

Reserved
(On 07.05.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 14th day of May 2018

Original Application No 330/00154 of 2017

Hon'ble Dr. Murtaza Ali, Member – J
Hon'ble Mr. Gokul Chandra Pati, Member – A

Kamlesh Jha, S/o Shri Shyam Deo Jha, presently posted as Deputy Chief Engineer / Construction / Works, North Central Railway, Subedarganj, Allahabad.

. . .Applicant

By Adv: Applicant in person

V E R S U S

1. Union of India through, the Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. General Manager, North Central Railway, Subedarganj, Allahabad.
3. Chief Administrative Officer / Construction, North Central Railway Subedarganj, Allahabad.
4. Chief Engineer / Construction / Central, North Central Railway Subedarganj, Allahabad.
5. Shri Pradeep Kumar, the then General Manager, North Central Railway Subedarganj, Allahabad (Now Member Staff, Railway Board, Rail Bhawan, New Delhi).
6. Shri Lallo Singh, the then Chief Administrative Officer / Construction, North Central Railway Subedarganj, Allahabad (Now Retired), through General Manager, North Central Railway Subedarganj, Allahabad.
7. Shri K.D. Ralh, Chief Engineer Construction / Central, North Central Railway Subedarganj, Allahabad.

. . . Respondents

By Adv: Sri M.K. Singh and Shri S.M. Mishra

ORDER

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The OA has been filed with the prayer for the following reliefs:-

- “i. To issue order or direction for quashing the Annual Performance Appraisal Report (APAR) for the period 01.04.2014 to 31.03.2015 (Annexure A-1 to this original application).
(Grounds are: Entries and gradings being arbitrary, without objective / targets, none of the entry mentions about performance, violation of rules, procedure and Hon'ble*

Supreme Court's direction on writing APAR, Documents mentioned in APAR arbitrary, manipulated, respondent no. 6 and 7 forfeited their rights to enter any remarks.)

- ii. To issue order or direction quashing the order dated 22.02.2016 issued by the respondent no. 2. (Annexure A-2 to the original application). (Grounds are: Order being arbitrary).**
- iii. To issue order which this Hon'ble Tribunal may deem fit and proper against abusing the power of harass the applicant to so as to safeguard the applicant from malafide exercise of power by the higher authorities. (Grounds are: As directed by the Hon'ble Supreme Court to given adequate protection to civil servants against capricious action from their superior authority).**
- iv. Cost of this O.A. which this Hon'ble court may deem fit and proper including mental harassment caused due to abuse of power in writing APAR.**
- v. Any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of present case."**

2. The facts of the case as per the OA in brief are that the applicant received Annual Performance Appraisal Report (in short APAR) for the period 01.04.2014 to 31.03.2015 on 31.12.2015. In this case the applicant submitted that his APAR has been written arbitrarily, although the applicant in self-appraisal had mentioned that there is no purpose to write APAR for the year 2014–15 as no work is allocated to the applicant for performance appraisal as directed in the APAR. In Part III, item -1 since he did not have any objectives / targets decided for the year's performance as per the guidelines of the Government, the reporting officer could not give specific comment as asked for against self appraisal and gave remarks about the duty list arbitrarily which was not called for. It confirms that there is no objective / target for performance appraisal as mentioned by him in para 2 in the APAR. He further submitted that there is no matter of accepting / not accepting the duty list for the APAR but nowhere in the APAR sought remarks on duty list. The scrutiny of entries shows that no entry is about performance as sought in the APAR. Reporting authority in item 3 under part III could not mention about any work and program objectives and did not mention what application of mind is needed for RTI work entrusted to the applicant who only transfers the

RTI queries to concerned officers / PIOs to reply. No such issue was raised by the reporting authority in the APAR.

3. It is further stated in the OA that the applicant was harassed by the respondents as although his post is work-charged post for construction projects, but he has not been entrusted with any duty related to construction project. Assistant Executive Engineer / Assistant Engineers were posted under the applicant, but working elsewhere.

4. It is stated that as per DOP&T letter dated 16.02.2009 (Annexure A-7), the reporting and reviewing officers had no authority to record his APAR for 2014-15 after 30.06.2015 and 31.08.2015 respectively. Since both the officers have not written his APAR for 2014-15 by due date, both have forfeited their right to enter any remarks.

5. It is stated in the OA that in part III, A the reporting officer written that the applicant was threatening the administration as he pursued legal remedy. He has also given derogatory and objectionable remarks by falsely mentioning applicant's misbehavior. In part III, B regarding attributes, reporting officer arbitrarily entered worst grading 'average' for all the items. In part IV, item 3 the reporting officer could not mention about any works but falsely mentioned about Rajbhasha. Having no knowledge of work of the applicant, the reporting authority failed to give any objective assessment and entered arbitrary remarks in casual manner. In part IV item 4 it was mentioned about letter dated 28.01.2015 and 04.02.2015. These letters were arbitrarily written with malicious attitude. Letter dated 04.02.2015 was a correspondence by reporting officer on the matter which are under authority of reporting officer and other Deputy Chief Engineers posted under him and no remarks could be given on those subjects in applicant's APAR. In Part IV, item 5 reporting

authority had given final grading 'below average' and remarks regarding fitness of applicant for promotion as 'No'. The entries being arbitrary, malafide and reviewing authority having knowledge of manipulation of the posts alongwith AXEN/C/Works but working somewhere else, still agreed with the adverse entries and mentioned his entry as 'Yes, I agree' which is contrary to the records and which establishes malafide on the part of the reviewing authority.

6. Respondent No. 2 invited representations from the applicant on the entries in the APAR for the period 01.04.2014 to 31.03.2015. The applicant moved representation dated 14.01.2016 (Annexure A-3) before respondent No. 2 and he was asked for clarification vide letter dated 18.01.2016 (Annexure A-3). The applicant submitted another representation 24.01.2016 and the said representation was rejected in arbitrary manner vide order dated 22.02.2016 (Annexure A-2), which is also impugned in this OA.

7. The respondents have filed their counter reply in which it is stated that respondent No. 4 on various occasions has intimated the applicant regarding his deficiencies during performance of his duties. But instead of improving, the applicant exhibits wilful negligence and disobedience of duties. On 28.01.2015 a letter was issued by the respondent No. 4 to the applicant regarding his efficiency of working and was requested to ensure proper chasing with field units and ensure submission of compiled position of arbitration cases 5th day of every month to SDGM. When no action was taken by the applicant, vide letter dated 04.02.2015, respondent No. 4 advised the applicant to start performing his duties as mentioned in the duty list. The applicant sent a reply on 11.02.2015 which demonstrated the attitude and working of the applicant. After considering the performance of his duties from 01.04.2014 to 31.03.2015, the reporting

authority has given the grading of "Below Average" for the above mentioned period and entered the adverse remarks regarding fitness for promotion in the department. The reviewing and accepting authority after perusing the entire record, entered the same grading which was based on factual position after considering the conduct and performance of the applicant. As per instructions issued by the DOP&T dated 28.03.2006 (Annexure CA-1) the overall grading recorded in the ACR is also not to be changed in any way even after the expunction of the adverse remarks either fully or partially by the competent authority. The reporting officer has taken into consideration the conduct and behaviour of the applicant and on the basis of the same he has given report against the applicant. The competent authority has decided the appeal of the applicant and as such further revision of the same either on administrative side or judicial side is not permissible in the eyes of law. Any entry below the benchmark for promotion is an adverse entry, if the employee is totally undisciplined, disobedient, refusing to work as per official duty list, then corrective action becomes essential to safeguard the interest of organization and justice to fellow employees who work sincerely and are productive for the organization. It is stated in the counter that the applicant simply refuses to obey his duty list without giving any reason and tries to threaten the administration.

8. It is further stated in the counter that all over Indian Railway Dy.CE/C/Works in Construction and Dy. CE/Works in open line coordinate with the field units at HQ level as per assigned official duty list. But in the present case the applicant considers this duty below his dignity. The applicant finds conspiracy by alleging the then CE/C/Central and CAO/C in his posting as Dy.CE/C/Works and he treats the job of Dy. CE/C/Works as clerical Job. Duties as specified in duty list are assigned by the Administration not by CE/C/Central. Duty list is meant for all officers in HQ/Const. All others are performing their duties as per the list except the

applicant. The applicant does not perform his duty as PIO/Con under RTI Act, which compelled the administration to depute individual field officers to act as PIO/Con to safeguard the interest of Railways. Further, the allegations against Senior Offices are totally uncalled for and the same is against the conduct rules as applicable on the applicant.

9. Respondents have further submitted that the applicant was graded 'Below Average' and entered the adverse remarks regarding fitness in the department in the APAR for the period for 01.04.2012 to 31.03.2013 and 01.04.2013 to 31.03.2014 against which the applicant preferred the two OA No. 369/15 and 1129/15 before this Tribunal. The main ground of challenge in the aforesaid OA was that the reporting and reviewing authority are prejudiced to spoil the career of the applicant by writing adverse APAR in arbitrary and illegal manner. This Tribunal by a common order dated 27.10.2016 has dismissed both the aforesaid OAs. Against the order dated 27.10.2016 of this Tribunal the applicant has preferred two Writ Petition No. 4052/17 before Hon'ble High Court and no interim order has been passed in this Writ Petition.

10. In the rejoinder reply, filed by the applicant, the applicant has reiterated almost the same pleadings as in the OA. It is further stated by him that the respondents have no regard for the rules, procedure and Hon'ble Supreme Court's direction in writing APAR. The applicant has always discharged whatever duty expected from him. Further, any work cannot be done by the applicant which are under authority of other officers. Any assessment of performance of the applicant has to be made only in the context of the work under his control. No entry could be made by APAR writing officers regarding performance. Grievances of the applicant are genuine and the full extent of the challenge can be ascertained from the OA itself. For any indiscipline there is separate Discipline and Appeal Rules and there was no such incidence of

indiscipline. He has further submitted that it is false to state that applicant does not discharge the duties under RTI Act. The applicant has been nominated as PIO/Con inspite of having no supporting staff under him under him. APAR of each year is assessed and there is already in instruction not to be prejudiced by the earlier APAR. Further, two APARs of the year 2012-13 and 2013-14 are already subjudice before Hon'ble Allahabad High Court on the ground of being erroneous in law and facts and malafide on the part of authorities.

11. The applicant who appeared in person was heard. He reiterated the contentions in the OA and highlighted the following main points / grounds:-

- i. He was not entrusted with any specific duty and no target was fixed by senior offices as per the guidelines of Government, although he was appointed against the construction project and he was not entrusted with any work relating to construction project as per the duty list (Annexure A-3) but entrusted with clerical nature of works / duties.
- ii. DOP&T letter dated 16.02.2009 (Annexure A-7) stipulates deadlines for reporting officer and reviewing officers for writing the APARs. His APAR for 2014-15 should have been written by reporting officer by 30.06.2015 and by reviewing officer by 31.08.2015 and after that date these officers have forfeited their right to write the APAR as per DOP&T letter dated 16.02.2009. Hence, the entries in the APAR have no value.
- iii. The entries in his APAR for 2014-15 have been written arbitrarily with malafide, in contravention of the instructions of Government. Since there was no specific duty or target given to him, the comments of the reporting and reviewing officers are uncalled for.

- iv. In response to adverse and arbitrary entries in the APAR, the applicant had submitted representations dated 14.01.2016 and 24.01.2016 to the respondent No. 2, who rejected his representations vide impugned order dated 22.02.2016.
- v. The applicant pointed out that as per the Judgment of Hon'ble Supreme Court in the case of ***Dev Dutt vs. Union of India and others*** reported in ***(2008) 2 SCC 771*** that nay entry below bench mark is required to be communicated. He also submitted a copy of judgment of Hon'ble Apex Court in the case of ***State of U.P. Vs. Yamuna Shanker Misra & Anr*** reported in ***AIR 1997 SC 3671*** wherein it is held that the officer entrusted with the duty to writ confidential reports, has a Public responsibility and objective of writing confidential reports is to given an opportunity to a Public Servant to improve excellence.

12. Learned counsel for the respondents reiterated the stand taken in the counter reply and stated that the entries in the APAR of the applicant have been made based on the conduct and performance of the applicant and there is no question of malafide or arbitrariness. A copy of the judgment of Madras High Court in Writ Petition No. 21271 of 2012 in the case of R. Ramesh vs. Bharat Sanchar Nigam Limited in support of the respondents' case.

13. We have considered the submissions of the parties as well as the pleadings on record. The applicant has raised a number of issues relating to assignment of his duty and has mentioned allegations like arbitrary and malafide action on the part of the reporting and reviewing officers of his APAR for the year 2014-15. As per the procedure laid down for the APARs, the applicant had submitted representations against the assessment of his performance as recorded by the reporting and

reviewing officers to the respondent no. 2 vide his representation dated 14.01.2016 (Annexure A-3) stating as under:-

"No.KJ/Pepr/14-15

Confidential
Dt.14-01-2016

To,
The General Manager,
N.C. Railway,
Allahabad.

Sub- Representation on Annual Performance Appraisal Report (APAR) for the year 2014-15.

Ref: PA-I (Confdl) to GM/NCR's e-mail dated 31.12.2015.

Respected Sir,

On the above subject of Annual Performance Appraisal Report (APAR) for the year 2014-15 following points are put up for consideration:-

Please connect my self-appraisal in the APAR in which I have mentioned that there is no short-fall with regard to absence of objective / targets. It is not the duty list but the objectives / targets under my control / authority is the criterion of APAR as directed in part-II, item-2 of APAR which was mentioned in the self appraisal. The same is asked in part-III, item-1 of APAR and not about the duty list. Entries in the APAR do not reflect any deficiency in the performance of undersigned but personal behavior which is not so and could have been dealt under concerned DAR. Though APAR communicated does not show any annexure, any remarks / letter were already addressed and replied. Regarding RTI the work was done as per direction under RTI Act as PIO/Con. Regarding Rajbhasha myself very frequently use in official noting which may be seen in filed please.

As directed by the Hon'ble Supreme Court, Performance Appraisal should be done objectively.

Instruction says:- Reporting authority should realize that objective is to develop an officer so that he realized his true potential."

As communicated by Railway Board: The Hon'ble Supreme Court has held in their judgment dt. 12.5.2008 in case of Dev Dutta vs. Union of India that "object of writing confidential report and making entries is to be given an opportunity to public servant to improve the performance".

As per Railway Board's letter bench-mark for my next promotion in SAG is 'very good' and should have 'very good' in every last five years.

I would like to mention that if APAR could have been written based on duty list statutory duty on RTI matters under my authority under RTI Act was done as mentioned in the self-appraisal & as other work of arbitration mater was dealt by me. Thus, with regard to above work also there was no short-fall.

So, in view of justice to the undersigned the above APAR may be withdrawn or if may be written as mentioned above the same may be reviewed and attributes & grading may please be upgraded to bench-mark i.e. 'very good' with expunge of adverse remarks on fitness in Deptt., ADRM & DRM, as there is no short-fall in performance in spite of constrain of no officer / staff available under my control.

Sd/-
(Kamlesh Jha)
DyCE/C/Works
NC Railway,
Allahabad

Copy to:

- 1. The Secretary, Railway Board, Rail Bhavan, New Delhi: for kind information please."**

In reply to the representation dated 14.01.2016, the respondent no. 2 has called for the following information from the applicant in letter dated 18.01.2016 (Annexure A-3):-

“Please find enclosed herewith copied of Annexure-1 to 4, attached by Reporting Authority while reporting your APAR of YE 31.03.15. You may file another representation within fifteen days from receipt of this letter, if you desire, otherwise your representation, referred to above, will be treated as final.

As desired by competent authority, please indicate the following:

- 1. Your performance as Dy CE/C in 14-15 and what is your potential which needs to be realized.***
- 2. Reporting, Reviewing & Accepting offices have left on option for them to make efforts to improve your performance and realize your true potential.”***

In reply, the applicant has submitted the representation dated 24.01.2016 (Annexure A-3) to the respondent no. 2, stating as under:-

“No. KJ/Repr/14-15

Confidential
Dt.24-01-2016

***To,
The General Manager,
N.C. Railway,
Allahabad.***

Sub- Representation on Annual Performance Appraisal Report (APAR) for the year 2014-15.

Ref: Your letter No. GM/NCR/APAR/Representation/15 dated 18.01.16.

Respected Sir,

On the above subject of Annual Performance Appraisal Report (APAR) for the year 2014-15 following points are put up for consideration:-

1. I satisfactorily done the statutory work under RTI Act as PIO/Con. I didn't have independent work as Dy CE/C in 2014-15. I should have work with authority of Dy CE/C over the matter with official set-up under me. I didn't had such opportunity for visibility of my potential as Dy CE/C.

2. Entries in the APAR do not reflect any deficiency in the performance of undersigned but personal behavior / conduct which is not so. It may kindly be appreciated that in the absence of objectives / targets, remarks in part – III, item-1 of APAR also does not show any defiance in performance. In this part-III, item-1 remarks is about the duty list which is not asked. Statutory duty on RTI matters under my authority as PIO/Con under RTI Act was done by me satisfactorily. So, there is no defiance in this regard. Regarding Rajbhasha myself has a very positive attitude which may be seen in filed in my frequent use in nothing. Regarding Annexure 2 to 4 attached in APAR, whole matter is around correspondence with reporting authority, CE/C/Central for not giving comments by the undersigned on position of tenders given by other DyCE/C which has been mentioned in the APAR as stiff attitude. It may please be appreciated that it is not the stiff attitude. It may please be appreciated that it is not the stiff attitude but the matter of position on tenders which pertains exclusively under authority of other Dy CE/C and no comment could be possible at the level of undersigned.

I would like to mention that statutory duty on RTI matters under my authority under RTI Act was done by me satisfactorily. Regarding other work, arbitration matter was dealt by me under instruction / guidance of reporting authority throughout the reporting year. It

may be appreciated that having already working throughout the year under guidance / instruction of reporting authority there is no such issue of stiff attitude about work and work that could have been done was done by me in spite of constraint of no officer / staff posted under me. If any other work given to me to be dealt at the level of the undersigned, I could have done those works.

So, in view of the above, to have justice with the undersigned, APAR for the year 2014-15 may kindly be reviewed and attributed & grading may please be upgraded to bench-mark for next promotion i.e. 'very good' with expunge of adverse remarks on fitness in Deptt., ADRM & DRM, as there is no short-fall in performance in spite of constrain of the officer / staff available under my control.

**Sd/-
(Kamlesh Jha)
Dy CE/C/Works
NC Railway,
Allahabad."**

14. It is clear from above that many grounds taken by the applicant in the OA, like the time limit fixed by DOPT for writing the APAR vide letter dated 16.02.2009 (Annexure A-7) and allegation of malafide and arbitrariness on the part of the reporting and reviewing officers have not been mentioned by him in his representations dated 14.01.2016 and 24.01.2016 to the respondent no. 2 in respect of the his APAR for the year 2014-15 in spite of opportunity given to him by the respondent no. 2 through his letter dated 18.01.2016, attaching the copy of four annexures furnished by the reporting officer in support of his assessment while writing the applicant's APAR for 2014-15. The applicant in his representation dated 24.01.2016 to the respondent no. 2 has mentioned nothing about the contents of the annexures to the letter dated 18.01.2016 which showed the approach of the applicant towards some of the works entrusted to him by the reporting officer. We do not understand the reasons why the applicant has failed to bring many of the points he has mentioned in the OA, in his said representations to the respondent no. 2. It is clear from the above that the applicant has not been able to explain the contents of the annexures of the letter dated 18.1.2016 of respondent No. 2 in his representation dated 24.01.2016 to respondent No. 2.

15. In consideration of the representation dated 24.01.2016 of the applicant, the respondent no. 2 has passed the order dated 22.02.2016 (Annexure A-2) as indicated below:-

“I have gone through the representation, comments of Reporting Authority and the Reviewing Authority. Having taken entire matter in totality, I am of the considered view that no change is warranted.”

In the OA, the applicant has raised the issue of fixing the target and objectives which have not been fixed for him by the reporting officer. The applicant, being a senior officer is expected to work according to the target and work objectives to be decided by him, if his superior authority does not fix it. It will not be correct on the part of a senior officer to take the stand that he will not write anything in his APAR about his performance or he will not perform the duty assigned to him if no target/objective is fixed by the reporting officer. The duty list of the applicant as enclosed with the letter dated 18.01.2016 of the respondent no. 2 shows the following duties:-

“Policy, Works Contract, Tenders, Standardization of Tender/SOR/Specification, Schedule of Power, Correction Slip to SOP and related issue, Estimates and Completion Reports, Survey Reports etc, Compilation of data/documentation and presentation for POM, CAO/C and GM conferences, RVNL Works, RTI cases, Arbitration, Court case (Works), CAG Reports, Draft paras, Audit/Accounts Inspection reports (Works), Liaison of CRS papers at HQ and field unit level, Any other works assigned time to time.”

16. We are unable to agree with the contentions of the applicant that as per the duty list as indicated above, there is no definite work of the applicant except the RTI work and there is no purpose of writing APAR with no objective or target fixed by the authority as per instructions. There is nothing to prevent the applicant to define his own objectives and target which could have been communicated to the reporting officer if the later did not fix it. When a senior officer waits for the higher authority to fix the objective and target for him and he does not indicate anything specific about the achievement in the APAR on the ground that the higher authority has not fix any target for him, it would be logical to draw the conclusion that he has achieved anything and he may not be interested in duties assigned to him. The applicant at the time of hearing, stated that

the works assigned to him as per the duty list are clerical in nature and those are not the works to be assigned to him. Clearly, such contentions on the part of the applicant are incorrect and irresponsible in view of many important items of works assigned to him as extracted in para 15 above. As pointed out earlier, the applicant has failed to point out in his representations dated 14.01.2016 and 24.01.2016 to the respondent no. 2 about the time limit fixed by DOPT for the reporting and reviewing authorities to write the APAR and after these dates, they would forfeit their right to write his APAR as per the DOP&T letter dated 16.02.2009 (Annexure A-7). Further, there is nothing in his representations dated 14.01.2016 and 24.01.2016 to show that the assessment / entries of the reporting and reviewing officers in the applicant's APAR for the year 2014-15 deserve to be upgraded or modified, given the factual background of the case. Hence, we do not find any reason to interfere with the impugned order dated 22.02.2016 passed by the respondent no. 2, confirming the assessment of the applicant in the APAR for the year 2014-15.

17. Regarding the ground mentioned in the OA about the time limit for writing the APAR as per the DOPT letter dated 16.02.2009 (Annexure A-7), it is noted that the applicant's APAR has been written after the last dates specified by the DOPT letter dated 16.02.2009, but the applicant has not objected to the same in his representations to the respondent no. 2 as mentioned in para 15 above. Having not objected to the APAR on this ground at the departmental level, it is not open to him to raise the issue before us. We also note that the DOPT letter dated 16.02.2009 does not specify anything about the APAR which has been written belatedly and duly accepted by the department and in absence of any specific provision. Such APAR cannot be held to be invalid and entries made therein ignored.

18. It is noticed that the judgment in the case of State of U.P. (supra) cited by the applicant, Hon'ble Apex Court has held as under:-

“.....The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon the facts or circumstances. Though sometimes, it may not be part of record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting/officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite given giving such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself necessarily, the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standards of excellence in services constantly rises to higher levels and it becomes successful tool to manage the services with officers of integrity, honesty, efficiency and devotion.”

19. It is seen that in this OA, the reporting officer has pointed out the defects to the applicant (as the enclosures to the letter dated 18.01.2016 of the respondent no. 2 to the applicant indicate), before recording his remarks in the APAR. It is also noted that the applicant has given different reasons not to comply with the instructions of his immediate senior officer, against whom he has also raised various allegations in the OA. His grievance appears to be on account of his assignment of duty, which he considers to be not as per his post. It is also noted that in the self-assessment report in para 2 of APAR the applicant stated under the head “Achievements” in para 2 that *“Statutory work under RTI Act and not related with APAR of IRSE officer. Issue on this APAR for year 2014-15 already addressed to GM/NCR vide letter KJ/Repr/14-15 dated 04.08.2015”*. In para 4 of the part 2 of APAR relating to short fall the application has stated the following:-

“Need to be posted on substantive post of IRSE officer”.

From these entries, it appears that the applicant has not reflected any other work except under RTI Act, done by him in 2014-15 under other

items of the duty list at Annexure A-3 in the self-assessment report in the APAR. Specific works undertaken by the applicant under RTI Act like disposal of application have not been mentioned in Para 2 of the APAR.

The reporting officer in Part III Para 1 has stated as under:-

“Though he has correctly written his duty list except item 5.11 of duty list (Ann-3) he does not do anything of his duty list as accepted by him in Para 2 at Page 2 (Achievements). He also mentioned that “Issue of this APAR for year 2014-15 already addressed to GM/NCR vide letter No. KJ/Repr/14-15 dt 4/8/15. This reference is not known to me. As such no useful achievement w.r.t. his duty list has been recorded by him in Para 2 of APAR.”

We are not able to find how the assessment of the reporting officer based on his self-assessment report recorded by the applicant in the APAR can be termed as uncalled for or arbitrary. Hence, such contentions of the applicant made in the OA do not have adequate justifications furnished by the applicant.

20. Learned counsel for the respondents has cited the judgment of R. Ramesh (supra) decided by Hon'ble Madras High Court, where it has been held as under:-

“40. That apart, it cannot be brushed aside that mere expunction of adverse entries, by itself, would not made the applicant more meritorious one. An employee cannot claim the benefit of such expunction unless and until he establishes that after expunction of adverse remarks he has a more meritorious record, as per the decision of the Hon'ble Supreme Court in Chandra Gupta V. Secretary to the Government of India [AIR 1995 SC 44].

41. In this connection, we pertinently point out that there is another scope for judicial review as against the adverse entries made in Annual Confidential Reports of concerned employees. In fact, Courts of Law are to act with care and utmost circumspection when they interfere with the administrative matters relating to executive function.

42. At this stage, it is not out of place for this Court to point out the decision of the Hon'ble Supreme Court in State of M.P. V. Srikant Chapekar, [AIR 1993 SC 1221] wherein it is held that 'In a case where Tribunal had interfered and held that adverse remarks in ACR were not sufficient to deny promotion, the Apex Court held that the refusal to promote an employee being 'lazy' or 'late comer' are valid grounds for denial and the Tribunal "out-stepped its jurisdiction" in reaching the conclusion that they were vague. The Court further held that it is not the function of Administrative Tribunals to assess the service of Government servants and that the function to evaluate the ACRs has been vested in the Departmental Promotion Committees”.

The observations of the Hon'ble Madras High Court in the case cited above that this Tribunal has limited power to assess the service of the Government servant and such assessment is an executive function. Hence, this Tribunal has a limited scope in this case to adjudicate the matter relating to assessment of performance of the applicant particularly when the charges of arbitrariness or malafide or violation of any rules on the part of the concerned authorities have not been substantiated by the applicant.

21. In view of above discussions, we are of the considered view that based on the materials available on record, there is no malafide or arbitrariness or illegality on the part of the respondents in writing the applicant's APAR for the year 2014-15 and in disposal of his representations dated 14.01.2016 and 24.01.2016 to the respondent No. 2 against the entries in his APAR for 2014-15, as alleged in the OA and that the OA being devoid of merits, deserves to be dismissed. Accordingly, the OA is dismissed. There is no order as to costs.

(Gokul Chandra Pati)
Member (A)

(Dr. Murtaza Ali)
Member (J)

/pc/