

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 41/094
R.A/C.P No.
E.P/M.A No.

1. Orders Sheet..... Pg..... to.....
2. Judgment/Order dtd. 24/02/2004 Pg..... to.....
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 41/2004 Pg..... to.....
5. E.P/M.P..... Pg..... to.....
6. R.A/C.P..... Pg..... to.....
7. W.S..... Pg..... to.....
8. Rejoinder..... Pg..... to.....
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

S. Nahar
08/11/17

FORM NO. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

✓ ORDER SHEET

Org. App/ Misc. Petn/ Cont. Petn/ Rev. Appl. 41/04

In O.A.

No. re of the Applicant(s) SK Bhattacharjee

Name of the Respondent(s) Business of India Sons

Advocate for the Applicant Mr. X. Paul, Mr. J.P. Chauhan

Counsel for the Railway/ C.G.S.C. Mr. A. Sarma
CGSC

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

..... O.P. No. 41/04
is filed. For the hearing
dates of 23-2-04.

No. S.G. - 435569

Dated. 23-2-04

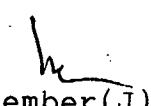
24.2.2004 Present: Hon'ble Shri Shaker Raju,
Judicial Member

Hon'ble Shri K.V. Prahladan,
Administrative Member

Heard the learned counsel
for the parties. Hearing concluded.
The O.A. is disposed of. Reasons to
be recorded separately.

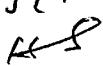
Let a copy of the detailed
order be served on the respondents.


Member (A)


Member (J)

nkm

4.3.04

copy of the Judgement
has been sent to the
D/Sec. for issuing the
same to the applicants
well as to the Addl
C.G.S.C.


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.41 of 2004

Date of decision: This the 24th day of February 2004

The Hon'ble Shri Shanker Raju, Judicial Member

The Hon'ble Shri K.V. Prahladan, Administrative Member

Shri Susanta Kr Bhattacharjee
Lower Division Clerk,
Ministry of Environment and Forests,
Government of India,
Regional Office (N.E.R.),
Shillong, Meghalaya.

.....Applicant

By Advocate Mr K. Paul, Mr J.P. Chandan
and Mr A. Sarma.

- versus -

1. Union of India,
represented by the Secretary to the
Government of India,
Ministry of Environment and Forests,
New Delhi.

2. The Chief Conservator of Forests (Central),
Government of India,
Ministry of Environment and Forests,
Regional Office (N.E.R.),
Shillong, Meghalaya.Respondents

By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

.....

O R D R R (ORAL)

SHANKER RAJU, MEMBER(J)

Heard Mr K. Paul, learned counsel for the
applicant and Mr B.C. Pathak, learned Addl. C.G.S.C.

2. Against the adverse remarks an appeal was
preferred by the applicant which was rejected by the
respondents. A memorial was filed on 26.8.2002 and is
still to be responded to by the respondents.

3. In view of the above we feel that ends of justice would be met if the O.A. is disposed of with directions to the respondents to dispose of the appeal filed by the applicant by dealing with all the contentions raised in his memorial against the adverse remarks within two months from the date of receipt of a copy of this order with intimation to the applicant.

4. The O.A. accordingly stands disposed of with the above directions.



(K. V. PRAHLADAN)
ADMINISTRATIVE MEMBER



(SHANKER RAJU)
JUDICIAL MEMBER

nkm

23FEB200

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH : GUWAHATI.

(An application under Section 19 of the A.T.Act, 1985)

O.A. NO. 41 OF 2004

Shri S.K. Bhattacharjee, Applicant.

- Versus -

Union of India & Another. Respondents.

LIST OF DATES

Date	Particulars	Para/Anx.	Page
24-8-2000	Communication of adverse remarks in the ACR of the applicant for the year 1999-2000	Para 4.3 Anx - A/1	3. 17.
21-9-2000	Representation submitted by the applicant against the adverse remarks recorded in his A.C.R.	Para 4.8 Anx. A/3	7-8. 19-21.
5-6-2002	Rejection of the representation dated 21-9-2000 by the Chief Conservator of Forests (Central)	Para 4.9 Anx. A/4	8. 22-23.
26-8-2002	Appeal filed by the applicant against the order dated 05-06-2002 before the Secretary, Govt. of India, Ministry of Environment & Forests, New Delhi	Para 4.13 Anx. A/5	10. 24-27.
21-11-2003	Reminder submitted to the Ministry at New Delhi	Para 4.14 Anx. A/6	10-11. 28-30.

Sneanta, Kr. Bhattacharya

Signature of the applicant.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH : GUWAHATI.

(An application under Section 19 of the A.T.Act, 1985)

O.A. NO. OF 2004

Shri S.K. Bhattacharjee. Applicant.

- Versus -

Union of India & Another. Respondents.

I N D E X

S1. / Particulars of Documents No. /	Annexure No. /	Page No. /
1. Application		1 - 16
2. Communication dated 24-8-2000 regarding the adverse remarks.	A / 1	17.
3. Communication dated 23-04-1992	A / 2	18.
4. Representation dated 21-9-2000 against the adverse remarks.	A / 3	19-21.
5. Communication dated 5-6-2002 rejecting the representation against adverse remarks.	A / 4	22-23.
6. Appeal dated 26-8-2002 against the rejection of representation	A / 5	24-27.
7. Reminder dated 21-11-2003	A / 6	28-30.

Susanta kr. Bhattacharjee

Signature of the applicant.

For use in the Tribunal's Office
Date of filing :-

Registration No. :-

Registration No. :-

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH : GUWAHATI.

(An application under Section 19 of the A.T. Act, 1985)

O.A. NO. 41 OF 2004

BETWEEN : Sri Susanta Kr. Bhattacharjee
Lower Division Clerk,
Ministry of Environment and
Forests, Government of India,
Regional Office (N.E.R.),
Shillong - 793003, Meghalaya.

..... Applicant.

- A N D -

1. Union of India
represented by the Secretary
to the Government of India,
Ministry of Environment and
Forests, Paryawaran Bhawan,
C.G.O. Complex, Lodhi Road,
New Delhi - 110003.

2. The Chief Conservator of
Forests (Central), Govt. of
India, Ministry of Environment
and Forests, Regional Office
(N.E.R.), Upland Road,
Laitumkhrah, Shillong-793003,
Meghalaya.

..... Respondents.

Contd

23-2-2004

File by, *7*
Susanta Kr. Bhattacharjee
through, Krishnendu Paul
Advocate

Substantive-Verbal-Scheme

1. PARTICULARS OF THE ORDERS AGAINST WHICH THIS APPLICATION IS MADE :-

1.1. 'Head of Office', Ministry of Environment and Forests, Regional Office (N.E.Z), Shillong, letter No. RO-NE/ACR/LDC/HT/487 dated 24-08-2000, communicating some adverse remarks in the Annual Confidential Report of the applicant for the year 1999-2000 (Annexure-A/1).

1.2. Memorandum No. RO NE / ACR / 99 / 664 dated 05-06-2002 of the Chief Conservator of Forests (C), Ministry of Environment & Forests, Regional Office (N.E.R.), Shillong, rejecting the representation of the applicant (Annexure-A/4).

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 submits that the application has been filed within the period of limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE :-

4.1. That the applicant is a citizen of India and as such is entitled to all the rights, protection and privileges guaranteed under the Constitution of India.

4.2. That the applicant is working as a Lower Division Clerk (L.D.C.) in the regular line in the

Ministry of Environment and Forests, Govt. of India,
Regional Office (N.E.R.), Shillong - 3, Meghalaya.

4.3. That under letter No.RO-NE/ACR/LDC/HT/487 dated 24-08-2000, the 'Head of Office', Ministry of Environment and Forests, Regional Office (N.E.Z.), Shillong, communicated to the applicant the following adverse remarks in his Annual Confidential Report for the year 1999-2000.

- a) Carelessness in typing especially accounts work and monthly report which had to be taken out from you and assigned to others. This needs major improvement.
- b) Cannot operate computer and also not willing to learn.
- c) In areas of discipline and punctuality much needs to be done for improvement despite several memos issued to you.
- d) Tends to ignore the official responsibility where it conflicts with personal interest.'

A copy of the said letter dated 24-08-2000 is annexed herewith and marked as Annexure-A/1.

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

Swaraj Bhawan
Government of India
Shillong

4.5. That the applicant was selected through the proper channel and he joined in service as L.D.C. on 01-08-1980 in the Directorate of Census Operations (Arunachal Pradesh), Shillong-3. He has also qualified himself in the examination conducted by the Staff Selection Commission. Thereafter, he was appointed in the same capacity in the North Eastern Police Academy, Umsaw, Barapani with effect from 16-01-1986, with all benefits of past service, pay protection, etc. The applicant was thereafter appointed as L.D.C. in the Office of the Chief Conservator of Forests (Central), Regional Office, Shillong, where he joined on 15-06-1989 and is continuing as such till today.

4.6. That there are certain provisions for writing the confidential reports of the Central Government employees. Under the Government of India, Department of Personnel & Administrative Reforms, Office Memorandum No.21011/1/81-Estt. (A), dated 5th June, 1981, steps should first be taken to have the defects / shortcomings etc. noticed in an employee concerned, and only those defects/shortcomings which have persisted despite efforts to have them corrected by advice / warning / reprimand etc., be mentioned in his / her A.C.R. The relevant portion of the said O.M. is extracted below :-

" There may be occasions when a superior 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 / displeasure / 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, 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 / reprimand, 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 the conclusion that despite such warning / displeasure / reprimand the officer has not improved, it may make appropriate mention of such 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

See notes for attachment

12

in that case, a copy of the warning / displeasure / reprimand referred to in the confidential report should be placed in the C.R. dossier as an annexure to the confidential report for the relevant period."

The applicant craves leave of this Hon'ble Tribunal to produce and rely upon the said O.M. dated 05-06-1981 at the time of hearing of the case.

4.7. That no advisory note or warning was communicated to the applicant to the effect that the applicant was careless in typing especially accounts work, that he cannot operate computer and not willing to learn, that in areas of discipline and punctuality much needs to be done for improvement and that he tends to ignore the official responsibility where it conflicts with personal interest, during the reporting period 1999-2000, 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 Central Government, he had any adverse remark in his confidential report nor there was any carelessness in typing, inability to operate computer on the part of the applicant, shortcomings in areas of discipline and punctuality, etc., during the reporting year 1999-2000. To the contrary, the applicant has earned a number of merit certificates and honorarium which are to the effect that he is a very sincere,

Susanta, Mr. Bhattacharya

hardworking and efficient worker and that he is attending to multifarious tasks, such as entire accounts works of the office, technical and all miscellaneous activities and that he often works beyond office hours and even on Government holidays and that he is well conversant with all relevant files, and is an asset to the office. An honorarium of Rs.1000.00 was received by the applicant during May, 1999 from the Government, vide Bill No.74/NG dated 05-05-1999 on the recommendation of the Ministry of Environment and Forests.

A copy of one such recommendatory letter is annexed herewith and marked as Annexure-A/2 and the applicant craves leave of the Hon'ble Tribunal to produce and rely upon such other letters of appreciation at the time of hearing of the case.

4.8. That the applicant filed a representation on 21-09-2000 against the adverse remarks recorded in his A.C.R., pointing out in detail that the adverse remarks were recorded violating the procedure laid down in the Government of India, DP & AR O.M. No.21011/1/81-Estt(A), dated 05-06-1981, as no prior warning or reprimand was issued to the applicant and the adverse entries were not based on facts. It was also pointed out that the adverse remarks are general remarks and are brief and casual and conveys no real picture. The adverse remarks have not

Contd

been shown against specific headings and could not therefore be co-related to the items in the A.C.R. form to which they relate. The applicant was not given the prescribed opportunity of self correction, if anything requiring correction, was noticed in him. The said remarks made in the A.C.R. display a conscious bias against the applicant.

A copy of the representation dated 21-09-2000 is annexed herewith and marked as Annexure-A/3.

4.9. That under Memorandum No.RO NE/ACR/99/664 dated 05-06-2002, the Chief Conservator of Forests (C), Ministry of Environment & Forests, Regional Office (N.E.R.), Shillong, rejected the representation filed by the applicant except in respect of one entry out of the four adverse entries in the A.C.R. The representation dated 21-09-2000 was rejected by a sweeping, surmisical and evasive order avoiding all specifics as were raised in the representation. The order dated 05-06-2002 of the competent authority was a non-speaking one, and in real terms, a mere show piece paper disposal only.

A copy of the said memorandum dated 05-06-2002 is annexed herewith and marked as Annexure-A/4.

4.10. That under Government of India, DP & AR O.M. No.21011/1/77-Estt. dated the 30th January, 1978, a time

Contd

Sunder, Mr. Bhawal Singh

limit has been fixed for disposal of representation against the communication of adverse remarks. According to this Government Circular, a representation 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.

The applicant craves leave of this Hon'ble Tribunal to produce and rely upon the said O.M. dated 30-01-1978 at the time of hearing of the case.

4.11. That the order dated 05-06-2002 by which the representation against adverse remarks was rejected is completely time barred and void in rule for reasons of it having been passed after more than one year and eight months in place of the prescribed maximum period of three months. This order has been passed only when the question of granting financial upgradation to the applicant under A.C.P. has arisen.

4.12. That under Government of India, DP & AR, O.M. No.21011/1/77-Estt., dated the 30th January, 1978, an appeal or memorial can be filed against the rejection of the representation against adverse remarks within a period of six months after such rejection.

The applicant craves leave of the Hon'ble Tribunal to produce and rely upon the said O.M. dated 30-01-1978 at the time of hearing of the case.

Sunder, Mr. B. Shastri

4.13. That the applicant preferred an appeal dated 26-08-2002 against the order dated 05-06-2002 rejecting the representation against adverse remarks, within the stipulated period of six months, in terms of the provisions of Government of India, DP & AR, O.M. No.21011/1/77-Estt. dated the 30th January, 1978. The said appeal was addressed to the Secretary to the Government of India, Ministry of Environment & Forests, New Delhi, through the Additional Director and Head of Office, Government of India, Ministry of Environment & Forests, RO (N.E.R.), Shillong, vide Diary No.1138 dated 28-08-2002. The applicant in his appeal pointed out that the order dated 05-06-2002 is completely time barred and is not acceptable in the eye of law. The representation was rejected in a most casual manner without assigning any reason. The order is evasive and avoidant of all specifics on facts and rules and it has been passed only when the question of granting financial upgradation under A.C.P. has arisen. The applicant prayed for expunging the adverse entries from his A.C.R.

A copy of the said appeal dated 26-08-2002 is annexed herewith and marked as Annexure-A/5.

4.14. That, although the appeal dated 26-08-2002 was duly received and forwarded to the competent authority but no order has been passed disposing of the appeal. Therefore, the applicant submitted a reminder application on 21-11-2003 to the Ministry at New Delhi

Substantia, for. O.P. Ranjan

through proper channel with a request to look into the case of the applicant and to communicate the order of the Ministry on the said appeal as early as possible. The Regional Office of the Ministry at Shillong acknowledged the receipt of the said reminder vide Diary No.1551 dated 24-11-2003. The applicant also sent an advance copy of the reminder by registered post vide registered letter No.A 3919 dated 24-11-2003. However, the applicant is yet to be informed about the outcome of his appeal.

A copy of the said application dated 21-11-2003 is annexed herewith and marked as Annexure-A/6.

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 out that he is careless in typing and cannot operate computer and that in areas of discipline and punctuality much needs to be done for improvement. As such the adverse remarks have been recorded most illegally violating the Government of India, DP & AR, O.M. No.21011/1/81-Estt. (A), dated 05-06-1981 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 order dated 05-06-2002 rejecting the representation against the adverse remarks is completely

Sunderak Phansingh

18

time barred and void in rule for reasons of it having been passed after more than one year and eight months in place of the maximum period of three months as prescribed in the Government of India, DP & AR, O.M. No.21011/1/77-Estt., dated 30-01-1978 and therefore, the said order is liable to be quashed and the adverse remarks should be deemed to be inoperative.

5.3. That the applicant was never in 23 years of his service life communicated that he is careless in typing, that he cannot operate computer and also not willing to learn and that in areas of discipline and punctuality much needs to be done for improvement. Nobody can develop carelessness in typing and lack in computer knowledge and in areas of discipline and punctuality, within a year. If the applicant had these characteristics it would have been reflected in his earlier confidential reports inasmuch as the applicant spent 23 years in Central Government Service and had 22 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 assessment of the performance of the applicant and is therefore liable to be set aside and quashed.

5.4. That, neither any instances to substantiate the adverse remarks nor any facts on which these remarks were based have been brought out in the report. As such

Sunder Ver Bhattacharya

Surinder K. Bhatia (S/o)

the adverse remarks in the report are violative of the rules and instructions framed by the Government of India, DP & AR, D.M. No.21011/1/81-Estt. (A), dated 05-06-1981 and the law laid down by the Hon'ble Supreme Court of India is Sukhdeo -Vs- Commissioner Amravati Division, Amravati and another, reported in (1996) 5 SCC 103, M.A. Rajasekhar -Vs- State of Karnataka and another, reported in (1996) 10 SCC 369 and in P.K. Shastri -Vs- State of M.P. and others, reported in (1997) 7 SCC 329.

5.5. 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 impression and are violative of the rules and circulars framed by the Government of India. The representation against the adverse remarks was rejected without sufficient reasons and that too long after the period prescribed by the circular, at the time when the question of granting financial upgradation under A.C.P. has arisen, thus revealing a conscious bias against the applicant.

5.6. That the adverse remarks are not only violative of the rules and instructions in the matter but are not correct appreciation of the applicant as he is a qualified person and has been given very good remarks by the officers in earlier years. In fact, the applicant was earlier promoted to the post of U.D.C. by a duly constituted D.P.C. but later on the applicant was reverted to the present post of L.D.C. to facilitate his

absorption in the Regional Office of the Ministry at Shillong.

6. DETAILS OF REMEDIES EXHAUSTED :-

That the applicant had filed an appeal dated 26-08-2002 followed by a reminder application dated 21-11-2003 but the same are yet to be considered and disposed of by the respondents.

7. PARTICULARS OF PREVIOUS APPLICATION IF ANY :-

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. RELIEF 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 the records may be pleased to set aside and quash the adverse remarks communicated under letter No.RO-NE/ACR/LDC/HT/487 dated 24-08-2000 (Annexure-A/1) and the order rejecting the representation against the adverse remarks issued under Memo

Sunder, Mr. Bhalacharya

No.RD NE / ACR / 99 / 664 dated 05-06-2002

(Annexure-A/4) and to direct the respondents to correct the records by expunging the adverse remarks and/or be pleased to pass any such further order/orders as the Lordships of the Hon'ble Tribunal may deem fit and proper.

And for this act of kindness, the applicant as in duty bound shall ever pray.

9. INTERIM ORDER, IF ANY PRAYED FOR :- Nil.

10. THE APPLICATION IS FILED THROUGH ADVOCATES

11. PARTICULARS OF THE INDIAN POSTAL ORDER

i) I.P.O. No.5G 435569

ii) Date :- 12-03-2003

iii) Payable at :- Guwahati

12. LIST OF ENCLOSURES :-

As stated in the index.

..... Verification

Contd

VERIFICATION

I, Sri Susanta Kumar Bhattacharjee, son of Late S.B. Bhattacharjee, aged about 46 years, at present working as L.D.C. in the Office of the Chief Conservator of Forests (Central), Government of India, Ministry of Environment and Forests, North Eastern Regional Office, Upland Road, Shillong - 793003, do hereby verify that the contents of paragraphs 4.1 to 4.14 are true to my personal knowledge and paragraphs 5.1 to 5.6 are believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on this the 23rd day of February, 2004 at Guwahati.

Identified by

Krishnendu Paul
Advocate.



Signature of the applicant.

Government of India
Ministry of Environment & Forests
Regional Office (NEZ)

ANNEXURE- A/1

Gram : PARYAVARAN
Phone/Tele. 227673
227929
227565
Email/Fax 0364 - 227673

No. HQ-NN/AGR/LDC/UT/464.

Date August 21, 2000

Subject : Adverse remarks on your ACR

I am directed to inform you that in your ACR for the year 1999-2000 there is shortcomings in your performance which is not acceptable.

The following is the extract of defects which you should note:

1. Carelessness in typing especially accounts work and monthly report which had to be taken out from you and assigned to others. This needs major improvement.

2. Cannot operate Computer and also not willing to learn.

3. In areas of discipline and punctuality much needs to be done for improvement despite several memos issued to you.

4. Tends to ignore the official responsibility where it conflicts with personal interest.

You are therefore, instructed to give your comments if any on the above remarks within one month from the date of issue of this letter.

(R. Kemp)
Head of Office.

Shri G. K. Bhattacharjee,
LDC,
Regional Office,
Shillong.

Certified to be true copy.

Krishnendu Paul

Advocate

23-2-2004.

(True copy)

Government of India
Ministry of Environment & Forests,
North Eastern Regional Office.

Upland Road,
Laitumkhrah,
Shillong-793003.

No.RO-NE/1-10-89/PF/50

Dated the 23-4-92.

To

Shri S K Sahrawat,IFS,
Asstt Inspector General of Forests,
Govt of India, Min of Env & Forests,
Paryavaran Bhavan, CGO Complex,Lodhi Road,
NEW DELHI-110 003.

Sub: SHRI S K BHATTACHARJEE,LDC-EXTENTION OF DEPUTATION PERIOD.

Ref: Ministry's letter No.4-1/89-RO(HQ), dt.11-5-89.

Sir,

I wish to place the following before you for favour of kind consideration and necessary action.

Shri S K Bhattacharjee,LDC,(Now UDC), has joined this office on 14-6-89(FN).The period of deputation was 3(three) years initially as per reference cited above. The 3(three) years will expire on 14-6-92. The Ministry has already been requested to extend the deputation period. In this connection I am to bring to kind notice that Shri S K Bhattacharjee, is a very sincere, hard-working and efficient worker. He is attending to multifarious tasks, such as entire accounts works of the office, Technical and all miscellaneous activities. He often works beyond office hours and even on Govt Holidays. Since all the ministerial posts are on deputation and the consequent frequent changes, office functioning has been hampered, Shri S K Bhattacharjee,UDC, is well conversant with all relevant files, and is an Assets to this office.

I, therefore, request that his deputation be extended for a further period of 2(two) years.

Yours faithfully,

Sd/-

Deputy Conservator of Forests(C)

*Certified to be true copy
Krishnendu Paul
Advocate
23-2-2004*

Annexure - 3

ANNEXURE-A/3

Copy for S.K.B.

Shillong,

Dated The 21st Sept/2000.

To

Reply No. 357 The Deputy Conservator of Forests (C), & Head of Office.
Date 22-7-2000 Govt of India, Min of Env & Forests,
GOVT OF INDIA Regional Office, (NER), Upland Road,
Ministry of Environment and SHILLONG-3.
Regional Office Shillong

(Through Proper Channel)

Sub:

REPRESENTATION OF SHRI S K BHATTACHARJEE, LDC(H/T),
AGAINST ADVERSE ENTRIES MADE IN HIS ACR FOR 1999-2000.

Ref:

Your office letter No. RO-NB/ACR/LDC/HT/487,
dated 24-8-2000.

Most Hon'ble Sir,

In your office letter under reference, a plethora of 4 adverse entries made in my ACR for the year 1999-2000, have been communicated to me. In this connection, I beg to represent as follows:

1. It is now well recognised that performance appraisal of an employee through his/her ACR is intended to be a tool for human resource development. It is not meant, in any way, to be a fault-finding instrument but a developmental one. Even a casual reading of the adverse entries, as many as 4, made in my ACR would convince anyone that the adverse entries have been made out of 'confused intention' and solely to find fault with me to the farthest end. The operation of subjectivity and conscious bias are clearly in evidence from the drafting itself, which are lacking in sobriety and moderate attitude.
2. It is not clear whether all the 4 adverse entries have been made by the Reporting Officer and have the approval of the Reviewing Officer. Under G.I., Cabinet Secretariat O.M. No. 51/5/22-Ests(A), dated 20th May 1972, para 7, the Reviewing Officer should exercise 'positive and independent' judgement on the remarks of the Reporting Officer under various detailed headings in the ACR form and express clearly his agreement or disagreement with the remarks of the Reporting Officer. This, the said O.M. dated 20th May 1972 says, is particularly necessary in regard to adverse remarks to ensure the essentials of objectivity in reporting. Item No. 3 in Part-IV of the ACR form for the Lower/Upper Division Clerks, requires the Reviewing Officer to state whether he agrees with the assessment of the Reporting Officer. The letter communicating the adverse remarks should contain an indication whether the adverse remarks carry approval of the Reviewing Officer.

...contd...2...

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Krishnendu Paul
Advocate
23-2-2004.

-3-

3. Part-III of the prescribed ACR Form for Lower/Upper Division Clerk, contains 15 items with distinct headings, and adverse entries, where made, are to be shown against each headings of the ACR form. The adverse remarks communicated to me have not shown against specific headings and could not therefore, be co-related to the items in the ACR form to which they relate. In particular, number 2 of the adverse entry relating to Computer operation, is out of the prescribed heading of the ACR form and hence wholly extraneous and contrary to rule.

4. Under G.I. Deptt. of Personnel & Administrative Reforms O.N. No.21011/1/77-Estt, dated 30-1-1978, adverse entries should be communicated alongwith mention of good points. This has not been done. Hence, recording of only adverse remarks in my ACR without mentioning good points are contrary to rule of the said DP&AR O.N. dated 30-1-1978. This re-affirms the subjectivity and conscious bias against me.

5. Further, under G.I. DP&AR O.N. No.21011/1/81-Estt(1), dated 5th June 1981, steps should first be taken to have the defects/shortcomings etc. noticed in an employee corrected, and only those defects/shortcomings which have persisted despite efforts to have them corrected by advice etc., be mentioned in his/her ACR. No advisory memo was issued to me by way of advice etc. before recording the adverse remarks in my ACR (so far as I remember). I was taken surprise and I have been tainted by adverse remarks in my ACR by denial of prescribed opportunity of self correction, if anything requiring correction, was notice with me.

6. In addition to what have been stated in the foregoing paragraphs, I state as follows, specific to each item of the adverse entries-

(1) Typing of accounts and monthly reports were not my allotted duties. If I had typed any such matter, that was in addition to my own allotted duties. Mistakes and errors are not unusual in typing work. In fact, they are inherent in typing work. But, if there was any mistake or error in matters typed by me, I was never cautioned by any memo. Hence straight inclusion of the adverse remarks in my ACR has contrary to rule GI O.N. mentioned in para 5 hereinabove.

...contd...3...

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(2) I am not a Computer Operator. Neither was I ever placed in Computer training by order. Hence, the question of my not being able to operate Computer does not arise at all. Since, I was never placed on regular Computer training under qualified Computer Instructor, there was also no question of my unwilling to learn Computer operation.

(3) The expression "much needs to be done in areas of discipline and punctuality" is vague. Discipline and punctuality are separate and distinct item in the ACR form. The two items could not have been clubbed into one and a vague and sweeping remark to the effect that much needs to be done in areas of discipline and punctuality, made in my ACR.

(4) The entry "Tends to ignore the official responsibility when it conflicts with personal interest", is an omnibus and sweeping remark. I was never told, by any advisory letter, where and in which matter I ignored my official responsibility did conflict with my personal interest. This personalised remark speaks volume of the intensity of conscious bias against me. In fact, no matter which related to my personal interest, could have been given to me for disposal. The remark is wholly shorn of facts and is born out of entrenched, "confused intention".

With the submissions as above, I request and pray to you to kindly look into the matter and expunge all the adverse entries from my ACR. I earnestly hope that there would be genuine attempts on the part of your administration to appreciate the basic purpose of performance appraisal of employee in letter and spirit which is development of human resources and not merely finding fault with the employee. I undertake to learn and improve wherever so advised and counselled. I would faithfully look to your administration for advice and inspiration which are the corner stone of ACR writing.

With high regards,

Yours faithfully,
S K BHATTACHARJEE
LDC(H/T) 12/19/2000

ANNEXURE - A/4

Ref No. RONE/ACR/99/664

dated 5.6.2002

MEMORANDUM

Sub: Adverse entries made in the ACR of for 1999-2000 – Shri S K Bhattacharjee.

Vide this office memo No. RO-NE/ACR/KDC/HT/487 dated August 24, 2000 on the above subject, the shortcoming in your performance for the year 1999-2000, which were not acceptable to this office, were communicated to you. The extracts of your shortcomings, as reflected in your ACR for the year 1999-2000, were as follows :-

- (a) Carelessness in typing especially accounts work and monthly reports which had to be taken out from you and assigned to others.
- (b) Cannot operate computer and also not willing to learn.
- (c) In areas of discipline and punctuality much needs to be done for improvement despite several memos issued to you.
- (d) Tends to ignore the official responsibility where it conflicts with personal interest.

In your explanation in para 1 of your explanation you have claimed, that even the casual reading of your adverse entries could convince anyone that these had been made "to confuse" and "solely to find fault with" you, that these were lacking in sobriety and were biased. Your claims are groundless because the shortcomings listed in your ACR are very clear, to the point, and objective. Further, there is nothing in it which can even remotely be called as lacking in sobriety.

In para 2 of your explanation you have claimed that it was not clear as to whether of the adverse entries had been made by the Reporting Officer and had the approval of the Reviewing Officer. In this connection, you are informed that the ACR is complete only when the entire process of reporting and reviewing is completed and only those remarks are communicated which reflect the reporting in the completed ACR. Therefore, your claims are groundless.

In the para 3 of your ACR you have claimed that the adverse remarks were not against the specific columns in ACR and, therefore, are not related to items in the ACR forms. You have claimed that computer operation is out of the prescribed headings of the ACR. Your claims are groundless because the adverse remarks relate clearly to your work including remarks related to the computer.

In para 4 & 5 of your explanation you have claimed that the adverse entries should be communicated along with the mention of good points and that "as far as you remember" no advisory memorandum was issued to you by way of advise and that you had been taken by surprise. It is quite obvious that you have chosen not to remember the instructions and advisories given to you regularly by the officers in this office particularly with regard to your quality of work, your carelessness and your lack of punctuality. For

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 Krishnendu Paul
 Advocate
 23-2-2004*

instance, a perusal of the attendance register reveals repeated delays in reaching office on your part.

In para 6 (1) you have claimed that typing of Accounts and related works were not your duties and, therefore, mistakes were only in the additional works. Your claims is without basis. Any official work related to the post of LDC and assigned to you permanently or for a short duration is your official work and none of them are additional works.

In para 6 (2) you further claimed that you are not Computer Operator and that you were never sent for computer training. All officials in this office have learnt the use of computer through getting trained with officers. It does not require a computer operator to operate the computer for Word Processing as required of you. As all other employees you were also requested to learn computer but you refused to do the needful. As a result of which the quality of work in your seat had suffered seriously.

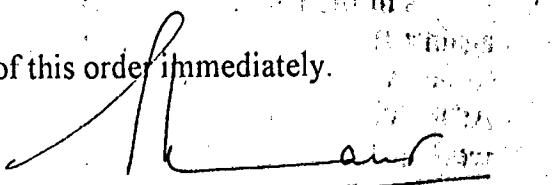
In para 6(3) on your explanation you have claimed that discipline and punctuality are separated in ACR form and these two are unjustly clubbed together in the remarks communicated to you. This is baseless because the adverse remarks are the essence of the overall review process of your work and qualities.

With regard to your claim in para 6(4) on your explanation you have claimed that you were never told by an advisory letter that you have ignored the official duties when it conflicted with personal needs. A perusal of files reveals that there is no substantive evidence to reach the conclusion that you gave precedence to your personal needs. Hence this adverse entry is ordered to be deleted.

In conclusion the adverse remarks shall read as :-

- (a) Carelessness in typing especially accounts work and monthly reports which had to be taken out from you and assigned to others.
- (b) Cannot operate computer and also not willing to learn.
- (c) In areas of discipline and punctuality much needs to be done for improvement despite several memos issued to you.

You are directed to acknowledge the receipt of this order immediately.


Promode Kant, S. 6. 0
Chief Conservator of Forests (C)

To

Shri S K Bhattacharjee
LDC
NERO
MoEF, Shillong - 3

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The Addl. Director
& Head of Office,
Govt. of India, MOEF,
RO(NER), Shillong.

Sub: Representation.

Sir,

Most respectfully I am to enclose herewith
a Representation (Appeal) against order dated 5-6-2002
with a request to forward the same to the Secretary,
Govt. of India, MOEF, New Delhi & oblige.

With regards,

Yours faithfully,

Enclo: Representation
with Annexures
A to D.


S K BHATTACHARYEE
LDC.

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Mony
Dated 23-2-2002

Office of the
Minister of Environment and Forests

Ministry of Environment and Forests
Regional Office, Shillong

to S K B

Certified to be true copy
Krishnendu Paul
Advocate
23-2-2004.

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To

The Secretary to the Govt. of India,
Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi-110 003.

(Through Proper Channel)

Sub: Appeal against orders on representation against adverse entries in the ACR -case of Shri S K Bhattacharjee,LDC.

Orders appealed against : Memorandum No.RO-NE/ACR/99/664, dated 5-6-2002 of the CCF(C), Regional Office (NER), Shillong. (Annexure-D)

Most Hon'ble Sir,

I am a Lower Division Clerk (LDC) in the Min. of Env & Forests, Regional Office (NER), Shillong, and have put in more than 22 (twenty two) years of devoted service. In this connection, kindly refer to this office letter No. RO-NE/1-18/PF/50 dated 23-4-1992.

3. In August 2000, the 'Head of Office' of the Regional Office(NER), Shillong, in his letter No.RO-NE/ACR/LDC/HT/487 dated August 24, 2000 communicated to me 4 adverse entries from my ACR for the year 1999-2000, as follows:-

- "(1) Careless in typing especially in accounts work and monthly report which had to taken out from you and assigned to others. This need major improvement.
- (2) Cannot operate Computer and also not willing to learn.
- (3) In areas of discipline and punctuality much needs to be done for improvement despite several memos issued to you,
- (4) Tends to ignore the official responsibility where it conflicts with (his) personal interest,"

(Copy of the forwarding letter dated 24-8-2000 enclosed - marked Annexure 'B'.

4. I made, well within the prescribed time, detailed fact-based and rule-supported representation against these adverse entries in my ACR to the Deputy Conservator of Forests, of the Regional Office (NER), Shillong, in my application dated the 21st September 2000. I respectfully enclose a copy of my said application dated 21-9-2000 (marked - Annexure 'D') which will speak for itself, for your kind perusal.
5. One year, eight months and fourteen days went down the line, no order was passed on my representation. Under Govt. of India, DP &AR O.M. No.21011/1/77.Est dated the 30th January 1978, representation against the adverse entries in the ACR is to be expeditiously disposed of by the competent authority "at any rate" "within three months". This was not done. But more than one and half year later, the Chief Conservator of Forests (Central) of the Regional Office, Shillong, in his Ref.No.RONE/ACR/99/664 dated 5-6-2002 rejected my representation (except in respect of one item out of 4 items as a cosmetic) by a sweeping, surmisical and highly evasive order avoiding all specifics as were raised in my representation dated 21-9-2002. That way, the order dated 5-6-2002 of the competent authority (Copy enclosed - marked Annexure 'C') was a non-speaking one, and in real terms, a mere show piece paper disposal only.
6. In making this appeal I beg to state as follows against the competent authority's order dated 5-6-2002 (Annexure-'C') on my representation dated 21-9-2002 (Annexure-'D')
 - (1) That the order is completely time barred and void in rule for reasons of its having been passed after more than one year and eight months in place of the prescribed maximum period of three months and ought to be quashed *de jure*,
 - (2) That the order is in sweeping language generalisation, evasive and avoidant of all specifics on facts and rules and is wholly non-speaking that way.
 - (3) That on the very face of it, the order bears manifest impress of the non-application of the mind by the competent authority to

the facts, rules and issues raised in my epresentation.(Annexure- 'D')

(4) That the order would be found to be conspicuous by non-quotation of any rule or order in support of the conclusions reached by the competent authority.

(5) That having regard to the fact that the order has been passed after more than one year and eight months when it has become time-barred, and has been passed only when the question of granting me financial upgradation under ACP has arisen. The order is, therefore, vitiated by the conscious bias against me.

(6) In para 174(7) of the P&T Manual, Vol-III, it has been laid down that it is very important both in the interest of efficiency of the service and also of the officers that the reports are written with greatest possible care so that the work, conduct, character and capabilities of the officers recorded upon, can be accurately judged from the recorded opinion. "Officers recording remarks must realise the importance of these entries as their own competency will be judged partly from the confidential remarks they record about officers working under them." With the risk of repetition, I refer to the letter dated 23-4-1992 (Copy enclosed- Annexure 'A') of the same Regional Office which will be found to speak in sharp contrast to, and contradiction of the adverse remarks in my ACR under appeal.

(7) With the submissions as above, I earnestly appeal to your gracious self to my case duly studied with reference to materials in Annexure B,C and D and to have orders issued expunging all the adverse entries from my ACR. And for this act of your kindness, I as duty bound shall ever pray.

Looking forward for justice and awaiting orders.

With high regards,

Enclo: Annexures 'A', 'B', 'C' and 'D'

Dated: 26.8.02,

Place : Shillong

Yours faithfully,


(S K Bhattacharjee)
LDC

ANNEXURE - A/6

31

November 21, 2003

To

The Secretary to the Government of India,
Ministry of Environment and Forests,
Paryavaran Bhavan, CGO Complex,
Lodi Road, New Delhi-110 003.

(Through Proper Channel)

Sub: Awaited orders on Appeal against rejection of representation
against adverse entries in the ACR – case of Shri S K
Bhattacharjee, LDC of the office of the Min of Env & Forests,
Regional Office(NER), Shillong.

Most respected Sir,

1. In terms of the provisions of Government of India,
Department of Personnel & Administrative reforms, OM No.21011/1/77-
Estt, dated the 30th January 1978, I preferred an appeal to your Ministry
in my application dated 26-8-2002 (marked Annexure-E) against the
rejection of my representation dated the 21st September, 2000 (marked
Annexure-C) against the adverse entries made in my ACR for the year
1999-2000 by the Chief Conservator of Forests(C) of your Regional
Office at Shillong (marked Annexure-D)

2. For the ready reference of your Ministry, I enclose full set of
my appeal papers as indicated below:

(A) Deputy Conservator of Forests(C),
MOEF, RO(NER), Shillong, letter
dated 23-4-1992.

Annexure-A

(B) 'Head of Office', MOEF, RO(NER),
Shillong, letter dated 21-8-2000
communicating the adverse entries
in the ACR.

Annexure-B

...contd...2

*Certified to be true copy
Krishnender Lal
Advocate
23-2-2004*

*Submitted to Office of 21/11/03 for
forward to MEF MTA*

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(C) Representation dated the 21st Sept/2000 of the employee, Shri S K Bhattacharjee, against the adverse entries. Annexure-C

(D) Memorandum dated 5-6-2002 of the Chief Conservator of Forests(C) of the MOEF, RO, (NER), Shillong, rejecting the representation of the employee, Shri S K Bhattacharjee, LDC. Annexure-D

(E) Appeal dated 26-8-2002 of the employee, Shri S K Bhattacharjee, to the Ministry of Forests, New Delhi, on which orders are awaited. Annexure-E.

3. I made my appeal to your Ministry on 26-8-2002(Annexure E) against the rejection of my representation against the adverse entries for the year 1999-2000. Your orders on my appeal are awaited as on date(November,2003).

4. I have put in more than 23(twenty three) years of service in the grade of LDC with spotless ACRs since my initial appointment w.e.f.1-8-1980. My first financial upgradation (ACP Scheme) which fell due on 9-8-1999, has not yet (November,2003) been ordered, apparently for the pendency of my appeal is not known.

5. The CCF(C) of your Regional Office at Shillong, in his order dated 5-6-2002(Annexure-D) on paras 4 & 5 of my representation against the adverse remarks on "areas of discipline and punctuality" made mention of the attendance register. I categorically disputed the adverse remarks and requested production of the attendance register and pleaded that the attendance register will, conclusively nail the remarks, but the attendance register was not produced.

6. The attention of your Ministry is respectfully invited to para 5 of my appeal dated 26-8-2002(Annexure-E). As pointed out in the said para 5 of my appeal, the Chief Conservator of Forests(C) of your Regional Office at Shillong, against whose orders the appeal has been made, rejected my representation after one year, eight months and

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fourteen days from the date of my representation. The rejection order was thus outrightly time barred in terms of GI, DP&AR O.M. No.21011/1/77-Esst, dated the 30th January, 1978 which lays the time limit for disposal of representation against adverse entries in the ACR, at three months "at any rate". Hence, the adverse entries in my ACR ipso-facts ought to be treated to have become inoperative.

With the submissions as foregoing, I repeat my request that you would be kind enough to have my case looked into and to communicate your Ministry's orders on my appeal at the earliest, your Ministry can make it possible.

With respectful regards,

Yours faithfully,

(S K Bhattacharjee)
LDC.
MOEF, RO(NER)
Shillong.

12/11/03