

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./TA/ NO. 09/09/2009 ~~2008~~
R.A./CP/NO.2015
E.P./M.P./NO.2015

1. Order Sheets..... 3pg..... 01to..... 06 ✓
MP. 69/08-2 pg 01 to 03 ✓
2. Judgment/ order dtd 04.5.2010 pg..... 01to..... 05 ✓
3. Judgment & Order dtd.....received from H.C. /Supreme Court.
4. O.A. 09/09page..... 01to..... 66 ✓
Amended in OA. 09/2009 pg 01 to 69 ✓
5. E.P./M.P. 6.9/09page..... 01to..... 07 ✓
6. R.A./C.P.page.....to.....
7. W.S. Filed on behalf of R-1, 2 Page..... 01to..... 05 ✓
VS
8. Rejoinder to W.S. R-No. 1 & 2 page..... 01to..... 06 ✓
in OA. 09/2009
9. Replypage.....to.....
10. Any other paperspage.....to.....
11. Memor appearance pg-1 ✓

SECTION OFFICER (JUDL.)

22/7/2015

22/7/2015

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH;

1. Original Application No. 9.109
2. Misc Petition No. /
3. Contempt Petition No. /
4. Review Application No. /

Applicant(S) Ashim Kr. Dey VS- Union Of India & Ors

Advocate for the Applicant(S) S. D. Chandray, A. Mannaf, S. Haque

Advocate for the Respondent(S) EGSC

Notes of the Registry:

Date

Orders of the Tribunal

Application is in form
is 100/C.F. Br. No. 10/-
6 pgs. 3 vds. P.D.D.
No. 396386/70
Dated 16.1.09

09.02.2009

Heard Mr A. Mannaf, learned
counsel appearing for the Applicant.

Admit. Issue notice to the
Respondents requiring them to file
written statement by 26.03.2009.

Mrs M. Das, learned Addl. Standing
counsel appearing for the Respondents (to whom a
copy of this Original Application has
already been supplied) undertakes to
appear for the Respondents in this case.
She undertakes to inform the
Respondents to file their written
statement by 26.03.2009.

Call this matter on 26.03.2009.

(M.R. Mohanty)
Vice-Chairman

pg

Copy not yet served
on respondents.

11/2
6.2.09.

26.2.09

Pl. issue Notices to the
Respondents requiring them
to file the by 26.3.09.

11/2

Copies of Notice Order
dt. 09-02-2009 sent to Regd
Section for issuing to the
Respondent by Regd. A/c No. 5140448-451
11.2.09 dt. 13-2-2009

26.03.2009

No written statement has yet been filed by the Respondents in this case.

Call this matter on 01.05.2009 awaiting written statement from the Respondents.

Send copies of this order to the Respondents in the address given in the O.A.

(M.R. Mohanty)
Vice- Chairman

/pb/

Notice duly served
on R- 2, 3.

01.05.2009

No written statement has yet been filed by the Respondents.

Call this matter on 04.06.2009 awaiting written statement from the Respondents.

Send copies of this order to the Respondents in the address given in the O.A.

(M.R. Mohanty)
Vice-Chairman

lm

Copies of order dated 1/5/09 send to D/Sec. for issuing to the respondents by post.

04.06.2009

Mr.S.Haque, learned counsel appearing for the Applicant is present. On behalf of the Respondents a prayer has been made seeking some time to file written statement.

Accordingly, call this matter on 28.07.2009 awaiting written statement from the Respondents.

(M.R. Mohanty)
Vice-Chairman

N/s not filed.

/bb/

3.6.09

NO. 175 Filed

12/5/09

N/s not filed.

29.4.09

D/No-1487/1490
27/3/09 Dt= 31-3-2009

- 3 -

O.A.9/2009

20.07.2009 This case was to be listed on 28th of July, 2009 and has wrongly been listed today.

Call this matter on 28.07.2009.

No w/s filed.

3
27.7.09


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

28.07.2009 Call this matter on 30.07.2009 alongwith M.P.No.69/2009.


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

nkm

30.07.2009 None appears for the Applicant nor the Applicant is present. Mrs M. Das, learned Addl. Standing Counsel for the Union of India, is, however, present.

Call this matter on 04.08.2009 for admission and orders.


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

nkm

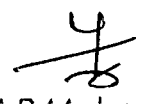
04.08.2009

No written statement has yet been filed by the Respondents. On the prayer of Mrs.M.Das, learned Addl. Standing counsel, call this matter on 17.09.2009 awaiting written statement from the Respondents.

No w/s filed.

3
16.9.09


(M.K. Chaturvedi)
Member (A)


(M.R. Mohanty)
Vice-Chairman

/bb/

17.09.2009

No written statement has yet been filed by the Respondents.

26.10.09

*W/s biled.
Copy served.
26.10.09*

Call this matter on 27.10.2009 awaiting written statement from the Respondents.


(M.K. Chaturvedi)
Member (A)

/bb/

*W/s biled by
R.No-1,2 & 5.*

24.11.09

27.10.2009

Mr.A.Mannaf, learned counsel seeks and allowed four weeks time to file rejoinder.

List on 27.11.2009.

*Rejoinder filed
by the Applicant. Service
copy kept in 'C' file.*

24.11.09

/bb/


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

27.11.2009

Rejoinder has been filed in this case. Thus pleadings are complete.

List this case on 06.01.2010 for hearing.


(Madan Kumar Chaturvedi)
Member (A)

*W/s and rejoinder
biled by the parties.*

26.11.09

*The case is ready
for hearing.*

/pb/


5.1.2010

6.1.2010.

On the request of learned counsel for the Respondents, case is adjourned to

4.2.2010.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

*The case is ready
for hearing.*

/lm/

3.2.2010

O.A.9-09

04.02.2010

Earlier matter was passed over on the request of proxy counsel for Respondents stating that some time is required to file reply to the amended O.A.

On examination of the matter, we notice that amended O.A. had been ^{filed} ~~sent~~ on 07.08.2009 and much thereafter reply was filed on 26.10.2009. On the face of it, reply filed contains reply to the amended O.A. In the circumstances, there is no necessity to file further reply to ~~the~~ amended O.A. Thus, pleadings are otherwise complete.

On the request of parties, matter is adjourned to 04.03.2010. Respondents are directed to produce all related records for perusal of this Tribunal by the next date.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/bb/

04.03.2010

On the request of Mrs. M. Das, learned Sr. CGSC for Respondents adjourn to 22nd March 2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

/pb/

22.03.2010

List the matter on 21st April 2010.

(Madan Kumar Chaturvedi)
Member (A)

/pb/

The case is ready
for hearing.

19.3.2010

The case is ready
for hearing.

20.4.2010

O.A. 9 of 2009

21.4.2010

Mrs. M.Das, learned Sr. Standing counsel for the Respondents prays for adjournment, which is not opposed by learned counsel for the Applicant.

List the matter on 4.5.2010.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

Im

4-6-2010

04.05.2010

Heard learned counsel for the parties.

For the reasons recorded separately, O.A. is

disposed of. No costs.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkm

Judgment/Final order
dated 4/5/2010 prepared
and sent to the D/
Section for issuing to
applicant/respondents
by post
vide No -

date -

copy cleared over to
advocate for both sides.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A.No.09 of 2009

DATE OF DECISION: 04.05.2010

Shri Ashim Kumar Dey

.....Applicant(s)

Mr A. Mannaf

Advocate(s) for the
Applicant (s)

- Versus -

Union of India and others

Respondent(s)

Mrs M. Das, Sr. C.G.S.C. for
respondent Nos.1, 2 & 5.

Advocate(s) for the
Respondent(s)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

1. Whether reporters of local newspapers
may be allowed to see the Judgment?
2. Whether to be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy
of the Judgment?

Yes/No

Yes/No

Yes/No

Member(J)

12

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.09 of 2009

Date of Order: This the 4th day of May 2010

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

Shri Ashim Kumar Dey,
S/o of Shri Ajit Kumar Dey,
Section Officer,
Office of the Accountant General (A&E),
Nagaland, Kohima-797001.

..... Applicant

By Advocate Mr A. Mannaf

- versus -

1. The Comptroller and Auditor General of India,
10 Bahadur Shah Zafar Marg,
New Delhi.
2. The Accountant General (A&E)
Nagaland, Kohima,
P.O. Kohima-797001.
3. Ahri Arindam Kumar Das
Senior Accounts Officer
(Treasury Misc. Section),
Office of the Accountant General (A&E),
Nagaland, Kohima, P.O. Kohima-797001.
4. Shri R.M. Dasgupta
Accounts Officer (Work Misc. Section),
Office of the Accountant General (A&E),
Nagaland, Kohima, P.O. Kohima-797001.
5. The Accounts Officer (Admin)
Office of the Accountant General (A&E),
Nagaland, Kohima, P.O. Kohima-797001.

.... Respondents


By Advocate Mrs M. Das, Sr. C.G.S.C. for
respondent Nos.1, 2 & 5.

.....

ORDER (ORAL)**MUKESH KUMAR GUPTA, JUDICIAL MEMBER**

Validity of Memorandum dated 16.08.2007 conveying certain remarks to applicant in the ACR for the period 08.09.2006 to 31.03.2007 and 01.04.2007 to 10.08.2007 is questioned in present O.A. He seeks expunction of said remarks.

2. Admitted facts are: applicant was initially appointed as Clerk-cum-Typist on 13.03.1990; promoted as Accountant on 26.05.1993; promoted as Senior Accountant on 26.05.1996 and Section Officer on 08.09.2006. Vide aforesaid memorandum, certain adverse remarks noticed in his ACRs had been conveyed. Learned counsel for applicant contends that said adverse remarks are not consonance of O.M.s issued on the subject. Principles of natural justice were violated; same were not communicated in the period prescribed; same are vague and did not meet the desired requirements mentioned under each head of the ACR; delayed communication vitiated the aforesaid adverse remarks. Said remarks are baseless as he was granted honorarium for his satisfactory performance for the year 2007-08; negative impact of it would adversely affect his future career and promotion and the same seems to have been recorded prejudicially and in colourable exercise of powers. Reference was made to various judgments in paras 5.4 - 5.6 in the O.A. No such steps were taken by the Reporting Officer for said periods before writing the said report nor any deficiency was pointed out to him giving him chance to improve his performance. In the above backdrop, it was prayed that the memorandum in question is required to be interfered with judicially.



3. By filing reply on behalf of respondent Nos.1, 2 and 5, matter was contested stating that against aforesaid memorandum he had preferred an appeal on 27.09.2007 to review the adverse remarks in said ACRs. Earlier he had approached this Tribunal vide O.A.No.84/2008, which was disposed of on 14.05.2008 requiring the respondents to reconsider his representation and pass speaking and reasoned order. In compliance of aforesaid direction a reasoned and speaking order dated 11.07.2008 had been passed at appropriate level taking into consideration the relevant notes/memo etc. Remarks in the ACR are basically for further guidance of the applicant and same cannot be construed as really adverse affecting his chance of promotion. The Reporting Officer as well Reviewing Officer had seen the self appraisal report submitted by him and thereafter the remarks so recorded were conveyed. The Reporting Officer is required to assess the officer's sense of responsibilities, dedication, motivation, etc. on day-to-day basis and duties performed as Section Officer. On examination of the matter, he felt that applicant required further improvement, which aspects were noticed and conveyed to him. Said remarks were definite and justified and based on performance. Every year the authorities fixed the target of work to be achieved by the Section. He was found to be lacking in achieving said target during the period of report and because of failure on his part to take appropriate initiative, the same had been recorded. Vide para 4.14 it was recorded that recently overall improvement was noticed and it was hoped that during 2008-09 the report would not remain as it was. The very fact that applicant was granted honorarium for the periods 2006-07 and 2007-08 indicates that no negativity of the ACRs was

taken into consideration. Otherwise he would not have been conferred said benefits, emphasized learned counsel for respondents.

4. We have heard learned counsel for the parties, perused the pleadings and other material placed on record. In order to appreciate as to whether the remarks conveyed indeed, constitute adverse/prejudicial affecting his service career or not, it would be relevant to notice the impugned memorandum which reads as follows:

"The following adverse remarks have appeared in Annual Confidential Report of Shri Ashim Kr. Dey, S.O. for the period 8/9/06 to 31/3/2007 and 1/4/2007 to 10/8/2007.

Period from 8/9/2007 to 31/5/2007

PART-III B	Comments
Item No.3 (Initiative) at page no.6	There is nothing of this sort has been noticed yet.
Item No.4 (Attitude of work), at page no.6	Officer's sense of responsibility as required for sectional duty requires further improvement/sincerity.
Item No.5 (Ability to inspire and motivate) At page No.6	Nothing of this sort has been noticed yet.
Item No.6 (Supervisory Ability), at page No.6	Officer's overall supervisory capacity requires further observation.

Period from 1/4/2007 to 10/8/2007

PART-III A	Comments
Item No.2 (Quality of Output), At page No.5	Officer's personal and quality of performance in regard to the standard of work and programme objectives requires sufficient improvement.
PART-III B	
Item No.1 (Analytical ability), At page no.5	Officer's ability relating to analysis pros and cons, formulation of alternatives and their evaluation for solving problems requires further improvement.
Item No.2 (Communication Skill) At page No.5	Though officer is capable to communicate with brevity clarity and accurately both orally and in writing, able to draft notes, briefs but yet it also requires more sincerity.
Item No.3 (Initiative) At page No.6	There is nothing of this sort noticed yet.
Item No.4 (Attitude of work), At page no.6	Officer's sense of responsibility as required for his sectional duty requires further improvement/sincerity.

Item No.5 (Ability to inspire and motivate) At page no.6	Nothing of this sort has been noticed yet.
Item No.6 (Supervisory Ability), At page No.6	There is nothing to comment.

The above remarks may kindly be noted and immediate action to rectify the defects may be taken to give a better account of the officer."

5. Bare perusal of the above would indicate that under various columns namely, 'Initiative', 'Attitude of work', 'Supervisory Ability' etc. during the ACR period 2006-07, nothing adverse has been noticed. Under the column 'Attitude of work', the concerned authority made the comment that he required further improvement/sincerity, which cannot be construed adverse in nature, rather he should take it supportively. The very fact that he had been allowed honorarium during the year 2007-08 despite the so called adverse remarks in itself would lead to a conclusion that same had not been treated as adverse or had any adversity in his service career. Learned counsel for applicant has pointed out that as on date he is working as Accounts Officer on ad hoc basis w.e.f. April 2010. Our unequivocal conclusion, in such circumstances is that the so called adverse remarks had no negative impact on his future career. In this view of the matter we hold that the same cannot be construed really adverse in nature, rather it should be as only advisory in nature.

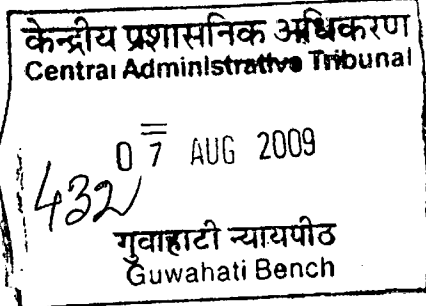
6. In view of above discussion, O.A. stands disposed of. No costs.


(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER


(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. NO. 9 OF 2009.
(AMENDED ORIGINAL APPLICATION)



Shri Ashim Kumar Dey

-Vs-

C.A.A.G.I. & Ors.

SYNOPSIS

The Applicant has been serving as Section Officer in the Office of the Accountant General (A&E), Nagaland, Kohima. The Respondent No.2 by a Memorandum No.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 communicated the adverse remarks that have appeared in the Annual Confidential Report for the period from 8.9.2006 to 31.3.2007 and 1.4.2007 to 10.8.2007 to the Applicant.

When the appeal against the adverse remarks submitted by the Applicant did not evoke any response from the Respondents, the Applicant filed an Original Application before this Hon'ble Tribunal vide O.A.No.84 of 2008. The Hon'ble Tribunal vide Order (Oral) dated 14.5.2008, without considering the merit of the application, passed orders directing the Respondents to consider the representation of the Applicant and pass a **reasoned order** within a period of 90 days from the date of receipt of a copy of the order with further direction that the respondents, while considering the representation of the Applicant, should take into consideration the grounds set forth in the present Original Application as part of the representation of the Applicant.

The Respondent No.5 vide his letter NO.Admn/A&E/CAT/AKD/2008-09/570 dated 11.7.2008 has intimated the Applicant that the Reviewing Officer did not find any reasonable ground to accept his representation and hence, the remark stands.

Being aggrieved by the said communication, the Applicant has submitted another representation dated 25.8.2008 incorporating the grounds set forth in his Original Application No.84 of 2008 and specifically drawing attention to the orders of the Hon'ble Tribunal to the Respondent No.2 for reconsideration.

The Respondent No.5 vide letter NO.Admn/A&E/AKD/89-90/1051 dated 14.10.2008 has reiterated their earlier decision. The Respondent Authorities has rejected the representation of the Applicant without passing **reasoned order** as per the orders of this Hon'ble Tribunal. Hence, this application is filed afresh.

Abdul Mannan

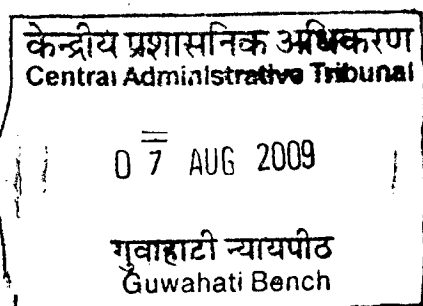
Filed by the petitioner
A.K. Dey
through Advocate
Abdul Mannan
Date 7.8.2009

Received for
Mr. N. Dey,
Addl. C.S.C.,
7/8/09 P.K. Dey

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A.NO. 9 of 2009.

(AMENDED ORIGINAL APPLICATION).



Shri Ashim Kumar Dey

-Vs-

C.A.A.G.I. & Ors.

I N D E X

Sl. No.	Contents	Page No.
1.	Amended Original application	1-14
2.	Verification	15
3.	Annexure-A1 series.	16,17
4.	Annexure-A2 series.	18-28
5.	Annexure-A3 series.	29-57
6.	Annexure-A4 series.	58-60
7.	Annexure-A5	61
8.	Annexure-A6 series.	62-67
9.	Annexure-A7	68
10.	Annexure-A8	69

A. K. Dey

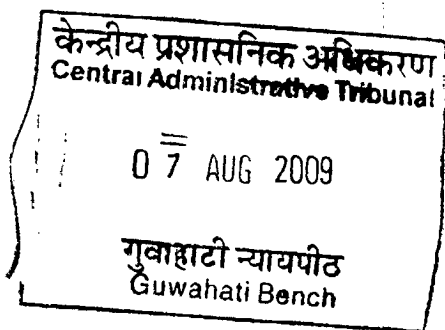
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. NO. 9 of 2009.
(AMENDED ORIGINAL APPLICATION).

Shri Ashim Kumar Dey

-Vs-

C.A.A.G.I. & Ors.



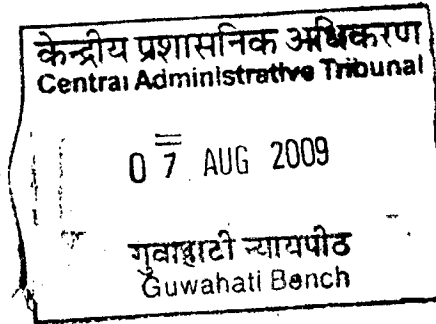
LIST OF EVENTS

Sl. No.	Particulars of events	Annexure
1.	The Accountant General, Nagaland, Kohima vide Memorandum NO.DAG(A&E)/CRACR/2006-07/176 dated 16.08.2007 communicated adverse remarks in the Annual Confidential Report for the periods 8.9.2006 to 31.3.2007 and 1.4.2007 to 10.8.2007 to the Applicant.	Annexure-A1 Series, Page 16,17
2.	The Applicant filed an Original Application bearing No.84 of 2008 before this Hon'ble Tribunal for setting aside and quashing the adverse remarks.	Annexure-A3 Series. Page 29-57
3.	The Hon'ble Tribunal vide Order (Oral) passed orders, without entering into the merits of the matter, directing the Respondents to consider the representation of the Applicant and to pass a reasoned order within a period of 90 days from the date of receipt of a copy of the order with further direction that the Respondents, while considering the representation of the Applicant, should take into consideration the grounds set forth in the present Original Application as part of the representation of the Applicant.	Annexure-A4 Series. Page 58-60
4.	The Accounts Officer (Admn) vide his letter NO.Admn/A&E/CAT/AKD/2008-09/570 dated 11.7.2008 intimated the Applicant that the Reviewing Officer did not find any reasonable ground to accept his representation and hence, the remark stands.	Annexure-A5. Page 61
5.	The Applicant submitted a representation dated 25.8.2008 to the Accountant General, Nagaland, Kohima incorporating the grounds set forth in the Original Application No.84 of 2008 and specifically pointing out the orders of the Hon'ble Tribunal for reconsideration.	Annexure-A6 Series. Page 62-67

A - V - Dey

2.

6.	<p>The Accounts Officer (Admn) vide his letter No.Admn/A&E/AKD/89-90/1051 dated 14.10.2008 has intimated the Applicant that as per the Hon'ble Central Administrative Tribunal, Guwahati Bench order dated 15.5.08, his representation has been considered at the appropriate level, and the decision of the authority has since been communicated to him vide letter No.Admn/A&E/CAT/AKD/08-09/570 dated 11.07.2008 and hence no more action is required at this end.</p>	<p>Annexure-A7 Page 68</p>
----	--	--------------------------------



A. V. Roy

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

ORIGINAL APPLICATION NO. 9 /2009.

(AMENDED ORIGINAL APPLICATION).

Shri Ashim Kumar Dey,
Son of Shri Ajit Kumar Dey,
Section Officer, Office of the
Accountant General (A&E),
Nagaland, Kohima.

..... APPLICANT.

-VERSUS-

1. The Comptroller and Auditor General of India,
10 Bahadur Shah Zafar Marg, New Delhi-
110002.
2. The Accountant General (A&E), Nagaland,
Kohima. P.O. Kohima- 797001.
3. The Senior Accounts Officer
(Treasury Misc. Section),
Office of the Accountant General (A&E),
Nagaland, Kohima.
P.O. Kohima-797001.
4. The Accounts Officer (Work Misc. Section),
Office of the Accountant General (A&E),
Nagaland, Kohima.
P.O. Kohima- 797001.
5. The Accounts Officer (Admn),
Office of the Accountant General (A&E),
Nagaland, Kohima.
P.O. Kohima- 797001.

..... RESPONDENTS.

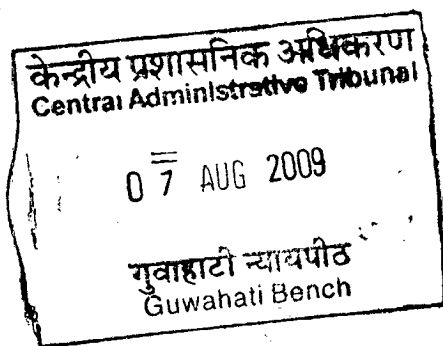
DETAILS OF APPLICATION:

1.

Particulars of the order against which the application is made:

The application is made against the Memorandum bearing NO.DAG(A&E)/CRACR/2006-07/176 dated 16.8.2007 issued under the signature of Shri A.N. Sarkar, Accountant General (A&E), Nagaland, Kohima communicating the adverse remarks in the Annual Confidential Report to the Applicant.

Contd.2.



A. V. Dey

2.

2. **Jurisdiction of the Tribunal:**

The Applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Hon'ble Tribunal.

3. **Limitation:**

That the Applicant declares that the petition is within the limitation period prescribed in section 21 of the Administrative Tribunal Act, 1985.

4. **Facts of the case:**

4.1. That the Applicant is a citizen of India and a permanent resident of Harulangpher Last Colony, Lumding under Nagaon District in the State of Assam and therefore he is entitled to protection of all the rights and privileges guaranteed under the Constitution of India and all other laws of the land in force.

4.2. That the Applicant begs to state that he was initially appointed as Clerk-Cum-Typist on 13.3.1990 in the Office of the Accountant General, Nagaland, Kohima and thereafter he was promoted to the post of Accountant on 26.5.1993, then Senior Accountant on 26.5.1996 and presently he has been serving as Section Officer in the said Office with effect from 8.9.2006 till date. As Section Officer the Applicant looked after two Sections viz. Treasury Miscellaneous and Work Miscellaneous headed by two Senior Officers during the period in question i.e. from 8.9.2006 to 10.8.2007. The Applicant's promotion to the three higher posts during a period of 18 years shows that he has an excellent service carrier.

4.3. That the Applicant begs to state that while he was serving as such the Respondent No.2 by a Memorandum bearing No. DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 had communicated to the Applicant 11 (Eleven) adverse remarks that have appeared in the Annual Confidential Report for the consecutive two periods from 8.9.2006 to 31.3.2007 and from 1.4.2007 to 10.8.2007.

Copies of the Memorandum dated 16.8.2007 are annexed here to and marked as Annexure-A1.

4.4. **ADVERSE REMARKS FOR THE PERIOD 8.9.2006 TO 31.3.2007:**

4.4.1. That as regards the adverse remarks for the period from 8.9.2006 to 31.3.2007 the Applicant begs to state and submit that the adverse remarks for the said period were not communicated with the period of one month of their being recorded as prescribed vide Govt. of India Department of Personnel & Administrative Reforms, O.M. No.21011/1/77-Est., dated the

Contd.3.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

07 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

A - K - Singh

30th January, 1978 (Ref. Page 717 and 718, Para 20 of Swamy's **Complete Manual on Establishment and Administration**). The same was communicated to him only on 16th August, 2007 after lapse of more than four and half month as result of which the Applicant, being a new Section Officer, had got no opportunity to improve his deficiencies in work and conduct during the subsequent period in respect of the impugned adverse remarks or to make a representation right on time i.e. before writing the ACR for the subsequent period. One of the objects of recording of adverse remarks is to afford the employee an opportunity of improving himself as that during the next year/period there may not be an occasion for the making of such remarks. But by such delay the very object of recording the adverse remarks is defeated and the Applicant is placed in a disadvantageous position to improve his deficiencies. As such the failure to observe the time frame in communicating the adverse remarks caused prejudice to the Applicant and the communication is inconsistent in Government instructions.

4.4.2.

That the Applicant further begs to state and submit that he was never given any training, necessary advice, guidance, assistance to improve his deficiencies nor was any deficiency in his conduct and work pointed out to him for improvement on any occasion nor was any periodical inspection/visit made to the sections under the charge of the Applicant during the period under report by the Reporting Officer before writing the ACR as per Government instructions given vide C.S., O.M. No.51/5/72-Ests. (A) dated the 20th May, 1972 (Ref. Page 712, Para 15 of Swamy's **Complete Manual on Establishment and Administration**).

4.4.3.

That as regards the adverse remarks under the Head 'Initiative' the Applicant begs to state that the Reporting Officer is required to comment on the "the capacity and resourcefulness of the Officer in handling normal as well as unforeseen situations, willingness to take additional responsibilities and new area of work and capacity to initiate cases at his level" only. But the Reporting Officer's answer "There is nothing of this sort has been noticed yet" is not definite and not the answer to those aspects. The Applicant has taken additional responsibilities as stated under paragraph 4.2. above but the Reporting Officer has lost sight of this fact to mention. As such the adverse remarks "There is nothing of this sort has been noticed yet" is vague and such remark shows the incapability and incompetence of the Reporting Officer to assess the performance of the Applicant and to give his answer correctly against the said Head.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

07 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

A. V. Singh

4.

4.4.4.

That as regards the adverse remarks under the Head 'Attitude of works' the Applicant begs to state that the Reporting Officer is required to comment on "how far the Officer can be relied upon, his sense of responsibility, the extent to which he is dedicated and motivated, his willingness to learn and systematize his work". But the Reporting Officer's answer "Officer's sense of responsibility as required for sectional duty requires further improvement/sincerity" is not definite and not supported by any factual statement/instance. As such the said impugned adverse remark is vague and baseless.

4.4.5.

That as regards the adverse remarks under the Head 'Ability to inspire and motivate' the Applicant begs to state that the Reporting Officer is required to comment on the "the capacity of the Officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence." But the Reporting Officer's answer 'Nothing of this has been noticed yet' is not definite and not supported by any factual statement/instance. As such the said impugned adverse remark is vague, baseless and such remark shows on the incapability and incompetence of the Reporting Officer to observe the conduct of the Applicant to give his answer correctly against the said Head.

4.4.6.

That as regards the adverse remarks under the Head 'Supervisory ability' the Applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability relating to (1) Guidance in the performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the Reporting officer's answer 'Officer's sense of responsibility and overall supervisory capacity requires further improvement/sincerity' is not confined to those three sub-heads. As such the said adverse remark is irrelevant.

4.5.

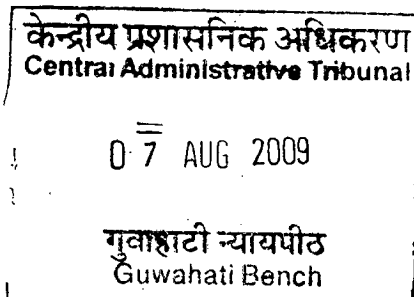
ADVERSE REMARKS FOR THE PERIOD 1.4.2007 TO 10.8.2007:

4.5.1.

That as regards the adverse remarks for the period from 1.4.2007 to 10.8.2007 the Applicant begs to state that the adverse remarks under the three Heads viz. (1) Head No.3 Initiative- "There is nothing of this noticed yet", (2) Head No.4 Attitude of work - "Officer's sense of responsibility as required for his sectional duty requires further improvement/sincerity" and (3) Head No.5 Ability to inspire and motivate - "Nothing of this sort has been noticed yet" are repetitions of the vague adverse remarks made against the same Heads No.3, 4 and 5 for the previous period 8.9.2006 to 31.3.2007 for which the Applicant had got no opportunity of improving himself during the period under report or

Contd.5.

A. K. Singh



25
5.

making representation against such remarks at the relevant point of time due to non communication of the adverse remarks on time in accordance with the Government instructions.

4.5.2. That as regards the adverse remarks under the Head 'Supervisory ability' the Applicant begs to state that Reporting Officer is required to comment on "the Officer's ability relating (1) Guidance in the performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the Reporting Officer's answer as "There is nothing to comment" is nothing but avoidance of Reporting Officer's obligation to comment specifically on these aspects and cryptic and not the answer to those sub-heads. On the other hand, such remark is indicative of the fact that the Reporting Officer had not made any periodical inspection/visit to the Sections to observe the supervisory ability of the Applicant during the period under report before recording such remarks.

4.5.3. That as regards the adverse remarks under the Head 'Quality of Output' the Applicant begs to state that the Reporting Officer is required to comment on "the Officer's personal and quality of performance having regard to the standard of work and programme objectives, and constraints, if any". But the Reporting Officer's answer "Officer's personal ability and quality of performance in regard to the standard of work and programme objectives requires sufficient improvement" is baseless and not supported by any factual statement/instance.

4.5.4. That as regards the adverse remarks under the head 'Analytical ability' the Applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability relating to analysis of pros and cons; formulation of alternatives and their evaluation of solving problems, ability to indicate decisions areas". But the Reporting Officer's answer "Officer's ability relating to analysis pros and cons, formulation of alternatives and their evaluation for solving problems requires further improvement" is baseless and arbitrary as the Applicant was never given any training, necessary advice, guidance, assistance to improve his deficiencies nor was any deficiency in his conduct and work pointed out to him for improvement by the Reporting Officer on any occasion during the period under report nor assigned any target/goal to be achieved for the year.

4.5.5. That as regards the adverse remarks under the head 'Communication Skill' the Applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability to communicate with brevity, clarity and accuracy both orally and in writing; ability to draft notes, brief for meeting etc." The Reporting Officer while commending the

'Communication Skill' of the applicant very well in respect of these aspects, the subsequent remarks in the tail as '.....but yet it also requires more sincerity' is unwarranted, unjust and unfair.

4.5.5A.

That on the initiative and under strict supervision of the Applicant, the Treasury Misc. Section had proposed for inspection of Treasuries and Sub-Treasuries of Nagaland to the Senior Accounts Officer, who was the Reporting Officer in respect of ACR, since no Treasuries were inspected for the past several years despite there being orders of the Comptroller & Auditor General of India. When the said proposal was not agreed to by the Senior Accounts Officer on the pretext of shortage of staff, the Applicant had a meeting with the Sr. Accounts Officer where he had clearly pointed out that the staff as suggested was sufficient to carryout the inspection and thus personal differences cropped up between them. Surprisingly, in the month of August, 2007 the Applicant was withdrawn from the Treasury Misc. and Work Misc. Sections and posted in the Internal Test Audit Section by the Sr. Accounts Officer for the reasons best known to him. In the subsequent periods, the applicant was entrusted with the work of audit of the Treasuries as the Accountant General probably came to know the higher degree of work capability of the Applicant. This reflects the initiative of the Applicant during the periods under report.

4.5.5B.

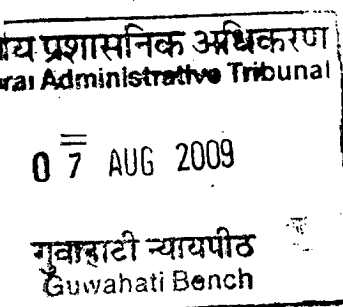
That on the initiative and under the strict supervision of the Applicant, the Treasury Miscellaneous section was able to prepare the Combined Administrative Report of A&E and Audit Offices for the year 2005-06 (pending work) and 2006-07 successfully during the period under report which reflects the applicant's sense of responsibility, sincerity, supervisory capacity, quality of performance, standard of works and analytical ability in regard to sectional duty.

4.5.5C.

That on the initiative of the Applicant, a Grievance Cell in the Office as per C & AGI's guideline has also come into existence in the Office of the Accountant General, Nagaland. This achievement on the part of the applicant as new Section Officer reflects the Applicant's sense of sincerity and initiative which was over looked by the Reporting Officer.

4.5.5D.

That under strict supervision and initiative of the Applicant, matters relating to many court cases were successfully disposed of by making a team spirit within his subordinates during the periods under report. This has reflected not only the applicant's initiative but also reflected his attitude of works, sense of responsibility, ability to motivate his subordinates, his supervisory ability, quality of out put and analytical ability etc. etc.



A. K. Dey

4.5.5E.

That as regards the Work Misc. Section, the Applicant had supervised the works relating to checking and sending of the Monthly Divisional Accounts and Forest Accounts (Quarterly and Annual) to the Electronic Data Processing Section for compilation. In addition to that reconciliation of the Departmental (Divisional) figure with that of Electronic Data Processing and maintenance of other Sectional records, making correspondence with the Division for wanting schedules/Accounts etc. were undertaken during the periods under report.

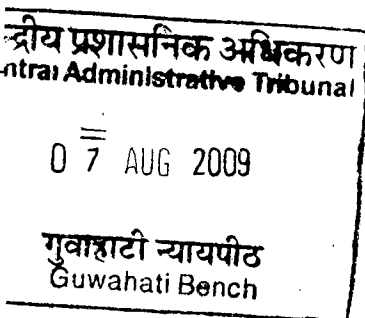
4.6.

That the Applicant begs to submit that the contents of adverse remarks for both the periods are baseless and vague as the Applicant was never given any training, necessary advice, guidance and assistance for improvement of his deficiencies in performance nor was any deficiency on him pointed out for improvement nor the Reporting Officer ever made any periodical inspection/visit to the Sections to observe the conduct and work of the Applicant nor assigned any target/goal to be achieved for the year as prescribed on the subject of writing of confidential remarks in the said Memo dated the 20th May, 1972 and also in the instructions for filling the entries in the prescribed ACR Form itself.

Copies of the ACR Form are annexed
hereto and marked as Annexure-A2.

4.7.

That the Applicant further begs to submit that during the periods under report, the Applicant looked after two Sections viz. Treasury Miscellaneous and Work Miscellaneous headed by two Senior Officers viz. Senior Accounts Officer in-charge of Treasury Miscellaneous Section and Accounts Officer in-charge of Work Miscellaneous Section and the Reporting Officers had neither inspected/visited the Sections under the charge of the Applicant nor given training, necessary advice, guidance, assistance to improve his deficiencies nor pointed out any deficiency in his performance for improvement nor made prejudicial inspection/visit to observe the performance of the Applicant on any occasion during the periods under report before writing the adverse report; rather the Respondent No2 had granted honorarium of Rs.1250/- vide Bill No. G-82 dated 30.3.07 and Rs.500/- vide Bill No.578 dated 31.3.08 to the Applicant for his good performance during the year 2006-07 and 2007-08 respectively. As such the grant of honorarium to the Applicant is indicative of the fact that the Applicant's service during the periods under report is presumed to be satisfactory and such grant of honorarium amply proves that the adverse remarks recorded in that particular periods are prejudiced.



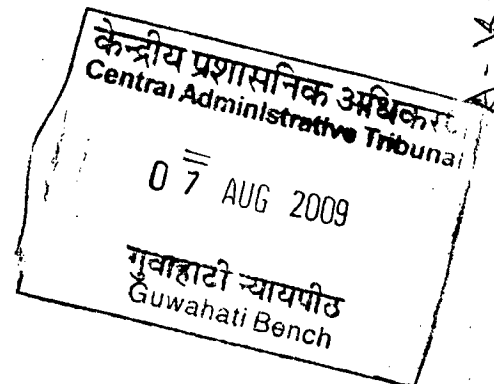
A-10 Aug

8.

4.8. That the Applicant further begs to submit that the impugned adverse remarks are not based on specific instances/factual statement on the performance of the Applicant reviewed and corrective steps taken by way of giving necessary guidance for improvement on the deficiencies of the Applicant at regular interval which led to the adverse remarks so as to enable the Applicant to make an effective representation and/or to improve his work and conduct and they are inconsistent in Government instructions given in the said Memo dated 20th May, 1972.

4.8.1. That the Applicant begs to submit that the Reporting Officer is required to adhere to the following prescribed Time-Schedule for preparation of Confidential Reports:

<u>Nature of action</u>	<u>Date by which to be completed</u>
1. Distribution of blank CR forms to All concerned (i.e., to officer to be reported upon where self-appraisal has to be given and to Reporting officers where self Appraisal is not to be given).	31 st March. (This may be completed even a week earlier).
2. Submission of self-appraisal to Reporting officer by officer to be Reported upon (where applicable).	15 th March.
3. Submission of report by reporting Officer to reviewing officer. - Where self appraisal by officer reported upon is prescribed.	7 th May.
- Where self-appraisal by officer reported upon is not prescribed.	21 st April.
- Where officer reported upon is himself a reporting officer for subordinates under him.	22 nd May.
4. Report to be completed by Reviewing Officer and sent to Administration or CR Section/ the Cell.	by 23 rd May where the due date for the reporting officer is 7 th May. 7 th May where the due date for Reporting officer is 21 st April. 5 th June where the due date for Reporting officer is 22 nd May.



But in the instance case, the Reporting Officer had failed in his duty to comply with the said prescribed Time-Schedule for preparation of the Confidential Reports which the Reviewing Officer also failed to notice the same causing thereby prejudiced to the Applicant.

An extract copy of the Time-Schedule is annexed hereto and marked as ANNEXURE- A8.

Contd.9.

4.8.2. That the Applicant begs to submit that had the Applicant been communicated the adverse remarks of the 1st period i.e. 26.8.2006 to 31.3.2007 in time instead of communicating the same along with the adverse remarks of 2nd successive period i.e. 01.04.2007 to 10.08.2007 at a time vide Memo No.DAG (A&E)/CR-ACR/ 2006-07/176 dated 16.8.2007, he would have got sufficient time for rectification of deficiencies mentioned in the first period by the Reporting Officer and also the repetitions of the same in the second period could have been avoided.

4.8.3. That the Applicant begs to submit that training for the newly promoted Section Officer like the Applicant is highly essential. But in the case of the Applicant, no training whatsoever was imparted either in-house arrangement or at the Regional Training Centre, Shillong during the periods under report.

4.8.4. That the Applicant begs to submit that the Applicant was also the Section Officer of another Section namely Work Misc. Section under the direct control of the Accounts Officer (Work Misc. Section). It is doubtful whether the said Accounts Officer was consulted before writing the impugned adverse remarks for the periods under report by the Reporting Officer.

4.8.5. That the Applicant begs to submit that no Memorandum /instruction/advice whatsoever was issued to the Applicant during the periods under report for improvement of any deficiencies, if noticed, during the periods under report by any of the Accounts Officers under whom the Applicant worked or by the Reporting Officer.

4.8.6. That the Applicant begs to submit that the Applicant made thorough study on the working structure as well as status of works of both the Treasury Misc. and Work Misc. Sections soon after his promotion as Section Officer with

full vigor and spirit. He also made his best efforts to pull up all pending and current works by motivating his subordinate staffs and creating a team spirit within the staffs of both the Sections. Consequently, no works in both the Sections were kept pending during the periods under report. Had the Applicant not taken initiative and motivated his subordinate staffs and created a team spirit among the staffs of both the Sections, disposal of works detailed elsewhere would not have been possible during the periods under report.

4.8.7. That the Applicant begs to submit that in spite of all the above-mentioned facts, the Reporting Officer had deliberately avoided to appreciate the applicant's initiative, his attitude of works, his ability to inspire and motivate his staff, his supervisory capacity, his quality of output etc. and his performances in the ACR of the periods under report and rather recorded adverse remarks arbitrarily and out of malice towards the Applicant and thus

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

07 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

29
A-11-10-11

10.

attempted to destroy his reputation of being efficient Government servant. As such, the adverse remarks are entirely incorrect, unfounded, misleading and arbitrary and liable to be set aside and quashed by this Hon'ble Tribunal.

5. Ground for relief with legal provision:

5.1. The impugned adverse remarks for the period from 8.9.2006 to 31.3.2007 under Part-IIIB of the ACR are invalid-

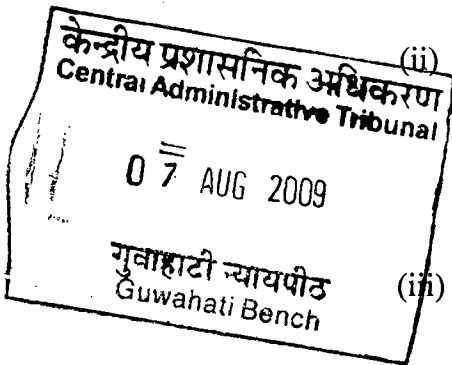
- (i) as the communication of the same does not adhere to the time frame laid down for the steps about such remarks and is violative of principles of natural justice and the failure to observe the time frame in communicating the adverse remarks on time caused prejudice to the Applicant;
- (ii) as the contents of the adverse remarks for the period under report are vague answers to the prescribed Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR;
- (iii) as the contents of the adverse remarks are not in accordance with the Government instructions on the subject of writing of confidential remarks;
- (iv) as the grant of honorarium to the Applicant for the year 2006-07 for good performance negatives the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the period under report are prejudiced.

5.2. The impugned adverse remarks under the Head No.3, 4 and 5 for the period from 1.4.2007 to 10.8.2007 of the ACR are invalid as the delayed communicated repeated adverse remarks for the period 8.9.2006 to 31.3.2007 vitiated the adverse remarks recorded for the subsequent period from 1.4.2007 to 10.8.2007 and not sustainable in law.

5.2.1. The impugned adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as their contents are vague answers to the prescribed Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR and they are not in accordance with the instructions on the subject of writing confidential remarks.

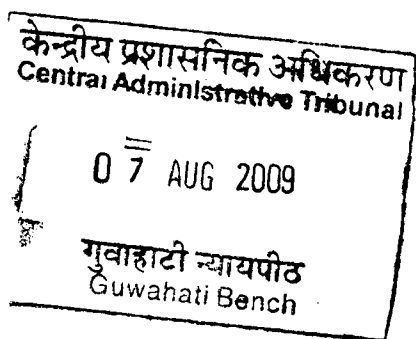
5.2.2. The adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as the grant of honorarium to the Applicant for his satisfactory performance for the year 2007-08 has negative the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the period under report are prejudiced.

Contd.11.



A. K. Das

- 5.3. It is the established proposition of law that the writing of the confidential remarks, communication of adverse remarks and disposal of representation etc. should be in accordance with the Government instructions and laid down procedure. In the instant case, the respondent authorities had not complied with the instructions and procedure.
- 5.4. The Gujarat High Court in the case of B.R. Kulkarni (Dr.) Vs. Government of Gujarat 1978 (2) SLR 682 (Guj) per P.D. Desai observed that uncommunicated adverse remarks are of "no avail and cannot be relied upon for any purpose to prejudice of the petitioner" and when they "form the sole or substantial basis of adverse remarks in confidential reports for subsequent period, the confidential reports for the subsequent period would also be vitiated".
- 5.5. The Delhi high Court also, echoing in similar vein, in the case of Gita Ram Gupta Vs. Union of India 1979 SLR 227 laid down propositions on the uncommunicated or delayed communicated adverse remarks and observed that adverse remarks stand expunged, if not communicated,..... And in the event of adverse remarks not communicated in time, it bears no effect.
- 5.6. The Supreme Court of India in the case of Sukhdev vs. Commissioner, Amravati Division and another, 1964 (4) Supreme 758 = 1996 (5) SCC 103 = 1996 (5) JT 477 = 1996 (2) UJ (SC) 153 = 1996 SCC (L&S) 1141 = 1996 (2) SLJ 3 = 1996 (4) SLR 8 (SC) = 1996 (73) Fac. LR 1964 on the question of making vague remarks observed that when an officer makes the remarks, he must eschew of making vague remarks causing jeopardy to the service of subordinate officer. He must bestow careful attention to collect correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate official whose carrier prospect and service was in jeopardy. It would be salutary that the Controlling Officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement.
- 5.7. In the instant case, no such steps were taken by the Reporting Officer during the periods under report before writing the adverse remarks nor was any deficiency pointed out to the applicant on any occasion for improvement.
- 5.8. In the facts and circumstances stated above, the impugned adverse remarks for the periods under report are inconsistent in Government instructions and not sustainable in law as being vague and invalid and are liable to be held to be invalid and set aside and quashed by this Hon'ble Tribunal.



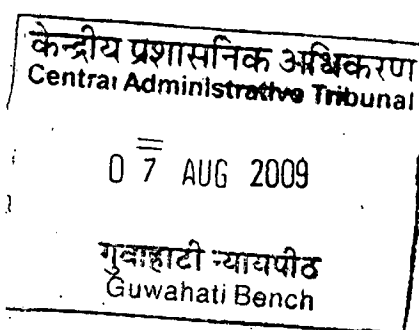
12.

6. **Details of the remedies exhausted:**

- 6.1. The Applicant declares that he has availed of all the remedies available to him under the relevant service rules and he has no other alternative and efficacious remedy available to him except by way of this instant application.
- 6.2. The Applicant approached this Hon'ble Tribunal by filing an Original Application being registered and numbered as O.A.NO.84 of 2008 praying for setting aside and quashing the impugned adverse remarks recorded in his A.C.R. for the consecutive two periods 8.9.2006 to 31.3.2007 and 1.4.2007 to 10.8.2007.

Copies of the Original Application NO.84 of 2008 are annexed hereto and marked as Annexure-A3 Series.

- 6.3. This Hon'ble Tribunal vide Order (Oral) dated 14.05.2008 was pleased to pass an order directing the Respondents **"to consider the representation of the Applicant and pass a reasoned order within a period of 90 days from the date of receipt of a copy of this order"** with further direction that **"the Respondents, while considering the representation of the Applicant, should take into consideration the grounds set forth in the present Original Application as part of the representation of the Applicant."**



Copies of the Order dated 14.05.2008 passed by this Hon'ble Tribunal are annexed hereto and marked as Annexure-A4 Series.

- 6.4. The Accounts Officer (Admn) in the Office of the Sr. Deputy Accountant General (A&E), Nagaland, Kohima vide his letter NO.Admn/A&E/CAT/AKD/2008-09/570 dated 11.7.08 has intimated the Applicant that the Reviewing Officer did not find any reasonable ground to accept the representation of Applicant and hence, the adverse remarks stands.

Copies of the letter dated 11.7.2008 is annexed hereto and marked as Annexure-A5.

- 6.5. Being aggrieved by the said communication dated 11.7.2008, the Applicant vide his letter dated 23.8. 2008 submitted a representation to the Respondent NO.2 detailing his grievances against the impugned adverse remarks specifically pointing out the relevant part of the orders passed by the Hon'ble Tribunal on 14.05.2008 for reconsideration and setting aside the impugned adverse remarks.

Copies of the representation dated 25.08.2008 is annexed hereto and marked as Annexure-A6 Series.

Contd.13.

A-K-Devg

13.

- 6.6. The said Accounts Officer (Admn) in the Office of the Sr. Deputy Accountant General (A&E), Nagaland, Kohima vide his letter NO. Admn/A&E)/AKD/89-90/1051 dated 14.10.2008 has intimated the Applicant that as per the Hon'ble Central Administrative Tribunal, Guwahati Bench order dated 15.05.2008 the representation of the Applicant has been considered at the appropriate level and the decision of the authority has since been communicated to the Applicant vide their letter NO.ADMN/A&E/CAT/AKD/08-09/570 dated 11.07.2008.

Copy of the letter dated 14.10.2008 is annexed hereto and marked as Annexure-A7.

7. **Matters not previously filed or pending with any other court:**

The Applicant further declares that he had not previously filed any application, writ petition, or suit regarding the matter, in respect of which this application has been made, before any court or any other authority or any other bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. **Relief sought:**

In view of the facts mentioned in Para 6 above the Applicant prays for the following relief(s):-

- 8.1. The Memorandum NO.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 issued under the signature of Shri A.N. Sarkar, Accountant General (A&E), Nagaland, Kohima communicating the impugned adverse remarks in the Annual Confidential Report to the applicant be set aside.

- 8.2. To pass order or orders directing the respondent authorities to expunge the impugned adverse remarks and/or pass such order or orders as the Hon'ble Tribunal may deem fit and proper.

9. **Interim order, if any prayed for:**

Pending final decision on the application, the Applicant seeks the following interim relief:

- 9.1. To stay/suspend the operation of the impugned adverse remarks made for the period from 8.9.2006 to 31.3.2007 and for the period from 1.4.2007 to 10.8.2007 in the Annual Confidential Report.
- 9.2. To pass any other order or orders as the Hon'ble Tribunal may deem fit and proper.

10. **Particulars of the Postal Order filed in respect of the application fee.**

- (1) IPO NO. 39G 386170.
 (2) Date of issue: 16.01.2009.
 (3) Issued from: Guwahati G.P.O.
 (4) Amount: Rs.50/-
 (5) Payable at: Guwahati.

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal 07 AUG 2009 गुवाहाटी न्यायपीठ Guwahati Bench

A-K-De-ly

11.

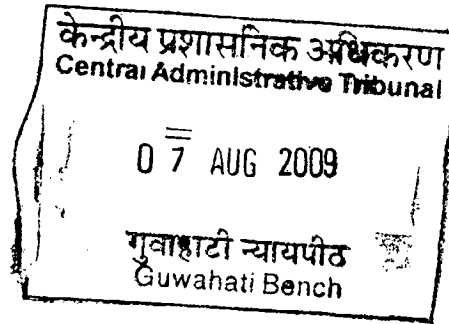
List of enclosures:

- (1) Memo. NO.DAG (A&E)/CRACR/2006-07 - Annexure-A1.
dated 16.8.2007.
- (2) Specimen ACR Form. - Annexure-A2 Series.
- (3) Original Application No.84 of 2008. - Annexure-A3 Series.
- (4) Order (Oral) dated 14.05.2008 passed by the - Annexure-A4 Series.
Hon'ble Tribunal in the Original Application
No.84 of 2008.
- (5) Letter NO.Admn/A&E/CAT/AKD/ - Annexure-A5.
2008-09/570 dated 11.07.2008.
- (6) Representation dated 25.08.2008. - Annexure-A6 Series.
- (7) Letter NO.Admn/A7E)/AKD/89-90/1051 - Annexure-A7.
dated 14.10.2008.
- (8) Time-Schedule for Preparation of - Annexure-A8.
Confidential Reports.

12.

This application is filed bonafide and in the interest of justice through
Advocate.

.....Verification.



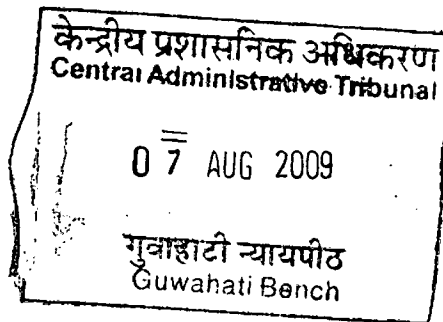
A-K-Devg

15.

VERIFICATION

I, Shri Ashim Kumar Dey son of Shri Ajit Kumar Dey, aged about 42 years working as Section Officer in the Office of the Accountant General (A&E), Nagaland, Kohima, resident of Harulangpher Last Colony, Lumding, Dist. Nagaon, Assam do hereby verify that the contents of paragraphs 1,2,3, 4.1 to 4.3, 4.4.1 to 4.4.6, 4.5.1 to 4.5.5, 4.5.5A to 4.5.5E, 6.1 to 6.6, 7, 10, 11, 12 are true to my knowledge and paragraphs 4.6 to 4.8, 4.8.1 to 4.8.7, 5.1, 5.2, 5.2.1, 5.2.2, 5.3 to 5.8, 8.1, 8.2, 9.1, 9.2 are believed to be true on legal advice and that I have not suppressed any material fact.

I signed this verification on this...7.....th day of August, 2009 at Guwahati.



A K. Dey
(ASHIM KUMAR DEY)
Signature of applicant.

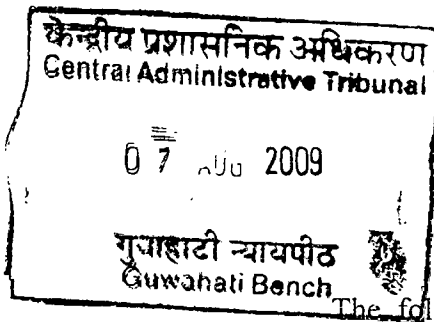
Date: 7-8-09

Place: Guwahati.

CONFIDENTIAL

OFFICE OF THE SENIOR DEPUTY ACCOUNTANT GENERAL (A&E)
NAGALAND::KOHIMA

No.DAG(A&E)/CRACR/2006-07/ 176.
Dated: -16/8/2007.

MEMORANDUM

The following adverse remarks have appeared in Annual Confidential Report of Shri Ashim Kr. Dey, S.O. for the period 8/9/06 to 31/3/2007 and 1/4/2007 to 10/8/2007.

Period from 8/9/2007 to 31/3/2007

PART-III B	Comments
Item No.3. (Initiative) at page no 6	There is nothing of this sort has been noticed yet.
Item No.4 (Attitude of work), at page no.6	Officer's sense of responsibility as required for sectional duty requires further improvement/sincerity.
Item No.5 (Ability to inspire and motivate) At page No.6	Nothing of this sort has been noticed yet
Item No.6 (Supervisory Ability), at page No.6	Officer's overall supervisory capacity requires further observation.

Period from 1/4/2007 to 10/8/2007

PART-III A	Comments
Item No. 2. (Quality of Output), At page No.5	Officer's personal and quality of performance in regard to the standard of work and programme objectives requires sufficient improvement.
PART -III B	
Item No. 1 (Analytical ability), At page no. 5	Officer's ability relating to analysis pros and cons, formulation of alternatives and their evaluation for solving problems requires further improvement.
Item No.2 (Communication Skill) At page No.5	Though officer is capable to communicate with brevity clarity and accurately both orally and in writing, able to draft notes, briefs but yet it also requires more sincerity.
Item No. 3 (Initiative) At page No. 6	There is nothing of this sort noticed yet.
Item No. 4 (Attitude of work), At page no. 6	Officer's sense of responsibility as required for his sectional duty requires further improvement/sincerity.

Confirmed to be true copy
[Signature]
[Signature]

Item No.5 (Ability to inspire and motivate) At page no. 6	Nothing of this sort has been noticed yet.
Item No.6 (Supervisory Ability) At page No. 6	There is nothing to comment.

The above remarks may kindly be noted and immediate action to rectify the defects may be taken to give a better account of the officer.



A.N. SARKAR
Accountant General (A&E)

Copy to: -

1. Ashim Kr. Dey, S.O.



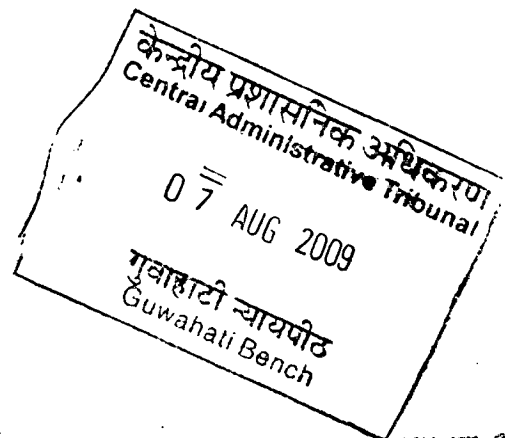


OFFICE OF THE
SENIOR DEPUTY ACCOUNTANT GENERAL (ASE)
NAGALAND : KOHIMA

CONFIDENTIAL REPORT

FOR

SUPERVISORS
SECTION OFFICERS
ASSISTANT ACCOUNTS OFFICERS
ACCOUNTS OFFICERS
SENIOR ACCOUNTS OFFICERS



Name of the official

(in CAPITAL letters) _____

Designation _____

Report for the period from _____ to _____

Confirmed to be true copy

Mukund
Advocate

(2)

CONFIDENTIAL REPORT FOR
Supervisors/Section Officers/Asstt. Accounts Officers/
Accounts Officers/Sr. Accounts Officers

Report for the period from to

PART—I

PERSONAL DATA

(To be filled by the Administrative Section concerned of the office)

1. Name of the officer :
(In CAPITAL letters)
2. Designation :
3. Whether the officer belongs :
to SC/ST?
4. Date of birth :
5. Educational qualifications :
i/c professional and technical
qualifications
6. Departmental Examination passed :
i.e. S.O.G.E. (Civil, Commercial,
Railways, Revenue Audit etc.)
7. Date of continuous appointment :
to the present grade.
8. Present post and date of :
appointment thereto
9. Period of absence from duty (on :
leave, training etc.) during the
year. If he was undergone
training, please specify)



(3)

PART-II

(to be filled in by the Officer Reported upon)

(Please read carefully the instructions given at the end of the form before filling the entries)

1. Brief description of the duties.

2 (A). Please specify targets/objectives goals (in quantitative or other terms) of work you set for yourself or that were set for you, eight to ten items of work in the order of priority and your achievement against each target.

Targets/Objectives/Goals

Achievements

(4)

2. (B) If you are a Section Officer or Assistant Accounts Officer, please state briefly, the target set and the quantum of work done in regard to recording, indexing and weeding out of files, maintenance of Guard files, Sectional Note book and other registers, furnishing of O & M and other returns etc.

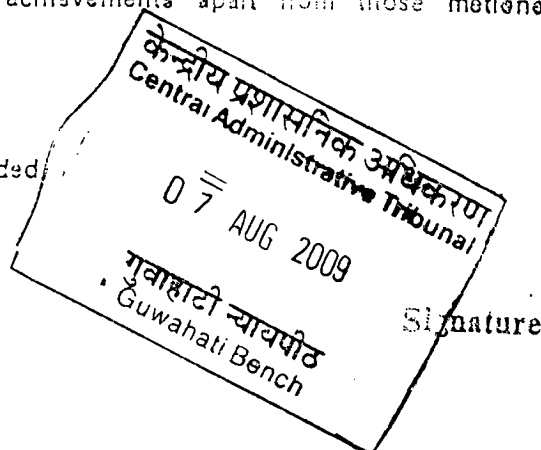
3. (A) Please state briefly the shortfalls with reference to the targets/objectives/goals referred to in column-3 Please specify constraints, if any, in achieving the targets.

4. (B) Please also indicate items in which there have been significantly, higher achievements and your contribution thereto.

4. (C) Any significant additional achievements apart from those mentioned to in column 3.

5. (D) Training programmes attended

Date



PART - III

(To be filled by the Reporting Officer):

(Please read carefully the instructions given at the end of the form before filling the entries).

A. NATURE AND QUALITY OF WORK.

1. Please comment on Part - II as filled out by the Officer and specifically state whether you agree with the answer relating to targets and objectives, achievements and shortfalls. Also specify constraints, if any in achieving the objectives. In case you disagree with any of the remarks contained in Part-II, the reasons thereof may be given.

(5)

2. QUALITY OF OUTPUT :-

- (a) Please comment on the officer's personal and quality of performance having regard to the standard of work and programme objectives, and constraints, if any.

3. KNOWLEDGE OF SPHERE OF WORK :-

Please comment specifically on each of these :- Level of knowledge of functions, rules and regulations, related instructions and their application in the field of work assigned to the officer.

B. ATTRIBUTES

1. Analytical ability :-

Please comment on the officer's ability relating to analysis of pros and cons; formulation of alternatives and their evaluation for solving problems, ability to indicate decision areas.

2. Communication Skill :-

Please comment on the officer's ability to communicate with brevity, clarity and accuracy both orally and in writing; ability to draft notes, briefs for meeting etc.

(6)

3. Initiative :-

Please comment on the capacity and resourcefulness of the officer in handling normal as well as unforeseen situations; willingness to take additional responsibilities and new area of work and capacity to initiate cases at his level.

4. Attitude of work :-

Please comment how far the officer can be relied upon, his sense of responsibility, the extent to which he/she is dedicated and motivated, his/her willingness to learn and systematize his/her work.

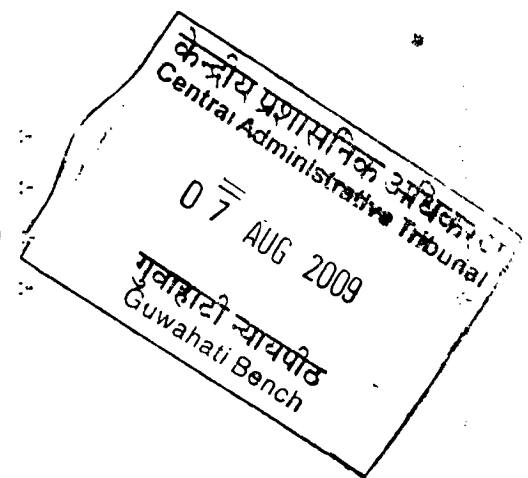
5. Ability to inspire and motivate :-

Please comment on the capacity of the Officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence.

6. Supervisory Ability :-

Please comment on the Officer's ability relating to :-

- (1) Guidance in the performance of tasks
- (2) Review of performance (monitoring of key areas)
- (3) Enforcing discipline



7. Inter-personal relations and team work :-

Please comment on the quality relationship with superiors, colleagues and subordinates and on the ability to appreciate others point of view and take advance in the proper spirit. Please also comment on his/her capacity to work as a members of a team and to promote team spirit and optimise the output of the team.

(7)

(4)

Please indicate three fields of work from amongst the following for possible specification and career development of the officer. Please mark 1, 2, 3 in three appropriate boxes.

- [illegible]

(8)

PART-IV

GENERAL

1. State of health :-

2. Integrity :-
(Please see Note below the instruction)

3. General Assessment :-

(Please give an overall assessment of the officer with reference to his/her strength and shortcomings and also by drawing attention to the qualities if any not covered by the entries above. If the officer reported upon is an Accounts Officer/Audit Officer, please state special characteristics and/or any abilities deserving appointment as Welfare Officer and/or promotion to IA & AS)
Specific mention about the quality of LAR stating whether it contains matter for Draft Para and Value for Money comments must be made.

4. Grading :-

(Outstanding/Very Good/Good/Average/Below Average)

An officer should not be graded outstanding unless exceptional quality and performance have been noticed; grounds for giving such a grading should be clearly brought out and the grading be consistent with and conform to the assessment made in Part - III)

Signature :

Name :-

in BLOCK letters

Place :

Date :-

Designation :-

(During the period of report)



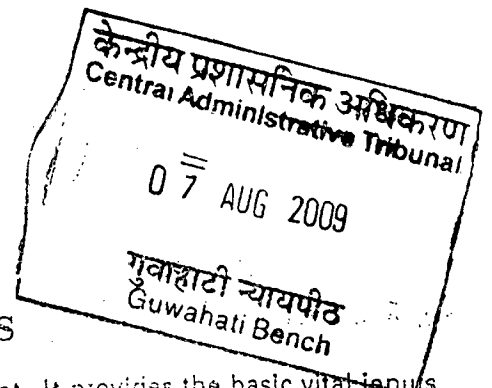
(9)

PART—V**REMARKS OF THE REVIEWING OFFICER**

1. Length of service under the Reviewing Officer :-
2. Are you satisfied that the Reporting Officer has made his/her report with due care and attention and after taking into account all the relevant material ?
3. Do you agree with the assessment of the Officer given by Reporting Officer ? (In case of disagreement please specify the reasons)
Is there anything you wish to modify or add ?
4. If the official reported upon is a member of a Scheduled Caste/ Tribe, please indicate specifically whether the attitude of the Reporting Officer in assessing the performance of the SC/ST Official has been fair and just.
5. General remarks with specific comments about the meritorious work of the official including the grading.
6. Has the Official any special characteristics, and/or any abilities which would justify his/her selection for special assignment or/out of turn promotion ? If so, specify.

Signature of the Reviewing Officer

Name :-
(In BLOCK letters)Designation :
(During the period of report)Place :
Date :



(10)

INSTRUCTIONS

1. The Confidential Report is an important document. It provides the basic vital inputs for assessing the performance of an officer and for his/her further advancement in his/her career. The officer reported upon, the Reporting Officer and the Reviewing Officer should therefore, undertake the duty of filling out the form with a high sense of responsibility.
2. Performance appraisal through Confidential Reports should be used as a tool for human resource development. Reporting Officers should realise that the objectives is to develop an officer so that he/she realises his/her true potential. It is not meant to be a fault finding process but a development one. The reporting Officer and the Reviewing Officer should not shy away from reporting shortcomings in performance, attitudes or overall personality of the Officer reported upon.
3. The columns should be filled with due care and attention and after devoting adequate time. Any attempt to fill report in a casual or superficial manner will be easily discernible to the higher authorities.
4. If the Reviewing Officer is satisfied that the Reporting Officer had made the report without due care and attention he/she shall record a remark to that effect in item I of the part-IV. The competent authority shall enter the remarks in the confidential Roll of the Reporting Authority.
5. Every answer shall be given in a narrative form. The space provided indicates the desired length of the answer. Words and phrases should be chosen carefully and should accurately reflect the intention of the Officer recording the answer, please use unambiguous and simple language. Please do not use omnibus expressions like outstanding, very good, good, average, below average, while giving your comments against any of the attributes.
6. The Reporting Officer shall, in the beginning of the year set quantitative/physical 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 Officer reported upon and the Reporting Officer. The Targets/Goals shall be set at the commencement of the Reporting year, i.e. January in the case of All India Service Officers. In the case of an officer taking 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 area of the work and any special features that may specific to the nature or the area of the officer to be reported upon.
8. Although performance appraisal is a year-end exercise, in order that it may be a tool for human resource development, the Reporting officer should meet during the course of the year at regular interval review the performance and take necessary corrective steps.
9. It should be the endeavor of each appraiser to present the truest possible picture of, the appraisee in regard to his/her performance, conduct, behaviour and potential.

(11)

10. Assessment should be confined to the appraisee's performance during the period of report only.
11. Some posts of the same rank may be more exacting than others. The degree of stress and strain in any post may also vary from time to time. These facts should be borne in mind during appraisal and should be commented upon appropriately.
12. Aspects on which an appraisee is to be evaluated on different attributes are delineated below each column. The appraiser should deal with these and other aspects relevant to the attributes.

NOTE

The following procedure should be followed in filling up the item relating to integrity :-

- i) If the officer's integrity is beyond doubt, it may be so stated.
- ii) If there is any doubt or suspicion, the item should be left blank and action taken as under :-
 - (a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report that the next superior officer who will ensure that the follow up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he has not watched the officer's work for sufficient time to form a definite judgement or that he has heard nothing against the officer, as the case may be.
 - (b) If, as a result of the follow up action the doubts or suspicions are cleared the officer's integrity should be certified and an entry made accordingly in the C. R.
 - (c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.
 - (d) If as a result of the follow up action the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period and thereafter action taken as indicated at (b) and (c) ABOVE.



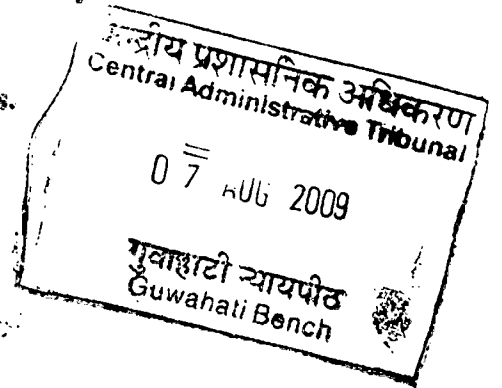
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. NO. 84.....of 2008.

Shri Ashim Kumar Dey

-VS-

C.A.A.G.I. & Ors.



SYNOPSIS

The applicant has been serving as Section Officer in the Office of the Accountant General (A&E), Nagaland, Kohima. The Respondent No.2 by a Memorandum NO.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 communicated the adverse remarks that have appeared in the Annual Confidential Report for the periods from 8.9.2006 to 31.3.2007 and 1.4.2007 to 10.8.2007 to the applicant. The applicant submitted an appeal against the adverse remarks vide his letter dated 27.9.2007 to the Respondent No.2 for review and thereafter he submitted a reminder vide his letter dated 4.12.2007. The Respondent No.2 has not yet disposed of the appeal and kept it pending. Hence, this application.

Certified to be true copy

*Munish
Advocate*

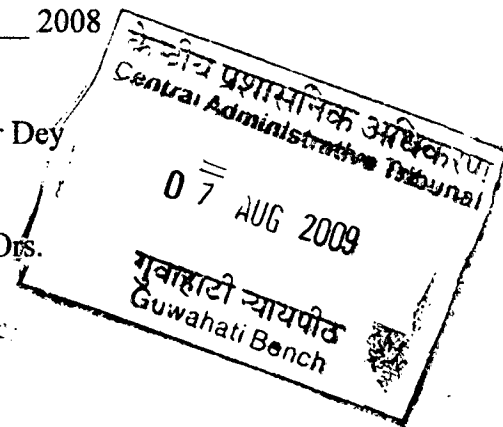
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. NO. 84/ 2008

Shri Ashim Kumar Dey

-VS-

C.A.A.G.O.I. & Ors.



I N D E X

Sl. No.	Contents	Page No.
1.	Original Application	1-10
2.	Verification	11
3.	Annexure-A1	12-13
4.	Annexure-A2 Series	14
5.	Annexure-A3 Series	15
6.	Annexure-A4	16-17
7.	Annexure-A5	18

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. No. 84/....., 2008.

Shri Ashim Kumar Dey,

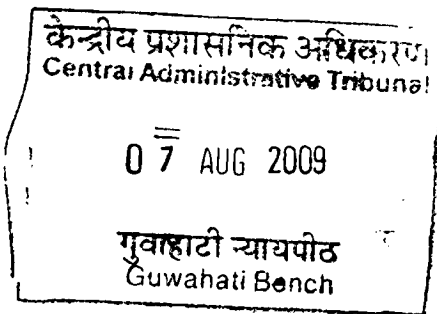
Son of Shri Ajit Kumar Dey,

Section Officer,

Office of the Accountant General (A&E),

Nagaland, Kohima.

.....APPLICANT



- VERSUS-

1. **The Comptroller and Auditor General of India,** 10 Bahadur Shah Zafar Marg, New Delhi- 110002.
2. **The Accountant General (A&E),** Nagaland, Kohima. P.O. Kohima- 797001, Nagaland.
3. **Shri Arindam Kumar Das,** Senior Accounts Officer (Treasury Misc. Section), Office of the Accountant General (A&E), Nagaland, Kohima. P.O. Kohima- 797001.
4. **Shri R.M. Dasgupta,** Accounts Officer (Work Misc. Section), Office of the Accountant General (A&E), Nagaland, Kohima. P.O. Kohima- 797001.

.....RESPONDENTS

DETAILS OF APPLICATION:

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

The application is made against the Memorandum bearing No.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 issued under the signature of Shri

A.N. Sarkar, Accountant General (A&E), Nagaland, Kohima communicating the adverse remarks in the Annual Confidential Report to the applicant.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation:

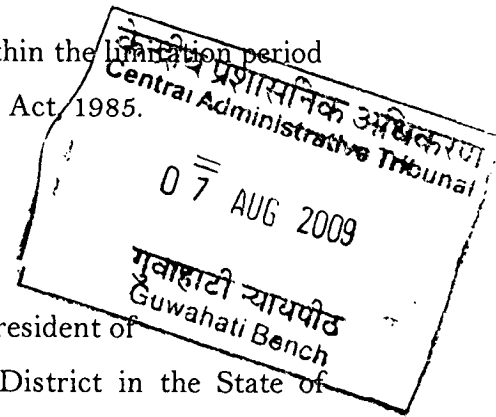
The applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case:

- 4.1. That the applicant is a citizen of India and a permanent resident of Harulangpher Last Colony, Lumding under Nagaon District in the State of Assam and therefore he is entitled to protection of all the rights and privileges guaranteed under the Constitution of India and all other laws of the land in force.
- 4.2. That the applicant begs to state that he was initially appointed as Clerk-cum-Typist on 13.3.1990 in the Office of the Accountant General, Nagaland, Kohima and thereafter he was promoted to the posts of Accountant on 26.5.1993, Senior Accountant on 26.5.1996 and presently he has been serving as a Section Officer in the said Office with effect from 8.9.2006 till date. The applicant has been looking after two Sections viz. Treasury Miscellaneous and Work Miscellaneous headed by two Officers. During the period of his service the applicant has all along been maintaining absolute integrity and devotion to duty and he has no blemish in his service carrier. Further the applicant's promotion to the three higher posts during a period of 18 years shows that he has an excellent service carrier.
- 4.3.1. That the applicant begs to state that while he was serving as such the Respondent No.2 by a Memorandum bearing No.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 had communicated to the applicant 11 (Eleven) adverse remarks that have appeared in Annual Confidential Report for the period from 8.9.2006 to 31.3.2007 and from 1.4.2007 to 10.8.2007.

Copies of Memorandum dated 16.8.2007 are annexed hereto and marked as Annexure-A1.

- 4.4. That as regards the adverse remarks for the period from 8.9.2006 to 31.3.2007 the applicant begs to state and submit that the adverse remarks for the said period were not communicated within the period of one month of their being



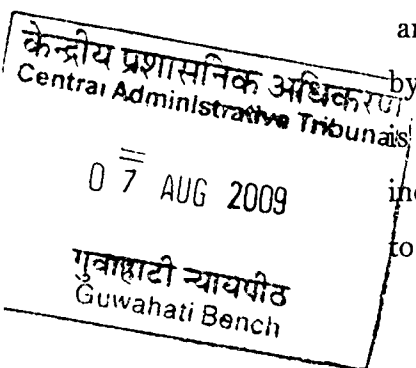
recorded as prescribed vide Govt. of India Department of Personnel & Administrative Reforms, O.M. No.21011/1/77-Estt., dated the 30th January, 1978. The same was communicated to him only on 16th August, 2007 after lapse of more than four and half month as a result of which the applicant, being a new Section Officer, had got no opportunity to improve his deficiencies in work and conduct during the subsequent period in respect of the impugned adverse remarks or to make a representation right on time i.e. before writing the ACR

for the subsequent period. One of the objects of recording of adverse remarks is to afford the employee an opportunity of improving himself so that during the next year/ period there may not be an occasion for the making of such remarks. But by such delay the very object of recording adverse remarks is defeated and the applicant is placed in a disadvantageous position to improve his deficiencies. As such the failure to observe the time frame in communicating the adverse remarks caused prejudice to the applicant and the communication is inconsistent in Government instructions.

- 07 AUG 2009
গুৱাহাটী ন্যায়পীঠ
Guwahati Bench
- 4.4.1. That the applicant further begs to state and submit that he was never given any training, necessary advice, guidance, assistance to improve his deficiencies nor was any deficiency in his conduct and work pointed out to him for improvement on any occasion nor was any periodical inspection/ visit made to the sections under the charge of the applicant during the period under report by the Reporting Officer before writing the ACR as per Government instructions given vide C.S., O.M. No.51/5/72-Ests. (A) dated the 20th May, 1972.
- 4.4.2. That as regards the adverse remark under the Head 'Initiative' the applicant begs to state that the Reporting Officer is required to comment on "the capacity and resourcefulness of the Officer in handling normal as well as unforeseen situations; willingness to take additional responsibilities and new area of work and capacity to initiate cases at his level" only. But the Reporting Officer's answer "There is nothing of this sort has been noticed yet" is not definite and not the answer to those aspects. The applicant has taken additional responsibilities as stated under paragraph 4.2. above but the Reporting Officer has lost sight of this fact to mention. As such the adverse remarks 'There is nothing of this sort has been noticed yet' is vague and such remark shows the incapability and incompetency of the Reporting Officer to assess the performance of the applicant and to give his answer correctly against the said Head.
- 4.4.3. That as regards the adverse remarks under the Head 'Attitude of work' the applicant begs to state that the Reporting Officer is required to comment on "how far the Officer can be relied upon, his sense of responsibility, the extent to which he is dedicated and motivated, his willingness to learn and systematize his work". But the Reporting Officer's answer 'Officer's sense of responsibility as

required for sectional duty requires further improvement/sincerity' is not definite and not supported by any factual statement/ instance. As such the said impugned adverse remark is vague and baseless.

- 4.4.4. That as regards the adverse remarks under the Head 'Ability to inspire and motivate' the applicant begs to state that the Reporting Officer is required to comment on "the capacity of the Officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence". But the Reporting Officer's answer 'Nothing of this has been noticed yet' is not definite and not supported by any factual statement/ instance. As such the said impugned adverse remark is vague, baseless and such remarks shows only the incapability and incompetency of the Reporting Officer to observe the conduct of the applicant to give his answer correctly against the said Head.



- 4.4.5. That as regards the adverse remarks under the Head 'Supervisory ability' the applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability relating to (1) Guidance in the performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the Reporting Officer's answer 'Officer's sense of responsibility and overall supervisory capacity requires further improvement/sincerity' is not confined to those three sub-heads. As such the said adverse remark is irrelevant.

- 4.5. That as regards the adverse remarks for the period from 1.4.2007 to 10.8.2007 the applicant begs to state that the adverse remarks under the three Heads viz. (1) Head No.3 'Initiative- There is nothing of this sort noticed yet, (2) Head No.4. Attitude of work - Officer's sense of responsibility as required for his sectional duty requires further improvement/sincerity and (3) Head No.5 Ability to inspire and motivate - Nothing of this sort has been noticed yet' are repetitions of the vague adverse remarks made against the same Head No.3, 4 and 5 for the previous period from 8.9.2006 to 31.3.2007 for which the applicant had got no opportunity of improving himself during the period under report or making representation against such remarks at the relevant point of time due to non communication of the adverse remarks on time in accordance with the Government instructions. Further such repetitions of vague adverse remarks are indicative of the fact that the ACRs for the period from 8.9.2006 to 31.3.1007 and from 1.4.2007 to 10.8.2007 were written at-one-go after 10.8.2007 only which is in contrary to the Government instructions.

- 4.5.1. That as regards the adverse remarks under the Head 'Supervisory ability' the applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability relating to (1) Guidance in the performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the

Reporting Officer's answer as 'There is nothing to comment' is nothing but avoidance of Reporting Officer's obligation to comment specifically on these aspects and cryptic and not the answer to those sub-heads. On the other hand, such remark is indicative of the fact that the Reporting Officer had not made any periodical inspection/ visit to the Sections to observe the supervisory ability of the applicant during the period under report before recording such remarks.

4.5.2. That as regards the impugned adverse remarks under the Head 'Quality of Output' the applicant begs to state that the Reporting Officer is required to comment on "the Officer's personal and quality of performance having regard to the standard of work and programme objectives, and constraints, if any". But the Reporting Officer's answer "Officer's personal and quality of performance in regard to the standard of work and programme objectives requires sufficient improvement" is baseless and not supported by any factual statement/ instance.

4.5.3. That as regards the adverse remarks under the Head 'Analytical ability' the applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability relating to analysis of pros and cons; formulation of alternatives and their evaluation for solving problems, ability to indicate decision areas". But the Reporting Officer's answer "Officer's ability relating to analysis pros and cons, formulation of alternatives and their evaluation for solving problems requires further improvement" is baseless and arbitrary as the applicant was never given any training, necessary advice, guidance, assistance to improve his deficiencies nor was any deficiency in his conduct and work pointed out to him for improvement by the Reporting Officer on any occasion during the period under report nor assigned any target/goal to be achieved for the year.

4.5.4. That as regards the adverse remarks under the Head 'Communication Skill' the applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability to communicate with brevity, clarity and accuracy both orally and in writing; ability to draft notes, briefs for meeting etc." The Reporting Officer while commending the 'Communication Skill' of the applicant very well in respect of these aspects, the subsequent remark in the tail as '.....but yet it also requires more sincerity' is unwarranted, unjust and unfair.

4.6. That the applicant begs to submit that the contents of adverse remarks for both the periods are baseless and vague as the applicant was never given any training, necessary advice, guidance and assistance for improvement of his deficiencies and performance nor was any deficiency on him pointed out for improvement nor the Reporting Officer made any periodical inspection/visit to the Sections to observe the conduct and work of the applicant nor assigned any target/goal to be achieved for the year as prescribed on the subject of writing of confidential remarks in the C.S., O.M. No. 51/5/72- Ests. (A) dated the 20th May, 1972 and

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
07 AUG 2009
गुवाहाटी न्यायपीठ
Guwahati Bench

in the G.I., M.H.A., O.M. No. 51/4//64-Estt. (A), dated the 21st June, 1965 and also the instructions for filling the entries in the prescribed ACR Form itself.

- 4.7. That the applicant further begs to submit that during the periods under report, the applicant looked after two sections viz. Treasury Miscellaneous and Work Miscellaneous headed by two Officers viz. Senior Accounts Officer in-charge of Treasury Miscellaneous Section and Accounts Officer - in-charge of Work Miscellaneous Section and they/Reporting Officer had neither inspected/visited the Sections under the charge of the applicant nor given training, necessary advice, guidance, assistance to improve his deficiencies nor pointed out any deficiency in his performance for improvement nor made periodical inspection/visit to observe the performance of the applicant on any occasion during the periods under report before writing the adverse report; rather the Respondent No.2 had granted honorarium of Rs. 1250/- vide Bill No. G-82 dated 30.3.07 and Rs. 500/- vide Bill No. 578 dated 31.3.08 to the applicant for his good performance during the year 2006-07 and 2007-08 respectively. As such the grant of honorarium to the applicant is indicative of the fact that the Applicant's service during the periods under report is presumed to be satisfactory and such grant of honorarium amply proves that the adverse remarks recorded in that particular periods are prejudiced.

- 4.8. That the applicant further begs to submit that the adverse remarks are not based on specific instances / factual statement on the performance of the applicant reviewed and corrective steps taken by way of giving necessary guidance for improvement on the deficiencies of the applicant at regular interval which led to the adverse remarks so as to enable the applicant to make an effective representation and / or to improve his work and conduct and they are inconsistent in Government instructions given in the said Memo dated 20th May, 1972.

- 4.9. That the applicant further begs to submit that the adverse remarks are Communicated for guidance. But the last paragraph of the Memo. forwarding the adverse remarks is cryptically coached to mean a 'Warning' to the applicant which amounts to colorable exercise of powers by the Respondent No.2 and inconsistent in Government instructions given in the Ministry of Home Affairs Office memorandum No.51/7/68-Estt. (A), dated the 19th September, 1969 and D.P. & A.R., O.M. No. 51/3/74-Estts. (A), dated the 22nd May, 1975.

The Government Memos relied upon elsewhere contained in the 'Swamy's Complete Manual on Establishment and Administration'.

The copies of the relevant portion are annexed hereto and marked as **Annexure- A2** and the

Photostat copies of the ACR form are annexed hereto and marked as Annexure- A3.

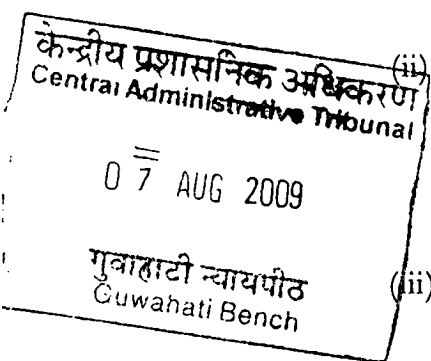
5. Ground for relief with legal provision:

5.1. The impugned adverse remarks for the period from 8.9.2006 to 31.3.2007 under Part-IIIB of the ACR are **invalid** -

- (i) as the communication of the same does not adhere to the time frame laid down for the steps about such remarks and is violative of principles of natural justice and the failure to observe the time frame in communicating the adverse remarks on time caused prejudice to the applicant,
- (ii) as the contents of the adverse remarks for the period under report are vague answers to the Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR,
- (ii) as the contents of the adverse remarks are not in accordance with the Government instructions on the subject of writing of confidential remarks,
- (iv) as the grant of honorarium to the applicant for the year 2006-07 for good performance negatives the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the period under report are prejudiced.
- (v) as the time-limit for disposal of representation submitted against adverse remarks was not adhered to for the steps in accordance with the instructions and the non-disposal of the representation and keeping it pending disposal beyond the prescribed period renders the adverse remarks inoperative.

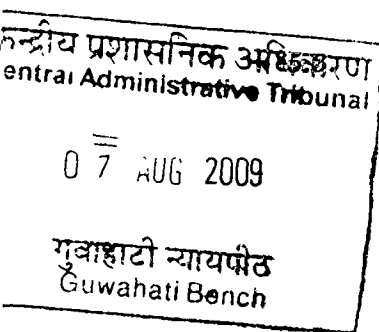
5.2. The impugned adverse remarks under the Head No.3, 4 and 5 for the period from 1.4.2007 to 10.8.2007 of the ACR are **invalid** as the delayed communicated repeated adverse remarks for the period from 8.9.2006 to 31.3.2007 vitiated the adverse remarks recorded for the subsequent period from 1.4.2007 to 10.8.2007 and not sustainable in law.

5.2.1. The impugned adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as their contents are vague answers to the Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR and they are not in accordance with the instructions on the subject of writing confidential remarks.



5.2.2. The adverse remarks for the period from 1.4.2007 to 10.8.2007 are **invalid** as the grant of honorarium to the applicant for his satisfactory performance for the year 2007-08 has negative the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the periods under report are prejudiced.

5.2.3. The adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as the time-limit for disposal of representation submitted against the adverse remarks was not adhered to for the steps in accordance with the instructions and the non disposal of the representation and keeping it pending disposal beyond the prescribed period renders the adverse remarks inoperative.



It is the established proposition of law that the writing of the confidential remarks, communication of adverse remarks and disposal of representation etc. should be in accordance with the Government instructions and laid down procedure. In the instant case, the respondent authorities had not complied with the instructions and procedure.

5.4. The Gujarat High Court in the case of B.R. Kulkarni (Dr.) Vs Government of Gujarat 1978 (2) SLR 682 (Guj) per P.D. Desai observed that uncommunicated adverse remarks are of "no avail and cannot be relied upon for any purpose to the prejudice of the petitioner" and when they "form the sole or substantial basis of adverse remarks in confidential reports for subsequent period, the confidential reports for the subsequent period would also be vitiated".

5.5. The Delhi High Court also, echoing in similar vein, in the case of Gita Ram Gupta Vs. Union of India 1979 SLJ 227 laid down propositions on the uncommunicated or delayed communicated adverse remarks and observed that adverse remarks stand expunged, if not communicated, and in the event of adverse remarks not communicated in time, it bears no effect.

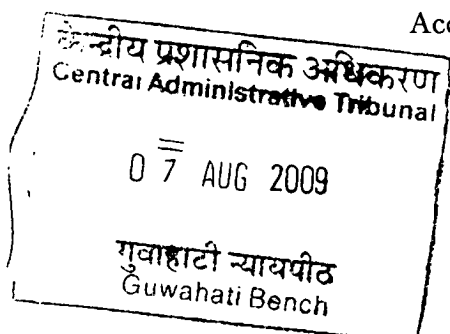
5.6. The Supreme Court of India in the case of Sukhdev vs. Commissioner, Amravati Division and another, 1964 (4) Supreme 758 = 1996 (5) SCC 103 = 1996 (5) JT 477 = 1996 (2) UJ (SC) 153 = 1996 SCC (L&S) 1141 = 1996 (2) SLJ 3 = 1996 (4) SLR 8 (SC) = 1996 (73) Fac. LR 1644 on the question of making vague remarks observed that when an officer makes the remarks, he must eschew of making vague remarks causing jeopardy to the service of subordinate officer. He must bestow careful attention to collect correct and truthful information and give necessary particular when he seeks to make adverse remarks against the subordinate official whose career prospect and service was in jeopardy. It would be salutary that the Controlling officer before writing adverse remarks would give prior sufficient opportunity in

writing by informing him of the deficiency he noticed for improvement.

- 5.7. In the instant case, no such steps were taken by the Reporting Officer during the periods under report before writing the adverse remarks nor was any deficiency pointed out to the applicant on any occasion for improvement.
- 5.8. In the facts and circumstances stated above, the impugned adverse remarks for the periods under report are inconsistent in Government instructions and not sustainable in law as being vague and invalid and are liable to be held to be invalid and set aside and quashed by this Hon'ble Tribunal.

6. Details of the remedies exhausted:

- 6.1. The applicant declares that he has availed of all the remedies available to him under the relevant service rules and he has no other alternative and efficacious remedy available to him except by way of this instant application.
- 6.2. The applicant submitted appeal against the adverse remarks vide letter dated 27.9.2007 to the Accountant General, Nagaland, Kohima for review but no reply is received.
- 6.3. The applicant further submitted a reminder vide letter dated 4.12.2007 to the Accountant General (A&E), Nagaland, Kohima but no reply is received.



Copies of the letter dated 27.9.2007 and 4.12.2007 are annexed hereto and marked as **Annexure-A4**, and **Annexure-A5** respectively.

7. Matters not previously filed or pending with any other court:

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter, in respect of which this application has been made, before any court or any other authority or any other bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Relief sought:

In view of the facts mentioned in para 6 above the applicant prays for the following relief(s):-

- 8.1. The Memorandum NO.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007

issued under the signature of Shri A.N. Sarkar, Accountant General (A&E), Nagaland, Kohima communicating the impugned adverse remarks in the Annual Confidential Report to the applicant be set aside and quashed.

- 8.2. To pass order or orders directing the authorities to expunge the impugned adverse remarks and/or pass such order or orders as the Hon'ble Tribunal may deem fit and proper.

9. Interim order, if any prayed for:

Pending final decision on the application, the applicant seeks the following interim relief:-

- 9.1. To stay/suspend the operation of the impugned adverse remarks made for the period from 8.9.2006 to 31.3.2007 and for the period from 1.4.2007 to 10.8.2007 in the Annual Confidential Report.
- 9.2. To pass any other order or orders as the Hon'ble Tribunal may deem fit and proper.

10. Particulars of Postal Order filed in respect of the application fee.

- (1) IPO NO.
- (2) Date of issue:
- (3) Issued from:
- (4) Amount:
- (5) Payable at:



11. List of enclosures:

1. Memorandum NO.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007. - ANNEXURE- A1.
2. Swamy's Complete Manual on Establishment and Administration For Central Government Officers. (Photostat copies) -ANNEXURE- A2.
3. ACR Form. - ANNEXURE- A3.
4. Letter dated 27.9.2007. - ANNEXURE- A4.
5. Letter dated 4.12.2007. - ANNEXURE- A5.

12. This application is filed bonafide and in the interest of justice through Advocate.

.....Verification

VERIFICATION

I, Shri Ashim Kumar Dey son of Shri Ajit Kumar Dey, age about 41 years working as Section Officer in the Office of the Accountant General (A&E), Nagaland, Kohima, resident of Harulangpher Last Colony, Lumding, Dist. Nagaon, Assam do hereby verify that the contents of paragraphs 1, 4, 6, 7, 11 and 12 are true to my personal knowledge and paragraphs to 2, 3, 5, 8, 9 and 10 believed to be true on legal advice and that I have not suppressed any material fact.

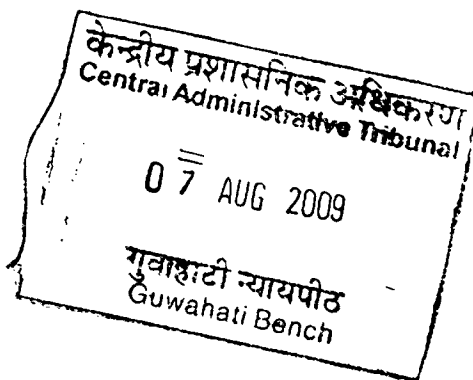
I signed this verification on this...8.5.....day of May, 2008 at Guwahati.

(ASHIM KUMAR DEY)

Signature of applicant

Date: 8.5.2008.

Place: Guwahati.



CONFIDENTIAL**OFFICE OF THE SENIOR DEPUTY ACCOUNTANT GENERAL (A&E)
NAGALAND::KOHIMA**

No.DAG(A&E)/CRACR/2006-07/ 176.

Dated: -16/8/2007.

MEMORANDUM

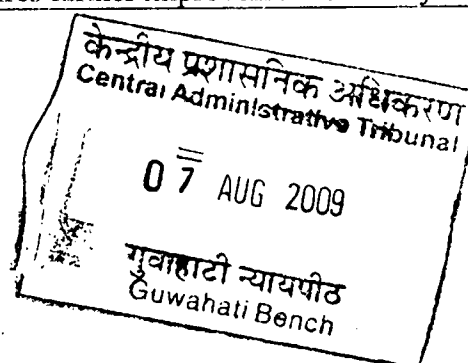
The following adverse remarks have appeared in Annual Confidential Report of **Shri Ashim Kr. Dey, S.O.** for the period 8/9/06 to 31/3/2007 and 1/4/2007 to 10/8/2007.

Period from 8/9/2007 to 31/3/2007

PART-III B	Comments
Item No.3. (Initiative) at page no 6	There is nothing of this sort has been noticed yet.
Item No.4 (Attitude of work), at page no.6	Officer's sense of responsibility as required for sectional duty requires further improvement/sincerity.
Item No.5 (Ability to inspire and motivate) At page No.6	Nothing of this sort has been noticed yet
Item No.6 (Supervisory Ability), at page No.6	Officer's overall supervisory capacity requires further observation.

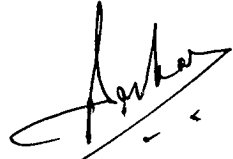
Period from 1/4/2007 to 10/8/2007

PART-III A	Comments
Item No. 2. (Quality of Output), At page No.5	Officer's personal and quality of performance in regard to the standard of work and programme objectives requires sufficient improvement.
PART -III B	
Item No. 1 (Analytical ability), At page no. 5	Officer's ability relating to analysis pros and cons, formulation of alternatives and their evaluation for solving problems requires further improvement.
Item No.2 (Communication Skill) At pate No.5	Though officer is capable to communicate with brevity clarity and accurately both orally and in writing, able to draft notes, briefs but yet it also requires more sincerity.
Item No. 3 (Initiative) At page No. 6	There is nothing of this sort noticed yet.
Item No. 4 (Attitude of work), At page no. 6	Officer's sense of responsibility as required for his sectional duty requires further improvement/sincerity.



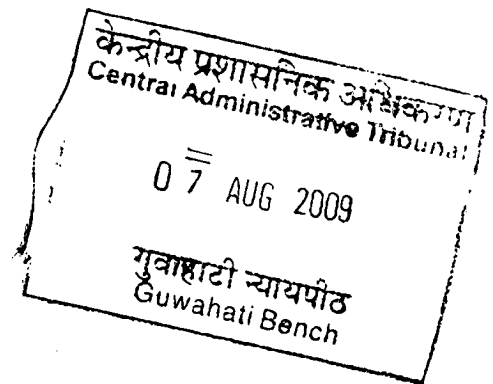
Item No.5 (Ability to inspire and motivate) At page no. 6	Nothing of this sort has been noticed yet.
Item No.6 (Supervisory Ability) At page No. 6	There is nothing to comment.

The above remarks may kindly be noted and immediate action to rectify the defects may be taken to give a better account of the officer.


A.N. SARKAR
Accountant General (A&E)

Copy to: -

1. Ashim Kr. Dey, S.O.



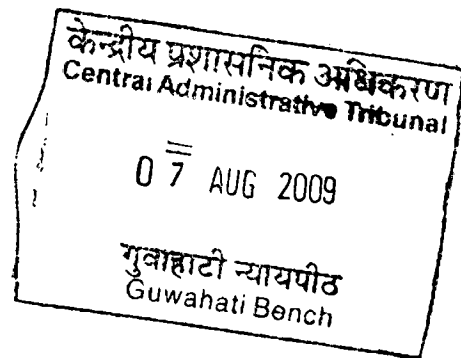


OFFICE OF THE
SENIOR DEPUTY ACCOUNTANT GENERAL (A&E)
NAGALAND :: KOHIMA

CONFIDENTIAL REPORT

FOR

SUPERVISORS
SECTION OFFICERS
ASSISTANT ACCOUNTS OFFICERS
ACCOUNTS OFFICERS
SENIOR ACCOUNTS OFFICERS



Name of the official

(in CAPITAL letters)

Designation

Report for the period from to

(2)

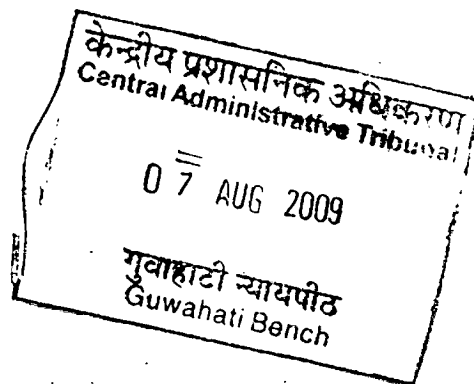
CONFIDENTIAL REPORT FOR
Supervisors/Section Officers/Asstt. Accounts Officers/
Accounts Officers/Sr. Accounts Officers

Report for the period from to

PART—I**PERSONAL DATA**

(To be filled by the Administrative Section concerned of the office)

1. Name of the officer :
(in CAPITAL letters)
2. Designation :
3. Whether the officer belongs :
to SC/ST ?
4. Date of birth :
5. Educational qualifications :
i/c professional and technical
qualifications
6. Departmental Examination passed :
i.e. S.O.G.E. (Civil, Commercial,
Railways, Revenue Audit etc.)
7. Date of continuous appointment :
to the present grade.
8. Present post and date of :
appointment thereto
9. Period of absence from duty (on :
leave, training etc.) during the
year. If he was undergone
training, please specify)



(3)

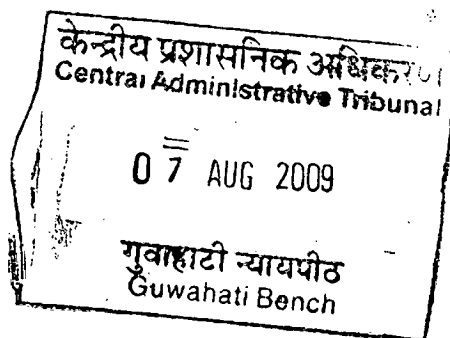
PART-II

(to be filled in by the Officer Reported upon)

(Please read carefully the instructions given at the end of the form before filling the entries)

1. Brief description of the duties.

2 (A). Please specify targets/objectives goals (in quantitative or other terms) of work you set for yourself or that were set for you, eight to ten items of work in the order of priority and your achievement against each target.

Targets/Objectives/GoalsAchievements

(4)

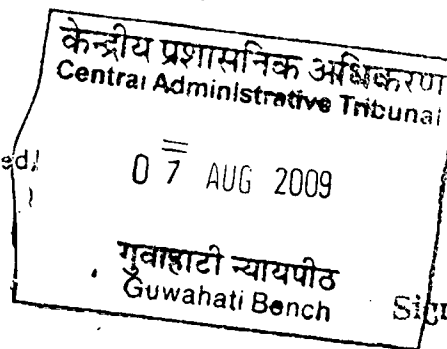
2. (B) If you are a Section Officer or Assistant Accounts Officer, please state briefly, the target set and the quantum of work done in regard to recording, indexing and weeding out of files, maintenance of Guard files, Sectional Note book and other registers, furnishing of O & M and other returns etc.

3. (A) Please state briefly the shortfalls with reference to the targets/objectives/goals referred to in column-3 Please specify constraints, if any, in achieving the targets.

4. (B) Please also indicate items in which there have been significantly, higher achievements and your contribution thereto.

4. (C) Any significant additional achievements apart from those mentioned to in column 3.

5. (D) Training programmes attended!



Date

PART - III

(To be filled by the Reporting Officer):

(Please read carefully the instructions given at the end of the form before filling the entries).

A. NATURE AND QUALITY OF WORK.

1. Please comment on Part - II as filled out by the Officer and specifically state whether you agree with the answer relating to targets and objectives, achievements and shortfalls. Also specify constraints, if any in achieving the objectives. In case you disagree with any of the remarks contained in Part-II, the reasons thereof may be given.

(5)

2. QUALITY OF OUTPUT :-

- (a) Please comment on the officer's personal and quality of performance having regard to the standard of work and programme objectives, and constraints, if any.

3. KNOWLEDGE OF SPHERE OF WORK :-

Please comment specifically on each of these :- Level of knowledge of functions, rules and regulations, related instructions and their application in the field of work assigned to the officer.

B. ATTRIBUTES**1. Analytical ability :-**

Please comment on the officer's ability relating to analysis of pros and cons; formulation of alternatives and their evaluation for solving problems; ability to indicate decision areas.

2. Communication Skill :-

Please comment on the officer's ability to communicate with brevity, clarity and accuracy both orally and in writing; ability to draft notes, briefs for meeting etc.

(6)

3. Initiative :-

Please comment on the capacity and resourcefulness of the officer in handling normal as well as unforeseen situations; willingness to take additional responsibilities and new area of work and capacity to initiate cases at his level.

4. Attitude of work :-

Please comment how far the officer can be relied upon, his sense of responsibility, the extent to which he/she is dedicated and motivated, his/her willingness to learn and systematize his/her work.

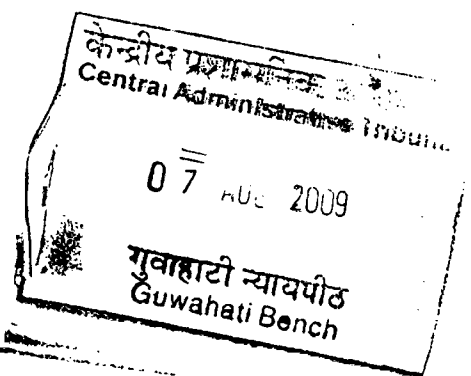
5. Ability to inspire and motivate :-

Please comment on the capacity of the Officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence.

6. Supervisory Ability :-

Please comment on the Officer's ability relating to :-

- (1) Guidance in the performance of tasks :-
- (2) Review of performance (monitoring of key areas) :-
- (3) Enforcing discipline :-



7. Inter-personal relations and team work :-

Please comment on the quality relationship with superiors, colleagues and subordinates and on the ability to appreciate others point of view and take advance in the proper spirit. Please also comment on his/her capacity to work as a members of a team and to promote team spirit and optimise the output of the team.

(7)

8. Attitude towards SC/ST/Weaker Sections Society :-

Please comment on his/her understanding of the problems of SC/ST/Weaker Sections and Willingness to deal with them.

9. Attitude and Potential :-

Please indicate three fields of work from amongst the following for possible specification and career development of the officer. Please mark 1, 2, 3 in three appropriate boxes.

- | | |
|---|----------------------|
| 1. Receipt Audit | <input type="text"/> |
| 2. Commercial Audit | <input type="text"/> |
| 3. Autonomous Bodies Audit | <input type="text"/> |
| 4. Work Audit | <input type="text"/> |
| 5. Civil Audit | <input type="text"/> |
| 6. Other Audit | <input type="text"/> |
| 7. Personal Administration
Office Management | <input type="text"/> |
| 8. Accounts Function | <input type="text"/> |
| 9. Entitlement Function | <input type="text"/> |
| 10. Training | <input type="text"/> |
| 11. Systems, O&M Computerisation | <input type="text"/> |
| 12. Any other fields (Please specify) | <input type="text"/> |

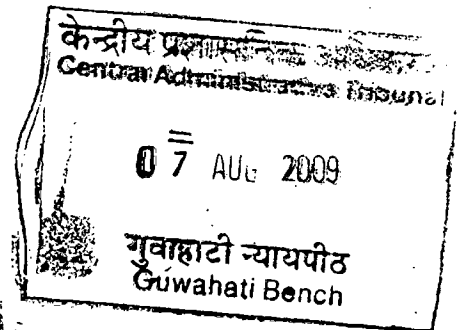
(8)

PART—IV**GENERAL**

1. **State of health** :-
2. **Integrity** :-
(Please see Note below the instruction)
3. **General Assessment** :-
(Please give an overall assessment of the officer with reference to his/her strength and shortcomings and also by drawing attention to the qualities if any not covered by the entries above. If the officer reported upon is an Accounts Officer/Audit Officer, please state special characteristics and/or any abilities deserving appointment as Welfare Officer and/or promotion to IA & AS)
Specific mention about the quality of LAR stating whether it contains matter for Draft Para and Value for Money comments must be made.

4. **Grading** :-
(Outstanding/Vary Good/Good/Average/Below Average)
An officer should not be graded outstanding unless exceptional quality and performance have been noticed; grounds for giving such a grading should be clearly brought out and the grading be consistent with and conform to the assessment made in Part - III)

Signature :



Name :-

(in BLOCK letters)

Place :

Date :-

Designation :-
(During the period of report)

(9)

PART-V**REMARKS OF THE REVIEWING OFFICER**

- 1: Length of service under the Reviewing Officer :-
2. Are you satisfied that the Reporting Officer has made his/her report with due care and attention and after taking into account all the relevant material ?
3. Do you agree with the assessment of the Officer given by Reporting Officer ? (In case of disagreement please specify the reasons)
Is there anything you wish to modify or add ?
4. If the official reported upon is a member of a Scheduled Caste/ Tribe, please indicate specifically whether the attitude of the Reporting Officer in assessing the performance of the SC/ST Official has been fair and just.
5. General remarks with specific comments about the meritorious work of the official including the grading.
6. Has the Official any special characteristics, and/or any abilities which would justify his/her selection for special assignment or/out of turn promotion ? If so, specify.

Signature of the Reviewing Officer

Name :-
(In BLOCK letters)

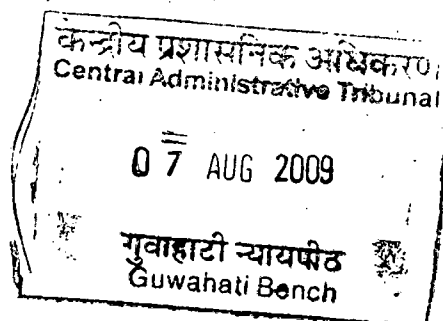
Designation :
(During the period of report)

Place :
Date :

(10).

INSTRUCTIONS

1. The Confidential Report is an important document. It provides the basic vital inputs for assessing the performance of an officer and for his/her further advancement in his/her career. The officer reported upon, the Reporting Officer and the Reviewing Officer should therefore, undertake the duty of filling out the form with a high sense of responsibility.
2. Performance appraisal through Confidential Reports should be used as a tool for human resource development. Reporting Officers should realise that the objectives is to develop an officer so that he/she realises his/her true potential. It is not meant to be a fault finding process but a development one. The reporting Officer and the Reviewing Officer should not shy away from reporting shortcomings in performance, attitudes or overall personality of the Officer reported upon.
3. The columns should be filled with due care and attention and after devoting adequate time. Any attempt to fill report in a casual or superficial manner will be easily discernible to the higher authorities.
4. If the Reviewing Officer is satisfied that the Reporting Officer had made the report without due care and attention he/she shall record a remark to that effect in item I of the part-IV. The competent authority shall enter the remarks in the confidential Roll of the Reporting Authority.
5. Every answer shall be given in a narrative form. The space provided indicates the desired length of the answer. Words and phrases should be chosen carefully and should accurately reflect the intention of the Officer recording the answer, please use unambiguous and simple language. Please do not use omnibus expressions like outstanding, very good, good, average, below average, while giving your comments against any of the attributes.
6. The Reporting Officer shall, in the beginning of the year set quantitative/physical 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 Officer reported upon and the Reporting Officer. The Targets/Goals shall be set at the commencement of the Reporting year, i.e. January in the case of All India Service Officers. In the case of an officer taking 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 area of the work and any special features that may specific to the nature or the area of the officer to be reported upon.
8. Although performance appraisal is a year-end exercise, in order that it may be a tool for human resource development, the Reporting officer should meet during the course of the year at regular interval review the performance and take necessary corrective steps.
9. It should be the endeavor of each appraiser to present the truest possible picture of, the appraisee in regard to his/her performance, conduct, behaviour and potential.



(11)

10. Assessment should be confined to the appraisee's performance during the period of report only.
11. Some posts of the same rank may be more exacting than others. The degree of stress and strain in any post may also vary from time to time. These facts should be borne in mind during appraisal and should be commented upon appropriately.
12. Aspects on which an appraisee is to be evaluated on different attributes are delineated below each column. The appraiser should deal with these and other aspects relevant to the attributes.

NOTE

The following procedure should be followed in filling up the item relating to Integrity :-

- i) If the officer's integrity is beyond doubt, it may be so stated.
- ii) If there is any doubt or suspicion, the item should be left blank and action taken as under :-
 - (a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report that the next superior officer who will ensure that the follow up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he has not watched the officer's work for sufficient time to form a definite judgement or that he has heard nothing against the officer, as the case may be.
 - (b) If, as a result of the follow up action the doubts or suspicions are cleared the officer's integrity should be certified and an entry made accordingly in the C. R.
 - (c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.
 - (d) If as a result of the follow up action the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period and thereafter action taken as indicated at (b) and (c) ABOVE.



To

The Accountant General
Nagaland Kohima.

Sub: Appeal for review of adverse remarks in Confidential Report.

Sir,

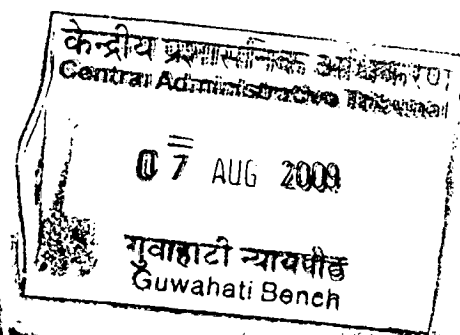
With due respect I would like to draw your kind notice on the subject cited above and to request your good self kindly to review the matter so that my future service career is not hampered.

Respected sir, I have been served a memorandum vide No. DAG(A&E) CRACR/2006-07/176 dtd 16.8.2007 about the adverse remarks noted in my C.R for the period from 8.9.2007 to 31.3.2007 and 1.4.2007 to 10.8.2007.

That sir, in this regard I would like to invite the reference of G.I., DP&AR, OM NO.21011/1/81 Estt.(A), dtd 5.6.1981 wherein it is clearly mentioned that 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 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 C.R 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 C.R 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.

That Sir, most humbly I would like to mention here that I was neither served any memo on my deficient performance in sectional works nor I was motivated by my Branch Officer to improve my deficiencies, if noticed any. However, adverse remarks have been noted baselessly in my C.R for the above mentioned periods and thereby my bright Service career has been put in stake.

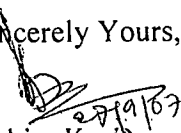
Respected sir, I have always exercised my maximum initiatives to develop my supervisory abilities through utmost sincerity by motivating my subordinate staffs by generating a team spirit amongst them which ultimately resulted in achieving the targets set by the office Administrations.

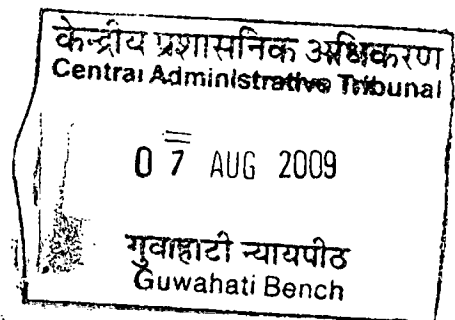


*Recd
27/9/07
M. P. S. to A.G.*

In the light of above, I would fervently request your authority to review the adverse remarks in my Confidential Report for the above mentioned two periods.

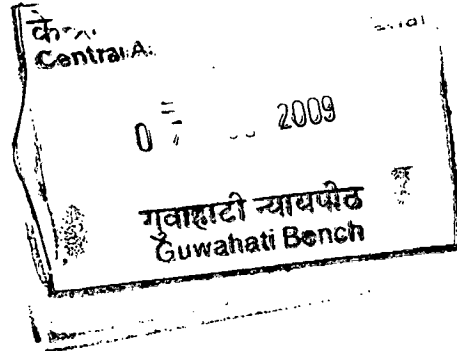
Sincerely Yours,


Ashim Kr. Dey,
Section Officer
T.M. Section



To

The Accountant General
Nagaland :: Kohima.



Sub: Appeal to revoke adverse remarks noted in Confidential Report pertaining to two consecutive periods from 8.9.2006 to 31.3.2007 and 1.4.2007 to 10.08.2007.

Respected Sir,

I would like to refer my representation dated 27.09.2007 on the subject cited above and to state that till date I have not received any information from your kind authority whether the adverse remarks noted in my A.C.R for the above mentioned periods have already been revoked or not.

I, therefore, once again request your good self to look into the matter and revoke the same at the earliest; otherwise, there will be no option to me but to seek the help of legal court for justice.

Dated, 4th December'2007

Sincerely Yours

(Ashim Kr. Dey)
S.O, I.T.A Section

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 84 of 2008

Date of Order: This, the 14th Day of May, 2008

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE SHRI KHUSHIRAM, ADMINISTRATIVE MEMBER

Shri Ashim Kumar Dey
Son of Shri Ajit Kumar Dey
Section Officer
Office of the Accountant General (A&E)
Nagaland, Kohima.

Applicant.

By Advocates S/Shri S.D.Choudhury, A.Munnaf & S.Haque.

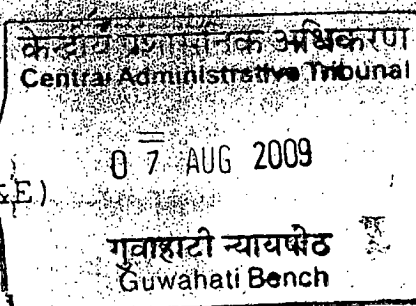
- Versus -

1. The Comptroller and Auditor General of India
10 Bahadur Shah Zafar Marg
New Delhi-110 002.

2. The Accountant General (A&E), Nagaland
Kohima, P.O: Kohima-797 001
Nagaland.

3. Shri Arindam Kumar Das
Senior Accounts Officer
(Treasury Misc. Section)
Office of the Accountant General (A&E)
Nagaland, Kohima
P.O: Kohima - 797 001.

4. Shri R.M.Dasgupta
Accounts Officer (Work Misc. Section)
Nagaland, Kohima
P.O: Kohima - 797 001.



.... Respondents.

Mrs.Manjula Das, Sr.C.G.S.C.

Certified to be true copy

Manjula Das

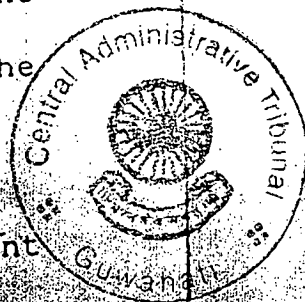
ORDER (ORAL)
14.05.2008

MANORANJAN MOHANTY (V.C.):

Heard Mr. S.D.Choudhury, learned counsel appearing for the Applicant, and Mrs. Manjula Das, learned Sr. Standing counsel for the Union of India; on whom, a copy of this Original Application has already been served, and also perused the materials placed on record.

2. The Applicant was communicated with adverse entries in his ACR under Annexure-A1 dated 16.08.2007. It appears that Applicant submitted a representation under Annexure-A4 dated 27.09.2007. It is stated that he had also submitted a reminder under Annexure-A5 dated 4/5.12.2007. Without hearing from the Respondents, the Applicant has approached this Tribunal with the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985.

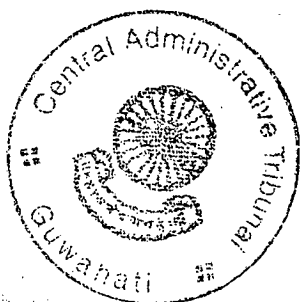
3. Since the representation of the Applicant (directed against the adverse entries, communicated on 16.08.2007) is stated to be still pending with the Respondents, without entering into the merits of the matter, this Original Application is, hereby, disposed of, at the admission stage, with direction to the Respondents to consider the representation of the Applicant and pass a reasoned order within a period of



90 days from the date of receipt of a copy of this order.

4. Send copies of this order to the Respondents, along with copies of this Original Application, and the Respondents, while considering the representation of the Applicant, should take into consideration the grounds set forth in the present Original Application as part of the representation of the Applicant.

5. Send copies of this order to the Applicant and free copies of this order be supplied to the learned counsel appearing for both the parties.



/bb/

Sd/-
Manoranjan Mohanty
Vice Chairman
Sd/-
Khushiram
Member (A)

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

07 AUG 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

TRUE COPY

प्रतिलिपि

(Signature)
अनुभाग अधिकारी

Section Officer (Judl)

Central Administrative Tribunal

गुवाहाटी न्यायपीठ

Guwahati Bench

गुवाहाटी/Guwahati-5

27/5/08

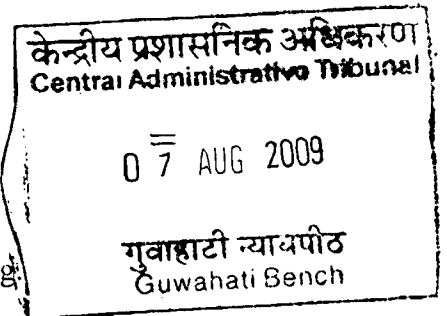
**OFFICE OF THE SR.DY.ACCOUNTANT GENERAL(A&E)
NAGALAND:KOHIMA**

Admn/A&E/CAT/AKD/2008-09/570

Dated:- 11/7/08

To

Shri Ashim Kumar Dey
Section Officer
O/o the Sr.Dy.Accountant General
Nagaland, Kohima



Subject:- Adverse remarks in Annual Confidential Report regarding

Reference:- Original Application No. 84 of 2008 before the Central Administrative Tribunal, Guwahati Bench, Guwahati and Hon'ble Tribunal's order dated 14/05/08.

Dear Dey,

In response to your representation dated 27/09/07 followed by reminder of 04/12/07 in connection with the subject as cited above, I am to communicate that your case has since been considered at the appropriate level taking into consideration all the relevant notes/Memos etc.. However, in view of the remarks recorded by the Reporting Officer in your Annual Confidential Report for the periods from 8/9/06 to 31/3/07 and from 1/4/07 to 10/8/07 and subsequently the remarks recorded by the Reporting Officer in response to your representation, the Reviewing Officer did not find any reasonable ground to accept your representation.

Hence, the remark stands.

Accounts Officer(Admn)

Certified to be true copy

*Amrinder
Advocate*

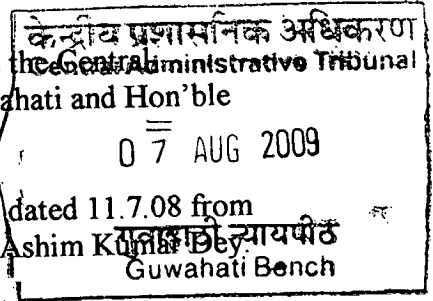
To

The Accountant General,
Nagaland, Kohima.

SUB: **ADVERSE REMARKS IN ANNUAL CONFIDENTIAL REPORTS-
REPRESENTATION THEREOF.**

REF: (1) Original Application NO.84 of 2008 filed before the Central Administrative Tribunal, Guwahati Bench, Guwahati and Hon'ble Tribunal's order dated 14.05.08.

(2) Letter NO.Admn/A&E/CAT/AKD/2008-09/570 dated 11.7.08 from the Accounts Officer (Admn) addressed to Shri Ashim Kumar Dey, Guwahati Bench



Sir,

On the subject and reference cited, I have the honour to state that the reply communicated by the Accounts Officer (Admn) regarding consideration of the representation at the appropriate level is not in accordance with the orders passed by the Hon'ble Tribunal. The Hon'ble Tribunal in their order dated 14.05.08 passed under paragraph 3 directed the Respondents **"to consider the representation of the Applicant and pass a reasoned order"** and also gave further direction under paragraph 4 of the said order that **"the Respondents, while considering the representation of the Applicant, should take into consideration the grounds set forth in the present Original Application as part of the representation of the Applicant"**. But the reply is not in accordance with the said directions. I am reiterating my grievances for your sympathetic consideration as hereunder:

(1) That as regards the adverse remarks for the period from **8.9.2006 to 31.3.2007** I beg to state that the adverse remarks for the said period were not communicated within the period of one month of their being recorded as prescribed vide Govt. of India Department of Personnel & Administrative Reforms, O.M. No.21011/1/77-Estt., dated the 30th January, 1978. The same was communicated to me only on 16th August, 2007 after lapse of more than four and half month as a result of which I, being a new Section Officer, had got no opportunity to improve my deficiencies in work and conduct during the subsequent period in respect of the impugned adverse remarks or to make a representation right on time i.e. before writing the ACR for the subsequent period. As such, the failure to observe the time frame in communicating the adverse remarks caused prejudice to me and the communication is inconsistent in Government instructions.

(2) That I beg to state that I was never given any training, necessary advice, guidance, assistance to improve my deficiencies nor was any deficiency in my conduct and work pointed out to me for improvement on any occasion nor was any periodical inspection/ visit made to the sections under my charge during the period under report by the Reporting Officer before writing the ACR as per Government instructions given vide C.S., O.M. No.51/5/72-Ests. (A) dated the 20th May, 1972.

Contd. Page 2.

Certified to be true copy
Munish
Advocate

Rd

Shri S. S. S. S. S.
P.S. S. S. S.

Shri S. S. S. S. S.

(3) That as regards the adverse remark under the Head 'Initiative' I beg to state that the Reporting Officer is required to comment on "the capacity and resourcefulness of the Officer in handling normal as well as unforeseen situations; willingness to take additional responsibilities and new area of work and capacity to initiate cases at his level" only. But the Reporting Officer's answer "There is nothing of this sort has been noticed yet" is not definite and not the answer to those aspects. I had taken additional responsibilities of looking after two sections but the Reporting Officer has lost sight of this fact to mention. As such the adverse remarks 'There is nothing of this sort has been noticed yet' is vague and such remark shows the incapability and incompetency of the Reporting Officer to assess the performance of the Officer like me and to give his answer correctly against the said Head.

(4) That as regards the adverse remarks under the Head 'Attitude of work' the I beg to state that the Reporting Officer is required to comment on "how far the Officer can be relied upon, his sense of responsibility, the extent to which he is dedicated and motivated, his willingness to learn and systematize his work". But the Reporting Officer's answer 'Officer's sense of responsibility as required for sectional duty requires further improvement/sincerity' is not definite and not supported by any factual statement/ instance. As such the said impugned adverse remark is vague and baseless.

केंद्रीय प्रशासनिक अधिकारी
Central Administrative Tribunal
07 AUG 2009
गुवाहाटी न्यायपीठ
Guwahati Bench

(5) That as regards the adverse remarks under the Head 'Ability to inspire and motivate' I beg to state that the Reporting Officer is required to comment on "the capacity of the Officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence". But the Reporting Officer's answer 'Nothing of this has been noticed yet' is not definite and not supported by any factual statement/ instance. As such the said impugned adverse remark is vague, baseless and such remarks shows only the incapability and incompetency of the Reporting Officer to observe the conduct of the applicant to give his answer correctly against the said Head.

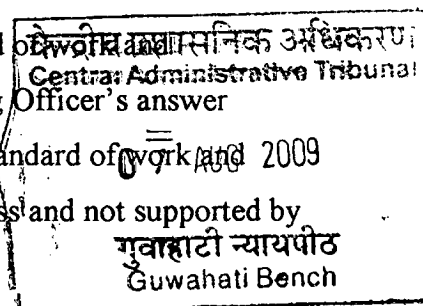
(6) That as regards the adverse remarks under the Head 'Supervisory ability' the I beg to state that the Reporting Officer is required to comment on "the Officer's ability relating to (1) Guidance in the performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the Reporting Officer's answer 'Officer's sense of responsibility and overall supervisory capacity requires further improvement/sincerity' is not confined to those three sub-heads. As such the said adverse remark is irrelevant.

(7) That as regards the adverse remarks for the period from 1.4.2007 to 10.8.2007 I beg to state that the adverse remarks under the three Heads viz. (1) Head No.3 'Initiative- There is nothing of this sort noticed yet, (2) Head No.4. Attitude of work - Officer's sense of responsibility as required for his sectional duty requires further improvement/sincerity and (3) Head No.5 Ability to inspire and motivate - Nothing of

this sort has been noticed yet' are repetitions of the vague adverse remarks made against the same Head No.3, 4 and 5 for the previous period from 8.9.2006 to 31.3.2007 for which the I had got no opportunity of improving myself during the period under report or making representation against such remarks at the relevant point of time due to non communication of the adverse remarks on time in accordance with the Government instructions. Further such repetitions of vague adverse remarks are indicative of the fact that the ACRs for the period from 8.9.2006 to 31.3.1007 and from 1.4.2007 to 10.8.2007 were written at-one-go after 10.8.2007 only which is in contrary to the Government instructions.

(8) That as regards the adverse remarks under the Head 'Supervisory ability' the I beg to state that the Reporting Officer is required to comment on "the Officer's ability relating to (1) Guidance in the performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the Reporting Officer's answer as 'There is nothing to comment' is nothing but avoidance of Reporting Officer's obligation to comment specifically on these aspects and cryptic and not the answer to those sub-heads. On the other hand, such remark is indicative of the fact that the Reporting Officer had not made any periodical inspection/ visit to the Sections to observe the supervisory my ability during the period under report before recording such remarks.

(9) That as regards the impugned adverse remarks under the Head 'Quality of Output' I beg to state that the Reporting Officer is required to comment on "the Officer's personal and quality of performance having regard to the standard of work and programme objectives, and constraints, if any". But the Reporting Officer's answer "Officer's personal and quality of performance in regard to the standard of work and programme objectives requires sufficient improvement" is baseless and not supported by any factual statement/ instance.



(10) That as regards the adverse remarks under the Head 'Analytical ability' the I beg to state that the Reporting Officer is required to comment on "the Officer's ability relating to analysis of pros and cons; formulation of alternatives and their evaluation for solving problems, ability to indicate decision areas". But the Reporting Officer's answer "Officer's ability relating to analysis pros and cons, formulation of alternatives and their evaluation for solving problems requires further improvement" is baseless and arbitrary as I was never given any training, necessary advice, guidance, assistance to improve my deficiencies nor was any deficiency in my conduct and work pointed out to me for improvement by the Reporting Officer on any occasion during the period under report nor assigned any target/goal to be achieved for the year.

(11) That as regards the adverse remarks under the Head 'Communication Skill' I beg to state that the Reporting Officer is required to comment on "the Officer's ability to communicate with brevity, clarity and accuracy both orally and in writing; ability to draft

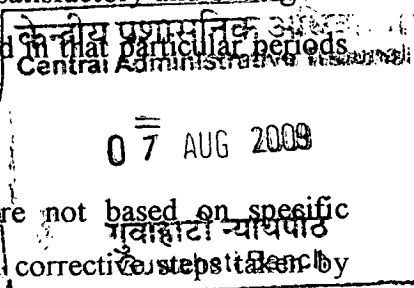
Admission No. 2012

4.

notes, briefs for meeting etc." The Reporting Officer while commending the 'Communication Skill' of the applicant very well in respect of these aspects, the subsequent remark in the tail as '.....but yet it also requires more sincerity' is unwarranted, unjust and unfair.

(12) That I beg to submit that the contents of adverse remarks for both the periods are baseless and vague as I was never given any training, necessary advice, guidance and assistance for improvement of my deficiencies and performance nor was any deficiency on me pointed out for improvement nor the Reporting Officer made any periodical inspection/visit to the Sections to observe the conduct and work of the applicant nor assigned any target/goal to be achieved for the year as prescribed on the subject of writing of confidential remarks in the C.S., O.M. No. 51/5/72- Ests. (A) dated the 20th May, 1972 and in the G.I., M.H.A., O.M. No. 51/4//64-Estt. (A), dated the 21st June, 1965 and also the instructions for filling the entries in the prescribed ACR Form itself.

(13) That I beg to submit that during the periods under report, I looked after two sections viz. Treasury Miscellaneous and Work Miscellaneous headed by two Officers viz. Senior Accounts Officer in-charge of Treasury Miscellaneous Section and Accounts Officer in-charge of Work Miscellaneous Section and they/Reporting Officer had neither inspected/visited the Sections under the charge of the applicant nor given training, necessary advice, guidance, assistance to improve his deficiencies nor pointed out any deficiency in my performance for improvement nor made periodical inspection/visit to observe the performance of the applicant on any occasion during the periods under report before writing the adverse report; rather the Authority had granted honorarium of Rs. 1250/- vide Bill No. G-82 dated 30.3.07 and Rs. 500/- vide Bill No. 578 dated 31.3.08 to me for my good performance during the year 2006-07 and 2007-08 respectively. As such the grant of honorarium to me is indicative of the fact that my service during the periods under report is presumed to be satisfactory and such grant of honorarium amply proves that the adverse remarks recorded in that particular periods are prejudiced.



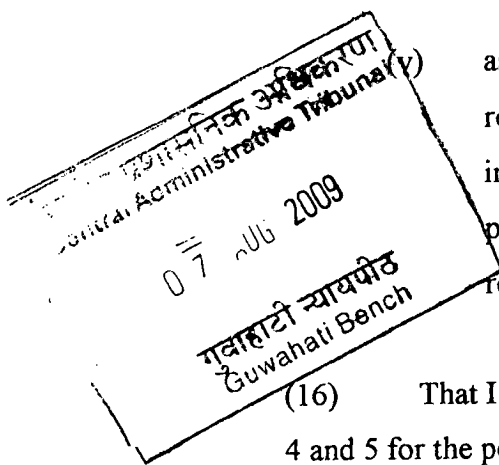
(14) That I beg to submit that the adverse remarks are not based on specific instances/factual statement on my performance reviewed and corrective steps taken by way of giving necessary guidance for improvement on the deficiencies at regular interval which led to the adverse remarks so as to enable me to make an effective representation and/ or to improve my work and conduct and they are inconsistent in Government instructions given in the said Memo dated 20th May, 1972.

(15) That I beg to submit that the impugned adverse remarks for the period from 8.9.2006 to 31.3.2007 under Part-IIIB of the ACR are **invalid**

- (i) as the communication of the same does not adhere to the time frame laid down for the steps about such remarks and is

violative of principles of natural justice and the failure to observe the time frame in communicating the adverse remarks on time caused prejudice to the applicant,

- (ii) as the contents of the adverse remarks for the period under report are vague answers to the Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR,
- (iii) as the contents of the adverse remarks are not in accordance with the Government instructions on the subject of writing of confidential remarks,
- (iv) as the grant of honorarium to the applicant for the year 2006-07 for good performance negatives the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the period under report are prejudiced.



as the time-limit for disposal of representation submitted against adverse remarks was not adhered to for the steps in accordance with the instructions and the non-disposal of the representation and keeping it pending disposal beyond the prescribed period renders the adverse remarks inoperative.

(16) That I beg to submit that the impugned adverse remarks under the Head No.3, 4 and 5 for the period from 1.4.2007 to 10.8.2007 of the ACR are **invalid** as the delayed communicated repeated adverse remarks for the period from 8.9.2006 to 31.3.2007 vitiated the adverse remarks recorded for the subsequent period from 1.4.2007 to 10.8.2007 and not sustainable in law.

(17) That I beg to submit that the impugned adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as their contents are vague answers to the Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR and they are not in accordance with the instructions on the subject of writing confidential remarks.

(18) That I beg to submit that the adverse remarks for the period from 1.4.2007 to 10.8.2007 are **invalid** as the grant of honorarium to the applicant for his satisfactory performance for the year 2007-08 has negated the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the periods under report are prejudiced.

(19) That I beg to submit that the adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as the time-limit for disposal of representation submitted against

Asliam 12.11.2009

6.

the adverse remarks was not adhered to for the steps in accordance with the instructions and the non disposal of the representation and keeping it pending disposal beyond the prescribed period renders the adverse remarks inoperative.

In view of the facts stated above, the reply given to me vide letter under reference is not acceptable to me and I earnestly request your benign authority kindly to reconsider my grievances as per direction of the Hon'ble Tribunal and set aside the impugned adverse remarks at an early date. I shall be highly grateful if action on this representation is taken within two months from the date of receipt of this representation and intimated to me.

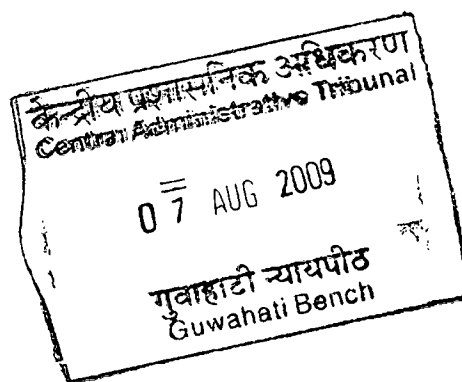
And for the act of your kindness I shall ever remain grateful to you.

Yours faithfully,

Ashim K. Deo
(ASHIM KUMAR DEY)

Section Officer,
Office of the Accountant General,
Nagaland, Kohima.

Dated Kohima, the 25th August, 2008.



**OFFICE OF THE SR.DY.ACCOUNTANT GENERAL (A&E)
NAGALAND:KOHIMA**

Admn/A&E/AKD/89-90/1051

Dated:- 14/10/08

To

Shri Ashim Kr.Dey,S.O.
Section Officer,
O/o the Sr.Dy.Accountant General (A&E)
Nagaland,Kohima.

Sub: - Adverse Remarks in Annual Confidential Reports.

Ref: - Your representation dated 25th Aug 2008 regarding above subject.

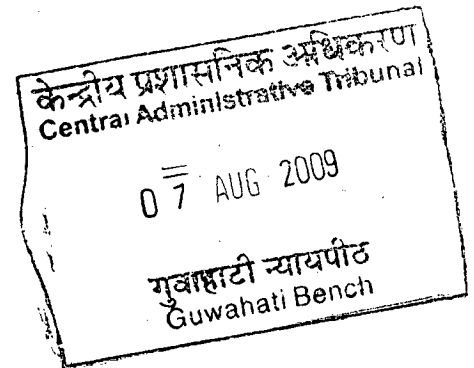
Sir,

In inviting a reference to your representation dated 25th August, 2008 regarding adverse remarks in your Annual Confidential reports, I am to state that as per the Hon'ble Central Administrative Tribunal, Guwahati Bench order dated 15/5/08, your representation has been considered at the appropriate level, and the decision of the authority has since been communicated to you vide this office letter No.Admn/A&E/CAT/AKD/08-09/570 dated 11/07/2008. (Photocopy enclosed)

Hence no more action is required at this end.

This is for your information.

Encl:-As stated above.



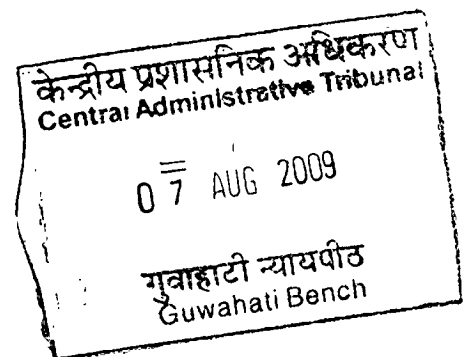
Yours faithfully,

Accounts Officer (Admn)

Certified to be true copy.
Advocate

**TIME-SCHEDULE FOR PREPARATION
OF CONFIDENTIAL REPORTS**

Nature of action	Date by which to be completed
1. Distribution of blank CR forms to all concerned (i.e., to officer to be reported upon where self-appraisal has to be given and to reporting officers where self-appraisal is not to be given).	31st March. (This may be completed even a week earlier).
2. Submission of self-appraisal to reporting officer by officer to be reported upon (where applicable).	15th April.
3. Submission of report by reporting officer to reviewing officer.	
— Where self-appraisal by officer reported upon is prescribed.	7th May.
— Where self-appraisal by officer reported upon is <i>not</i> prescribed.	21st April.
— Where officer reported upon is himself a reporting officer for subordinates under him.	22nd May.
4. Report to be completed by Reviewing Officer and sent to Administration or CR Section/Cell.	23rd May where the due date for the reporting officer is 7th May. 7th May where the due date for the reporting officer is 21st April. 5th June where the due date for reporting officer is 22nd May.

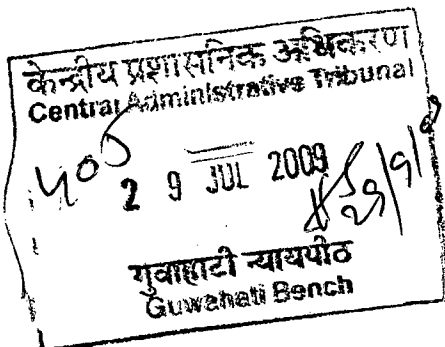


Certified to be true copy

*Amritinder
Advocate*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH, GUWAHATI.

Filed by:-
Hedul Hannaf
Advocate
Date: 29.7.09
90



M.P. NO. 69 of 2009.

In O.A.No.9/2009

Shri Ashim Kumar Dey Applicant.

-Vs-

U.O.I & Ors. Respondents.

INDEX

Sl. No.	Contents	Pages
1.	Schedule of proposed amendment	1 - 5
2.	Verification	6
3.	Annexure-A1	7

Received copy for
Mrs. M. Das
T.K. Zannat
29.7.09

Hedul Hannaf

A. K. Das

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

GUWAHATI.

MP NO. 69 OF 2009

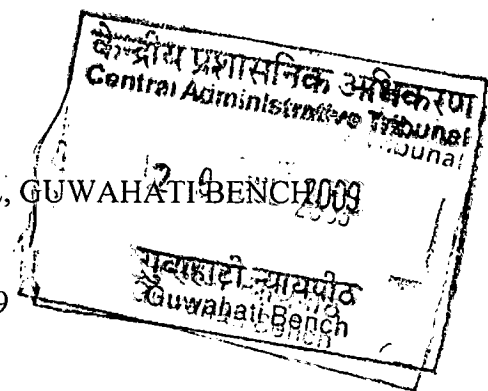
In O.A. No.9/2009

Shri Ashim Kumar Dey Applicant

-Vs-

U.O.I & Ors.

..... Respondents



SCHEDULE OF PROPOSED AMENDMENT.

1. That the Applicant be allowed to delete the name "Shri Arindam Kumar Das" appearing against Respondent No.3 in O.A. NO.9/2009 and the Respondent No.3 be read by designation as "3.The Senior Accounts officer (Treasury Misc. Section), Office of the Accountant General (A7E), Nagaland, Kohima."as the said name was inadvertently mentioned in the Original Application.

2. That the Applicant be allowed to delete the name "Shri R.M. Dasgupta" appearing against Respondent No.4 in O.A. No.9/2009 and the Respondent No.4 be read by designation as "4.The Accounts Officer (Works Misc. Section), Office of the Accountant General (A&E), Nagaland, Kohima."as the said name was inadvertently mentioned in the Original Application.

3. That the Applicant be allowed to delete the following contents of paragraph 4.9 of the O.A. No.9/2009 as they are not necessary to be pressed:

"4.9. That the Applicant further begs to submit that the adverse remarks are communicated for guidance. But the last paragraph of the Memo. forwarding the adverse remarks is cryptically coached to mean a 'Warning' to the Applicant which amounts to colourable exercise of powers by the Respondent No.2 and inconsistent in Government instructions given in the Ministry of Home Affairs Office Memorandum No.51/7/68-Estt. (A), dated the 19th September, 1969 and D.P. & A.R. O.M. No.51/3/74-Estts. (A), dated the 22nd May, 1975 (Ref. Page 717 and 718, Para 20 of Swamy's Complete Manual and Establishment and Administration)."

4. That the Applicant be allowed to add the following five paragraphs after paragraph No.4.5.5 of the O.A. No.9/2009 as the facts are inadvertently left out to mention in the Original Application and be read as:

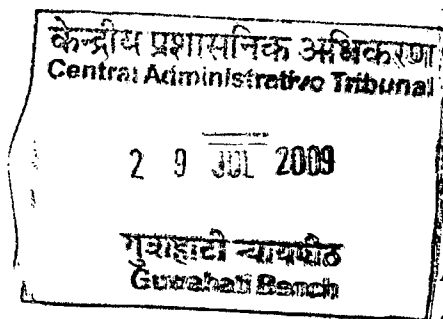
Contd.2.

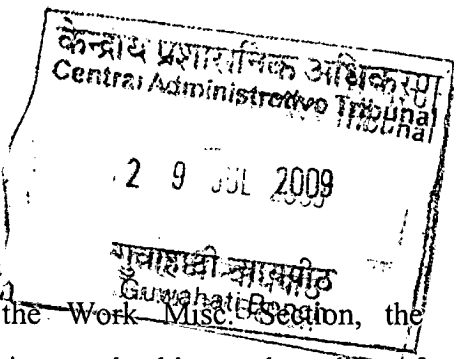
"4.5.5A. That on the initiative and under strict supervision of the Applicant, the Treasury Misc. Section had proposed for inspection of Treasuries and Sub-Treasuries of Nagaland to the Senior Accounts Officer, who was the Reporting Officer in respect of ACR, since no Treasuries were inspected for the past several years despite there being orders of the Comptroller & Auditor General of India. When the said proposal was not agreed to by the Senior Accounts Officer on the pretext of shortage of staff, the Applicant had a meeting with the Sr. Accounts Officer where he had clearly pointed out that the staff as suggested was sufficient to carryout the inspection and thus personal differences cropped up between them. Surprisingly, in the month of August, 2007 the Applicant was withdrawn from the Treasury Misc. and Work Misc. Sections and posted in the Internal Test Audit Section by the Sr. Accounts Officer for the reasons best known to him. In the subsequent periods, the applicant was entrusted with the work of audit of the Treasuries as the Accountant General probably came to know the higher degree of work capability of the Applicant. This reflects the initiative of the Applicant during the periods under report."

"4.5.5.B. That on the initiative and under the strict supervision of the Applicant, the Treasury Miscellaneous section was able to prepare the Combined Administrative Report of A&E and Audit Offices for the year 2005-06 (pending work) and 2006-07 successfully during the period under report which reflects the applicant's sense of responsibility, sincerity, supervisory capacity, quality of performance, standard of works and analytical ability in regard to sectional duty".

"4.5.5C. That on the initiative of the Applicant, a Grievance Cell in the Office as per C & AG I's guideline has also come into existence in the Office of the Accountant General, Nagaland. This achievement on the part of the applicant as new Section Officer reflects the Applicant's sense of sincerity and initiative which was over looked by the Reporting Officer."

"4.5.5.D. That under strict supervision and initiative of the Applicant, matters relating to many court cases were successfully disposed of by making a team spirit within his subordinates during the periods under report. This has reflected not only the applicant's initiative but also reflected his attitude of works, sense of responsibility, ability to motivate his subordinates, his supervisory ability, quality of out put and analytical ability etc. etc."





3.

“4.5.5.E. That as regards the Work Misc. Sec., the Applicant had supervised the works relating to checking and sending of the Monthly Divisional Accounts and Forest Accounts (Quarterly and Annual) to the Electronic Data Processing Section for compilation. In addition to that reconciliation of the Departmental (Divisional) figure with that of Electronic Data Processing and maintenance of other Sectional records, making correspondence with the Division for wanting schedules/Accounts etc. were undertaken during the periods under report.”

5. That the Applicant be allowed to add the following seven paragraphs after paragraph 4.8. of the O.A. No.9/2009 as the facts are inadvertently left out to mention in the Original Application and be read as:

“4.8.1. That the Applicant begs to submit that the Reporting Officer is required to adhere to the following prescribed Time-Schedule for preparation of Confidential Reports:

<u>Nature of action</u>	<u>Date by which to be completed</u>
1. Distribution of blank CR forms to All concerned (i.e., to officer to be reported upon where self-appraisal has to be given and to Reporting officers where self Appraisal is not to be given).	31 st March. (This may be completed
2. Submission of self-appraisal to Reporting officer by officer to be Reported upon (where applicable).	15 th March.
3. Submission of report by reporting Officer to reviewing officer. - Where self appraisal by officer reported upon is prescribed.	7 th May.
- Where self-appraisal by officer reported upon is not prescribed.	21 st April.
- Where officer reported upon is himself a reporting officer for subordinates under him.	22 nd May.
4. Report to be completed Reviewing Officer and sent to Administration or CR Section/ the Cell.	by 23 rd May where the due date for the reporting officer is 7 th May. 7 th May where the due date for Reporting officer is 21 st April. 5 th June where the due date for Reporting officer is 22 nd May.

But in the instance case, the Reporting Officer had failed in his duty to comply with the said prescribed Time-Schedule for preparation of

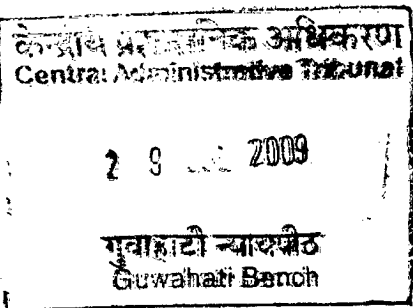
Contd.4.

A. K. Dey

the Confidential Reports which the Reviewing Officer also failed to notice the same causing thereby prejudiced to the Applicant.

An extract copy of the Time-Schedule is annexed hereto and marked as ANNEXURE- A1."

"4.8.2. That the Applicant begs to submit that had the Applicant been communicated the adverse remarks of the 1st period i.e. 26.8.2006 to 31.3.2007 in time instead of communicating the same along with the adverse remarks of 2nd successive period i.e. 01.04.2007 to 10.08.2007 at a time vide Memo No.DAG (A&E)/CR-ACR/ 2006-07/176 dated 16.8.2007, he would have got sufficient time for rectification of deficiencies mentioned in the first period by the Reporting Officer and also the repetitions of the same in the second period could have been avoided."



"4.8.3. That the Applicant begs to submit that training for the newly promoted Section Officer like the Applicant is highly essential. But in the case of the Applicant, no training whatsoever was imparted either in-house arrangement or at the Regional Training Centre, Shillong during the periods under report."

"4.8.4. That the Applicant begs to submit that the Applicant was also the Section Officer of another Section namely Work Misc. Section under the direct control of the Accounts Officer (Work Misc. Section). It is doubtful whether the said Accounts Officer was consulted before writing the impugned adverse remarks for the periods under report by the Reporting Officer."

"4.8.5. That the Applicant begs to submit that no Memorandum /instruction/advice whatsoever was issued to the Applicant during the periods under report for improvement of any deficiencies, if noticed, during the periods under report by any of the Accounts Officers under whom the Applicant worked or by the Reporting Officer."

"4.8.6. That the Applicant begs to submit that the Applicant made thorough study on the working structure as well as status of works of both the Treasury Misc. and Work Misc. Sections soon after his promotion as Section Officer with full vigor and spirit. He also made his best efforts to pull up all pending and current works by motivating his subordinate staffs and creating a team spirit within the staffs of both the Sections. Consequently, no works in both the Sections were kept pending

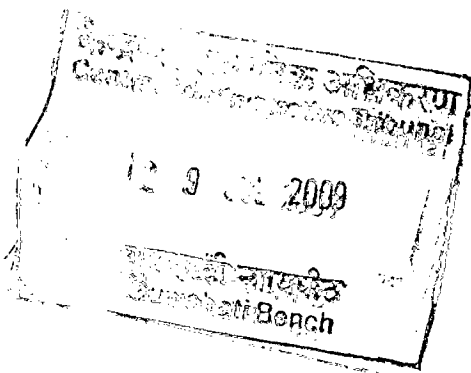
A. K. Singh

5.

during the periods under report. Had the Applicant not taken initiative and motivated his subordinate staffs and created a team spirit among the staffs of both the Sections, disposal of works detailed elsewhere would not have been possible during the periods under report.”

“4.8.7. That the Applicant begs to submit that in spite of all the above-mentioned facts, the Reporting Officer had deliberately avoided to appreciate the applicant’s initiative, his attitude of works, his ability to inspire and motivate his staff, his supervisory capacity, his quality of output etc. and his performances in the ACR of the periods under report and rather recorded adverse remarks arbitrarily and out of malice towards the Applicant and thus attempted to destroy his reputation of being efficient Government servant. As such, the adverse remarks are entirely incorrect, unfounded, misleading and arbitrary and liable to be set aside and quashed by this Hon’ble Tribunal.”

.....Verification.



A. K. Singh

6.

VERIFICATION

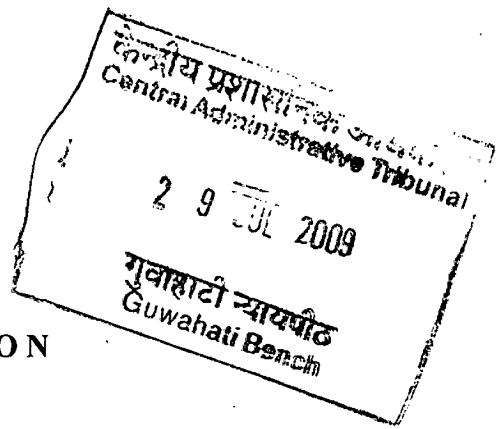
I, Shri Ashim Kumar Dey son of Shri Ajit Kumar Dey, aged about 42 years working as Section Officer in the Office of the Accountant General (A&E), Nagaland, Kohima, resident of Harulangpher Last Colony, Lumding, Dist. Nagaon, Assam do hereby verify that the statements made in paragraphs 1 to 5 are true to my knowledge and believed to be true and that I have not suppressed any material fact.

I signed this verification on this...²⁹.....the day of July, 2009 at Guwahati.

A. K. Dey
(ASHIM KUMAR DEY)
Signature of Applicant.

Date: 29.7.09

Place: Guwahati.



A. K. Dey

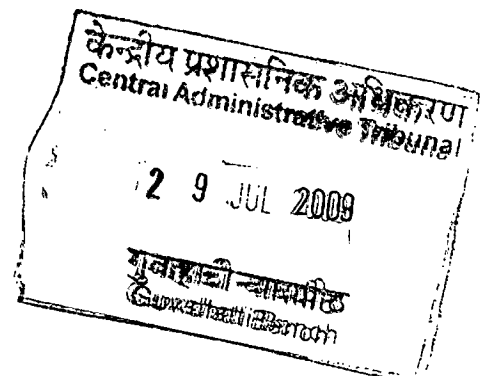
-7-

738

SWAMY'S—ESTABLISHMENT AND ADMINISTRATION

**TIME-SCHEDULE FOR PREPARATION
OF CONFIDENTIAL REPORTS**

Nature of action	Date by which to be completed
1. Distribution of blank CR forms to all concerned (i.e., to officer to be reported upon where self-appraisal has to be given and to reporting officers where self-appraisal is not to be given).	31st March. (This may be completed even a week earlier).
2. Submission of self-appraisal to reporting officer by officer to be reported upon (where applicable).	15th April.
3. Submission of report by reporting officer to reviewing officer.	
— Where self-appraisal by officer reported upon is prescribed.	7th May.
— Where self-appraisal by officer reported upon is <i>not</i> prescribed.	21st April.
— Where officer reported upon is himself a reporting officer for subordinates under him.	22nd May.
4. Report to be completed by Reviewing Officer and sent to Administration or CR Section/Cell.	23rd May where the due date for the reporting officer is 7th May. 7th May where the due date for the reporting officer is 21st April. 5th June where the due date for reporting officer is 22nd May.



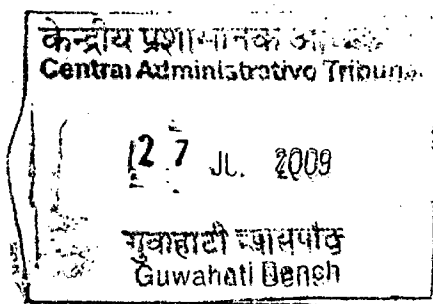
Certified to be true copy

Amrit Singh
Advocate

2.

1. The Applicant Shri. Ashim Kumar Dey is the Applicant in the Original Application NO.9 of 2009 filed before this Hon'ble Tribunal on 02.02.2009 praying for setting aside and quashing the impugned adverse remarks in the Annual Confidential Reports for the periods 08.09.2006 to 31.03.2007 and 01.04.2007 to 10.08.2007.

2. That the Applicant begs to state that certain vital facts relating to his works such as initiation of proposal for inspection of Treasuries, disposal of matters relating to court cases, initiation of proposal for setting up of Grievance Cell in the Office and preparation of Administrative Reports etc. during the periods under report were inadvertently left out to mention in the Original Application NO.9 of 2009 filed on 02.02.2009 before this Hon'ble Tribunal. Further, the names of Respondent No.3 and 4 were inadvertently mentioned in the said Original Application which needs amendment. The contents of the paragraph 4.9. of the said Original Application are not necessary to be pressed. As such, the said paragraph No.4.9. also needs to be deleted from the said Original Application.

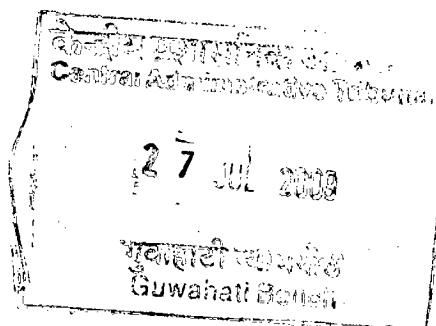


In the premises stated herein-above, the humble Applicant prays that the Hon'ble Tribunal may be pleased to admit this Application and

- (i) pass order or orders allowing the Applicant to amend the Original Application NO.9 of 2009 in the interest of justice and/or
- (ii) Pass such order or other orders as the Hon'ble Tribunal may deem fit and proper.

And for the act of kindness the Applicant as in duty bound shall ever pray.

..... Verification.



3.

VERIFICATION

I, Shri Ashim Kumar Dey son of Shri Ajit Kumar Dey, aged about 42 years working as Section Officer in the Office of the Accountant General (A& E), Nagaland, Kohima, resident of Harulangpher Last Colony, Lumding, Dist. Nagaon, Assam do hereby verify that the contents of paragraphs 1 and 2 are true to my knowledge and believed to be true and that I have not suppressed any material facts.

I signed this verification on this. 27...th day of July, 2009 at Guwahati.

Ashim Kumar Dey
(ASHIM KUMAR DEY)

Signature of Applicant.

Date: 27-7-09

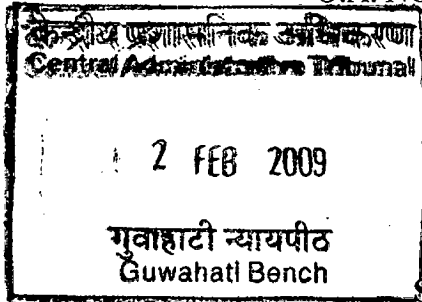
Place: Guwahati.

6.2.09

103

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. NO.9..... OF 2009.



Shri Ashim Kumar Dey

-Vs-

C.A.A.G.I. & Ors.

SYNOPSIS

The Applicant has been serving as Section Officer in the Office of the Accountant General (A&E), Nagaland, Kohima. The Respondent No.2 by a Memorandum No.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 communicated the adverse remarks that have appeared in the Annual Confidential Report for the period from 8.9.2006 to 31.3.2007 and 1.4.2007 to 10.8.2007 to the Applicant.

When the appeal against the adverse remarks submitted by the Applicant did not evoke any response from the Respondents, the Applicant filed an Original Application before this Hon'ble Tribunal vide O.A.No.84 of 2008. The Hon'ble Tribunal vide Order (Oral) dated 14.5.2008, without considering the merit of the application, passed orders directing the Respondents to consider the representation of the Applicant and pass a **reasoned order** within a period of 90 days from the date of receipt of a copy of the order with further direction that the respondents, while considering the representation of the Applicant, should take into consideration the grounds set forth in the present Original Application as part of the representation of the Applicant.

The Respondent No.5 vide his letter NO.Admn/A&E/CAT/AKD/2008-09/570 dated 11.7.2008 has intimated the Applicant that the Reviewing Officer did not find any reasonable ground to accept his representation and hence, the remark stands.

Being aggrieved by the said communication, the Applicant has submitted another representation dated 25.8.2008 incorporating the grounds set forth in his Original Application No.84 of 2008 and specifically drawing attention to the orders of the Hon'ble Tribunal to the Respondent No.2 for reconsideration.

The Respondent No.5 vide letter NO.Admn/A&E/AKD/89-90/1051 dated 14.10.2008 has reiterated their earlier decision. The Respondent Authorities has rejected the representation of the Applicant without passing **reasoned order** as per the orders of this Hon'ble Tribunal. Hence, this application is filed afresh.

Ashim Kumar Dey

Received
Gabinets
02.2.09

104

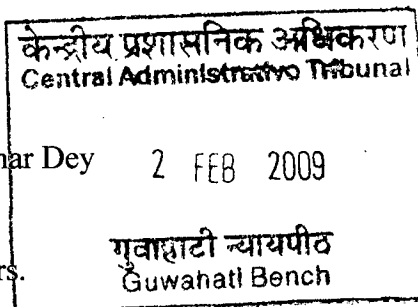
**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.**

O.A. NO....⁹.....of 2009.

Shri Ashim Kumar Dey 2 FEB 2009

-Vs-

C.A.A.G.I. & Ors.



I N D E X

Sl. No.	Contents	Page No.
1.	Original Application	1-12
2.	Verification	13
3.	Annexure-A1	14, 15
4.	Annexure-A2	16-26
5.	Annexure-A3	27-55
6.	Annexure-A4	56-58
7.	Annexure-A5	59
8.	Annexure-A6	60-65
9.	Annexure-A7	66

Ashim Kumar Dey

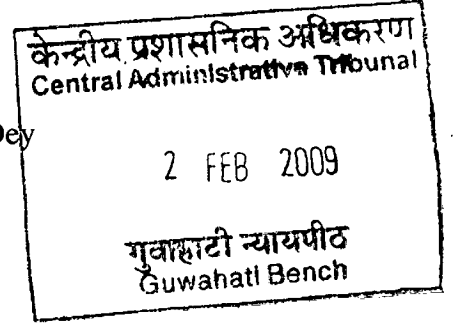
**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.**

O.A. NO.....9.....of 2009.

Shri Ashim Kumar Dey

-Vs-

C.A.A.G.I. & Ors.



LIST OF EVENTS

Sl. No.	Particulars of events	Annexure
1.	The Accountant General, Nagaland, Kohima vide Memorandum NO.DAG(A&E)/CRACR/2006-07/176 dated 16.08.2007 communicated adverse remarks in the Annual Confidential Report for the periods 8.9.2006 to 31.3.2007 and 1.4.2007 to 10.8.2007 to the Applicant.	Annexure-A1 Series, Page 14&15
2.	The Applicant filed an Original Application bearing No.84 of 2008 before this Hon'ble Tribunal for setting aside and quashing the adverse remarks.	Annexure-A3 Series. Page 27-55
3.	The Hon'ble Tribunal vide Order (Oral) passed orders, without entering into the merits of the matter, directing the Respondents to consider the representation of the Applicant and to pass a reasoned order within a period of 90 days from the date of receipt of a copy of the order with further direction that the Respondents, while considering the representation of the Applicant, should take into consideration the grounds set forth in the present Original Application as part of the representation of the Applicant.	Annexure-A4 Series. Page 56-58
4.	The Accounts Officer (Admn) vide his letter NO.Admn/A&E/CAT/AKD/2008-09/570 dated 11.7.2008 intimated the Applicant that the Reviewing Officer did not find any reasonable ground to accept his representation and hence, the remark stands.	Annexure-A5. Page 59
5.	The Applicant submitted a representation dated 25.8.2008 to the Accountant General, Nagaland, Kohima incorporating the grounds set forth in the Original Application No.84 of 2008 and specifically pointing out the orders of the Hon'ble Tribunal for reconsideration.	Annexure-A6 Series. Page 60-65

Ashim Kr - Dey

2.

6.	<p>The Accounts Officer (Admn) vide his letter No.Admn/A&E/AKD/89-90/1051 dated 14.10.2008 has intimated the Applicant that as per the Hon'ble Central Administrative Tribunal, Guwahati Bench order dated 15.5.08, his representation has been considered at the appropriate level, and the decision of the authority has since been communicated to him vide letter No.Admn/A&E/CAT/AKD/08-09/570 dated 11.07.2008 and hence no more action is required at this end.</p>	<p>Annexure-A7 Page 66</p>
----	--	--------------------------------

108
Ashim B. Bora

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

ORIGINAL APPLICATION NO...9...../2009.

Shri Ashim Kumar Dey,
Son of Shri Ajit Kumar Dey,
Section Officer, Office of the
Accountant General (A&E),
Nagaland, Kohima-797001,

..... APPLICANT.

-VERSUS-

1. The Comptroller and Auditor General of India,
10 Bahadur Shah Zafar Marg, New Delhi-
110002. ✓
2. The Accountant General (A&E), Nagaland,
Kohima. P.O. Kohima- 797001. ✓
3. Shri Arindam Kumar Das,
Senior Accounts Officer
(Treasury Misc. Section),
Office of the Accountant General (A&E),
Nagaland, Kohima.
P.O. Kohima-797001. ✓
4. Shri R.M. Dasgupta,
Accounts Officer (Work Misc. Section),
Office of the Accountant General (A&E),
Nagaland, Kohima.
P.O. Kohima- 797001. ✓
5. The Accounts Officer (Admn),
Office of the Accountant General (A&E),
Nagaland, Kohima.
P.O. Kohima- 797001. ✓

.....RESPONDENTS.

Contd.2.

Filed by the petitioner
Ashim Kumar Dey
through Advocate
Hedul Manoj
Date 2/2/09

Ashim Kumar Dey

13

2.

DETAILS OF APPLICATION:

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

The application is made against the Memorandum bearing NO.DAG(A&E)/CRACR/2006-07/176 dated 16.8.2007 issued under the signature of Shri A.N. Sarkar, Accountant General (A&E), Nagaland, Kohima communicating the adverse remarks in the Annual Confidential Report to the Applicant.

2. **Jurisdiction of the Tribunal:**

The Applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Hon'ble Tribunal.

3. **Limitation:**

That the Applicant declares that the petition is within the limitation period prescribed in section 21 of the Administrative Tribunal Act, 1985.

4. **Facts of the case:**

4.1. That the Applicant is a citizen of India and a permanent resident of Harulangpher Last Colony, Lumding under Nagaon District in the State of Assam and therefore he is entitled to protection of all the rights and privileges guaranteed under the Constitution of India and all other laws of the land in force.

4.2. That the Applicant begs to state that he was initially appointed as Clerk-Cum-Typist on 13.3.1990 in the Office of the Accountant General, Nagaland, Kohima and thereafter he was promoted to the post of Accountant on 26.5.1993, then Senior Accountant on 26.5.1996 and presently he has been serving as Section Officer in the said Office with effect from 8.9.2006 till date. As Section Officer the Applicant looked after two Sections viz. Treasury Miscellaneous and Work Miscellaneous headed by two Senior Officers during the period in question i.e. from 8.9.2006 to 10.8.2007. The Applicant's promotion to the three higher posts during a period of 18 years shows that he has an excellent service carrier.

4.3. That the Applicant begs to state that while he was serving as such the Respondent No.2 by a Memorandum bearing No. DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 had communicated to the

Assam H. - Beg

3.

Applicant 11 (Eleven) adverse remarks that have appeared in the Annual Confidential Report for the consecutive two periods from 8.9.2006 to 31.3.2007 and from 1.4.2007 to 10.8.2007.

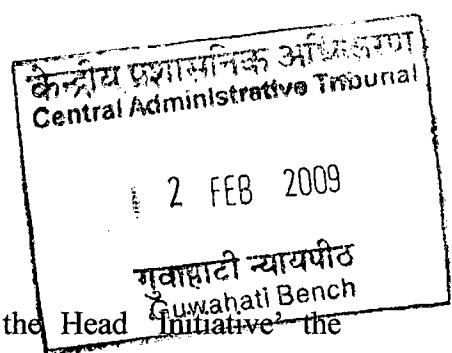
Copies of the Memorandum dated 16.8.2007
are annexed here to and marked as
Annexure-A1.

4.4. **ADVERSE REMARKS FOR THE PERIOD 8.9.2006 TO 31.3.2007:**

4.4.1. That as regards the adverse remarks for the period from 8.9.2006 to 31.3.2007 the Applicant begs to state and submit that the adverse remarks for the said period were not communicated with the period of one month of their being recorded as prescribed vide Govt. of India Department of Personnel & Administrative Reforms, O.M. No.21011/1/77-Est., dated the 30th January, 1978 (Ref. Page 717 and 718, Para 20 of Swamy's Complete Manual on Establishment and Administration). The same was communicated to him only on 16th August, 2007 after lapse of more than four and half month as result of which the Applicant, being a new Section Officer, had got no opportunity to improve his deficiencies in work and conduct during the subsequent period in respect of the impugned adverse remarks or to make a representation right on time i.e. before writing the ACR for the subsequent period. One of the objects of recording of adverse remarks is to afford the employee an opportunity of improving himself as that during the next year/period there may not be an occasion for the making of such remarks. But by such delay the very object of recording the adverse remarks is defeated and the Applicant is placed in a disadvantageous position to improve his deficiencies. As such the failure to observe the time frame in communicating the adverse remarks caused prejudice to the Applicant and the communication is inconsistent in Government instructions.

4.4.2. That the Applicant further begs to state and submit that he was never given any training, necessary advice, guidance, assistance to improve his deficiencies nor was any deficiency in his conduct and work pointed out to him for improvement on any occasion nor was any periodical inspection/visit made to the sections under the charge of the Applicant during the period under report by the Reporting Officer before writing the ACR as per Government instructions given vide C.S., O.M. No.51/5/72-Ests. (A) dated the 20th May, 1972 (Ref. Page 712, Para 15 of Swamy's Complete Manual on Establishment and Administration).

Ashtom M. Dey



4.

4.4.3. That as regards the adverse remarks under the Head 'Initiative' the Applicant begs to state that the Reporting Officer is required to comment on the "the capacity and resourcefulness of the Officer in handling normal as well as unforeseen situations, willingness to take additional responsibilities and new area of work and capacity to initiate cases at his level" only. But the Reporting Officer's answer "There is nothing of this sort has been noticed yet" is not definite and not the answer to those aspects. The Applicant has taken additional responsibilities as stated under paragraph 4.2. above but the Reporting Officer has lost sight of this fact to mention. As such the adverse remarks "There is nothing of this sort has been noticed yet" is vague and such remark shows the incapability and incompetence of the Reporting Officer to assess the performance of the Applicant and to give his answer correctly against the said Head.

4.4.4. That as regards the adverse remarks under the Head 'Attitude of works' the Applicant begs to state that the Reporting Officer is required to comment on "how far the Officer can be relied upon, his sense of responsibility, the extent to which he is dedicated and motivated, his willingness to learn and systematize his work". But the Reporting Officer's answer "Officer's sense of responsibility as required for sectional duty requires further improvement/sincerity" is not definite and not supported by any factual statement/instance. As such the said impugned adverse remark is vague and baseless.

4.4.5. That as regards the adverse remarks under the Head 'Ability to inspire and motivate' the Applicant begs to state that the Reporting Officer is required to comment on the "the capacity of the Officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence." But the Reporting Officer's answer 'Nothing of this has been noticed yet' is not definite and not supported by any factual statement/instance. As such the said impugned adverse remark is vague, baseless and such remark shows on the incapability and incompetence of the Reporting Officer to observe the conduct of the Applicant to give his answer correctly against the said Head.

4.4.6. That as regards the adverse remarks under the Head 'Supervisory ability' the Applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability relating to (1) Guidance in the

Aswini M. Bhat

5.

performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the Reporting officer's answer 'Officer's sense of responsibility and overall supervisory capacity requires further improvement/sincerity' is not confined to those three sub-heads. As such the said adverse remark is irrelevant.

4.5. ADVERSE REMARKS FOR THE PERIOD 1.4.2007 TO 10.8.2007:

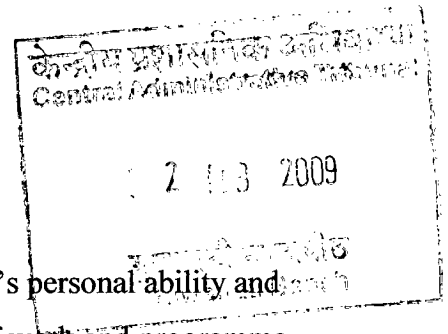
4.5.1. That as regards the adverse remarks for the period from 1.4.2007 to 10.8.2007 the Applicant begs to state that the adverse remarks under the three Heads viz. (1) Head No.3 Initiative- "There is nothing of this noticed yet", (2) Head No.4 Attitude of work - "Officer's sense of responsibility as required for his sectional duty requires further improvement/sincerity" and (3) Head No.5 Ability to inspire and motivate - "Nothing of this sort has been noticed yet" are repetitions of the vague adverse remarks made against the same Heads No.3, 4 and 5 for the previous period 8.9.2006 to 31.3.2007 for which the Applicant had got no opportunity of improving himself during the period under report or making representation against such remarks at the relevant point of time due to non communication of the adverse remarks on time in accordance with the Government instructions.

4.5.2. That as regards the adverse remarks under the Head 'Supervisory ability' the Applicant begs to state that Reporting Officer is required to comment on "the Officer's ability relating (1) Guidance in the performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the Reporting Officer's answer as "There is nothing to comment" is nothing but avoidance of Reporting Officer's obligation to comment specifically on these aspects and cryptic and not the answer to those sub-heads. On the other hand, such remark is indicative of the fact that the Reporting Officer had not made any periodical inspection/visit to the Sections to observe the supervisory ability of the Applicant during the period under report before recording such remarks.

4.5.3. That as regards the adverse remarks under the Head 'Quality of Output' the Applicant begs to state that the Reporting Officer is required to comment on "the Officer's personal and quality of performance having regard to the standard of work and programme objectives, and constraints,

Contd. 6.

As per Mr. Dny



6.

if any". But the Reporting Officer's answer "Officer's personal ability and quality of performance in regard to the standard of work and programme objectives requires sufficient improvement" is baseless and not supported by any factual statement/instance.

4.5.4. That as regards the adverse remarks under the head 'Analytical ability' the Applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability relating to analysis of pros and cons; formulation of alternatives and their evaluation of solving problems, ability to indicate decisions areas". But the Reporting Officer's answer "Officer's ability relating to analysis pros and cons, formulation of alternatives and their evaluation for solving problems requires further improvement" is baseless and arbitrary as the Applicant was never given any training, necessary advice, guidance, assistance to improve his deficiencies nor was any deficiency in his conduct and work pointed out to him for improvement by the Reporting Officer on any occasion during the period under report nor assigned any target/goal to be achieved for the year.

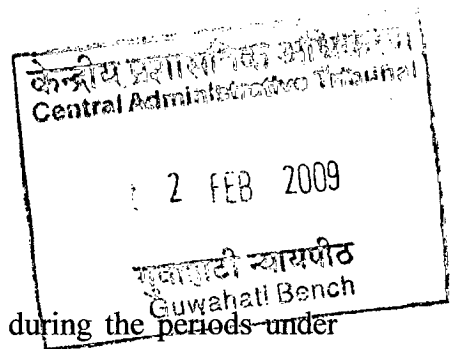
4.5.5. That as regards the adverse remarks under the head 'Communication Skill' the Applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability to communicate with brevity, clarity and accuracy both orally and in writing; ability to draft notes, brief for meeting etc." The Reporting Officer while commending the 'Communication Skill' of the applicant very well in respect of these aspects, the subsequent remarks in the trail as '.....but yet it also requires more sincerity' is unwarranted, unjust and unfair.

4.6. That the Applicant begs to submit that the contents of adverse remarks for both the periods are baseless and vague as the Applicant was never given any training, necessary advice, guidance and assistance for improvement of his deficiencies in performance nor was any deficiency on him pointed out for improvement nor the Reporting Officer ever made any periodical inspection/visit to the Sections to observe the conduct and work of the Applicant nor assigned any target/goal to be achieved for the year as prescribed on the subject of writing of confidential remarks in the said Memo dated the 20th May, 1972 and also in the instructions for filling the entries in the prescribed ACR Form itself.

Copies of the ACR Form are annexed
hereto and marked as Annexure-A2.

Contd. 7.

As per Mr. Dey



113

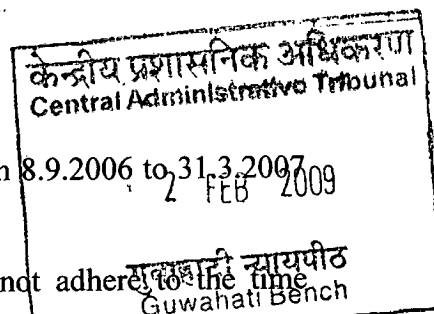
7.

4.7. That the Applicant further begs to submit that during the periods under report, the Applicant looked after two Sections viz. Treasury Miscellaneous and Work Miscellaneous headed by two Senior Officers viz. Senior Accounts Officer in-charge of Treasury Miscellaneous Section and Accounts Officer in-charge of Work Miscellaneous Section and the Reporting Officers had neither inspected/visited the Sections under the charge of the Applicant nor given training, necessary advice, guidance, assistance to improve his deficiencies nor pointed out any deficiency in his performance for improvement nor made prejudicial inspection/visit to observe the performance of the Applicant on any occasion during the periods under report before writing the adverse report; rather the Respondent No2 had granted honorarium of Rs.1250/- vide Bill No. G-82 dated 30.3.07 and Rs.500/- vide Bill No.578 dated 31.3.08 to the Applicant for his good performance during the year 2006-07 and 2007-08 respectively. As such the grant of honorarium to the Applicant is indicative of the fact that the Applicant's service during the periods under report is presumed to be satisfactory and such grant of honorarium amply proves that the adverse remarks recorded in that particular periods are prejudiced.

Aslem M. Beg

4.8. That the Applicant further begs to submit that the impugned adverse remarks are not based on specific instances/factual statement on the performance of the Applicant reviewed and corrective steps taken by way of giving necessary guidance for improvement on the deficiencies of the Applicant at regular interval which led to the adverse remarks so as to enable the Applicant to make an effective representation and/or to improve his work and conduct and they are inconsistent in Government instructions given in the said Memo dated 20th May, 1972.

4.9. That the Applicant further begs to submit that adverse remarks are communicated for guidance. But the last paragraph of the Memo. forwarding the adverse remarks is cryptically coached to mean a 'Warning' to the Applicant which amounts to colorable exercise of powers by the Respondent No.2 and inconsistent in Government instructions given in the Ministry of Home Affairs Office Memorandum No. 51/7/68-Estt. (A), dated the 19th September, 1969 and D.P. & A.R., O.M. No. 51/3/74-Estts. (A), dated the 22nd May, 1975 (Ref. Page 717 and 718, Para 20 of Swamy's Complete Manual on Establishment and Administration).



5. Ground for relief with legal provision:

5.1. The impugned adverse remarks for the period from 8.9.2006 to 31.3.2007 under Part-IIIB of the ACR are invalid-

- (i) as the communication of the same does not adhere to the time frame laid down for the steps about such remarks and is violative of principles of natural justice and the failure to observe the time frame in communicating the adverse remarks on time caused prejudice to the Applicant;
- (ii) as the contents of the adverse remarks for the period under report are vague answers to the prescribed Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR;
- (iii) as the contents of the adverse remarks are not in accordance with the Government instructions on the subject of writing of confidential remarks;
- (iv) as the grant of honorarium to the Applicant for the year 2006-07 for good performance negatives the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the period under report are prejudiced.

5.2. The impugned adverse remarks under the Head No.3, 4 and 5 for the period from 1.4.2007 to 10.8.2007 of the ACR are invalid as the delayed communicated repeated adverse remarks for the period 8.9.2006 to 31.3.2007 vitiated the adverse remarks recorded for the subsequent period from 1.4.2007 to 10.8.2007 and not sustainable in law.

5.2.1. The impugned adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as their contents are vague answers to the prescribed Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR and they are not in accordance with the instructions on the subject of writing confidential remarks.

5.2.2. The adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as the grant of honorarium to the Applicant for his satisfactory performance for the year 2007-08 has negative the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the period under report are prejudiced.

9.

5.3. It is the established proposition of law that the writing of the confidential remarks, communication of adverse remarks and representation etc. should be in accordance with the Government instructions and laid down procedure. In the instant case, the respondent authorities had not complied with the instructions and procedure.

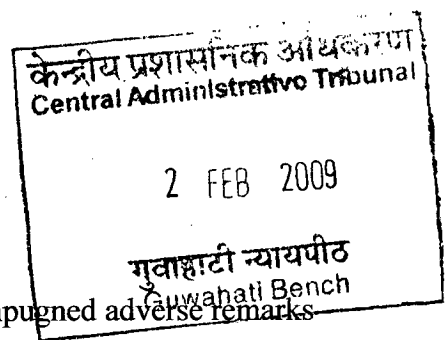
5.4. The Gujarat High Court in the case of B.R. Kulkarni (Dr.) Vs. Government of Gujarat 1978 (2) SLR 682 (Guj) per P.D. Desai observed that uncommunicated adverse remarks are of "no avail and cannot be relied upon for any purpose to prejudice of the petitioner" and when they "form the sole or substantial basis of adverse remarks in confidential reports for subsequent period, the confidential reports for the subsequent period would also be vitiated".

5.5. The Delhi high Court also, echoing in similar vein, in the case of Gita Ram Gupta Vs. Union of India 1979 SLR 227 laid down propositions on the uncommunicated or delayed communicated adverse remarks and observed that adverse remarks stand expunged, if not communicated,..... And in the event of adverse remarks not communicated in time, it bears no effect.

5.6. The Supreme Court of India in the case of Sukhdev vs. Commissioner, Amravati Division and another, 1964 (4) Supreme 758 = 1996 (5) SCC 103 = 1996 (5) JT 477 = 1996 (2) UJ (SC) 153 = 1996 SCC (L&S) 1141 = 1996 (2) SLJ 3 = 1996 (4) SLR 8 (SC) = 1996 (73) Fac. LR 1964 on the question of making vague remarks observed that when an officer makes the remarks, he must eschew of making vague remarks causing jeopardy to the service of subordinate officer. He must bestow careful attention to collect correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate official whose career prospect and service was in jeopardy. It would be salutary that the Controlling Officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement.

5.7. In the instant case, no such steps were taken by the Reporting Officer during the periods under report before writing the adverse remarks nor was any deficiency pointed out to the applicant on any occasion for improvement.

Aslam M. Beg



10.

- 5.8. In the facts and circumstances stated above, the impugned adverse remarks for the periods under report are inconsistent in Government instructions and not sustainable in law as being vague and invalid and are liable to be held to be invalid and set aside and quashed by this Hon'ble Tribunal.

6. **Details of the remedies exhausted:**

- 6.1. The Applicant declares that he has availed of all the remedies available to him under the relevant service rules and he has no other alternative and efficacious remedy available to him except by way of this instant application.
- 6.2. The Applicant approached this Hon'ble Tribunal by filing an Original Application being registered and numbered as O.A.NO.84 of 2008 praying for setting aside and quashing the impugned adverse remarks recorded in his A.C.R. for the consecutive two periods 8.9.2006 to 31.3.2007 and 1.4.2007 to 10.8.2007.

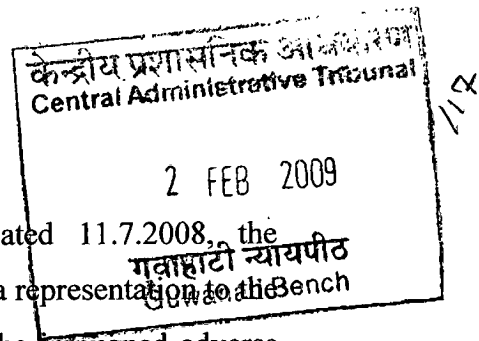
Copies of the Original Application NO.84 of 2008 are annexed hereto and marked as Annexure-A3 Series.

- 6.3. This Hon'ble Tribunal vide Order (Oral) dated 14.05.2008 was pleased to pass an order directing the Respondents **"to consider the representation of the Applicant and pass a reasoned order within a period of 90 days from the date of receipt of a copy of this order"** with further direction that **"the Respondents, while considering the representation of the Applicant, should take into consideration the grounds set forth in the present Original Application as part of the representation of the Applicant."**

Copies of the Order dated 14.05.2008 passed by this Hon'ble Tribunal are annexed hereto and marked as Annexure-A4 Series.

- 6.4. The Accounts Officer (Admn) in the Office of the Sr. Deputy Accountant General (A&E), Nagaland, Kohima vide his letter NO.Admn/A&E/CAT/AKD/2008-09/570 dated 11.7.08 has intimated the Applicant that the Reviewing Officer did not find any reasonable ground to accept the representation of Applicant and hence, the adverse remarks stands.

Copies of the letter dated 11.7.2008 is annexed hereto and marked as Annexure-A5.



11.

6.5.

Being aggrieved by the said communication dated 11.7.2008, the Applicant vide his letter dated 23.8. 2008 submitted a representation to the Respondent NO.2 detailing his grievances against the impugned adverse remarks specifically pointing out the relevant part of the orders passed by the Hon'ble Tribunal on 14.05.2008 for reconsideration and setting aside the impugned adverse remarks.

Copies of the representation dated 25.08.2008 is annexed hereto and marked as Annexure-A6 Series.

6.6.

The said Accounts Officer (Admn) in the Office of the Sr. Deputy Accountant General (A&E), Nagaland, Kohima vide his letter NO. Admn/A&E)/AKD/89-90/1051 dated 14.10.2008 has intimated the Applicant that as per the Hon'ble Central Administrative Tribunal, Guwahati Bench order dated 15.0.5.2008 the representation of the Applicant has been considered at the appropriate level and the decision of the authority has since been communicated to the Applicant vide their letter NO.ADMN/A&E/CAT/AKD/08-09/570 dated 11.07.2008.

Copy of the letter dated 14.10.2008 is annexed hereto and marked as Annexure-A7.

7.

Matters not previously filed or pending with any other court:

The Applicant further declares that he had not previously filed any application, writ petition, or suit regarding the matter, in respect of which this application has been made, before any court or any other authority or any other bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8.

Relief sought:

In view of the facts mentioned in Para 6 above the Applicant prays for the following relief(s):-

8.1.

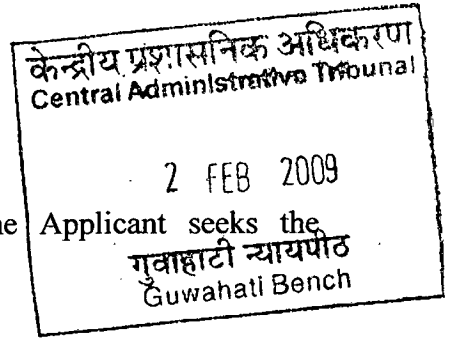
The Memorandum NO.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 issued under the signature of Shri A.N. Sarkar, Accountant General (A&E), Nagaland, Kohima communicating the impugned adverse remarks in the Annual Confidential Report to the applicant be set aside.

8.2.

To pass order or orders directing the respondent authorities to expunge the impugned adverse remarks and/or pass such order or orders as the Hon'ble Tribunal may deem fit and proper.

Contd. 12.

Ashim M. Dey



9. **Interim order, if any prayed for:**

Pending final decision on the application, the following interim relief:

Applicant seeks the
गुवाहाटी न्यायपीठ
Guwahati Bench

9.1. To stay/suspend the operation of the impugned adverse remarks made for the period from 8.9.2006 to 31.3.2007 and for the period from 1.4.2007 to 10.8.2007 in the Annual Confidential Report.

9.2. To pass any other order or orders as the Hon'ble Tribunal may deem fit and proper.

10. **Particulars of the Postal Order filed in respect of the application fee.**

- (1) IPO NO. 39G 386170.
- (2) Date of issue: 16.01.2009.
- (3) Issued from: Guwahati G.P.O.
- (4) Amount: Rs.50/-
- (5) Payable at: Guwahati.

11. **List of enclosures:**

- (1) Memo. NO.DAG (A&E)/CRACR/2006-07 - Annexure-A1.
dated 16.8.2007.
- (2) Specimen ACR Form. - Annexure-A2 Series.
- (3) Original Application No.84 of 2008. - Annexure-A3 Series.
- (4) Order (Oral) dated 14.05.2008 passed by the - Annexure-A4 Series.
Hon'ble Tribunal in the Original Application
No.84 of 2008.
- (5) Letter NO.Admn/A&E/CAT/AKD/ - Annexure-A5.
2008-09/570 dated 11.07.2008.
- (6) Representation dated 25.08.2008. - Annexure-A6 Series.
- (7) Letter NO.Admn/A7E)/AKD/89-90/1051 - Annexure-A7.
dated 14.10.2008.

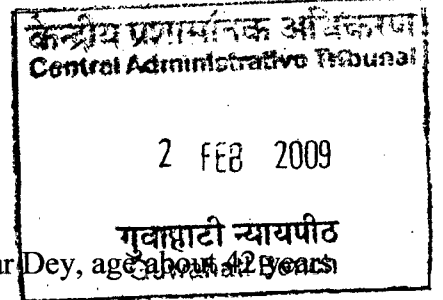
12. This application is filed bonafide and in the interest of justice through Advocate.

.....Verification.

Ashim M. Das

13.

VERIFICATION



I, Shri Ashim Kumar Dey son of Shri Ajit Kumar Dey, age ~~about 42 years~~ ^{42 years} working as Section Officer in the Office of the Accountant General (A&E), Nagaland, Kohima, resident of Harulangpher Last Colony, Lumding, Dist. Nagaon, Assam do hereby verify that the contents of paragraphs...1, 4, 6, 7, 11 and 12.....are true to my knowledge and paragraphs...2, 3, 5, 8, 9 and 10.....are believed to be true on legal advice and that I have not suppressed any material fact.

I signed this verification on this. 2nd th day of February, 2009 at Guwahati.

Ashim K. Dey

(ASHIM KUMAR DEY)

Signature of applicant.

Date: 2-2-2009

Place: Guwahati.

CONFIDENTIALOFFICE OF THE SENIOR DEPUTY ACCOUNTANT GENERAL (A&E)
NAGALAND::KOHIMA

No.DAG(A&E)/CRACR/2006-07/176.

Dated: -16/8/2007.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

2 FEB 2009

Confidential

गुवाहाटी न्यायपीठ
Guwahati BenchMEMORANDUM

The following adverse remarks have appeared in Annual Confidential Report of Shri Ashim Kr. Dey, S.O. for the period 8/9/06 to 31/3/2007 and 1/4/2007 to 10/8/2007.

Period from 8/9/2007 to 31/3/2007

PART-III B	Comments
Item No.3. (Initiative) at page no 6	There is nothing of this sort has been noticed yet.
Item No.4 (Attitude of work), at page no.6	Officer's sense of responsibility as required for sectional duty requires further improvement/sincerity.
Item No.5 (Ability to inspire and motivate) At page No.6	Nothing of this sort has been noticed yet
Item No.6 (Supervisory Ability), at page No.6	Officer's overall supervisory capacity requires further observation.

Period from 1/4/2007 to 10/8/2007

PART-III A	Comments
Item No. 2. (Quality of Output), At page No.5	Officer's personal and quality of performance in regard to the standard of work and programme objectives requires sufficient improvement.
PART -III B	
Item No. 1 (Analytical ability), At page no. 5	Officer's ability relating to analysis pros and cons, formulation of alternatives and their evaluation for solving problems requires further improvement.
Item No.2 (Communication Skill) At pate No.5	Though officer is capable to communicate with brevity clarity and accurately both orally and in writing, able to draft notes, briefs but yet it also requires more sincerity.
Item No. 3 (Initiative) At page No. 6	There is nothing of this sort noticed yet.
Item No. 4 (Attitude of work), At page no. 6	Officer's sense of responsibility as required for his sectional duty requires further improvement/sincerity.

Certified to be true copy

Jh
(JAHIRUDDIN)
Adusote

Item No.5 (Ability to inspire and motivate) At page no. 6	Nothing of this sort has been noticed yet.
Item No.6 (Supervisory Ability) At page No. 6	There is nothing to comment.

The above remarks may kindly be noted and immediate action to rectify the defects may be taken to give a better account of the officer.

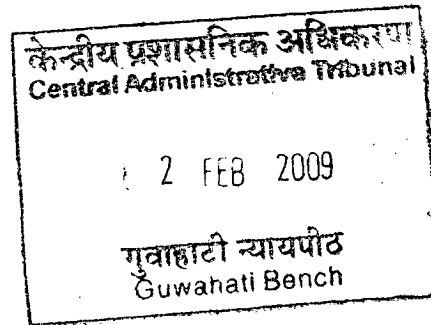
A.N. SARKAR
Accountant General (A&E)

Copy to: -

1. Ashim Kr. Dey, S.O.

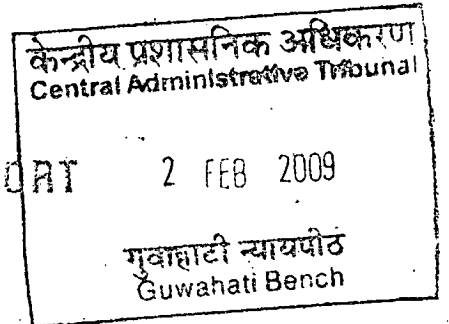
Certified to be true copy

(Signature)
(JAHIRUDDIN)
Advocate





OFFICE OF THE
SENIOR DEPUTY ACCOUNTANT GENERAL (A&E)
NAGALAND :: KOHIMA



CONFIDENTIAL REPORT

2 FEB 2009

FOR

SUPERVISORS
SECTION OFFICERS
ASSISTANT ACCOUNTS OFFICERS
ACCOUNTS OFFICERS
SENIOR ACCOUNTS OFFICERS

Name of the official

(in CAPITAL letters)

Designation

Report for the period from to

Certified to be true copy

[Signature]
(JIR HIRUDDIN)
Advocate

-17 (4)

(2)

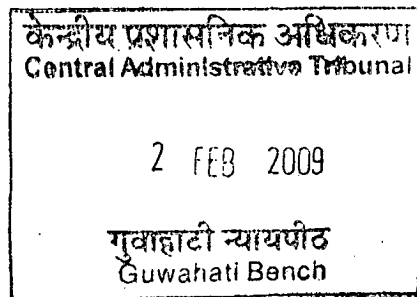
CONFIDENTIAL REPORT FOR
Supervisors/Section Officers/Asstt. Accounts Officers/
Accounts Officers/Sr. Accounts Officers

Report for the period from to

PART-I**PERSONAL DATA**

(To be filled by the Administrative Section concerned of the office)

1. Name of the officer :
(in CAPITAL letters)
2. Designation :
3. Whether the officer belongs :
to SC/ST ?
4. Date of birth :
5. Educational qualifications :
i/c professional and technical
qualifications
6. Departmental Examination passed :
i.e. S.O.G.E. (Civil, Commercial,
Railways, Revenue Audit etc.)
7. Date of continuous appointment :
to the present grade.
8. Present post and date of :
appointment thereto
9. Period of absence from duty (on :
leave, training etc.) during the
year. If he was undergone
training, please specify)



Certified to be true copy

Jhy
(JAHIRUDDIN)
 Advocate

105
-18-(2)

A2(2)

(3)

PART—II

(to be filled in by the Officer Reported upon)

(Please read carefully the instructions given at the end of the form before filling the entries)


1. Brief description of the duties.

2 (A). Please specify targets/objectives goals (in quantitative or other terms) of work you set for yourself or that were set for you, eight to ten items of work in the order of priority and your achievement against each target.

Targets/Objectives/Goals

Achievements

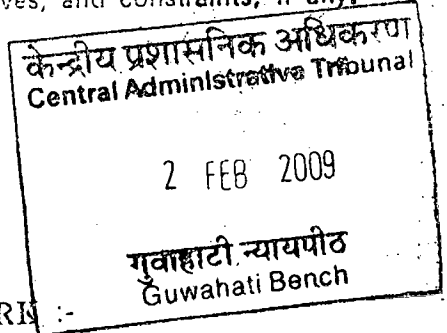
Certified to be true copy


(JAHIRUDDIN)
Advocate

(5)

2. QUALITY OF OUTPUT :-

- (a) Please comment on the officer's personal and quality of performance having regard to the standard of work and programme objectives, and constraints, if any.



3. KNOWLEDGE OF SPHERE OF WORK :-

Please comment specifically on each of these :- Level of knowledge of functions, rules and regulations, related instructions and their application in the field of work assigned to the officer.

B. ATTRIBUTES


1. Analytical ability :-

Please comment on the officer's ability relating to analysis of pros and cons; formulation of alternatives and their evaluation for solving problems; ability to indicate decision areas.

2. Communication Skill :-

Please comment on the officer's ability to communicate with brevity, clarity and accuracy both orally and in writing; ability to draft notes, briefs for meeting etc.

Certified to be true copy


(JAHIRUDDIN)
Advocate

2. (B) If you are a Section Officer or Assistant Accounts Officer, please state briefly, the target set and the quantum of work done in regard to recording, indexing and weeding out of files, maintenance of Guard files, Sectional Note book and other registers, furnishing of O & M and other returns etc.

3. (A) Please state briefly the shortfalls with reference to the targets/objectives/goals referred to in column-3 Please specify constraints, if any, in achieving the targets.

4. (B) Please also indicate items in which there have been significantly, higher achievements and your contribution thereto.

4. (C) Any significant additional achievements apart from those mentioned to in column 3.

5. (D) Training programmes attended,

Date

Signature

PART - III

(To be filled by the Reporting Officer):

(Please read carefully the instructions given at the end of the form before filling the entries).

A. NATURE AND QUALITY OF WORK.

1. Please comment on Part - II as filled out by the Officer and specifically state whether you agree with the answer relating to targets and objectives, achievements and shortfalls. Also specify constraints, if any in achieving the objectives. In case you disagree with any of the remarks contained in Part-II, the reasons thereof may be given.

Certified to be true copy

[Signature]

(IAH RUDDIN)
Advocate

3. Initiative :-

Please comment on the capacity and resourcefulness of the officer in handling normal as well as unforeseen situations; willingness to take additional responsibilities and new area of work and capacity to initiate cases at his level.

4. Attitude of work :-

Please comment how far the officer can be relied upon, his sense of responsibility, the extent to which he/she is dedicated and motivated, his/her willingness to learn and systematize his/her work.

5. Ability to inspire and motivate :-

Please comment on the capacity of the Officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence.

6. Supervisory Ability :-

Please comment on the Officer's ability relating to :-

- (1) Guidance in the performance of tasks :-
- (2) Review of performance (monitoring of key areas) :-
- (3) Enforcing discipline :-

केन्द्रीय प्रशासनिक अदालत
Central Administrative Tribunal


2 FEB 2019

गुवाहाटी न्यायालय
Guwahati Bench

7. Inter-personal relations and team work :-

Please comment on the quality relationship with superiors, colleagues and subordinates and on the ability to appreciate others point of view and take advance in the proper spirit. Please also comment on his/her capacity to work as a members of a team and to promote team spirit and optimise the output of the team.

Certified to be true copy


(JAHIRUDDIN)
Advocate

(7)

8. Attitude towards SC/ST/Weaker Sections Society :-

Please comment on his/her understanding of the problems of SC/ST/Weaker Sections and Willingness to deal with them.

9. Attitude and Potential :-

Please indicate three fields of work from amongst the following for possible specification and career development of the officer. Please mark 1, 2, 3 in three appropriate boxes.

1. Receipt Audit
2. Commercial Audit
3. Autonomous Bodies Audit
4. Work Audit
5. Civil Audit
6. Other Audit
7. Personal Administration
Office Management
8. Accounts Function
9. Entitlement Function
10. Training
11. Systems, O&M Computerisation
12. Any other fields (Please specify)

Certified to be true copy

Jhy
(JAHIRUDDIN)
Advocate

(8)

PART-IV

GENERAL

1. State of health :-

2. Integrity :-
(Please see Note below the instruction)

3. General Assessment :-

(Please give an overall assessment of the officer with reference to his/her strength and shortcomings and also by drawing attention to the qualities if any not covered by the entries above. If the officer reported upon is an Accounts Officer/Audit Officer, please state special characteristics and/or any abilities deserving appointment as Welfare Officer and/or promotion to IA & AS)
Specific mention about the quality of LAR stating whether it contains matter for Draft Para and Value for Money comments must be made.

4. Grading :-

(Outstanding/Vary Good/Good/Average/Below Average)

An officer should not be graded outstanding unless exceptional quality and performance have been noticed; grounds for giving such a grading should be clearly brought out and the grading be consistent with and conform to the assessment made in Part - III)

Signature :

Name :-

(in BLOCK letters)

Place :

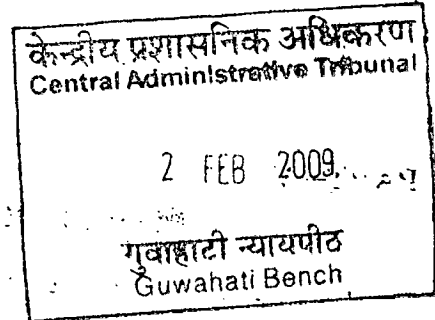
Date :-

Designation :-

(During the period of report)

Certified to be true copy

(Signature)
(JAHIRUDDIN)
Advocate



(9)

PART-V

REMARKS OF THE REVIEWING OFFICER

1. Length of service under the Reviewing Officer :-
2. Are you satisfied that the Reporting Officer has made his/her report with due care and attention and after taking into account all the relevant material ?
3. Do you agree with the assessment of the Officer given by Reporting Officer ? (In case of disagreement please specify the reasons)
Is there anything you wish to modify or add ?
4. If the official reported upon is a member of a Scheduled Caste/ Tribe, please indicate specifically whether the attitude of the Reporting Officer in assessing the performance of the SC/ST Official has been fair and just.
5. General remarks with specific comments about the meritorious work of the official including the grading.
6. Has the Official any special characteristics, and/or any abilities which would justify his/her selection for special assignment or/out of turn promotion ? If so, specify.

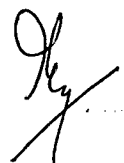
Signature of the Reviewing Officer

Name :-
(In BLOCK letters)

Designation :
(During the period of report)

Place :
Date :

Certified to be true copy


(JAHIRUDDIN)
Advocate

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

2 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

(10)

INSTRUCTIONS

1. The Confidential Report is an important document. It provides the basic vital inputs for assessing the performance of an officer and for his/her further advancement in his/her career. The officer reported upon, the Reporting Officer and the Reviewing Officer should therefore, undertake the duty of filling out the form with a high sense of responsibility.
2. Performance appraisal through Confidential Reports should be used as a tool for human resource development. Reporting Officers should realise that the objectives is to develop an officer so that he/she realises his/her true potential. It is not meant to be fault finding process but a development one. The reporting Officer and the Reviewing Officer should not shy away from reporting shortcomings in performance, attitudes or overall personality of the Officer reported upon.
3. The columns should be filled with due care and attention and after devoting adequate time. Any attempt to fill report in a casual or superficial manner will be easily discernible to the higher authorities.
4. If the Reviewing Officer is satisfied that the Reporting Officer had made the report without due care and attention he/she shall record a remark to that effect in item I of the part-IV. The competent authority shall enter the remarks in the confidential Roll of the Reporting Authority.
5. Every answer shall be given in a narrative form. The space provided indicates the desired length of the answer. Words and phrases should be chosen carefully and should accurately reflect the intention of the Officer recording the answer, please use unambiguous and simple language. Please do not use omnibus expressions like outstanding, very good, good, average, below average, while giving your comments against any of the attributes.
6. The Reporting Officer shall, in the beginning of the year set quantitative/physical 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 Officer reported upon and the Reporting Officer. The Targets/Goals shall be set at the commencement of the Reporting year, i.e. January in the case of All India Service Officers. In the case of an officer taking 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 area of the work and any special features that may specific to the nature or the area of the officer to be reported upon.
8. Although performance appraisal is a year-end exercise, in order that it may be a tool for human resource development, the Reporting officer should meet during the course of the year at regular interval review the performance and take necessary corrective steps.
9. It should be the endeavor of each appraiser to present the truest possible picture of, the appraisee in regard to his/her performance, conduct, behaviour and potential.

Certified to be true copy

(JAFARUDDIN)
Advocate

(11)

10. Assessment should be confined to the appraisee's performance during the period of report only.
11. Some posts of the same rank may be more exacting than others. The degree of stress and strain in any post may also vary from time to time. These facts should be borne in mind during appraisal and should be commented upon appropriately.
12. Aspects on which an appraisee is to be evaluated on different attributes are delineated below each column. The appraiser should deal with these and other aspects relevant to the attributes.

NOTE

The following procedure should be followed in filling up the item relating to Integrity :-

- i) If the officer's integrity is beyond doubt, it may be so stated.
- ii) If there is any doubt or suspicion, the item should be left blank and action taken as under :-
 - (a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report that the next superior officer who will ensure that the follow up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he has not watched the officer's work for sufficient time to form a definite judgement or that he has heard nothing against the officer, as the case may be.
 - (b) If, as a result of the follow up action the doubts or suspicions are cleared the officer's integrity should be certified and an entry made accordingly in the C. R.
 - (c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.
 - (d) If as a result of the follow up action the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period and thereafter action taken as indicated at (b) and (c) ABOVE.



Certified to be true copy

[Signature]
(JAHIRUDDIN)
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. NO. 84 of 2008.

Shri Ashim Kumar Dey

-VS-

C.A.A.G.I. & Ors.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

2 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

SYNOPSIS

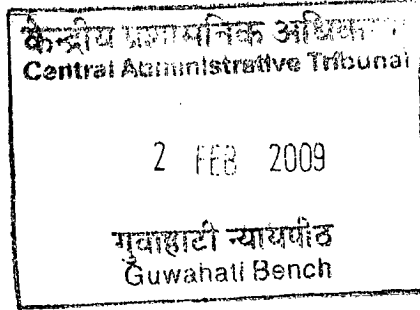
The applicant has been serving as Section Officer in the Office of the Accountant General (A&E), Nagaland, Kohima. The Respondent No.2 by a Memorandum NO.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 communicated the adverse remarks that have appeared in the Annual Confidential Report for the periods from 8.9.2006 to 31.3.2007 and 1.4.2007 to 10.8.2007 to the applicant. The applicant submitted an appeal against the adverse remarks vide his letter dated 27.9.2007 to the Respondent No.2 for review and thereafter he submitted a reminder vide his letter dated 4.12.2007. The Respondent No.2 has not yet disposed of the appeal and kept it pending. Hence, this application.

Certified to be true copy

(JAHIRUDDIN)

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.



O.A. NO. 84/ 2008

Shri Ashim Kumar Dey

-VS-

C.A.A.G.O.I. & Ors.

I N D E X

Sl. No.	Contents	Page No.
1.	Original Application	1-10
2.	Verification	11
3.	Annexure-A1	12-13
4.	Annexure-A2 Series	14
5.	Annexure-A3 Series	15
6.	Annexure-A4	16-17
7.	Annexure-A5	18

Certified to be true copy

(JASHIRUDDIN)
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. No. 84/....., 2008.

Shri Ashim Kumar Dey,

Son of Shri Ajit Kumar Dey,

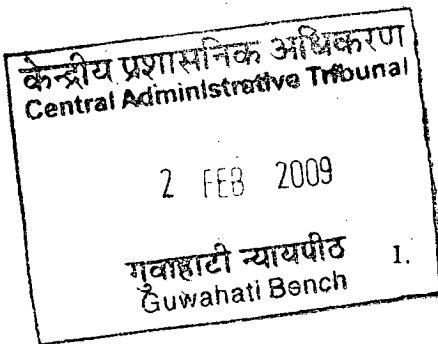
Section Officer,

Office of the Accountant General (A&E),

Nagaland, Kohima.

.....APPLICANT

- VERSUS-



**The Comptroller and Auditor General of
India, 10 Bahadur Shah Zafar Marg,
New Delhi- 110002.**

2. **The Accountant General (A&E), Nagaland,
Kohima. P.O. Kohima- 797001, Nagaland.**
3. **Shri Arindam Kumar Das,
Senior Accounts Officer
(Treasury Misc. Section),
Office of the Accountant General (A&E),
Nagaland, Kohima.
P.O. Kohima- 797001.**
4. **Shri R.M. Dasgupta,
Accounts Officer (Work Misc. Section),
Office of the Accountant General (A&E),
Nagaland, Kohima.
P.O. Kohima- 797001.**

.....RESPONDENTS

DETAILS OF APPLICATION:

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

The application is made against the Memorandum bearing No.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 issued under the signature of Shri

Certified to be true copy
9/6
(JANTRUDDH)
Advocate

A.N. Sarkar, Accountant General (A&E), Nagaland, Kohima communicating the adverse remarks in the Annual Confidential Report to the applicant.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation:

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

4. Facts of the case:

4.1. That the applicant is a citizen of India and a permanent resident of Harulangpher Last Colony, Lumding under Nagaon District in the State of Assam and therefore he is entitled to protection of all the rights and privileges guaranteed under the Constitution of India and all other laws of the land in force.


4.2. That the applicant begs to state that he was initially appointed as Clerk-cum-Typist on 13.3.1990 in the Office of the Accountant General, Nagaland, Kohima and thereafter he was promoted to the posts of Accountant on 26.5.1993, Senior Accountant on 26.5.1996 and presently he has been serving as a Section Officer in the said Office with effect from 8.9.2006 till date. The applicant has been looking after two Sections viz. Treasury Miscellaneous and Work Miscellaneous headed by two Officers. During the period of his service the applicant has all along been maintaining absolute integrity and devotion to duty and he has no blemish in his service carrier. Further the applicant's promotion to the three higher posts during a period of 18 years shows that he has an excellent service carrier.

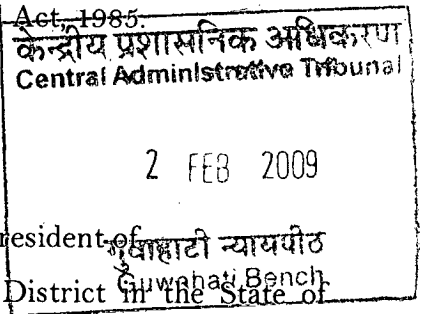
4.3.1. That the applicant begs to state that while he was serving as such the Respondent No.2 by a Memorandum bearing No.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007 had communicated to the applicant 11 (Eleven) adverse remarks that have appeared in Annual Confidential Report for the period from 8.9.2006 to 31.3.2007 and from 1.4.2007 to 10.8.2007.

Copies of Memorandum dated 16.8.2007 are annexed hereto and marked as Annexure-A1.

4.4. That as regards the adverse remarks for the period from 8.9.2006 to 31.3.2007 the applicant begs to state and submit that the adverse remarks for the said period were not communicated within the period of one month of their being

Certified to be true copy


(J. K. R. UDDIN) Advocate



recorded as prescribed vide Govt. of India Department of Personnel & Administrative Reforms, O.M. No.21011/1/77-Estt., dated the 30th January, 1978. The same was communicated to him only on 16th August, 2007 after lapse of more than four and half month as a result of which the applicant, being a new Section Officer, had got no opportunity to improve his deficiencies in work and conduct during the subsequent period in respect of the impugned adverse remarks or to make a representation right on time i.e. before writing the ACR for the subsequent period. One of the objects of recording of adverse remarks is to afford the employee an opportunity of improving himself so that during the next year/ period there may not be an occasion for the making of such remarks. But by such delay the very object of recording adverse remarks is defeated and the applicant is placed in a disadvantageous position to improve his deficiencies. As such the failure to observe the time frame in communicating the adverse remarks caused prejudice to the applicant and the communication is inconsistent in Government instructions.

4.4.1. That the applicant further begs to state and submit that he was never given any training, necessary advice, guidance, assistance to improve his deficiencies nor was any deficiency in his conduct and work pointed out to him for improvement on any occasion nor was any periodical inspection/ visit made to the sections under the charge of the applicant during the period under report by the Reporting Officer before writing the ACR as per Government instructions given vide C.S., O.M. No.51/5/72-Ests. (A) dated the 20th May, 1972.

4.4.2. That as regards the adverse remark under the Head 'Initiative' the applicant begs to state that the Reporting Officer is required to comment on "the capacity and resourcefulness of the Officer in handling normal as well as unforeseen situations; willingness to take additional responsibilities and new area of work and capacity to initiate cases at his level" only. But the Reporting Officer's answer "There is nothing of this sort has been noticed yet" is not definite and not the answer to those aspects. The applicant has taken additional responsibilities as stated under paragraph 4.2. above but the Reporting Officer has lost sight of this fact to mention. As such the adverse remarks 'There is nothing of this sort has been noticed yet' is vague and such remark shows the incapability and incompetency of the Reporting Officer to assess the performance of the applicant and to give his answer correctly against the said Head.

4.4.3. That as regards the adverse remarks under the Head 'Attitude of work' the applicant begs to state that the Reporting Officer is required to comment on "how far the Officer can be relied upon, his sense of responsibility, the extent to which he is dedicated and motivated, his willingness to learn and systematize his work". But the Reporting Officer's answer 'Officer's sense of responsibility as

Certified to be true copy

[Signature]

(JAHIRUDDIN)
Advocate

required for sectional duty requires further improvement/sincerity' is not definite and not supported by any factual statement/ instance. As such the said impugned adverse remark is vague and baseless.


- 4.4.4. That as regards the adverse remarks under the Head 'Ability to inspire and motivate' the applicant begs to state that the Reporting Officer is required to comment on "the capacity of the Officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence". But the Reporting Officer's answer 'Nothing of this has been noticed yet' is not definite and not supported by any factual statement/ instance. As such the said impugned adverse remark is vague, baseless and such remarks shows only the incapability and incompetency of the Reporting Officer to observe the conduct of the applicant to give his answer correctly against the said Head.

- 4.4.5. That as regards the adverse remarks under the Head 'Supervisory ability' the applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability relating to (1) Guidance in the performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the Reporting Officer's answer 'Officer's sense of responsibility and overall supervisory capacity requires further improvement/sincerity' is not confined to those three sub-heads. As such the said adverse remark is irrelevant.

- 4.5. That as regards the adverse remarks for the period from 1.4.2007 to 10.8.2007 the applicant begs to state that the adverse remarks under the three Heads viz. (1) Head No.3 'Initiative- There is nothing of this sort noticed yet, (2) Head No.4. Attitude of work - Officer's sense of responsibility as required for his sectional duty requires further improvement/sincerity and (3) Head No.5 Ability to inspire and motivate - Nothing of this sort has been noticed yet' are repetitions of the vague adverse remarks made against the same Head No.3, 4 and 5 for the previous period from 8.9.2006 to 31.3.2007 for which the applicant had got no opportunity of improving himself during the period under report or making representation against such remarks at the relevant point of time due to non communication of the adverse remarks on time in accordance with the Government instructions. Further such repetitions of vague adverse remarks are indicative of the fact that the ACRs for the period from 8.9.2006 to 31.3.1007 and from 1.4.2007 to 10.8.2007 were written at-one-go after 10.8.2007 only which is in contrary to the Government instructions.

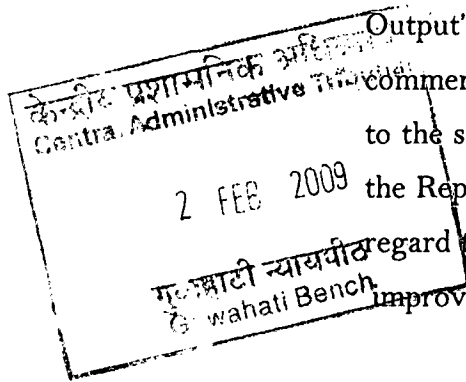
- 4.5.1. That as regards the adverse remarks under the Head 'Supervisory ability' the applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability relating to (1) Guidance in the performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the

Certified to be true copy


(JANTA WARDEN)
Advocate

Reporting Officer's answer as 'There is nothing to comment' is nothing but avoidance of Reporting Officer's obligation to comment specifically on these aspects and cryptic and not the answer to those sub-heads. On the other hand, such remark is indicative of the fact that the Reporting Officer had not made any periodical inspection/ visit to the Sections to observe the supervisory ability of the applicant during the period under report before recording such remarks.

4.5.2. That as regards the impugned adverse remarks under the Head 'Quality of Output' the applicant begs to state that the Reporting Officer is required to comment on "the Officer's personal and quality of performance having regard to the standard of work and programme objectives, and constraints, if any". But the Reporting Officer's answer "Officer's personal and quality of performance in regard to the standard of work and programme objectives requires sufficient improvement" is baseless and not supported by any factual statement/ instance.




4.5.3. That as regards the adverse remarks under the Head 'Analytical ability' the applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability relating to analysis of pros and cons; formulation of alternatives and their evaluation for solving problems, ability to indicate decision areas". But the Reporting Officer's answer "Officer's ability relating to analysis pros and cons, formulation of alternatives and their evaluation for solving problems requires further improvement" is baseless and arbitrary as the applicant was never given any training, necessary advice, guidance, assistance to improve his deficiencies nor was any deficiency in his conduct and work pointed out to him for improvement by the Reporting Officer on any occasion during the period under report nor assigned any target/goal to be achieved for the year.

4.5.4. That as regards the adverse remarks under the Head 'Communication Skill' the applicant begs to state that the Reporting Officer is required to comment on "the Officer's ability to communicate with brevity, clarity and accuracy both orally and in writing; ability to draft notes, briefs for meeting etc." The Reporting Officer while commending the 'Communication Skill' of the applicant very well in respect of these aspects, the subsequent remark in the tail as '.....but yet it also requires more sincerity' is unwarranted, unjust and unfair.

4.6. That the applicant begs to submit that the contents of adverse remarks for both the periods are baseless and vague as the applicant was never given any training, necessary advice, guidance and assistance for improvement of his deficiencies and performance nor was any deficiency on him pointed out for improvement nor the Reporting Officer made any periodical inspection/visit to the Sections to observe the conduct and work of the applicant nor assigned any target/goal to be achieved for the year as prescribed on the subject of writing of confidential remarks in the C.S., O.M. No. 51/5/72- Ests. (A) dated the 20th May, 1972 and

Certified to be true copy


(JAH RUDDIN)
Advocate

in the G.I., M.H.A., O.M. No. 51/4//64-Estt. (A), dated the 21st June, 1965 and also the instructions for filling the entries in the prescribed ACR Form itself.


- 4.7. That the applicant further begs to submit that during the periods under report, the applicant looked after two sections viz. Treasury Miscellaneous and Work Miscellaneous headed by two Officers viz. Senior Accounts Officer in-charge of Treasury Miscellaneous Section and Accounts Officer - in-charge of Work Miscellaneous Section and they/Reporting Officer had neither inspected/visited the Sections under the charge of the applicant nor given training, necessary advice, guidance, assistance to improve his deficiencies nor pointed out any deficiency in his performance for improvement nor made periodical inspection/visit to observe the performance of the applicant on any occasion during the periods under report before writing the adverse report; rather the Respondent No.2 had granted honorarium of Rs. 1250/- vide Bill No. G-82 dated 30.3.07 and Rs. 500/- vide Bill No. 578 dated 31.3.08 to the applicant for his good performance during the year 2006-07 and 2007-08 respectively. As such the grant of honorarium to the applicant is indicative of the fact that the Applicant's service during the periods under report is presumed to be satisfactory and such grant of honorarium amply proves that the adverse remarks recorded in that particular periods are prejudiced.

- 4.8. That the applicant further begs to submit that the adverse remarks are not based on specific instances / factual statement on the performance of the applicant reviewed and corrective steps taken by way of giving necessary guidance for improvement on the deficiencies of the applicant at regular interval which led to the adverse remarks so as to enable the applicant to make an effective representation and / or to improve his work and conduct and they are inconsistent in Government instructions given in the said Memo dated 20th May, 1972.

- 4.9. That the applicant further begs to submit that the adverse remarks are Communicated for guidance. But the last paragraph of the Memo. forwarding the adverse remarks is cryptically coached to mean a 'Warning' to the applicant which amounts to colorable exercise of powers by the Respondent No.2 and inconsistent in Government instructions given in the Ministry of Home Affairs Office memorandum No.51/7/68-Estt. (A), dated the 19th September, 1969 and D.P. & A.R., O.M. No. 51/3/74-Estts. (A), dated the 22nd May, 1975.

The Government Memos relied upon elsewhere contained in the 'Swamy's Complete Manual on Establishment and Administration'.

Considered to be true copy


(J. H. RUDDIN)
Advocate

The copies of the relevant portion are annexed hereto and marked as Annexure- A2 and the

Photostat copies of the ACR form are annexed hereto and marked as Annexure- A3.

5. Ground for relief with legal provision:


5.1. The impugned adverse remarks for the period from 8.9.2006 to 31.3.2007 under Part-III B of the ACR are **invalid** -

- (i) as the communication of the same does not adhere to the time frame laid down for the steps about such remarks and is violative of principles of natural justice and the failure to observe the time frame in communicating the adverse remarks on time caused prejudice to the applicant,
- (ii) as the contents of the adverse remarks for the period under report are vague answers to the Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR,
- (iii) as the contents of the adverse remarks are not in accordance with the Government instructions on the subject of writing of confidential remarks,
- (iv) as the grant of honorarium to the applicant for the year 2006-07 for good performance negatives the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the period under report are prejudiced.
- (v) as the time-limit for disposal of representation submitted against adverse remarks was not adhered to for the steps in accordance with the instructions and the non-disposal of the representation and keeping it pending disposal beyond the prescribed period renders the adverse remarks inoperative.

5.2. The impugned adverse remarks under the Head No.3, 4 and 5 for the period from 1.4.2007 to 10.8.2007 of the ACR are **invalid** as the delayed communicated repeated adverse remarks for the period from 8.9.2006 to 31.3.2007 vitiated the adverse remarks recorded for the subsequent period from 1.4.2007 to 10.8.2007 and not sustainable in law.

5.2.1. The impugned adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as their contents are vague answers to the Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR and they are not in accordance with the instructions on the subject of writing confidential remarks.

Certified to be true copy


(J. K. RUDRA)
Advocate

5.2.2. The adverse remarks for the period from 1.4.2007 to 10.8.2007 are **invalid** as the grant of honorarium to the applicant for his satisfactory performance for the year 2007-08 has negative the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the periods under report are prejudiced.

5.2.3. The adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as the time-limit for disposal of representation submitted against the adverse remarks was not adhered to for the steps in accordance with the instructions and the non disposal of the representation and keeping it pending disposal beyond the prescribed period renders the adverse remarks inoperative.

5.3. It is the established proposition of law that the writing of the confidential remarks, communication of adverse remarks and disposal of representation etc. should be in accordance with the Government instructions and laid down procedure. In the instant case, the respondent authorities had not complied with the instructions and procedure.

5.4. The Gujarat High Court in the case of B.R. Kulkarni (Dr.) Vs Government of Gujarat 1978 (2) SLR 682 (Guj) per P.D. Desai observed that uncommunicated adverse remarks are of "no avail and cannot be relied upon for any purpose to the prejudice of the petitioner" and when they "form the sole or substantial basis of adverse remarks in confidential reports for subsequent period, the confidential reports for the subsequent period would also be vitiated".

5.5. The Delhi High Court also, echoing in similar vein, in the case of Gita Ram Gupta Vs. Union of India 1979 SLJ 227 laid down propositions on the uncommunicated or delayed communicated adverse remarks and observed that adverse remarks stand expunged, if not communicated, and in the event of adverse remarks not communicated in time, it bears no effect.

5.6. The Supreme Court of India in the case of Sukhdev vs. Commissioner, Amravati Division and another, 1964 (4) Supreme 758 = 1996 (5) SCC 103 = 1996 (5) JT 477 = 1996 (2) UJ (SC) 153 = 1996 SCC (L&S) 1141 = 1996 (2) SLJ 3 = 1996 (4) SLR 8 (SC) = 1996 (73) Fac. LR 1644 on the question of making vague remarks observed that when an officer makes the remarks, he must eschew of making vague remarks causing jeopardy to the service of subordinate officer. He must bestow careful attention to collect correct and truthful information and give necessary particular when he seeks to make adverse remarks against the subordinate official whose career prospect and service was in jeopardy. It would be salutary that the Controlling officer before writing adverse remarks would give prior sufficient opportunity in

Certified to be true copy

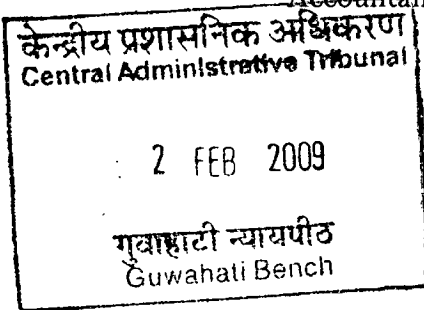
(SARUBEN)
Advocate

writing by informing him of the deficiency he noticed for improvement.

- 5.7. In the instant case, no such steps were taken by the Reporting Officer during the periods under report before writing the adverse remarks nor was any deficiency pointed out to the applicant on any occasion for improvement.
- 5.8. In the facts and circumstances stated above, the impugned adverse remarks for the periods under report are inconsistent in Government instructions and not sustainable in law as being vague and invalid and are liable to be held to be invalid and set aside and quashed by this Hon'ble Tribunal.

6. Details of the remedies exhausted:

- 6.1. The applicant declares that he has availed of all the remedies available to him under the relevant service rules and he has no other alternative and efficacious remedy available to him except by way of this instant application.
- 6.2. The applicant submitted appeal against the adverse remarks vide letter dated 27.9.2007 to the Accountant General, Nagaland, Kohima for review but no reply is received.
- 6.3. The applicant further submitted a reminder vide letter dated 4.12.2007 to the Accountant General (A&E), Nagaland, Kohima but no reply is received.



Copies of the letter dated 27.9.2007 and 4.12.2007 are annexed hereto and marked as Annexure-A4, and Annexure-A5 respectively.

7. Matters not previously filed or pending with any other court:

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter, in respect of which this application has been made, before any court or any other authority or any other bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Relief sought:

In view of the facts mentioned in para 6 above the applicant prays for the following relief(s):-

- 8.1. The Memorandum NO.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007

Certified to be true copy

(S. A. M. L. D. D. D.)
Advocate

issued under the signature of Shri A.N. Sarkar, Accountant General (A&E), Nagaland, Kohima communicating the impugned adverse remarks in the Annual Confidential Report to the applicant be set aside and quashed.

- 8.2. To pass order or orders directing the authorities to expunge the impugned adverse remarks and/or pass such order or orders as the Hon'ble Tribunal may deem fit and proper.

9. Interim order, if any prayed for:

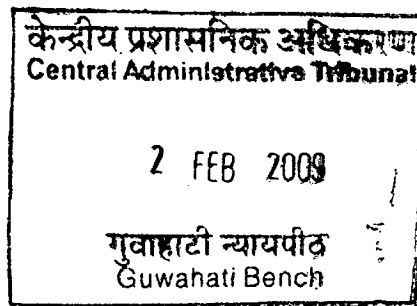
Pending final decision on the application, the applicant seeks the following interim relief:-

- 9.1. To stay/suspend the operation of the impugned adverse remarks made for the period from 8.9.2006 to 31.3.2007 and for the period from 1.4.2007 to 10.8.2007 in the Annual Confidential Report.

- 9.2. To pass any other order or orders as the Hon'ble Tribunal may deem fit and proper.

10. Particulars of Postal Order filed in respect of the application fee.

- (1) IPO NO.
- (2) Date of issue:
- (3) Issued from:
- (4) Amount:
- (5) Payable at:



11. List of enclosures:

1. Memorandum NO.DAG (A&E)/CRACR/2006-07/176 dated 16.8.2007. - ANNEXURE- A1.
2. Swamy's Complete Manual on Establishment and Administration For Central Government Officers. (Photostat copies) -ANNEXURE- A2.
3. ACR Form. - ANNEXURE- A3.
4. Letter dated 27.9.2007. - ANNEXURE- A4.
5. Letter dated 4.12.2007. - ANNEXURE- A5.

12. This application is filed bonafide and in the interest of justice through Advocate.

Certified to be true copy

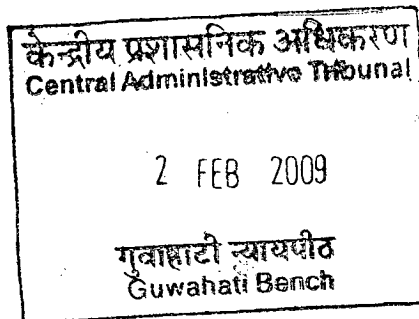
(Signature)
(SARASWATI)
Advocate

.....Verification

VERIFICATION

I, Shri Ashim Kumar Dey son of Shri Ajit Kumar Dey, age about 41 years working as Section Officer in the Office of the Accountant General (A&E), Nagaland, Kohima, resident of Harulangpher Last Colony, Lumding, Dist. Nagaon, Assam do hereby verify that the contents of paragraphs 1, 4, 6, 7, 11 and 12 are true to my personal knowledge and paragraphs to 2, 3, 5, 8, 9 and 10 believed to be true on legal advice and that I have not suppressed any material fact.

I signed this verification on this... 8th... day of May, 2008 at Guwahati.




(ASHIM KUMAR DEY)

Signature of applicant

Date: 8.5.2008.

Place: Guwahati.

Certified to be true copy


(ZAHAR UDDIN)
Advocate

CONFIDENTIALOFFICE OF THE SENIOR DEPUTY ACCOUNTANT GENERAL (A&E)
NAGALAND-KOHIMA

No.DAG(A&E)/CRACR/2006-07/ 176.

Dated: -16/8/2007.

MEMORANDUM

The following adverse remarks have appeared in Annual Confidential Report of Shri Ashim K. Dey, S.O. for the period 8/9/06 to 31/3/2007 and 1/4/2007 to 10/8/2007.


Period from 8/9/2007 to 31/3/2007

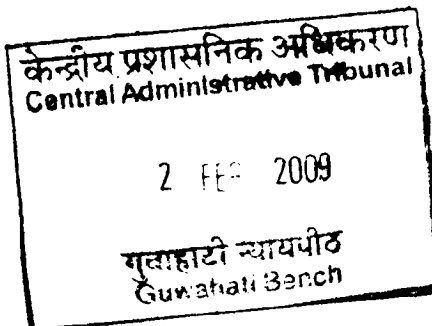
PART-III B	Comments
Item No.3. (Initiative) at page no 6	There is nothing of this sort has been noticed yet.
Item No.4 (Attitude of work), at page no.6	Officer's sense of responsibility as required for sectional duty requires further improvement/sincerity.
Item No.5 (Ability to inspire and motivate) At page no.6	Nothing of this sort has been noticed yet
Item No.6 (Supervisory Ability), at page No.6	Officer's overall supervisory capacity requires further observation.

Period from 1/4/2007 to 10/8/2007

PART-III A	Comments
Item No. 2. (Quality of Output), At page No.5	Officer's personal and quality of performance in regard to the standard of work and programme objectives requires sufficient improvement.
PART-III-B	
Item No. 1 (Analytical ability), At page no. 5	Officer's ability relating to analysis pros and cons, formulation of alternatives and their evaluation for solving problems requires further improvement.
Item No.2 (Communication Skill) At page No.5	Though officer is capable to communicate with brevity clarity and accurately both orally and in writing, able to draft notes, briefs but yet it also requires more sincerity.
Item No. 3 (Initiative) At page No. 6	There is nothing of this sort noticed yet.
Item No. 4 (Attitude of work), At page no. 6	Officer's sense of responsibility as required for his sectional duty requires further improvement/sincerity.


Certified to be true copy


(JANARUDIN)
Advocate



Item No.5 (Ability to inspire and motivate) At page no. 6	Nothing of this sort has been noticed yet.
Item No.6 (Supervisory Ability) At page No. 6	There is nothing to comment.


The above remarks may kindly be noted and immediate action to rectify the defects may be taken to give a better account of the officer.

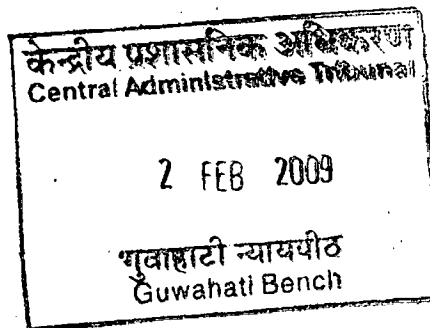

A.N. SARKAR
Accountant General (A&E)

Copy to: -

1. Ashim Kr. Dey, S.O.

Certified to be true copy


(JAMIR UDDIN)
Advocate



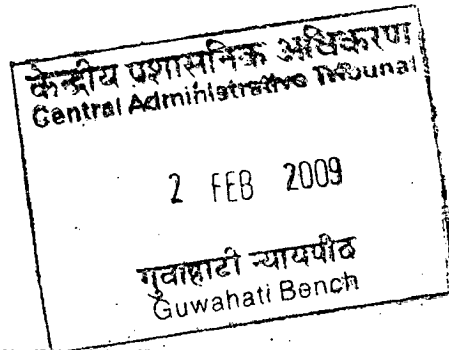


OFFICE OF THE
SENIOR DEPUTY ACCOUNTANT GENERAL (A&E)
NAGALAND :: KOHIMA

CONFIDENTIAL REPORT


FOR

SUPERVISORS
SECTION OFFICERS
ASSISTANT ACCOUNTS OFFICERS
ACCOUNTS OFFICERS
SENIOR ACCOUNTS OFFICERS



Name of the official
(in CAPITAL letters)
Designation.....
Report for the period from..... to.....

Certified to be true copy


(SAHARUDDIN)
Advocate

(2)

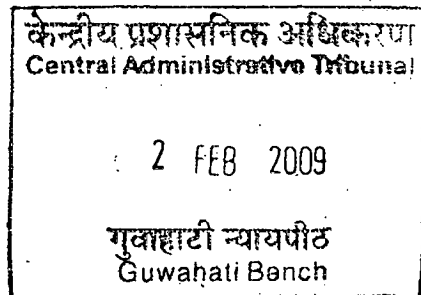
CONFIDENTIAL REPORT FOR
Supervisors/Section Officers/Asstt. Accounts Officers/
Accounts Officers/Sr. Accounts Officers

Report for the period from to

PART—I**PERSONAL DATA**

(To be filled by the Administrative Section concerned of the office)

1. Name of the officer :
(in CAPITAL letters)
2. Designation :
3. Whether the officer belongs :
to SC/ST ?
4. Date of birth :
5. Educational qualifications :
i/c professional and technical
qualifications
6. Departmental Examination passed :
i.e. S.O.G.E. (Civil, Commercial,
Railways, Revenue Audit etc.)
7. Date of continuous appointment :
to the present grade.
8. Present post and date of :
appointment thereto
9. Period of absence from duty (on :
leave, training etc.) during the
year. If he was undergone
training, please specify)

**Certified to be true copy**

(Signature)
(JATRAJON)
Advocate

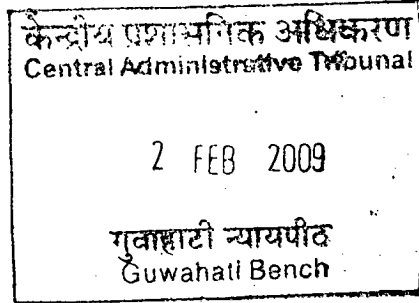
(3)

PART—II

(to be filled in by the Officer Reported upon)

(Please read carefully the instructions given at the end of the form before filling the entries)

1. Brief description of the duties.




2 (A). Please specify targets/objectives goals (in quantitative or other terms) of work you set for yourself or that were set for you, eight to ten items of work in the order of priority and your achievement against each target.

Targets/Objectives/Goals

Achievements

Certified to be true copy


(JAHIRUDDIN)
Advocate

45
- 15- (3)

A3 (18)

(4)

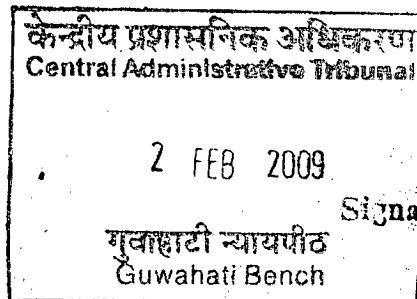
2- (B) If you are a Section Officer or Assistant Accounts Officer, please state briefly, the target set and the quantum of work done in regard to recording, indexing and weeding out of files, maintenance of Guard files, Sectional Note book and other registers, furnishing of O & M and other returns etc.

3. (A) Please state briefly the shortfalls with reference to the targets/objectives/goals referred to in column-3 Please specify constraints, if any, in achieving the targets.

4. (B) Please also indicate items in which there have been significantly, higher achievements and your contribution thereto.

4. (C) Any significant additional achievements apart from those mentioned to in column 3.

5. (D) Training programmes attended,



Date

Signature

PART - III

(To be filled by the Reporting Officer):

(Please read carefully the instructions given at the end of the form before filling the entries).

A. NATURE AND QUALITY OF WORK.

1. Please comment on Part - II as filled out by the Officer and specifically state whether you agree with the answer relating to targets and objectives, achievements and shortfalls. Also specify constraints, if any in achieving the objectives. In case you disagree with any of the remarks contained in Part-II, the reasons thereof may be given.

Certified to be true copy

(JAHIRUDDIN)
Advocate

(5)

2. QUALITY OF OUTPUT :-

- (a) Please comment on the officer's personal and quality of performance having regard to the standard of work and programme objectives, and constraints, if any.

3. KNOWLEDGE OF SPHERE OF WORK :-

Please comment specifically on each of these :- Level of knowledge of functions, rules and regulations, related instructions and their application in the field of work assigned to the officer.

B. ATTRIBUTES

1. Analytical ability :-

Please comment on the officer's ability relating to analysis of pros and cons; formulation of alternatives and their evaluation for solving problems; ability to indicate decision areas.

2. Communication Skill :-

Please comment on the officer's ability to communicate with brevity, clarity and accuracy both orally and in writing; ability to draft notes, briefs for meeting etc.

Certified to be true copy

[Signature]
(JAGADISH N)
Advocate

3. Initiative :-

Please comment on the capacity and resourcefulness of the officer in handling normal as well as unforeseen situations; willingness to take additional responsibilities and new area of work and capacity to initiate cases at his level.

4. Attitude of work :-

Please comment how far the officer can be relied upon, his sense of responsibility, the extent to which he/she is dedicated and motivated, his/her willingness to learn and systematize his/her work.

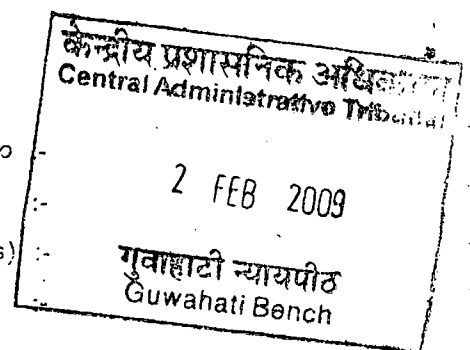
5. Ability to inspire and motivate :-

Please comment on the capacity of the Officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence.

6. Supervisory Ability :-

Please comment on the Officer's ability relating to

- (1) Guidance in the performance of tasks
- (2) Review of performance (monitoring of key areas)
- (3) Enforcing discipline



7. Inter-personal relations and team work :-

Please comment on the quality relationship with superiors, colleagues and subordinates and on the ability to appreciate others point of view and take advance in the proper spirit. Please also comment on his/her capacity to work as a members of a team and to promote team spirit and optimise the output of the team.

Certified to be true copy

(Signature)
(JAGTRUDDIN)
Advocate

(7)

8. Attitude towards SC/ST/Weaker Sections Society :-

Please comment on his/her understanding of the problems of SC/ST/Weaker Sections and Willingness to deal with them.

9. Attitude and Potential :-

Please indicate three fields of work from amongst the following for possible specification and career development of the officer. Please mark 1, 2, 3 in three appropriate boxes.

1. Receipt Audit
2. Commercial Audit
3. Autonomous Bodies Audit
4. Work Audit
5. Civil Audit
6. Other Audit
7. Personal Administration
Office Management
8. Accounts Function
9. Entitlement Function
10. Training
11. Systems, O&M Computerisation
12. Any other fields (Please specify)

Certified to be true copy

J. H. R. Uddin
(J. H. R. UDDIN)
Advocate

-15- (7)

(3)

PART-IV

GENERAL

1. State of health :-

2. Integrity :-

(Please see Note below the instruction)

3. General Assessment :-

(Please give an overall assessment of the officer with reference to his/her strength and shortcomings and also by drawing attention to the qualities if any not covered by the entries above. If the officer reported upon is an Accounts Officer/Audit Officer, please state special characteristics and/or any abilities deserving appointment as Welfare Officer and/or promotion to IA & AS)
Specific mention about the quality of LAR stating whether it contains matter for Draft Para and Value for Money comments must be made.

4. Grading :-

(Outstanding/Vary Good/Good/Average/Below Average)

An officer should not be graded outstanding unless exceptional quality and performance have been noticed; grounds for giving such a grading should be clearly brought out and the grading be consistent with and conform to the assessment made in Part - III)

Signature :

Name :-

in BLOCK letters

Place :

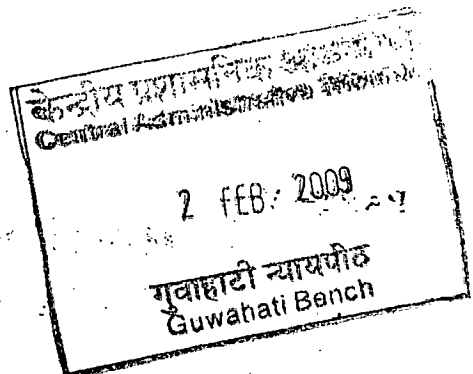
Date :-

Designation :-

(During the period of report)

Certified to be true copy

(Signature)
(FARUDDIN)
Advocate



(9)

PART-V

REMARKS OF THE REVIEWING OFFICER

- 1: Length of service under the Reviewing Officer :-
2. Are you satisfied that the Reporting Officer has made his/her report with due care and attention and after taking into account all the relevant material ?
3. Do you agree with the assessment of the Officer given by Reporting Officer ? (In case of disagreement please specify the reasons)
Is there anything you wish to modify or add ?
4. If the official reported upon is a member of a Scheduled Caste/ Tribe, please indicate specifically whether the attitude of the Reporting Officer in assessing the performance of the SC/ST Official has been fair and just.
5. General remarks with specific comments about the meritorious work of the official including the grading.
6. Has the Official any special characteristics, and/or any abilities which would justify his/her selection for special assignment or/out of turn promotion ? If so, specify.

Signature of the Reviewing Officer

Name :-
(In BLOCK letters)

Designation :
(During the period of report)

Place :
Date :

Certified to be true copy

[Signature]
(S. H. RUDIN)
Advocate

केन्द्रीय प्रशासनिक आयोग
Central Administrative Tribunal

2 FEB 2009


गुवाहाटी न्यायाधीश
Guwahati Bench

(10)

INSTRUCTIONS

1. The Confidential Report is an important document. It provides the basic vital inputs for assessing the performance of an officer and for his/her further advancement in his/her career. The officer reported upon, the Reporting Officer and the Reviewing Officer should therefore, undertake the duty of filling out the form with a high sense of responsibility.
2. Performance appraisal through Confidential Reports should be used as a tool for human resource development. Reporting Officers should realise that the objectives is to develop an officer so that he/she realises his/her true potential. It is not meant to be a fault finding process but a development one. The reporting Officer and the Reviewing Officer should not shy away from reporting shortcomings in performance, attitudes or overall personality of the Officer reported upon.
3. The columns should be filled with due care and attention and after devoting adequate time. Any attempt to fill report in a casual or superficial manner will be easily discernible to the higher authorities.
4. If the Reviewing Officer is satisfied that the Reporting Officer had made the report without due care and attention he/she shall record a remark to that effect in item I of the part-IV. The competent authority shall enter the remarks in the confidential Roll of the Reporting Authority.
5. Every answer shall be given in a narrative form. The space provided indicates the desired length of the answer. Words and phrases should be chosen carefully and should accurately reflect the intention of the Officer recording the answer, please use unambiguous and simple language. Please do not use omnibus expressions like outstanding, very good, good, average, below average, while giving your comments against any of the attributes.
6. The Reporting Officer shall, in the beginning of the year set quantitative/physical 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 Officer reported upon and the Reporting Officer. The Targets/Goals shall be set at the commencement of the Reporting year, i.e. January in the case of All India Service Officers. In the case of an officer taking 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 area of the work and any special features that may specific to the nature or the area of the officer to be reported upon.
8. Although performance appraisal is a year-end exercise, in order that it may be a tool for human resource development, the Reporting officer should meet during the course of the year at regular interval review the performance and take necessary corrective steps.
9. It should be the endeavor of each appraiser to present the truest possible picture of, the appraisee in regard to his/her performance, conduct, behaviour and potential.

Certified to be true copy


(JAH/RUBIN)
Advocate

(11)

10. Assessment should be confined to the appraisee's performance during the period of report only.
11. Some posts of the same rank may be more exacting than others. The degree of stress and strain in any post may also vary from time to time. These facts should be borne in mind during appraisal and should be commented upon appropriately.
12. Aspects on which an appraisee is to be evaluated on different attributes are delineated below each column. The appraiser should deal with these and other aspects relevant to the attributes.

NOTE

The following procedure should be followed in filling up the item relating to Integrity :-

- i) If the officer's integrity is beyond doubt, it may be so stated.
- ii) If there is any doubt or suspicion, the item should be left blank and action taken as under :-
 - (a) A separate secret note should be recorded and followed up. A copy of the note should also be sent together with the Confidential Report that the next superior officer who will ensure that the follow up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he has not watched the officer's work for sufficient time to form a definite judgement or that he has heard nothing against the officer, as the case may be.
 - (b) If, as a result of the follow up action the doubts or suspicions are cleared the officer's integrity should be certified and an entry made accordingly in the C. R.
 - (c) If the doubts or suspicions are confirmed, this fact should also be recorded and duly communicated to the officer concerned.
 - (d) If as a result of the follow up action the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period and thereafter action taken as indicated at (b) and (c) ABOVE.

●●●●●

Certified to be true copy

[Signature]
 (JAH RUDDIN)
 Advocate

53
-16-

ANNEXURE - A 4

A 3(26)

15/9

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

2 FEB 2009

गुवाहाटी न्यायपीठ
Guwahati Bench

The Accountant General
Nagaland Kohima.

Sub: Appeal for review of adverse remarks in Confidential Report.

Sir,

With due respect I would like to draw your kind notice on the subject cited above and to request your good self kindly to review the matter so that my future service career is not hampered.

Respected sir, I have been served a memorandum vide No. DAG(A&E) GRACR/2006-07/176 dtd 16.8.2007 about the adverse remarks noted in my C.R for the period from 8.9.2007 to 31.3.2007 and 1.4.2007 to 10.8.2007.


That sir, in this regard I would like to invite the reference of G.I..DP&AR. OM NO.23011/1/81 Estt.(A), dtd 5.6.1981 wherein it is clearly mentioned that 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 disfigure, it calls for some formal action such as the communication of 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 C.R 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 C.R 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.

That Sir, most humbly I would like to mention here that I was neither served any memo on my deficient performance in sectional works nor I was motivated by my Branch Officer to improve my deficiencies, if noticed any. However, adverse remarks have been note baselessly in my C.R for the above mentioned periods and thereby my bright Service career has been put in stake.

Respected sir, I have always exercised my maximum initiatives to develop my supervisory abilities through utmost sincerity by motivating my subordinate staffs by generating a team spirit amongst them which ultimately resulted in achieving the targets set by the office Administrations.

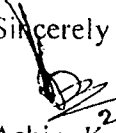
Recd
27/9/07
M.P.S. to A.G.

Certified to be true copy


(JAMIRUDDIN)
Advocate


In the light of above, I would fervently request your authority to review the adverse remarks in my Confidential Report for the above mentioned two periods.

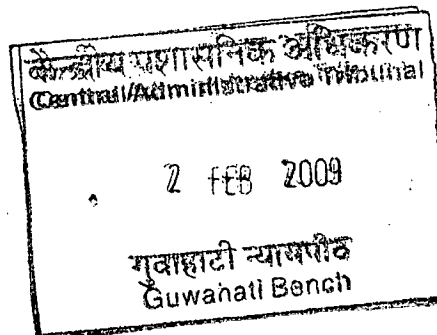
Sincerely Yours,


29/07/07
Ashim Kr. Dey,
Section Officer

T.M. 20.08.07

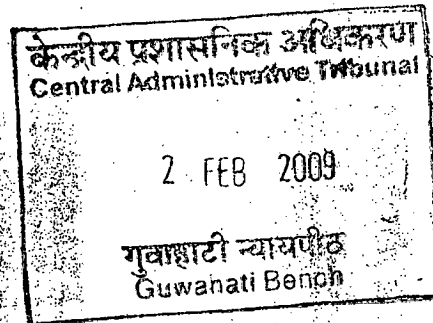
Certified to be true copy


(J. A. R. UDDIN)
Advocate



To

The Accountant General
Nagaland: Kohima.



Sub: Appeal to revoke adverse remarks noted in Confidential Report pertaining to two consecutive periods from 8.9.2006 to 31.3.2007 and 1.4.2007 to 10.08.2007.

Respected Sir,

I would like to refer my representation dated 27.09.2007 on the subject cited above and to state that till date I have not received any information from your kind authority whether the adverse remarks noted in my A.C.R for the above mentioned periods have already been revoked or not.

I, therefore, once again request your good self to look into the matter and revoke the same at the earliest; otherwise, there will be no option to me but to seek the help of legal court for justice.

Dated, 4th December 2007

Sincerely Yours

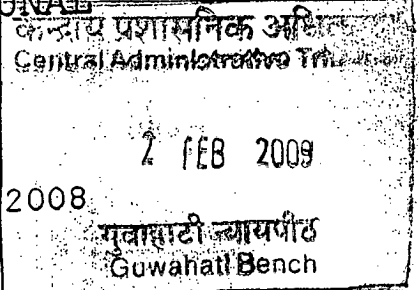
(Ashim Kr. Dey)
S.O, I.T.A Section

Certified to be true copy

(JAHIRUDDIN)
Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH



Original Application No. 84 of 2008

Date of Order: This, the 14th Day of May, 2008

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE SHRI KHUSHIRAM, ADMINISTRATIVE MEMBER

Shri Ashim Kumar Dey
Son of Shri Ajit Kumar Dey
Section Officer
Office of the Accountant General (A&E)
Nagaland, Kohima.

Applicant.

By Advocates S/Shri S.D.Choudhury, A.Munnaf & S.Haque.

- Versus -

1. The Comptroller and Auditor General of India
10 Bahadur Shah Zafar Marg
New Delhi-110 002.

2. The Accountant General (A&E), Nagaland
Kohima, P.O: Kohima-797 001
Nagaland.

3. Shri Arindam Kumar Das
Senior Accounts Officer
(Treasury Misc. Section)
Office of the Accountant General (A&E)
Nagaland, Kohima
P.O: Kohima - 797 001.

4. Shri R.M.Dasgupta
Accounts Officer (Work Misc. Section)
Nagaland, Kohima
P.O: Kohima - 797 001.

..... Respondents.

Mrs.Manjula Das, Sr.C.G.S.C.

Certified to be true copy

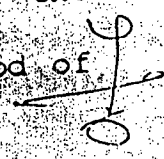
(Signature)
(FAHIRUDDIN)
Advocate

ORDER (ORAL)
14.05.2008


MANORANJAN MOHANTY (V.C.):

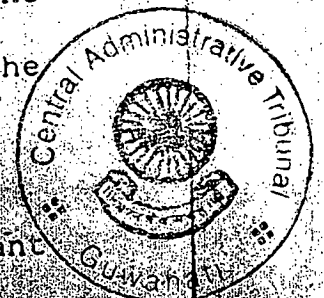
163
Heard Mr. S.D.Choudhury, learned counsel appearing for the Applicant, and Mrs. Manjula Das, learned Sr. Standing counsel for the Union of India; on whom, a copy of this Original Application has already been served, and also perused the materials placed on record.

2. The Applicant was communicated with adverse entries in his ACR under Annexure-A1 dated 16.08.2007. It appears that Applicant submitted a representation under Annexure-A4 dated 27.09.2007. It is stated that he had also submitted a reminder under Annexure-A5 dated 4/5.12.2007. Without hearing from the Respondents, the Applicant has approached this Tribunal with the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985.

3. Since the representation of the Applicant (directed against the adverse entries, communicated on 16.08.2007) is stated to be still pending with the Respondents, without entering into the merits of the matter, this Original Application is, hereby, disposed of, at the admission stage, with direction to the Respondents to consider the representation of the Applicant and pass a reasoned order within a period of 

Certified to be true copy


(JAYRUDIN)
Advocate



90 days from the date of receipt of a copy of this order.

4. Send copies of this order to the Respondents, along with copies of this Original Application, and the Respondents, while considering the representation of the Applicant, should take into consideration the grounds set forth in the present Original Application as part of the representation of the Applicant.

5. Send copies of this order to the Applicant and free copies of this order be supplied to the learned counsel appearing for both the parties.

Sd/-

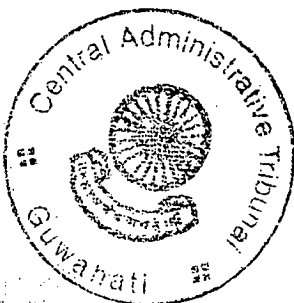
Manoranjan Mohanty

Vice Chairman

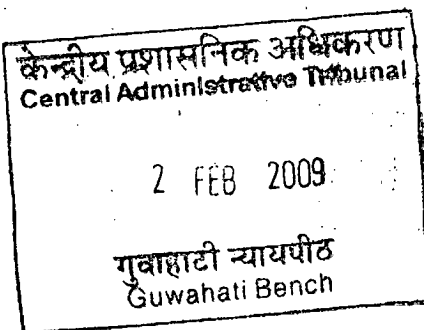
Sd/-

Khushiram

Member (A)



/bb/



TRUE COPY

प्रतिलिपि

अनुभाग अधिकारी

Section Officer (Judl)

Central Administrative Tribunal

गुवाहाटी न्यायपीठ

Guwahati Bench

गुवाहाटी/Guwahati-5

27/5/08

Certified to be true copy

(JAHIR UDDIN)
Advocate

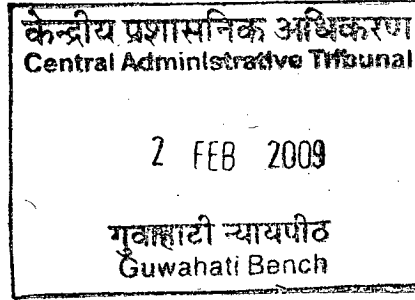
**OFFICE OF THE SR.DY.ACCOUNTANT GENERAL(A&E)
NAGALAND:KOHIMA**

Admn/A&E/CAT/AKD/2008-09/570

Dated:- 11/7/08

To

Shri Ashim Kumar Dey
Section Officer
O/o the Sr.Dy.Accountant General
Nagaland, Kohima



Subject:- Adverse remarks in Annual Confidential Report regarding.

Reference:- Original Application No. 84 of 2008 before the Central Administrative Tribunal, Guwahati Bench, Guwahati and Hon'ble Tribunal's order dated 14/05/08.

Dear Dey,

In response to your representation dated 27/09/07 followed by reminder of 04/12/07 in connection with the subject as cited above, I am to communicate that your case has since been considered at the appropriate level taking into consideration all the relevant notes/Memos etc.. However, in view of the remarks recorded by the Reporting Officer in your Annual Confidential Report for the periods from 8/9/06 to 31/3/07 and from 1/4/07 to 10/8/07 and subsequently the remarks recorded by the Reporting Officer in response to your representation, the Reviewing Officer did not find any reasonable ground to accept your representation.

Hence, the remark stands.

Accounts Officer(Admn)

Certified to be true copy

(JAHIRUDDIN)
Advocate

To

The Accountant General,
Nagaland, Kohima.

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

2 FEB 2009

SUB:

गुवाहाटी न्यायपीठ
Guwahati Bench
**ADVERSE REMARKS IN ANNUAL CONFIDENTIAL REPORTS-
REPRESENTATION THEREOF.**

REF:

- (1) Original Application NO.84 of 2008 filed before the Central Administrative Tribunal, Guwahati Bench, Guwahati and Hon'ble Tribunal's order dated 14.05.08.
- (2) Letter NO.Admn/A&E/CAT/AKD/2008-09/570 dated 11.7.08 from the Accounts Officer (Admn) addressed to Shri Ashim Kumar Dey.


Sir,


On the subject and reference cited, I have the honour to state that the reply communicated by the Accounts Officer (Admn) regarding consideration of the representation at the appropriate level is not in accordance with the orders passed by the Hon'ble Tribunal. The Hon'ble Tribunal in their order dated 14.05.08 passed under paragraph 3 directed the Respondents "to consider the representation of the Applicant and pass a reasoned order" and also gave further direction under paragraph 4 of the said order that "the Respondents, while considering the representation of the Applicant, should take into consideration the grounds set forth in the present Original Application as part of the representation of the Applicant". But the reply is not in accordance with the said directions. I am reiterating my grievances for your sympathetic consideration as hereunder:

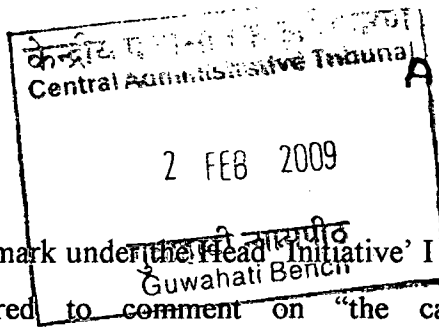
- (1) That as regards the adverse remarks for the period from 8.9.2006 to 31.3.2007 I beg to state that the adverse remarks for the said period were not communicated within the period of one month of their being recorded as prescribed vide Govt. of India Department of Personnel & Administrative Reforms, O.M. No.21011/1/77-Estt., dated the 30th January, 1978. The same was communicated to me only on 16th August, 2007 after lapse of more than four and half month as a result of which I, being a new Section Officer, had got no opportunity to improve my deficiencies in work and conduct during the subsequent period in respect of the impugned adverse remarks or to make a representation right on time i.e. before writing the ACR for the subsequent period. As such, the failure to observe the time frame in communicating the adverse remarks caused prejudice to me and the communication is inconsistent in Government instructions.

- (2) That I beg to state that I was never given any training, necessary advice, guidance, assistance to improve my deficiencies nor was any deficiency in my conduct and work pointed out to me for improvement on any occasion nor was any periodical inspection/ visit made to the sections under my charge during the period under report by the Reporting Officer before writing the ACR as per Government instructions given vide C.S., O.M. No.51/5/72-Ests. (A) dated the 20th May, 1972.

Certified to be true copy


(J. H. RUDRAN)
Advocate


P. S. um



(3) That as regards the adverse remark under the Head 'Initiative' I beg to state that the Reporting Officer is required to comment on "the capacity and resourcefulness of the Officer in handling normal as well as unforeseen situations; willingness to take additional responsibilities and new area of work and capacity to initiate cases at his level" only. But the Reporting Officer's answer "There is nothing of this sort has been noticed yet" is not definite and not the answer to those aspects. I had taken additional responsibilities of looking after two sections but the Reporting Officer has lost sight of this fact to mention. As such the adverse remarks 'There is nothing of this sort has been noticed yet' is vague and such remark shows the incapability and incompetency of the Reporting Officer to assess the performance of the Officer like me and to give his answer correctly against the said Head.

(4) That as regards the adverse remarks under the Head 'Attitude of work' the I beg to state that the Reporting Officer is required to comment on "how far the Officer can be relied upon, his sense of responsibility, the extent to which he is dedicated and motivated, his willingness to learn and systematize his work". But the Reporting Officer's answer 'Officer's sense of responsibility as required for sectional duty requires further improvement/sincerity' is not definite and not supported by any factual statement/instance. As such the said impugned adverse remark is vague and baseless.


(5) That as regards the adverse remarks under the Head 'Ability to inspire and motivate' I beg to state that the Reporting Officer is required to comment on "the capacity of the Officer to motivate, to obtain willing support by own conduct and capacity to inspire confidence". But the Reporting Officer's answer 'Nothing of this has been noticed yet' is not definite and not supported by any factual statement/instance. As such the said impugned adverse remark is vague, baseless and such remarks shows only the incapability and incompetency of the Reporting Officer to observe the conduct of the applicant to give his answer correctly against the said Head.

(6) That as regards the adverse remarks under the Head 'Supervisory ability' the I beg to state that the Reporting Officer is required to comment on "the Officer's ability relating to (1) Guidance in the performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the Reporting Officer's answer 'Officer's sense of responsibility and overall supervisory capacity requires further improvement/sincerity' is not confined to those three sub-heads. As such the said adverse remark is irrelevant.

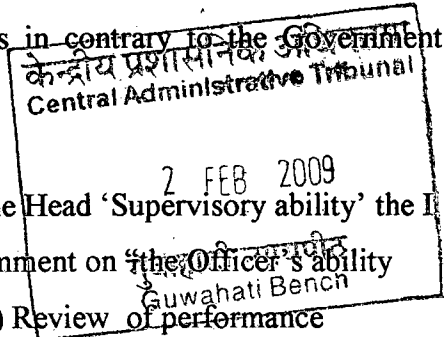
(7) That as regards the adverse remarks for the period from 1.4.2007 to 10.8.2007 I beg to state that the adverse remarks under the three Heads viz. (1) Head No.3 'Initiative- There is nothing of this sort noticed yet, (2) Head No.4. Attitude of work - Officer's sense of responsibility as required for his sectional duty requires further improvement/sincerity and (3) Head No.5 Ability to inspire and motivate - Nothing of

Ashim M. Dey

Certified to be true copy


(SAR/RUBIN)
Advocate

this sort has been noticed yet' are repetitions of the vague adverse remarks made against the same Head No.3, 4 and 5 for the previous period from 8.9.2006 to 31.3.2007 for which the I had got no opportunity of improving myself during the period under report or making representation against such remarks at the relevant point of time due to non communication of the adverse remarks on time in accordance with the Government instructions. Further such repetitions of vague adverse remarks are indicative of the fact that the ACRs for the period from 8.9.2006 to 31.3.1007 and from 1.4.2007 to 10.8.2007 were written at-one-go after 10.8.2007 only which is in contrary to the Government instructions.



(8) That as regards the adverse remarks under the Head 'Supervisory ability' the I beg to state that the Reporting Officer is required to comment on "the Officer's ability relating to (1) Guidance in the performance of tasks, (2) Review of performance (monitoring of key areas) and (3) Enforcing discipline". But the Reporting Officer's answer as 'There is nothing to comment' is nothing but avoidance of Reporting Officer's obligation to comment specifically on these aspects and cryptic and not the answer to those sub-heads. On the other hand, such remark is indicative of the fact that the Reporting Officer had not made any periodical inspection/ visit to the Sections to observe the supervisory my ability during the period under report before recording such remarks.

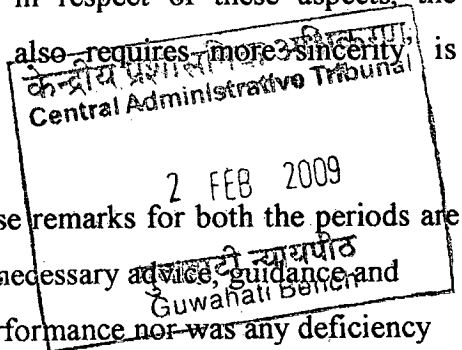
(9) That as regards the impugned adverse remarks under the Head 'Quality of Output' I beg to state that the Reporting Officer is required to comment on "the Officer's personal and quality of performance having regard to the standard of work and programme objectives, and constraints, if any". But the Reporting Officer's answer "Officer's personal and quality of performance in regard to the standard of work and programme objectives requires sufficient improvement" is baseless and not supported by any factual statement/ instance.

(10) That as regards the adverse remarks under the Head 'Analytical ability' the I beg to state that the Reporting Officer is required to comment on "the Officer's ability relating to analysis of pros and cons; formulation of alternatives and their evaluation for solving problems, ability to indicate decision areas". But the Reporting Officer's answer "Officer's ability relating to analysis pros and cons, formulation of alternatives and their evaluation for solving problems requires further improvement" is baseless and arbitrary as I was never given any training, necessary advice, guidance, assistance to improve my deficiencies nor was any deficiency in my conduct and work pointed out to me for improvement by the Reporting Officer on any occasion during the period under report nor assigned any target/goal to be achieved for the year.

[Signature]
(JAH/RUBBN)
Advocate

(11) That as regards the adverse remarks under the Head 'Communication Skill' I beg to state that the Reporting Officer is required to comment on "the Officer's ability to communicate with brevity, clarity and accuracy both orally and in writing; ability to draft

notes, briefs for meeting etc." The Reporting Officer while commending the 'Communication Skill' of the applicant very well in respect of these aspects, the subsequent remark in the tail as '.....but yet it also requires more sincerity' is unwarranted, unjust and unfair.



(12) That I beg to submit that the contents of adverse remarks for both the periods are baseless and vague as I was never given any training, necessary advice, guidance and assistance for improvement of my deficiencies and performance nor was any deficiency on me pointed out for improvement nor the Reporting Officer made any periodical inspection/visit to the Sections to observe the conduct and work of the applicant nor assigned any target/goal to be achieved for the year as prescribed on the subject of writing of confidential remarks in the C.S., O.M. No. 51/5/72- Ests. (A) dated the 20th May, 1972 and in the G.I., M.H.A., O.M. No. 51/4//64-Estt. (A), dated the 21st June, 1965 and also the instructions for filling the entries in the prescribed ACR Form itself.


(13) That I beg to submit that during the periods under report, I looked after two sections viz. Treasury Miscellaneous and Work Miscellaneous headed by two Officers viz. Senior Accounts Officer in-charge of Treasury Miscellaneous Section and Accounts Officer in-charge of Work Miscellaneous Section and they/Reporting Officer had neither inspected/visited the Sections under the charge of the applicant nor given training, necessary advice, guidance, assistance to improve his deficiencies nor pointed out any deficiency in my performance for improvement nor made periodical inspection/visit to observe the performance of the applicant on any occasion during the periods under report before writing the adverse report; rather the Authority had granted honorarium of Rs. 1250/- vide Bill No. G-82 dated 30.3.07 and Rs. 500/- vide Bill No. 578 dated 31.3.08 to me for my good performance during the year 2006-07 and 2007-08 respectively. As such the grant of honorarium to me is indicative of the fact that my service during the periods under report is presumed to be satisfactory and such grant of honorarium amply proves that the adverse remarks recorded in that particular periods are prejudiced.

(14) That I beg to submit that the adverse remarks are not based on specific instances/factual statement on my performance reviewed and corrective steps taken by way of giving necessary guidance for improvement on the deficiencies at regular interval which led to the adverse remarks so as to enable me to make an effective representation and/ or to improve my work and conduct and they are inconsistent in Government instructions given in the said Memo dated 20th May, 1972.

(15) That I beg to submit that the impugned adverse remarks for the period from 8.9.2006 to 31.3.2007 under Part-IIIB of the ACR are invalid

- (i) as the communication of the same does not adhere to the time frame laid down for the steps about such remarks and is

Certified to be true copy


(J. A. ROBINSON)
Advocate

violative of principles of natural justice and the failure to observe the time frame in communicating the adverse remarks on time caused prejudice to the applicant,

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal

- (ii) as the contents of the adverse remarks for the period under report are vague answers to the Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR,
- (iii) as the contents of the adverse remarks are not in accordance with the Government instructions on the subject of writing of confidential remarks,
- (iv) as the grant of honorarium to the applicant for the year 2006-07 for good performance negatives the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the period under report are prejudiced.
- (v) as the time-limit for disposal of representation submitted against adverse remarks was not adhered to for the steps in accordance with the instructions and the non-disposal of the representation and keeping it pending disposal beyond the prescribed period renders the adverse remarks inoperative.

2 FEB 2009

गुवाहाटी बेंच
Guwahati Bench

(16) That I beg to submit that the impugned adverse remarks under the Head No.3, 4 and 5 for the period from 1.4.2007 to 10.8.2007 of the ACR are **invalid** as the delayed communicated repeated adverse remarks for the period from 8.9.2006 to 31.3.2007 vitiated the adverse remarks recorded for the subsequent period from 1.4.2007 to 10.8.2007 and not sustainable in law.

(17) That I beg to submit that the impugned adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as their contents are vague answers to the Heads in the ACR and do not meet the desired requirements mentioned under each Head of the ACR and they are not in accordance with the instructions on the subject of writing confidential remarks.

Certified to be true copy (18) That I beg to submit that the adverse remarks for the period from 1.4.2007 to 10.8.2007 are **invalid** as the grant of honorarium to the applicant for his satisfactory performance for the year 2007-08 has negated the contents of adverse remarks and such grant of honorarium amply proves that the adverse remarks recorded for the periods under report are prejudiced.

(JAHIRUDDIN)
Advocate

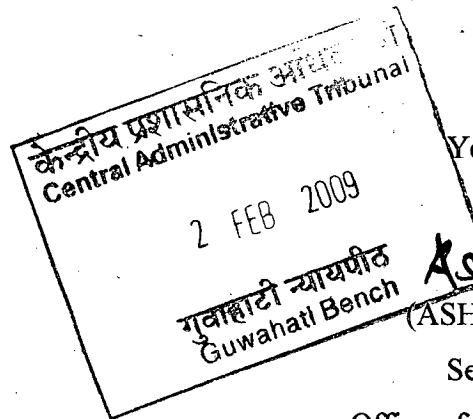
(19) That I beg to submit that the adverse remarks for the period from 1.4.2007 to 10.8.2007 are invalid as the time-limit for disposal of representation submitted against

6.

the adverse remarks was not adhered to for the steps in accordance with the instructions and the non disposal of the representation and keeping it pending disposal beyond the prescribed period renders the adverse remarks inoperative.

In view of the facts stated above, the reply given to me vide letter under reference is not acceptable to me and I earnestly request your benign authority kindly to reconsider my grievances as per direction of the Hon'ble Tribunal and set aside the impugned adverse remarks at an early date. I shall be highly grateful if action on this representation is taken within two months from the date of receipt of this representation and intimated to me.

And for the act of your kindness I shall ever remain grateful to you.



Yours faithfully,

Ashim Kumar Deo
(ASHIM KUMAR DEY)

Section Officer,
Office of the Accountant General,
Nagaland, Kohima.

Dated Kohima, the 25th August, 2008.

Certified to be true copy

(Signature)
(IAHIRUDDIN)
Advocate

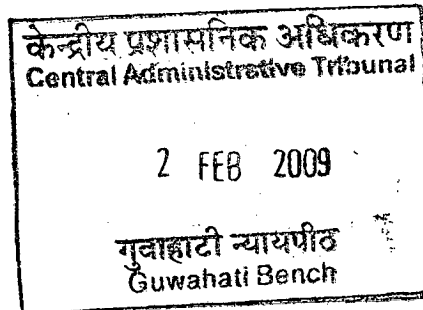
**OFFICE OF THE SR.DY.ACCOUNTANT GENERAL (A&E)
NAGALAND:KOHIMA**

Admn/A&E/AKD/89-90/1051

Dated:- 14/10/08

To

Shri Ashim Kr.Dey,S.O.
Section Officer,
O/o the Sr.Dy.Accountant General (A&E)
Nagaland,Kohima.



Sub: - Adverse Remarks in Annual Confidential Reports.

Ref: - Your representation dated 25th Aug 2008 regarding above subject.

Sir,


In inviting a reference to your representation dated 25th August, 2008 regarding adverse remarks in your Annual Confidential reports, I am to state that as per the Hon'ble Central Administrative Tribunal, Guwahati Bench order dated 15/5/08, your representation has been considered at the appropriate level, and the decision of the authority has since been communicated to you vide this office letter No.Admn/A&E/CAT/AKD/08-09/570 dated 11/07/2008. (Photocopy enclosed)

Hence no more action is required at this end.

This is for your information.

Enclo:-As stated above.

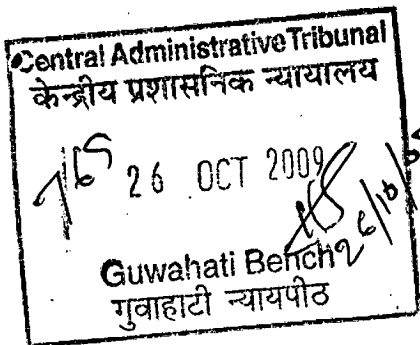
Certified to be true copy


(TAHIRUDDIN)
Advocate

Yours faithfully,


Accounts Officer (Admn)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH



IN THE MATTER OF:

O.A. No. 9 / 09.

Ashim Kumar Dey

...Applicant

-Vs-

Union of India and ors.

...Respondents

-AND-

IN THE MATTER OF:

Written statement on behalf of
Respondent No. 1, 2 and 5.

(WRITTEN STATEMENT ON BEHALF OF RESPONDENT NOS. 1, 2 AND 5)

I, Sri. R.M. DAS GUPTA, S/o. H. Radha Binode Das Gupta,
aged about 53 years presently working as the Senior Accounts Officer (Admn.), Office
of the Accountant General, Nagaland, Kohima, do hereby solemnly affirm and state
as follows :-

1. That, I am the Senior Accounts Officer (Admn.), Office of the
Accountant General, Nagaland, Kohima. Copies of the aforesaid application have
been served upon the respondent no. 1, 2 and 5. I have gone through the original
application and have understood the contents thereof. being the Senior Accounts
Officer in the office, I am conversant with the facts and circumstances of the case
thereof. I have been authorized to file this written statement on behalf of
Respondent No. 1, 2 and 5.

2. That, I do not admit any of the statements save and except which
are specifically admitted hereinafter and the same are deemed as denied.

3. That before traversing various paragraphs of the present original
application, the answering respondent would like to place the brief facts of the
case.

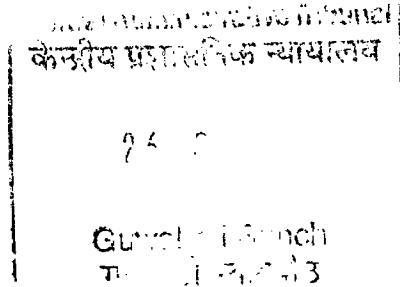
BRIEF FACTS:

Rel. Mawnef
Advocate
23/10/09

Filed by: -
The Respondent
Ms. 1, 2 and 5
Through: -
Manginder Das
Sr. C.A.S.e
C.A.T.
23/10/09

नगरपालिका, कायलिय महासभा
नगरपालिका, कायलिय महासभा
Sd/- *Manginder Das*
Office of the Accountant General
Nagaland, Kohima

68



3.1 That the applicant is presently working as Section Officer in the Office of the Accountant General (A&E), Kohima, Nagaland.

3.2 That vide memorandum dated 16.08.07 the applicant was intimated by the Respondent no.2, that the adverse remarks had appeared in Annual Confidential Report (ACR) for the period of 08.09.06 to 31.03.07 and 01.04.07 to 10.08.07.

3.3 That against the said memorandum the applicant preferred an appeal dated 27.09.07 to review of adverse remarks in Confidential Report.

3.4 That the applicant thereafter approached before this Hon'ble Tribunal by filing an O.A. no. 84/08. The Hon'ble Court after hearing the case was pleased to dispose of the said case vide order dated 14.05.08 by directing the Respondent to consider the representation of the applicant. Further ordered to pass a reasoned order within a period of 90 days from the date of receipt of a copy of the order.

3.5 That the Respondent Authority in compliance with the above order dated 14.05.08 passed a reasoned order dated 11.07.08 stating that the case of the applicant was considered at an appropriate level by taking into consideration of all the relevant notes / memo etc.

The Review Officer did not find any reasonable ground to accept the applicant's representation.

3.6 That thereafter the applicant again made a representation dated 25.08.08 before the Respondent no. 2. The respondent authority thereafter informed the applicant that his representation had since been considered at the appropriate level and the decision of the authority had since been communicated to him vide letter dated 11.07.08. Hence no more action was required.

3.7 That the remarks in the ACR are based on the performance of the applicant. The observation made by the Reviewing Officer, respondent no. 2 in the Memorandum dated 16.08.07 is as follows:

"The above remarks may kindly be noted and immediate action to rectify the defects may be taken to give a better account of the officer",
Hence it is clear that for future guidance of the applicant, the said observation was made to rectify the defects to so as to give a better accountability as a Section Officer.

REPLY TO THE FACTS:

4.1 That with regard to the statements made in paragraph 4.1 of the application, the humble answering respondent has nothing to make comment on it.

नगरपालिका, कायस्थ महाकुलाका
नामाले : : कोटिमा.
Sr. Accounts Officer, Kohima
Office of the Accountant General
Nagaland, Kohima

69

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

4.2 That with regard to the statements made in paragraphs 4.2 and 4.3 of the application, the humble answering respondent has nothing to make comment on it as they are part of records of the case. He, however, does not admit any statements which are contrary to records.

4.3 That with regard to the statements made in paragraph 4.4.1 of the application, the humble answering respondent begs to state that the applicant had submitted his self-appraisal for the period from 08.09.06 to 31.03.07 on 26.06.07 and the Reporting Officer submitted the ACR to the Reviewing Officer i.e. Deputy Accountant General on 02.08.07 and Reviewing Officer completed the ACR on 10.08.07. The communication regarding adverse remarks in the ACR was made to the applicant on 16.08.07.

4.4 That with regard to the statements made in paragraph 4.4.2 of the application, the humble answering respondent begs to state that the applicant was promoted to the post of Section Officer after passing the Section Officer Grade Examination Part I and II. It is to be stated here that the syllabus of the Section Officer Grade Examination as well as other examination and periodical training conducted in the department consists of all the basic course of duties and responsibilities for discharging the duties relating to Section Officer. The applicant is having a good length of work experience of nearly 16 years of service in the department and the allegation made by the applicant is not tenable.

4.5 That with regard to the statements made in paragraph 4.4.3 of the application, the humble answering respondent begs to state that on observing the capacity and resourcefulness of the officer in handling normal as well as unforeseen situation, willingness to take additional responsibilities, and new area of work and capacity to initiate case at his level, the Reporting Officer had observed nothing such sort of the act, occurrences or happening, hence he was bound to write the comment "There is nothing of this sort has been noticed yet," and is based on the duty performed by the applicant for the said period.

4.6 That with regard to the statements made in paragraphs 4.4.4 and 4.4.5 of the application, the humble answering respondent begs to state that the Reporting Officer is required to assess the officer's sense of responsibilities, dedication, motivation, etc. on the basis of day-to-day sectional duties performed by the Section Officer working under him. The applicant's performance was assessed on the basis of Sectional duties performed by him and observed accordingly by the Reporting Officer that it requires further improvement. Hence the comment made by the Reporting Officer was definite and justified and based on true nature of communication.

नगराज, १५ कोहिमा.

Sr. Accountant General
Office of the Sr. Accountant General
Masaland, Kohima

70

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 OCT 2009

Guwahati Bench
गुवाहाटी न्यायपीठ

4.7 That with regard to the statements made in paragraphs 4.4.6 of the application, the humble answering respondent begs to state that during the period of report the Reporting Officer observed that the Officers capability relating to offer of guidance in the performance of task, reviewing capability of monitoring key areas and regularities in enforcing discipline in the day-to-day work was not put up to the mark for discharging the duties allotted to him. Hence the comment given by the Reporting Officer is clear and relevant.

4.8 That with regard to the statements made in paragraph 4.5.1 of the application, the humble answering respondent begs to state that the applicant has submitted his self-appraisal for the period 01.04.07 to 10.08.07 on 01.08.07. The Reporting Officer has reported and the Reviewing Officer has completed the ACR on 10.08.07 and the adverse remarks were communicated to the applicant on 16.08.07 which is in the prescribed period.

4.9 That with regard to the statements made in paragraph 4.5.2 of the application, the humble answering respondent begs to reiterate and reaffirm the statements made in paragraph 4.7 of the Written Statement.

4.10 That with regard to the statements made in paragraph 4.5.3 of the application, the humble answering respondent begs to state that the comment of the Reporting Officer was based on real ground activities of the official's performance and accordingly it has been commented.

4.11 That with regard to the statements made in paragraph 4.5.4 of the application, the humble answering respondent begs to state that the routine and periodical training programme are being arranged by the office and for which staffs and officers are being deputed to Regional Training Institute, Shillong in a routine manner and hence the claim of the applicant is not true. The applicant had also attended such type of training in his career. Hence the allegation made by the applicant is not acceptable.

4.12 That with regard to the statements made in paragraph 4.5.5 of the application, the humble answering respondent begs to state that in the Office Memorandum dated 16.08.07, the comment in Item No. 2 for the period from 01.04.07 to 10.08.07 is totally fair and just and the aim to improve the ability of the applicant.

4.13 That with regard to the statements made in paragraph 4.6 of the application, the humble answering respondent begs to reiterate and reaffirm the statements made in paragraph 4.4 and 4.11 of this Written Statement.

Further stated that in every year, the authority fixed the target for work to be achieved by the section. The applicant is in fact found lacking in

न्यायाधीश, न्यायपीठ

नामांकित : : कोहिमा.
Sr. Accounts Officer
Office of the Deputy Commissioner, Shillong
Mizoram, Kohima

176

71

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय

26 OCT 2009

Guwahati Bench

achieving the target during the period of report and which is not on his own initiative.

4.14 That with regard to the statements made in paragraph 4.7 of the application, the humble answering respondent begs to state that the routine and periodical training programme are being arranged by the office and for which staffs and officers are being deputed Regional Training Institute, Shillong and hence allegation of the applicant is not true. The honorarium for the period of 2006-07 amounting to Rs. 1250/- vide bill no. G-82 was granted to him for a period which was prior to his promotion as Section Officer i.e. the period of Senior Accountant and for the year 2007-08, the honorarium for an amount of Rs. 500/- was given to him to motivate and to improve his work subsequently in the responsible post of Section Officer (which is a deficit office) as a token of inspiration. Recently overall improvement is noticed and hoped during 2008-09 the report will not remain as it is. Therefore the sanction of the honorarium does not show the negativity of the report in the ACR.

4.15 That with regard to the statements made in paragraph 4.8 of the application, the humble answering respondent begs to state that the remarks in the ACR are based on the performance of the Applicant.

4.16 That with regard to the statements made in paragraph 4.9 of the application, the humble answering respondent begs to state that the observations made in the last para of the Memorandum dated 16.08.07 is clear and for future guidance of the applicant for rectification so as to give a better accountability as a Section Officer.

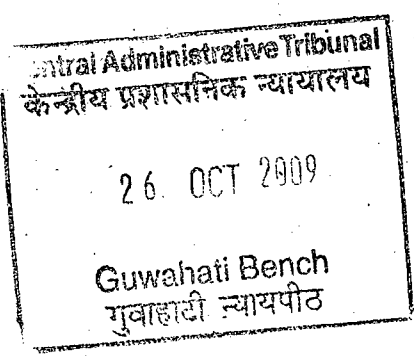
The allegation made by the applicant against the respondent no. 2 is baseless. The respondent no. 2 just instructed to take action to rectify the defects for giving a better account of the officer. So there is no question of colourable exercise of powers.

4.17 That it is submitted that the instant application has no merit at all and is liable to be dismissed.

नमो देवे.
Sr. Accounting Officer, Mahan Ras Centre,
Office of the Accountant General,
Nasaland, Kohima.

72

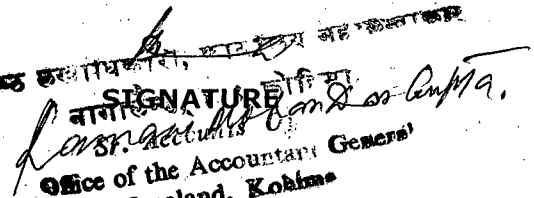
198



VERIFICATION

I, Sri. R.M. Das Gupta, S/o H. Radha Binode Das Gupta, aged about 53 years presently working as the Senior Accounts Officer (Admn.), Office of the Accountant General, Nagaland, Kohima, do hereby verify that the statements made in paragraphs 1 to 4.17 are true to my knowledge and belief, those made in paragraphs 1 to 4.17 being matters of records of the case are true to my information derived therefrom which I believe to be true and the rests are my humble submission before this Hon'ble Tribunal. I have not suppressed any material fact before the Hon'ble Tribunal,

And I sign this verification on the 17th day of October 2009 at Guwahati.

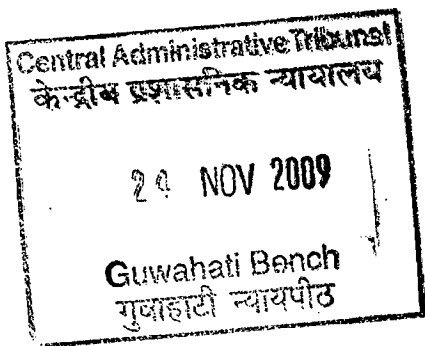

SIGNATURE
Sr. Accounts Officer
Office of the Accountant General
Nagaland, Kohima

73

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. NO. 9/2009

Filed by the petitioner
Ashim Kumar Dey
through Advocate
Adarsh Kumar
Date 14/11/2009



Shri Ashim Kumar Dey Applicant

-Vs-

U.O.I. & Ors. Respondents

-AND-

IN THE MATTER OF:

Rejoinder to Written

Statement of Respondents No.1, 2 and 5
in O.A.No.9/2009.

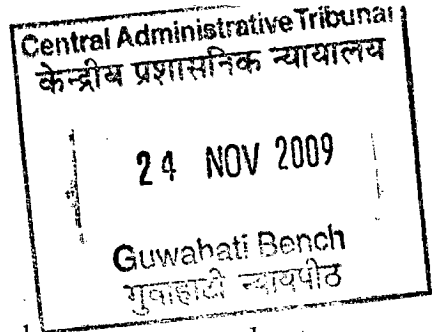
(REJOINDER TO WRITTEN STATEMENT)

I, Shri Ashim Kumar Dey, son of Shri Ajit Kumar Dey working as Section Officer in the Office of the Accountant General (A&E), Kohima, Nagaland do hereby solemnly affirm and state as follows:

1. That I am the Applicant in the afore-mentioned case and as such I am fully acquainted and conversant with the facts and circumstances of the case thereof.
2. That a copy of the aforesaid Written Statement filed by the Respondent No. 2, 2, and 5 having been served on my Counsel, I have gone through the same and understood the contents thereof. I do not admit any of the averments which are not borne out by and/or inconsistent with records. The averments which are not specifically admitted here-in-after shall be deemed to have been denied by the Applicant.
3. That in regard to the statements made in paragraphs 1, 2, 3, 3.1 to 3.4 of the Written Statement; the Applicant has no comment to make.
4. That the statement made in paragraph 3.5 of the Written Statement is not admitted as because no reasoned order vide letter dated 11.07.08 was passed and that too without considering the relevant notes/memos etc.
5. That with reference to the statement made in paragraphs 3.6 of the Written Statement, the Appellant begs to state that the order passed by the Reviewing Officer dated 11.07.08 was passed in total disregard to the order passed by the Hon'ble Tribunal dated 14.05.08 and also the adverse remarks in the ACR have been made without conformity with the Govt. Notification and instructions given vide C.S. OM NO.51/5/72-

A. K. Dey

(74)



180

2.

Est (A) dated 20th May 1972 and the decision taken by the Respondents is wrong and not tenable.

6. That in regard to the statements made in paragraph 3.7 of the Written Statement, it may be stated that no action by the Respondents was taken to rectify the defects of the Appellant. It was necessary for the Respondents to inspect and point out the defects, if any, for better accountability of the Applicant as Section Officer. Moreover, no supervision was made or any training was imparted to him for improving his performance etc. as is reflected in the adverse remarks in the A.C.R.

7. That with regard to the statements made in paragraph 4.3 of the written statements, the Applicant begs to state that according to time-schedule for distribution of blank ACR forms is 31st March and submission of self-appraisal is 15th April as referred to in Annexure-A8 of the application. The Reporting Officer failed to adhere to the said time-table for distribution of blank ACR form for self-appraisal. There was a delay of about three months in distributing blank ACR form for self-appraisal. There is no explanation as to why the blank ACR form was not distributed as per prescribed time-schedule. The Applicant reiterates and reaffirms the statement made in paragraph 4.4.1. of his Original amended application which is herein-after referred to as the application.

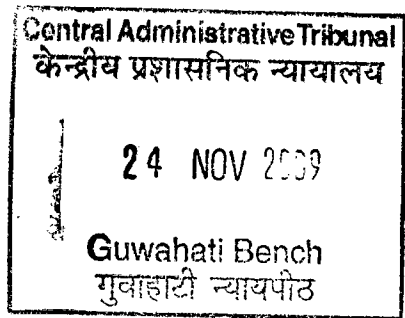
8. That the statement made in paragraph 4.4 of the Written Statement is a vague and evasive answer. Besides, what is stated in paragraph 4.4.2 of the application, the applicant was given no training after he assumed the Office of Sectional Officer, no Senior Officer spoke to him about his deficiencies in his conduct and work, nor any periodical inspection/visits were made to the sections under charge of the Applicant during the period under report of the Reporting Officer before writing the A.C.R. as per Govt. instructions given vide CS OM NO.51/5/72-Est. (A) dated 20th May 1972.

9. That the statement made in paragraphs 4.5 of the Written Statement is not correct. The Applicant was given additional responsibility viz. Treasury Miscellaneous and Work Miscellaneous during the period 8.9.2006 to 10.08.2007 and was promoted thrice till now by dint of his hard work and sincerity. But surprisingly, the Reporting Officer has lost sight of all these and his remark-"There is nothing of this sort has been noticed" is arbitrary and incorrect assessment of the performance of the Applicant and the Reporting Officer is incapable and incompetent in giving his comments against the said Head.

10. That with regard to the statement made in paragraph 4.6 of the Written Statement, the Applicant begs to state that the observation made by the Reporting officer

A. K. Dey

75



181

3.

to assess the Officer's sense of responsibility, dedication, motivation etc. on day to-day sectional duties performed by him and his remark-"Requires further improvement" are indefinite, baseless and not supported by any factual statement/instance.

11. That with reference to the statement made in paragraph 4.7 of the written statement, the Applicant respectfully states that the adverse comments regarding the Officer's offer of guidance in the performance of task, reviewing capability of monitoring key areas and regulations in enforcing discipline was not put up to the mark is made without following guidelines having been clubbed together without any application of mind and not dealing with the Heads separately. Therefore, the comments are irrelevant and vague and ought to be expunged from the Confidential Report.

12. That with reference to the paragraph 4.8 of the Written Statement, it is submitted by the Applicant that the adverse remarks of the period 08.09.06 to 31.03.2007 and period 01.04.2007 to 10.08.2007 were communicated to the Applicant on 16.08.2007 at a time thereby depriving the Applicant from improving his performance of his duty as Sectional Officer for the subsequent period i.e. 01.04.2007 to 10.08.2007. The said adverse remarks in A.C.R. are cryptic and not specific; therefore, such adverse remarks are baseless and improper and put the future prospect of the Applicant in jeopardy. The Applicant reaffirms and reiterates the statement made in paragraph 4.5.1 of his application.

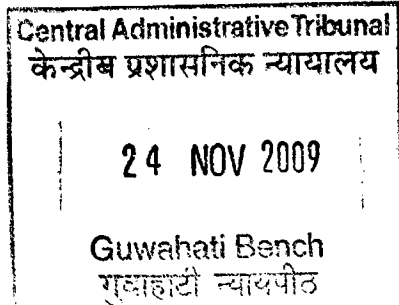
13. That in regard to the statement made in paragraph 4.9 of the Written Statement, the Reporting officer's reply is evasive and suppressive of the ground reality that the Reporting Officer failed to comments the Applicant's shortcomings under different Heads on time and also failed to pay periodical visits or inspection to the Sections to observe the supervising ability of the Applicant during the period under report before recording such remarks.

14. That the adverse remarks and comments as referred to in paragraph 4.10 of the Written Statement are without any basis and not supported by any factual statement/evidence.

15. That the allegation made in paragraph 4.11 of the Written Statement is baseless and incorrect. The Applicant re-iterates and re-affirms the statement made in paragraph 4.5.4 of the Application. The Reporting Officer has given no reasoned decision in the adverse remarks as required under the Rules and Govt. instructions.

A. R. Dey

(76)



182

4. .

16. That with reference to paragraph 4.12 of the Written Statement, the Applicant begs to state that that the comment in tail of Item No.2 for the period 01.04.2007 to 10.08.07 is unwarranted and made without due care and attention and not in accordance to the instructions as contemplated and presented on the subject of writing of Confidential remarks in the A.C.R. form.

17. That the statement made in sub-paragraph of paragraph 4.13 of the Written Statement is vehemently denied and the Applicant hereby re-affirms and re-iterates the contents of paragraph 4.6 of the application.

18. That with reference to the statement made in paragraph 4.14 of the Written Statement, the Respondents have tactfully and conveniently avoided commenting upon the fact that the Applicant was instructed to look after two Sections viz. Treasury Miscellaneous and Work Miscellaneous headed by two Senior Officers in the ACR. The Applicant successfully carried out the work that was given to him. The Applicant hereby re-iterates and re-affirms the statement made in paragraph 4.7 of the Application.

19. That with reference to the statement made in paragraph 4.15 of the Written Statement, the adverse remarks in the A.C.R. have been made without observing the work and conduct of the Applicant carefully. Assessments of certain qualities of the Applicant as referred to the paragraphs 4.5.5A to 4.5.5E in the Application were not appreciated in the A.C.R. as required under the rules. The assessments in the A.C.R. are faulty, not specific and made in a routine, mechanical manner in breach of prescribed rules in writing of the Confidential Reports.

20. That in regard to the statements made in paragraph 4.16 of the Written Statement, the Applicant categorically re-iterates and reaffirms what has been stated in paragraph 4.8 to 4.8.7 of the application.

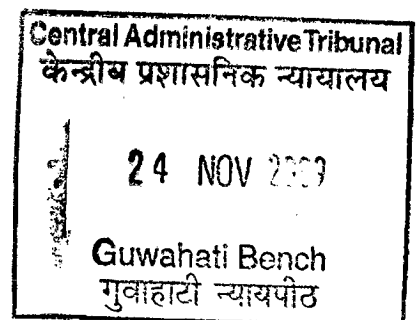
21. That the submission made in paragraph 4.17 of the Written Statement is not admitted by the Applicant.

22. That the Applicant begs to submit that the impugned adverse remarks in the A.C.R. are invalid and cannot be accepted on the following grounds:

- (i) The impugned adverse remarks under Head No. 3, 4 and 5 for the period from 08.09.2006 to 31.03.2007 of the A.C.R. are invalid as the said adverse remarks were communicated on 16.08.2007 after a lapse of delay

A K - Dny

77



183

5.

of four and half months thereby vitiated the adverse remarks and failure to observe the time frame in communicating the adverse remarks on time caused prejudiced to the Applicant and not sustainable in law.

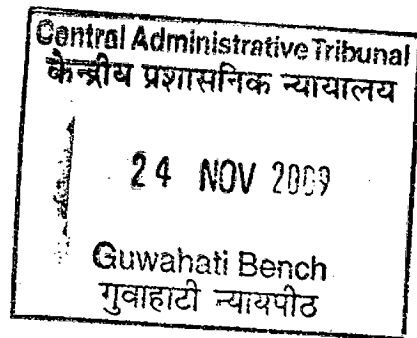
- (ii) The contents of the adverse remarks for the period 08.09.2006 to 31.03.2007 and 01.04.2007 to 10.08.07 are vague, inconsistent, and repetitive and passed in haste without proper application of mind and they do not meet the desired requirements mentioned under each Head of the A.C.R. form.
- (iii) The contents of the adverse remarks in the A.C.R. are not in accordance with the Government instructions on the subject of writing of confidential remarks and recorded without due care.
- (iv) The contents of the adverse remarks for the period mentioned above are arbitrary and violative of the rules and Government instructions.
- (v) No prior sufficient opportunity was given to the Applicant for making improvement of the deficiency noticed by the Respondents prior to the writing of the A.C.R.
- (vii) The order of Reviewing Officer is not a reasoned one.

A - R - Dug

23. In the facts and circumstances stated above, the impugned adverse remarks for the periods under report are inconsistent to Government instructions and not sustainable in law being vague and invalid and are liable to be held invalid and be set aside and quashed by this Hon'ble Tribunal for ends of justice.

.....Verification.

78



6.

VERIFICATION

I, Shri Ashim Kumar Dey, son of Shri Ajit Kumar Dey, aged about 42 years working as Section Officer in the Office of the Accountant General (A&E), Nagaland, Kohima, resident of Harulangpher Last Colony, Lumding, Dist. Nagaon, Assam do hereby verify that the contents of the aforesaid paragraphs 1 to 23 are true to my knowledge, information and belief and the same are believed to be true and that I have not suppressed any material facts.

And I signed this verification on the 24th day of November, 2009 at Guwahati.

A. K. Dey
(ASHIM KUMAR DEY)

SIGNATURE