No. 2003
B. Datta, Advocate,
Counsel, Guwahati 781011

20/7/03

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(2)

1.2. The General Manager (Con) N.F.Railway, Maligaon's letter No. Z/SS/CON/CR/Adv/Gaz dated 4.9.03 rejecting the ~~presentation~~ of the ^{MS} of the applicant (A/5)

2. Jurisdiction of the Tribunal :

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

3. Limitation

The applicant submits that the application has been filed within the period of limitation prescribed under Sec. 21 of the A.T. Act, 1985.

4. Facts of Case

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

4.2. That, the applicant is working as Assistant Executive Engineer, a gazetted post, and is posted in the office of the General Manager (CON), N.F.Railway, Maligaon. Prior to his posting in the Office of the General Manager (CON), N.F.Railway, Maligaon, the applicant was working as Assistant Executive Engineer/CON, N.F.Railway, Ambassa since 1998 and applied for his transfer and the applicant was transferred to Maligaon and the applicant joined at Maligaon on 1.1.2003.

4.3. That, under letter No. Z/SS/CON/CR/Adv/GAZ dated 9.7.03 the Chief Engineer/Con/N.F.Railway, Maligaon (Respdt. No.3) communicated to the applicant following adverse entry recorded in his annual confidential report for the year ending 31.3.2003.

(i) Lack of technical knowledge and application of the same leading to delay in work due to setting out a faulty alignment.

(ii) Does not make effort to standardise the work.

(iii) Lack ^{of} initiative and avoid responsibility.

20

16/12/03

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(3)

A copy of the said letter dated 9.7.03 is annexed as Annexure A/1

4.4. That, the above remarks are general in nature and not based on ~~any~~ ^{any} facts. Nor any instance has been given on the basis of which these remarks were made.

4.5. That, the applicant was appointed in the N.F.Railway in the year 1979 as Inspector of works, now redesignated as section Engineer, and was promoted to the present post through the process of selection in the year 1993. The applicant is an qualified engineer as certified by the Institute of Engineer (India) and also completed the integrated coarse in Indian Railways Institute of Civil Engineers, Pune and was graded very good on subjects of Track, Bridge and work aspects of Railways.

4.6. That, provisions for writing the confidential reports of the railway servants have been made in the Indian Railway Establishment code Code Vol – 1 1971. The Indian Railway Establishment code is a statutory rule framed by the president of India in exercise of powers conferred on him by the proviso to article 309 of the constitution of India.

4.7. That Rule 1608 of the Indian Railway Establishment code Vol I provides that a gazette railway servant shall not be ordinarily given an unfavourable confidential report before an opportunity has been taken, preferably at a personal interviews or by a personal letter pointing out to him the direction in which his work has been unsatisfactory or faculty of character or temperment which requires to be remedied. The manner and method of conveying to the railway servant that his work needs improvement in certain directions must be such that the advice given and the warning or censure administrated whether orally or in writing shall be most beneficial to him. If, inspite of this, there is no improvement and an adverse confidential report has to be made, the facts on which the remarks are based should be clearly brought out.

13/7/2003

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(4)

4.8. That Rule 1609 of the Indian Railway Establishment code provides that as a general rule, ~~in~~ ^{no} circumstances a gazetted railway servant be kept in ignorance for any length of time that his superior, after sufficient experience of his work, are dissatisfied with him.

4.9. That, the chief personnel officer, N.F.Railway, vide circular No. E/54/CON/Pt. III dated 11.5.88 issued, interalia, instructions for following the provisions of rule 1608 of the Establishment code in writing confidential reports.

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

4.10. That, the General Manager, N.F. Railway, Maligaon also issued instruction vide circular No. E/54/1/CON/IV dated, 24.1.94 that adverse entries at the end of the year should not be automatic as a matter of routine and the reporting officer from time to time during the reporting year review the working of staff working under him and if it is found that working of any one is not up to the mark and requires improvement in any areas, he should invariably be given written warnings which must be got acknowledged. If at the end of the year it is found that his workings has considerably improved the reporting authority may not take cognisance of such warnings. If however, the overall performance of the staff concerned to be reported upon has not improved the warning given may be kept as base report to avoid complaints that during the year he had never been warned/reprimanded to improve himself and suddenly the adverse remarks have appeared in the confidential report.

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

4.11. That, No warning or reprimand was communicated to the applicant to the effect that the applicant is lack of technical knowledge and initiative and does not make efforts to standardize the work during the reporting period of 2002 – 2003 before recording the adverse entries in the confidential report of the applicant. The applicant further submits that never in his service life of 23 years in the N.F.Railway, ^{had} ~~any~~ adverse remark in his confidential report nor their

(5)

were any faulty alignment and delay in execution of work during the year 2002 – 2003. To the contrary the section between Kumarghat – Manu was opened to the traffic 4 months before the scheduled date of completion and the Railway Minister was pleased to announce on 27.12.2002 at Kumarghat an award of Rs. 5 lakhs for commendable work done by the officers and staff in completing the work 4 months ahead of target date.

4.12. That, the applicant filed a representation on 4.8.2003 pointing out in detail that the adverse entries were recorded violating the procedure laid down in Rule 1608 and the circular dated 24.1.94 issued by the General Manager, N.F.Railway, Maligaon as no prior warning or reprimand was issued to the applicant and as no facts on the basis of which the adverse entries were made. It was also pointed out that the adverse remarks are general remarks and are brief and casual and conveys no real picture and therefore violating of provision of rule 1607 of the Indian Railway Establishment code Vol – I.

A copy the representation dated 4.8.2003 is
annexed as Annexure A/4

4.13. That, under General Manager/Con, N.F.Railway, Maligaon's letter No. Z/SS/CON/CR/Adv/Gaz dated 4.9.2003 the applicant was communicated the orders of the competent authority to the effect that the competent authority had gone through the representation and found no reason or justification as to why the adverse entry in the Annual confidential Report should be expunged and the same stands. The representation was rejected in a most casual manner without assigning any reason.

A copy of the letter dated 4.9.2003 is annexed as Annexure A/5

5. Ground for relief :

5.1. That before recording the adverse remarks the reporting authority did not issue any personal letter, warning or reprimand to the applicant pointing

16/10/03

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(6)

out that he lacks technical knowledge does not make efforts to standardize the work and lacks initiative and avoid responsibility. As such the adverse remarks have been recorded most illegally violating the provisions of rule 1608 of the Indian Railway establishment code, a statutory rule, and the instructions issued by the General Manager, N.F.Railway, Maligaon vide Annexure A/3 and therefore liable to be quashed and set aside being ultravires to rules and instructions framed and issued for writing confidential reports.

5.2. That, the applicant was never in 23 years of his service life communicated that he lacks technical knowledge, does not make efforts to standardize his work or lack initiative and avoids responsibility. Nobody can develop lack of technical knowledge, not taking interest in standardizing work, lack of initiative and avoiding tendency within a year. If the applicant had these characteristics it would have been reflected in his earlier confidential reports in as much as the applicant served 23 years in N.F.Railway and had 21 earlier confidential reports by a large number of officers. As no such adverse remarks were communicated earlier it shows that the confidential report has been written in a casual manner without applying objectivity and is not correct appreciation of the applicant and is therefore liable to be set aside and quashed.

5.3. That, neither any instances to substantiate the adverse remarks nor any facts on which these remarks based have been brought out in the report. As such the reports is violative of Rule 1608 of the Indian Railway Establishment code and the law laid down by the Hon'ble Supreme Court of India in M.R. Rajsekhar vs. Karnataka 1997 (I) SLJ. SC. 45 and liable to be set aside and quashed.

5.4. That, the adverse remarks are only general remarks and are so brief and casual that this convey no real picture and are based on offhand impressions and are violative of Rule 1607 of the Indian Railway EstablishmentCode Vol (I).

5.5. That, the adverse remarks are not only violative of rules and instruction in the matter but are not correct appreciation of the applicant as he is qualified engineer and has been graded very good by the Indian Railway Institute

[Handwritten signature and date: 16/12/03]

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(7)

of civil Engineers, Pune on the subjects of track, Bridge and Work aspects of Railways.

6. Details of remedies exhausted :

That the applicant filed representation dated 4.08.2003 but the same has been rejected without assigning any reason.

7. Particulars of Previous application if any. :

That , The applicant submit that he has not filed any application/suit writ petition in any Tribunal or Court on the subject mater of this application nor any such application, suit or writ petition is pending before any Tribunal or any Court on the subject matte of this application.

8. Relief sought :

Under the circumstances stated in the application of applicant humbly prayers to the lordship of the Tribunal to be pleased to :

Call for the records and after hearing the parties set aside the adverse remarks communicate under letter No. Z/SS/Con/CR/Adv/ GAZ dated 9-7-2003 (Annex -A/1) and the letter No. Z/SS/CON/CR/ADV/Gaz dated 4-9-03 (Annex - A/5) rejecting the representations and to direct the respondents to correct the records accordingly and such other orders as the lordship of the Hon'ble Tribunal deem fit.

And for this act kindness the applicant duty bound shall ever pray.

9. Interim relief :

NIL

10. Particulars of application fees

I.P.O. No. 54.43357 Dated5....7....0..3

For Rs. Fifty enclosed.

11. List of enclosure:

As in index.



(8)

VERIFICATION

I SHRI Biprajit Dutta son of late B.C. Dutta aged 44 years residing in Railway Bunglow No. 297/1, Sarada Colony, Maligaon, Guwahati - 781011, do hereby verify that the statements made in paragraphs 4.1, 4.2, 4.3, 4.5, 4.11, 4.12, 4.13, 6 and 7 are true to my knowledge. The statements made in paragraphs 2, 3, 4.6, 4.7, 4.8, 4.9 and 4.10 are true to my information ~~as~~ which I believe to be true and the rest are my submission before the Hon'ble Tribunal and I have not suppressed any material facts.

And I sign this verification on this 16th days of October 2003.

Date . 16/10/2003

Place : Guwahati


Signature of the applicant

- 9 -

Bracewell

N. E. Railway

Office of the
General Manager (Con)
N.F.Rly. Maligaon.

Dt.9.7.03.

Confidential
No.Z/SS/Con/CR/Adv/GAZ

Shri Biprojit Dutta,
AXEN/Con/PL
N.F.Rly.Maligaon.

(Through Dy.CE/Con/PL/MLG).

Sub: ACR for Y.E. 31.3.2003 - communication of Adverse Entries.

The following remarks have appeared in your ACR for year ending 31.3.2003.

- (i) Lack of technical knowledge and appreciation of the same leading to delay in work due to setting out a faulty alignment.
- (ii) Does not make effort to standardise the work.
- (iii) Lack of initiative and avoid responsibility.

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

Please acknowledge receipt of this letter on the duplicate copy enclosed and return the same to this office within 10 days from the date of receipt. Please Note that representation, if any, has to be preferred within one month's time of receipt of this letter after which no representation will be considered.

Chief Engineer(Con)
N. F. Rly. Maligaon.

True Copy

R. Dotta

R. Dutta, (Advocate)
Malligaon, Guwahati-781014

5th June 1973
Spent the day with
David and his wife
in the city.

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 49th 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 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

True copy

D. Datta

D. Datta, (Advocate)

Maligaon, Guwahati-781011

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 Confldl 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 Confldl 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.

*True copy
2/10/78*

*B. Datta, (Advocate)
Guwahati-781018*

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.

True Copy

2 Dots

R. Datta, (Advocate),
Guwahati, 731001.

Confidential

13

Annexure A/3 1

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/ADRs,
All Dist. & Asstt. Officers of Non-Divnsd. 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 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.

True Copy

R. Dutta

R. Dutta (Advocate)
Maligaon, Guwahati-781011

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 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.

Take copy
R. D. Datta

Mr. M. D. Aurora

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 Dy. 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

True Copy
R. Dutta

R. Dutta, 14/5/2009
Manager, Maligaon, 7/2009

Copy of Board's letter No. E(NG) I-81-CR-8 dated 31.8.81/22.9.81 circulated under GMP/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/Estd(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-Estd. (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 been found satisfactory. If, however, the reporting authority comes to 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, a copy of the warning/ displeasure/ reprimand referred to in the confidential report should be placed in the CR dossier as an Annexure to the confidential report for the relevant period. The adverse remarks should also be conveyed to the officer and his representation, if any, against the same disposed off in accordance with the procedure laid down in the instructions issued in this regard.

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

True Copy
D. Datta

R. Datta. (Attn:cc'd)
Maligaon, Guwahati-731011

CONFIDENTIAL

TO

The Chief Engineer (CON) V
N F Railway M aligoan GHY 11.

Respected Sir,

SUB: ACR for Y.E 31/03/2003 communication of adverse entries.

REF: Your letter no Z/SS/CON/ADV/GAZ dated 9/7/2003

Apropos the aforementioned communication under which 3 adverse entries were communicated to me I beg to Submit the following representation for your kind perusal and sympathetic order please.

That sir, The authority for recording the annual confidential report is provided in chapter XVI of the Indian Railways Establishment Code vol-1 1971 edition. Rule 1606 of the same code is the authority for recording the annual confidential report and rules 1607 to 1610 provides the procedure of writing such report and action to be taken before recording an adverse entry in the annual confidential report of a railway servant.

That sir, Rule 1607 RI, inter-alia, provides that the annual confidential reports must not be confined merely to general remarks and off hand impressions so brief and casual as to convey little or no real-meaning and the assessment must be based on failure or excellence in the work entrusted to the Railway servant.

That sir, Rule 1608 provides that a gazetted railway servant shall not ordinarily be given an unfavorable confidential report before the railway servant in a interview or personal letter pointing out to him the direction in which his

True copy
R. Dutta

R. Dutta, Advocate
Mangalore, Karnataka, India

work has been unsatisfactory or fault of character or temperament etc which require to be remedied. If inspire of this, there is no improvement and an adverse confidential report has to be made the facts on which the remarks are based should be clearly brought out.

That sir, besides the code provisions the Railway Board issued series of instructions in respect of recording the adverse remarks in the CR. Basing on these instructions Local Railway administration issued NO of circulars reiterating the rules and Railway Board's instructions in respect of writing annual confidential reports.

That sir, in circular no E/54/CON/PII dated 11/5/88, the CPO/T&M/N F Railway Maligoan, Inter-alia, pointed out that some reporting officers are submitting confidential reports without observing the procedure as enumerated in Rule 168 RI and such confidential reports are liable to be expunged and advised to ensure that the instructions are adhered to before recording adverse remarks.

That sir, in circular no E/54/1/CON/P-IV dated 24/1/94 The General Manager (P) N F Railway issued categorical instructions that adverse entries at the end of the year should not be automatic as a matter of routine. The officer initiating the CRs must, from time to time, during the reporting year should review the working of the staff under him and if it is found that his working is not up to the mark and requires improvement in areas, he should invariably be given written warnings which must be got acknowledged. If at the end of the year considerable improvement is noticed the reporting authority may not take cognizance of such warning and can give him a good report on his overall performance. If however the overall performance is not improved the adverse remark can be recorded against the relevant item of the CR for which a warning has been given.

True Copy

R. Dutta

R. Dutta (Advocate)
Mahanagar, Guwahati-781011

That sir, on the back ground of these very clear provisions of writing CRs with adverse remark the communication of adverse remarks came as a bolt from the blue to me. I was never Communicated that I lack in technical knowledge or that I do not make effort to standarise the Work or I lack in initiative and avoid responsibility. As such the adverse remarks have been recorded without observing the procedure laid down in rule 1608 RI and General Manager (P)'s Circular no E/54/1/CON/P-IV dated 24/1/94 and therefore liable to be expunged.

That sir, all the 3 adverse remarks viz lack of technical Knowledge etc. dose not make effort to standardize the work, lack of initiative and avoid responsibility are general remarks and are so brief and casual that it conveys no real pictures and based on off hand impressions and there by violation of the provisions of rule 1607 RI and are therefore liable to be expunged.

That sir, the adverse remarks as recorded are not only general in nature but are also vague and not supported by facts as basis on which the remarks are made and the facts on which the remarks are based have not been brought out as is required to be done in terms of rule 1608 RI and there fore the adverse remarks are liable to be expunged being ultra-vireos to rule 1608 RI.

That sir, not only the adverse remarks have been given violating the norms and procedure laid down in rules and instructions as referred to in the fore gone paras but these also do not stand the test of reasoning. As for example it may be pointed out that it has been recorded that I lack in technical knowledge and appreciation. If I really lack in technical knowledge and appreciation, this being a vital aspect, would have been noticed by other officers under whom I worked prior to 2002-03 for long 23 years of my service and would have reflected in my CR and Communicated. The remark is also not factually correct as there were

True Copy
R. Dutta

R. Dutta (Advocate)
Mumbai, Gujarat, 781011

- 20 -

Annexure A/4 Contd
ny

neither any faulty alignment as checked by honb'l CRS nor any delay and the project was commissioned 4 months before the schedule, for which the Hon'ble Railway Minister was pleased to sanction a sum of Rs 5 lacks for Commendable work done by officers and staff in completing the work 4 month ahead of the target date. I may also point out that I am an qualified Engineer holding the degree of MIE (Civil) as Certified by the Institute of Engineers (India) and also completed the Integrated course very recently at IRICEN /PUNE with grading VERY GOOD on subjects Track, Bridge & Works aspect of Railway.

That sir, other 2 remarks viz does not make efforts to standarise the work and lack of initiative and avoid responsibility are also vital aspects of a person's character and would have been noticed by earlier officers and reflected in earlier CRs. But no adverse remark was ever communicated to me in my 23 Years of service. I am sure you will kindly appreciate that no human being develop such characteristic within a year and absence of any earlier adverse remark goes to show that the reporting authority failed to make correct appreciation of my qualities and the reports are not justified.

I sincerely hope that you will kindly appreciate that serious injustice has been done to me by recording the adverse remarks and that too violating the code provisions and circulars and would pray for expunging of the same and for this act of kindness I shall remain ever grateful to you.

With regards

Yours faithfully

Dated 04.08.2003

(B. DUTTA)
AXEN/CON/PL-3
MALIGOAN. GHY 11

True Copy
B. Dutta

B. Dutta. (Aerocon)
M.G. Road, Guwahati-781011

Annexure 5

N. F. Railway.

Office of the
General Manager(Con)
N.F.Rly.Maligaon.

Confidential.
No.Z/SS/Con/CR/Adv/Gaz.

Dated 4-9-03.

Shri Biprojit Dutta,
Asstt.Executive Engineer/Con/PL-3.
N.F.Rly.Maligaon.

Sub:- ACR for the year ending 31.3.03 - Adverse entry.
Re:- Your appeal dt.4. 8-03.

Your above referred appeal has been carefully examined by the Competent Authority and after due consideration the Competent authority has passed the following orders:-

"I have gone through the representation of the officer. I find no reason or justification why the adverse entry in ACR should be expunged. The same stands."

Opposing
PS to GM(Con) 4-9-03
For General Manager(Con)

Recd 6/9/03
6/10/03

True Copy
R. Dutta.

R. Dutta, (Advocate)
Guwahati 781011

-22-

(CR)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH, GUWAHATI.

O.A. NO 238/03.

B. Dutta

-vs-

U.O.I & ors.

WRITTEN STATEMENT FILED BY THE RESPONDENTS.

1. That the respondents have received the copy of the ~~OA~~ Petition ~~.....~~ and has gone through the copy of the said Contempt petition filed by the petitioner and have understood the contents thereof.
2. That save and except the statements which are specifically admitted hereinbelow, other statements made in the Petition are categorically denied. Further the statements which are not borne on records are also denied and the petitioners are put to the strictest proof thereof.
3. That respondents instead of repeating the various contentions made in the OA begs to highlight the basic issues of the case as follows:

The Warning/reprimand was communicated to the applicant vide Annexure-i to 5 (enclosed). An award of Rs.5 lakhs was ~~given to the~~ whole staff and officers, not in individual cases and as such same can not be treated as a defense by the applicant.

The accepting Authority after carefully examining the appeal made by the applicant, rejected the appeal of the applicant. The reporting authority warned/reprimanded the applicant as recorded in ACR.

36
Filed by
the Respondents-Name
Siddhanta Jarma
Ris. Advocate
12/5/04
7/6/04

✓

The adverse remarks are recorded in the ACR after observing the performance of the applicant during the period for which ACR has been initiated. It is not true, adverse remarks are based on fact.

The adverse remarks are to the points made after due consideration and observing the performance of the applicant during the period.

3

VERIFICATION

I Shri AMBESWAR SAIKIA, aged about 48 years, son of LATE CHANDRA SAWA presently working as Dy. CHIEF PERSONNEL OFFICER/CON/Malijan Railway do hereby verify and state that the statement made in paragraphs, are true to my knowledge and those made in paragraphs 1 to 3 being matters of records are true to my information derived therefrom, which I believe to be true and the rest of my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this Twelveth day of May 2004.

Ambeswar SAIKIA
Deponent 12/5/04
(AMBESWAR SAIKIA)

Deputy Chief Personnel Officer
Construction, Malijan
N.F.M.

~~SECRET~~ 25 ~~SECRET~~ 39
Confidential

No.Z/SS/Con/CR/Adv/GAZ.

Shri Biprojit Dutta,
AXEN/Con/PL
N.F.Rly.Maligaon.

(Through Dy.CE/Con/PL/MLG).

Office of the
General Manager(Con)
N.F.Rly.Maligaon.

Dt.9.7.03.

Sub: ACR for Y.E. 31.3.2003 - communication of Adverse Entries.

The following remarks have appeared in your ACR for year ending 31.3.2003.

- (i) Lack of technical knowledge and appreciation of the same leading to delay in work due to setting out a faulty alignment.
- (ii) Does not make effort to standardise the work.
- (iii) Lack of initiative and avoid responsibility.

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

Please acknowledge receipt of this letter on the duplicate copy enclosed and return the same to this office within 10 days from the date of receipt. Please Note that representation, if any, has to be preferred within one month's time of receipt of this letter after which no representation will be considered.

3
9.7.03
Chief Engineer(Con)
N. F. Rly. Maligaon.

Termed
Advocate

26
TO
26
A. S. Mehta A/

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 49th 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 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

Attended
S. S.
Advocate

-11 27 8

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 Confdl. Reports without observing the above procedure, these remarks may have to be expunged and as such, the Reporting Officers are advised to ensure that the above instructions are adhered to before recording adverse remarks, if any.

5. Bd's further instructions contained in their letter No. E(NG)II/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.

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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.

Attested
for
Advocate

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Process no A/3
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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/ADRs,
All Dist. & Asstt. Officers of Non-Divnsd. 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 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.

*Attested
S.
Advocate*

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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 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.

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W

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 Dy. 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

Attested
by
Advocate

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CONFIDENTIAL

TO

The Chief Engineer (CON) V
N F Railway M algoan GHY 11.

Respected Sir,

SUB: ACR for Y.E 31/03/2003 communication of adverse entries.

REF: Your letter no Z/SS/CON/ADV/GAZ dated 9/7/2003

Apropos the aforementioned communication under which 3 adverse entries were communicated to me I beg to Submit the following representation for your kind perusal and sympathetic order please.

That sir, The authority for recording the annual confidential report is provided in chapter XVI of the Indian Railways Establishment Code vol-1 1971 edition. Rule 1606 of the same code is the authority for recording the annual confidential report and rules 1607 to 1610 provides the procedure of writing such report and action to be taken before recording an adverse entry in the annual confidential report of a railway servant.

That sir, Rule 1607 RI, inter-alia, provides that the annual confidential reports must not be confined merely to general remarks and off hand impressions so brief and casual as to convey little or no real meaning and the assessment must be based on failure or excellence in the work entrusted to the Railway servant.

That sir, Rule 1608 provides that a gazetted railway servant shall not ordinarily be given an unfavorable confidential report before the railway servant in a interview or personal letter pointing out to him the direction in which his

Attested
S.
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work has been unsatisfactory or fault of character or temperament etc which require to be remedied. If inspire of this, there is no improvement and an adverse confidential report has to be made the facts on which the remarks are based should be clearly brought out.

That sir, besides the code provisions the Railway Board issued series of instructions in respect of recording the adverse remarks in the CR. Basing on these instructions Local Railway administration issued NO of circulars reiterating the rules and Railway Board's instructions in respect of writing annual confidential reports.

That sir, in circular no E/54/CON/PII dated 11/5/88, the CPO/T&M/N F Railway Maligoan, Inter-alia ,pointed out that some reporting officers are submitting confidential reports without observing the procedure as enumerated in Rule 168 RI and such confidential reports are liable to be expunged and advised to ensure that the instructions are adhered to before recording adverse remarks.

That sir, in circular no E/54/1/CON/P-IV dated 24/1/94 The General Manager (P) N F Railway issued categorical instructions that adverse entries at the end of the year should not be automatic as a matter of routine. The officer initiating the CRs must, from time to time, during the reporting year should review the working of the staff under him and if it is found that his working is not up to the mark and requires improvement in areas, he should invariably be given written warnings which must be got acknowledged. If at the end of the year considerable improvement is noticed the reporting authority may not take cognizance of such warning and can give him a good report on his overall performance .If however the overall performance is not improved the adverse remark can be recorded against the relevant item of the CR for which a warning has been given.

Attested
for
Advocate

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That sir, on the back ground of these very clear provisions of writing CRs with adverse remark the communication of adverse remarks came as a bolt from the blue to me. I was never Communicated that I lack in technical knowledge or that I do not make effort to standarise the Work or I lack in initiative and avoid responsibility. As such the adverse remarks have been recorded without observing the procedure laid down in rule 1608 RI and General Manager (P)'s Circular no E/54/1/CON/P-IV dated 24/1/94 and therefore liable to be expunged.

That sir, all the 3 adverse remarks viz lack of technical Knowledge etc. dose not make effort to standardize the work, lack of initiative and avoid responsibility are general remarks and are so brief and casual that it conveys no real pictures and based on off hand impressions and there by violation of the provisions of rule 1607 RI and are therefore liable to be expunged.

That sir, the adverse remarks as recorded are not only general in nature but are also vague and not supported by facts as basis on which the remarks are made and the facts on which the remarks are based have not been brought out as is required to be done in terms of rule 1608 RI and there fore the adverse remarks are liable to be expunged being ultra-vires to rule 1608 RI.

That sir, not only the adverse remarks have been given violating the norms and procedure laid down in rules and instructions as referred to in the fore gone paras but these also do not stand the test of reasoning. As for example it may be pointed out that it has been recorded that I lack in technical knowledge and appreciation. If I really lack in technical knowledge and appreciation, this being a vital aspect, would have been noticed by other officers under whom I worked prior to 2002-03 for long 23 years of my service and would have reflected in my CR and Communicated. The remark is also not factually correct as there were

Attested
S,
Advocate

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Ann A/4 contd

neither any faulty alignment as checked by honb'l CRS nor any delay and the project was commissioned 4 months before the schedule, for which the Hon'ble Railway Minister was pleased to sanction a sum of Rs 5 lacks for Commendable work done by officers and staff in completing the work 4 month ahead of the target date. I may also point out that I am an qualified Engineer holding the degree of MIE (Civil) as Certified by the Institute of Engineers (India) and also completed the Integrated course very recently at IRICEN /PUNE with grading VERY GOOD on subjects Track, Bridge & Works aspect of Railway.

That sir, other 2 remarks viz does not make efforts to standarise the work and lack of initiative and avoid responsibility are also vital aspects of a person's character and would have been noticed by earlier officers and reflected in earlier CRs. But no adverse remark was ever communicated to me in my 23 Years of service. I am sure you will kindly appreciate that no human being develop such characteristic within a year and absence of any earlier adverse remark goes to show that the reporting authority failed to make correct appreciation of my qualities and the reports are not justified.

I sincerely hope that you will kindly appreciate that serious injustice has been done to me by recording the adverse remarks and that too violating the code provisions and circulars and would pray for expunging of the same and for this act of kindness I shall remain ever grateful to you.

With regards

Yours faithfully

Dated 04.08.2003

(B. DUTTA}
AXEN/CON/PL-3
MALIGOAN. GHY 11

Attested
S.
Advocate

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N. F. Railway.

Office of the
General Manager(Con)
N.F.Rly.Maligaon.

Dated 4-9-03.

Confidential

NoZ/SS/Con/CR/Adv/Gaz.

Shri Biprojit Dutta,
Asstt. Executive Engineer/Con/PL-3.
N.F.Rly.Maligaon.

Sub:- ACR for the year ending 31.3.03 - Adverse entry.
Ref:- Your appeal dt.4.8.03.

Your above referred appeal has been carefully examined by the Competent Authority and after due consideration the Competent authority has passed the following orders:-

"I have gone through the representation of the officer. I find no reason or justification why the adverse entry in ACR should be expunged. The same stands."

Managing
PS to GM(Con) 4-9-03
For General Manager(Con)

Attested
S.
Advocate

23 JUN 2003

Guwahati Bench

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:::::

GUWAHATI BENCH ::::: GUWAHATI.O.A. No. 230/2003

Biprajit Dutta ...

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 has understood the meaning of the contents thereof and begs to file his rejoinder as follows :
- 2) That the applicant reiterates what has already been stated in the original application that no warning/reprimand has ever been issued to the applicant before recording the adverse entries in the A.C.R. of the applicant.
- 3) That the respondents in paragraph 3 of their written statement have stated that warning/reprimand was communicated to the applicant vide Annexure-1 to 5 (enclosed with the written statement). This is an absolutely incorrect statement and is merely an afterthought on the part of the respondents. Had

Biprajit Dutta
 (By PROSTI DUTTA)
 through, Krishnadev Paul, Advocate, 22-6-2004

it been true it would have found mention in the order dated 4.9.2003 whereby the representation filed by the applicant against the adverse remarks was rejected and in which the applicant specifically raised the issue that no warning/reprimand was ever communicated to him before recording the adverse remarks in his ACR.

Besides, the documents enclosed as Annexure-1 to 5 to the written statement are not warning/reprimand issued to the applicant as claimed by the respondents. These documents do not support the statements made in paragraph 3 of the written statement. The respondents have deliberately made such kind of false statements in their written statement.

The applicant further states that the award of Rs.5 lakhs was given to the whole staff and officers including the applicant which proves that the said adverse remarks are not based on facts.

The respondents in the third sub-paragraph of paragraph 3 of their written statement have stated that the accepting authority after carefully examining the appeal made by the applicant, rejected the appeal of the applicant. In this connection, the applicant states that while rejecting the representation, the main objection raised by the applicant that no warning/reprimand was given before recording the adverse remarks, was not at all considered by the said authority.

Therefore, the stand taken by the respondents in their written statement that the reporting authority warned/reprimanded the applicant, is merely an afterthought and is not true. Even the documents enclosed with the written statement do not support the stand taken by the respondents.

With regard to the statements made in the fourth and fifth sub-paragraphs of paragraph 3 of the written statement, the applicant begs to reiterate what has already been stated by him in the original application. The adverse remarks recorded in his A.C.R. are not based on facts and the same have been written in a casual manner without applying objectivity and is not correct appreciation of the applicant. The said adverse remarks are therefore liable to be set aside and quashed.

4. That the averments made in the written statement filed by the respondents are incorrect and false. The respondents have deliberately made such averments to mislead the Hon'ble Tribunal and to jeopardise the career prospects of the applicant.

VERIFICATION

I, Shri Biprajit Dutta, son of Late B.C.Dutta, aged about 44 years, residing in Railway Bunglow No. 294/D, Sarada Colony, Maligaon, Guwahati-781011, do hereby verify that the statements made in paragraphs 1, 2 and 3 are true to my knowledge and the rest are my humble submission before the Hon'ble Tribunal and I have not suppressed any material facts.

And I sign this verification on this the 22nd day of June, 2004.


Signature.
(BIPRAJIT DUTTA)