

**Central Administrative Tribunal
Principal Bench, New Delhi**

Reserved on : 11.11.2014
Pronounced on : 20.08.2015

OA No. 1334/ 2014

**Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B. K. Sinha, Administrative Member**

Shri Tushar Ranjan Mohanty
S/O Shri Rabi Narayan Mohanty
SAG Officer of the Indian Statically Service
Deputy Director General
RPU, CAP, Central Statistics Office,
Ministry of Statistics and Programme Implementation
Add: G-31, HUDGO Place Extension
New Delhi-110049.Applicant

VERSUS

Union of India & Others :- through

1. The Chief Statistician of India and Secretary
Ministry of Statistics and Programme Implementation
Sardar Patel Bhawan, Parliament Street
New Delhi- 110001.
2. Prof. T.C. A. Anant,
Chief Statistician of India and Secretary
Ministry of Statistics and Programme Implementation
Fourth Floor, Sardar Patel Bhawan, Parliament Street
New Delhi- 110001.
3. Shri Arvind Kumar
Former Joint Secretary
Ministry of Statistics and Programme Implementation,
Service Through

The Chief Statistician of India Secretary
Ministry of Statistics and Programme Implementation
Fourth Floor, Sardar Patel, Bhawan, Parliament Street
New Delhi- 110001

..... Respondents

(By Advocate: Shri R. N. Singh)

O R D E R

Dr. B. K. Sinha, Member (A):-

This is one amongst a series of more than 200 OAs that have been admittedly filed by the applicant *vis-a-vis* the respondents which have either been decided or are under process of decision.

2. The applicant in the instant OA, filed under section 19 of Administrative Tribunals Act, 1985, is aggrieved with and challenges paragraph 5 of the communication dated 05.03.2012 introducing a three level performance appraisal system i.e. (1) Reporting Officer (2) Reviewing Officer and (3) Accepting Officer in the APAR format of ISS Officer from the APAR of 2011-12 onwards. The applicant has sought the following relief (s) vide means of this OA:-

“8.1 To allow the present Application;

8.2 To quash and set aside the decision in

Paragraph 5 of communication No.

12011/18/2009-APAR (ISS)- Pt. Dated

05.03.2012 (Annexure: A-1) to introduce

the System of Accepting Authority for

the Annual Performance Appraisal

Reports of the Officers of the Indian

Statistical Service;

Or, alternatively;

8.3 to declare that the decision in Paragraph 5 of Communication No. 12011/18/2009-APAR (ISS)-Pt. Dated 05.03.2012 (Annexure: A-1) to introduce the System of Accepting Authority for officers of the Indian Statistical Service would not be applicable for the Annual Performance Appraisal Report for the year 2011- 2012 of the officer of the Indian Statistical Service, being retrospective in character;

Or, alternatively;

8.4 to declare that the decision in Paragraph 5 of communication No. 12011/18/2009-APAR (ISS)- Pt., dated 05.03.2012 (Annexure : A-1) to introduce the System of Accepting Authority for officers of the Indian Statistical Service would not be applicable for the Annual Performance Appraisal Report for the year 2011- 2012, being retrospective in character;

8.5. and as a consequence thereto, direct the Respondent Ministry to grant all

consequential benefits to the Applicant upon removal of the System of Accepting Authority for Officer of the Indian Statistical Service or only the Applicant;

8.6 to issue any such and further orders/directions this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and

8.7 to allow exemplary costs of the application.

3. The applicant is a directly recruited Officer of the Indian Statistical Service (ISS) of 1981 batch who was promoted in Senior Administrative Grade of ISS on ad hoc basis w.e.f. 2.11.2006 and was subsequently regularised in the same capacity w.e.f. 29.5.2009. It is the submission of the applicant that while 14 of his batchmates had been granted Non-Functional Upgradation (NFU) to Higher Administrative Grade w.e.f. 2.7.2013 vide letter dated 16.1.20014, the same had been denied to him on the ground that the Accepting Authority had given a below Bench Mark grading in the Annual Performance Appraisal Report (APAR) for the year 2011-12 and the period pertaining to 1.4.2012 to 31.7.2012.

4. It is the case of the applicant that his recruitment and service conditions are governed by the Indian Statistical Service Rules, 1961 (referred hereinafter as the Service Rules, 1961) as amended from time to time, and from 09.09.2013 onwards by the Indian Statistical Service Rules, 2013 (referred hereafter as the Service Rules, 2013) which came to substitute the earlier Service Rules 1961. The applicant had joined Respondent Ministry on 04.11.2011 as Deputy Director General. Thereafter, the Respondent Ministry issued impugned communication dated 5.3.2013 making the respondent No. 2 the Accepting Authority in respect of the APARs of the Applicant. The applicant was conveyed adverse entries in his APAR for the year 2011-2012 vide communication dated 16.12.2013 to which he submitted his representation on 24.01.2014 stating, *inter alia*, that the impugned Memo dated 05.03.2012 had not been communicated to him and it was only through the mechanism of RTI that he came to learn about its contents. The Respondent Ministry forwarded this communication vide its letter dated 24.12.2013 wherein the applicant submitted, on the basis of the factual matrix, that before writing the adverse remarks, no warning had ever been given to him. His principal challenge to the impugned document was purely in a legal framework; the three tier appraisal system was legally not tenable for the reasons that no consultations had been made

with the Department of Personnel and Training; the respondent no. 2 had issued the same without having even obtained the approval of the Minister for which he was not competent; and that the format of the APAR form was still structured to a two-tier appraisal system while the Accepting Authority had been hurriedly superimposed impinging upon the timelines provided.

5. We have noted earlier that representation dated 24.01.2013 has been made largely in such factual matrix but chooses to ignore the issue at hand which stands to be decided largely as a question of law. Considering the size of the OA and counter reply filed by the respondents, it is felt that narration of the facts would serve only to add to the bulk of this order without contributing anything to its substance. Hence, we proceed straightway to list the following grounds on which challenge has been made to the 3rd tier into the system of recording of APAR introduced by means of impugned order dated 05.03.2012:-

1. There has been no prior consultation with the DoPT nor does the impugned order have its approval deemed mandatory otherwise.
2. The impugned decision violates Rule 5 of the Indian Statistical Service Rules, 1961 (page 441). There was no provision for Accepting Authority in the Service Rules,

1961. The note for inserting an Accepting Authority was initiated by means of para 5 of note dated 27.01.2012 (page 482) even when the main file was available with the Department (page 481) implying an ulterior motive. The note of the respondent No. 3, one Arvind Kumar, the then Joint Secretary in the Respondent Organization records that a three level appraisal system was prevailing in most of Central Group 'A' Services while ISS traditionally had two tier appraisal system. This was followed at the time of drafting the new APAR format system introduced in 2010. The note further states that in such cases where the Reporting and Reviewing Authorities award varying and contradictory grades, it becomes difficult for the Secretaries or any other Senior Officers to take a synthesised view in absence of any provision to this effect. This makes introduction of the third level in the form of an Accepting Authority necessary.

3. The applicant submits that he is not questioning the three tier System as such, but rather the manner of introduction of the provision of the third tier. He questions that the format of a JS level Officer could not have been approved by another JS level Officer (Page 506). Since the level of Accepting Authority had been hurriedly introduced without having undertaken the due diligence, it suffered many incongruities e.g. there was no

column for Accepting Authority (page 508) and the time schedule did not include the Accepting Authority.

4. The introduction of the three tier system is inconsistent with Rule 3(3) of the Government of India (Allocation of Business) Rules, 1961 read with Rule 2 and 3(3) of the Government of India (Transaction of Business) Rules, 1961. Rule 15 of the Service Rule, 1961 provides that in absence of provisions, rules applicable to the Central Service class 1 shall apply. The applicant submits that there is no provision for Accepting Authority in equivalent rules like the Indian Economic Service. In para 4.40 of the OA, the applicant has referred to OM dated 14.05.2009 of DOP&T which inter-alia provides as under:-

- “(i) The existing nomenclature of the Annual Confidential Report will be modified as Annual Performance Assessment Report (APAR).
- (ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing officer and the Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory level above him, as in the case of personal staff attached to officer, such communication shall be made after the reporting officer has completed the performance assessment. ”

Therefore, the applicant submits that the system of Accepting Authority for APAR would continue where it is

already in vogue and nowhere has the DoPT given a carte blanche to the Respondent Ministry to create the system of Accepting Authority where it was not available. Hence, the applicant submits that the introduction of the system of accepting Authority in APAR is illegal and de-hors the instructions of the DOP&T.

5. The applicant further submits that the Ministry is not the sole Authority for taking decisions in such matters. It is to be advised by the Indian Statistical Service Board constituted under Rule 2 (a) of the Service Rules, 1961. Rules 5 of the Service Rules, 2013 provides that Government of India, Ministry of Statistics and Programme implementation shall be controlling Authority of the Service. This Rule further provides that major policy matter like cadre-review, restructuring of cadres, reviewing the roles and function of the cadres/individual officers *vis-a-vis* other Ministries or Departments or State Governments or Union Territories etc. are to be decided by the cadre controlling Authority in consultation with the Indian Statistical Service Board. The argument of the applicant is that the creation of Accepting Authority in their APAR under reference does not have the mandatory approval of the Ministry of such (independent authority) and hence it is illegal and de-hors the rules [para 4.43 page 34 of the paper book]. For that matter, even the

Minister of State in Independent Authority of Statistic Charge cannot take unilateral decisions and has to have the approval of ISS Board mandatorily. This makes entire exercise bad in law, illegal and non-est.

6. The Applicant further alleges malice in law and malice in fact is that he had been intervener in OA No. 653/2010 whereby appointment respondent No. 2 as Chief Statistician of India has been quashed by this Tribunal vide its order dated 20.10.2011. Respondent No. 2 has now introduced himself as responding as Accepting Authority so that he could get even with him by downgrading his APARs. The applicant further submits that the respondent No. 2 had gone to the extent of threatening him personally that he would ensure that he never gets promoted. The applicant further claims that OA 653/2010 was decided quashing the appointment of respondent no.2 mainly on the basis of his arguments. The applicant had also acted as a Caveator before the Hon'ble High Court W. P. (C) No.8124/2011 and CM No. 18278 of 2011.

7. The applicant submits in support of the alternative prayer that the APAR system with Accepting Authority should not be introduced in respect of the Report year 2011-12, the assessing officers must have a minimum period of 90 days to watch the work of officers reported

upon. In the instant case when the impugned communication was issued on 05.03.2012, the concerned Accepting Authority would have only 25 days to watch the applicant's performance. In this regard, the instructions of DOP&T OM dated 22.05.1976 would apply mutatis- mutandis to the Accepting Authority in the present case.

6. The Respondents have filed counter affidavits wherein they have rebutted the averments in the OA. At the very outset they raise preliminary objections of limitation as the applicant has challenged the communication dated 05.03.2012 by filing instant OA on 15.04.2014 beyond one year of the cause of action arising. In the second place the respondents submit that the applicant has raised the same issue in OA No. 216/2014 by filing MA No. 1043/2014 on the same grounds by including representations dated 24.01.2014. Therefore, the OA is hit by ***res judicata/ constructive res-judicata*** leading to gross misuse of the process of law. In the third place, the respondents submit that the APAR provides the basic and vital inputs for assessing the performance of an officer and advancement in his career. It also serves as a tool for judging his comparative merit relating to his conditions of service e.g. confirmation, promotion, selection grade, crossing efficiency bar, continuance in service beyond certain age or completion

of certain years' service etc. The Government has accepted the principle that these factors should be based solely on the assessment of the confidential dossiers. Learned Counsel for the respondents drew our attention to para 3.1 of DOP&T OM dated 23.07.2009, which provides that forms in which APARs are recorded vary amongst different Departments and between different levels of responsibilities within departmental hierarchies, works and duties attached to various posts. Respondents further submit that DOP&T OM dated 14.05.2009 provides the procedure for maintenance and preparations of APARs and communication of entries. It also provides that the new system is to be made applicable after 01.04.2009 for the reporting period 2008-09. Learned Counsel for respondent has also referred to the OM dated 14.05.2009 whereby the Respondent Department had considered the representations of the applicant and had communicated to him an order dated 24.12.2009 enclosing there with the aforesaid OM giving him opportunity to submit representations within stipulated time. Making a reference to OM dated 23.07.2009, the respondents submit that it prescribed the objectives and procedure for formats of APAR for revisions of the respective cadres of the Government of India. It stipulates that wherever Accepting Authority has been prescribed i.e. the existing system columns are also being provided for such authority to give his comments/ remarks

and details the remarks of the Reporting/Reviewing Authorities and difference of opinion along with the reasons therefor **[para (v) of the Page No. 375 of OA]**. This OM goes ahead to further prescribe time schedule for the Accepting Authority of 15 days by the Officers reported upon. Since format has been based upon general guidelines of DOP&T for which Department had directed the concerned authorities for making necessary changes in the format, the matter was decided at the level of the Secretary, MOSPI on 22.02.2010 and the revised format was being followed for the APAR for the year 2009-10. Referring to the need of having an Accepting Authority, learned Counsel for respondents submits that it was felt that the difference of opinions arising between Reporting and Reviewing Authorities had to be reconciled. In order to develop greater clarity the submissions of the respondents in their counter-affidavit are extracted as under:-

“15. That it was also submitted that while in the Ministry, the APAR of JS also goes to the Minister for acceptance, in CSO and NSSO, even the APARs of the Additional Secretary level officers are not going to the Hon’ble Minister for acceptance. Accordingly, it was proposed to introduce the third level of Accepting Officer in the

APAR format of all ISS officers from the APAR of 2011-12.

16. That this issue was deliberated at different levels and with the approval of the Hon'ble MOS (IC), the proposal to introduce the system of 'Accepting Authority' was decided and the same resulted in the issue of letter dated 05.03.2012, which has been challenged by the applicant.
17. That with regard to the averments all along in the OA that the DOPT's OMs dated 14.05.2009 or 23.07.2009 did not authorize introduction of the 'Accepting Authority', the respondents used the counter argument that the instructions of DOP&T, nowhere bar the respondent Ministry from introduction of the 'Accepting Authority'. As submitted earlier, the decision to introduce the 'Accepting Authority' has been taken based on its own merit and with due approval of the Hon'ble Minister in the respondent Ministry.

18. That the letter dated 05.03.2012 introducing inter alia the level of the 'Accepting Authority' was well circulated and the revised format was made applicable in respect of all officers of ISS since the reporting period 2011-2012. Based on the revised format, a large number of the APAR of the ISS Officers for the year 2011-2012 onwards have been completed or under the process of completion.
19. That even the applicant was very much aware about the content of the letter dated 05.03.2012 based on which the format of the APAR was revised and the system of the Accepting Authority was introduced in the APAR ISS Officers. The APAR of the applicant for the period 08.11.2011 to 31.03.2012 (pages 294-310, Annexure 1 (colly) and Annexure 2 of the OA) were sent by the Administration on 11.04.2012, which indicates the details of the Reporting, Reviewing and Accepting Authorities. The applicant submitted himself appraisal dated

15.05.2012, in this APAR which included the details of Reporting, Reviewing and Accepting Authority, to his Reporting Officer on 16.08.2012.

20. That nowhere in this APAR for the period of 08.11.2011 to 31.03.2012 nor separately the applicant raised the issue of introduction of the Accepting Authority (as mentioned in the APAR) thereby indicating that he was fully aware of the introduction of one more level of the 'Accepting Authority' in the APAR of the ISS.

21. That having acquiesced to introduction of the 'Accepting Authority' by way of submission of self appraisal way back on 16.08.2012, it cannot be case of the applicant that he was not aware of the system of introduction of 'Accepting Authority'. Therefore, raising the issue of the legality of the introduction of the third level of 'Accepting Authority' at such a belated stage when a large number of the APAR of the ISS offices have been completed and the same has been utilized

for various purposes like promotion/confirmation/upgradation is barred by the limitation, delay and latches.

22. That this issue is now being raised by the applicant only because the assessment of his performance has been made by the respective Reporting/ Reviewing / Accepting Authority on objective criteria and that the grading are not according to this linking.”

7. Learned counsel for the respondents has also rebutted the averment of the applicant on the ground that the service Rules, 2013 have been applied in these situations as the same had already been notified. Respondents further submits that the proposal to introduce the system of Accepting Authority is only an administrative issue and not a policy decision, requiring the advice of the ISS Board. As such it was well within the competence of the Hon’ble Minister in charge of the MOSPI who is the cadre controlling authority, as averred by the applicant in para 4.43 (page- 559). Further, introduction of the Accepting Authority for the ISS officers is no way in violation of any statutory provisions as averred by the applicant. The respondents have submitted regarding the

decision of the APAR of the Accepting Authority in their counter affidavit is as under:

“4.48: ”With regard to the averments made in this para attention of the Hon’ble Tribunal is invited to the copy of the APAR for the period 08.11.2011 to 31.03.2012 (copy at pages 294-310 of the OA annexure-1 (copy) of annexure-2 of the OA). This APAR submitted by the applicant with the self appraisal was sent to him by Administration with date 11.04.2012, which indicates the details of the Reporting, Reviewing and Accepting Authority. The applicant submitted his self appraisal dated 15.05.2012, of this APAR (which included the details of Reporting, Reviewing and Accepting Authority) to his Reporting Officer on 16.08.2012. Nowhere in this APAR nor separately the applicant raised the issue of ‘Accepting Authority’ not being appropriate authority in his case thereby indicating that he was fully aware of the introduction of one more level of the ‘Accepting Authority’ in the APAR of the ISS. Thus, having acquiesced to introduction of the ‘Accepting Authority’ by way of submission of self appraisal, it cannot

be case of the applicant that the introduction of 'Accepting Authority' is a violation of any instructions. The instructions quoted by the applicant is completely misplaced and skewed argument, in as much as the fact that while system of 'Accepting Authority' was issued vide letter dated 05.03.2012 which was made applicable for the APAR for the year 2011-2012 onwards, there exists different channels for submission in the Govt Set up all the time. There exists Reporting Authority which reports to the Reviewing Authority and the 'Reviewing Authority' Reports to the next authority in hierarchy which becomes the 'Accepting Authority'. This instructions of the DOP&T as quoted by the applicant that the different authorities must have 90 days of experience of the work of the officer, is relevant when the officer reported upon has not worked for more than 90 days within any of a particular authority mentioned above. In the instant case, all the three particular authorities namely Reporting, Reviewing and Accepting Authority were the superior officers of the applicant since long during the

reporting period and they have rightly assessed the performance of the applicant.”

8. Learned counsel for the respondents vehemently argued that it is wrong on the part of the applicant to ignore the acceptance of OM dated 05.03.2012 vide which the Accepting Authority has been introduced in APAR of the ISS Officers. The fact that self-appraisal format had been sent to the applicant by administration is accepted by him, indicates the detail of the Reporting, Reviewing and Accepting Authority.

9. Learned counsel for respondent has submitted that the applicant was only an intervener in OA 1653/2010 without any specific rights to be enforced in that OA. The order dated 20.10.2011 of the Central Administrative Tribunal in OA. 1653/2010 was challenged in WPC No. 8124/2011 before the Hon'ble High Court of Delhi, which was dismissed by the Hon'ble High Court at the admission stage itself vide order dated 17.09.2013 without having issued notice to the Ministry. Therefore, the learned counsel for the respondents submits that the attempt of the applicant to make out a case of bias/malice is only to mislead the court. Learned counsel for respondent have also taken us through various posts enjoyed by the applicant in different Ministries including that in Tribal Affairs, Health and Family Welfare, Agriculture and Industry, after that the applicant had been given Department

of Justice after identifying a post of SAG level. The Following attempts were made by the respondent of the posting of applicant:

(f) The matter of the posting of the applicant was also a subject matter of the litigation before the Hon'ble High Court of Delhi. Hon'ble High Court in its order dated 24.08.2011 in the WP (c) No. 562/2011 and CM No. 1197/2011 (stay) and WP (c) No. 1095/2011 had inter-alia directed for the implementation of posting order dated 25.05.2011 within maximum period of one month.

(g) Since the matter regarding posting of the applicant with Department of Justice in light of the above directions of the Hon'ble High Court of Delhi was under consultation, this Ministry had filed one CM No. 16940 of 2011 in the WP (C) No. 562 of 2010 seeking extension of time for implementation of the order dated 24.08.2011.

(h) The applicant in written submission to the above CM had made out a case for his

posting within this Ministry by making all sorts of allegations. Some of the averments made in paras 11 and 12 of his written submission are reproduced to substantiate as to how the applicant is now making out a case of bias by questioning his posting made in the ministry after several failed attempts to post him outside this ministry:

“11. That unfortunately, the post of Chief Statistician of India is not a cadre post of the Indian Statistical Service and is an open selection post. The essential eligibility criteria prescribed for the post of Chief Statistician of India is ‘Statistical and managerial experience in a large statistical organization’. One look at the different postings being offered to the Respondent would show that the places where the respondent is being posted are not large statistical organizations, thereby ensuring that the respondent would be at disadvantage in selection for the post of Chief Statistician of India, whenever it takes place next.

12. That one other point that needs to be highlighted here is that the Petitioner-Ministry is trying to give an impression that the Respondent is not acceptable to several Ministries. The Respondent would not like to comment on the same but the thing would become evident is that if the respondent would have been posted in the Petitioner Ministry and not in outside Ministry, then the question of the acceptance would not arise. However, if the respondent is posted in the Petitioner Ministry, and then he would become eligible for the post of Chief Statistician of India, which situation is not acceptable for several officers of the Petitioner Ministry.”

10. The applicant has filed a rejoinder application contradicting all averments in the counter reply of the respondents. The applicant has narrated in some detail as to how he had been placed under suspension and departmental proceedings that had been lodged against him on minor grounds. He has submitted that the file had never been submitted before the Accepting Authority, the previous Minister who was well aware of the exceptional abilities of the

applicant. This sufficiently indicates that the respondents bore deep rooted malice against him and wanted to mar his career prospects at any cost. He was eligible otherwise to be considered for the post of Statistician General which was not acceptable to the respondents particularly to respondent no.2.

11. We have closely examined the pleadings along with such documents as adduced by the parties running into more than 900 pages and patiently heard the applicant who appears in person as well as Shri R. N. Singh, learned counsel for the respondents. On the basis of the above, we find that the following issues are germane to take decision in this case:-

- (i) Whether the case is barred by limitation?***
- (ii) Whether the OA is barred by res judicata in respect of OA No.216/2014 with MA No.1034/2014?***
- (iii) Whether the impugned order has been vitiated on account of non-consultation with the DoP&T and other procedural latches?***
- (iv) Whether the ACRs/APAR of the applicant for the year 2011-2012 will not be accepted by the Accepting Authority being retrospective in nature.***
- (v) Whether the defence of the respondents is hit by malafide?***

12. Insofar as the first issue is concerned, the applicant in his rejoinder affidavit has submitted that though admittedly his relief is against the impugned notification dated 05.03.2012 but it was brought to his notice by the respondents vide communication dated 14.12.2013 (page 313 of the paper book). The applicant in para 6 of his rejoinder affidavit (page 608 of the paper book) has strongly denied that he ever had any knowledge of the impugned order dated 05.03.2012 and he had motivatedly submitted that he was even prepared to undergo a lie detector test. However, considering the facts of the case and also that the case has already been heard on merit, we find it both expedient and in the interest of justice that it should be decided on merit. Hence, the issue of limitation is waived and is not considered as stumbling block.

13. As regards the second issue; reliefs sought for by the applicant in the instant OA and OA No.216/2014 with MA No.1034/2014 are being reproduced herein below in a tabular form:-

OA No.1334/2014	OA No.216/2014	MA No.1034/2014
“8.1 To allow the present Application; 8.2 To quash and set aside the decision in Paragraph 5 of communication No. 12011/18/2009-APAR (ISS)- Pt. Dated 05.03.2012 (Annexure: A-1) to	8.1 to allow the present Application; 8.2 to quash the impugned order dated 16.01.2014 (Annexure A-1) in as much as it is detrimental to the Applicant;	(i) allow the present Miscellaneous Application; (ii) treat the information given in the present MA and the documents enclosed hereto as part of the OA and permit the

<p>introduce the System of Accepting Authority for the Annual Performance Appraisal Reports of the Officers of the Indian Statistical Service;</p> <p>Or,</p> <p>alternatively;</p> <p>8.3 to declare that the decision in Paragraph 5 of Communication No. 12011/18/2009-APAR (ISS)-Pt. Dated 05.03.2012 (Annexure : A-1) to introduce the System of Accepting Authority for officers of the Indian Statistical Service would not be applicable for the Annual Performance Appraisal Report for the year 2011- 2012 of the officer of the Indian Statistical Service, being retrospective in character;</p> <p>Or,</p> <p>alternatively;</p> <p>8.4 to declare that the decision in Paragraph 5 of communication No. 12011/18/2009-APAR (ISS)- Pt., dated 05.03.2012 (Annexure : A-1) to introduce the System of Accepting Authority for officers of the Indian Statistical Service would not be</p>	<p>8.3 to direct the Respondent Ministry to grant Non-Functional Financial Upgradation to the Applicant to the Higher Administrative Grade with effect from 02.07.2013, at par with the juniors of the Applicant;</p> <p>8.4 to direct the Respondent Ministry to pay arrears of salary of the Higher Administrative Grade with effect from 02.07.2013;</p> <p>8.5 to direct the Respondent Ministry to pay compound interest@18% per annum, compounded monthly, with effect from 02.07.2013, till the date of payment of the arrears of salary;</p> <p>8.6 to direct the Respondent Ministry to take appropriate action against the erring official for their acts of omissions and commissions in the matter in terms of Department of Personnel and Training Office Memorandum</p>	<p>Applicant to place reliance on the same for deciding the issues (?) in the OA;</p> <p>(iii) issue any such and further order/direction this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case; and</p> <p>(iv) award exemplary cost against the Respondent.</p>
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<p>applicable for the Annual Performance Appraisal Report for the year 2011- 2012, being retrospective in character;</p> <p>8.5. and as a consequence thereto, direct the Respondent Ministry to grant all consequential benefits to the Applicant upon removal of the System of Accepting Authority for Officer of the Indian Statistical Service or only the Applicant;</p> <p>8.6 to issue any such and further orders/directions this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and</p> <p>8.7 to allow exemplary costs of the application.</p>	<p>No.22011/9/98-Estt.(D), dated 14.12.200;</p> <p>To issue any such and further orders/directions this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and</p> <p>8.7 to issue any such and further orders/directions this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and</p> <p>8.8 to allow exemplary costs of the application.</p>	
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Further, in para 5 of MA No.1034/2014, the applicant has stated in the following terms:-

“5. That the Applicant has submitted his comprehensive representation against the Annual Performance Appraisal Report for the year 2011-2012 vide Letter dated 24.01.2014. However, the same is not enclosed hereto, as the same runs into 255 pages and may not be relevant to the purposes of our case. However the Applicant reserves the right to place on record his comprehensive representation dated 24.01.2014 in the Rejoinder to the present MA or OA, if so required.”

Significantly, in the instant OA, the applicant has heavily relied upon his representation dated 24.01.2014. In this respect, the applicant submits in para 4.8 of the instant OA as under:-

“4.8 That there were several correspondences by the Applicant with the Respondent Ministry in this regard. Finally, the applicant submitted a comprehensive representation dated 24.01.2014 [Annexure A-2 (colly)] to the Respondent Ministry against the adverse and below benchmark grading in the Annual Performance Appraisal Report for the year 2011-2012. In this representation the applicant raised the plea that introduction of the system of Accepting Authority in the Annual Performance Appraisal Reports of the Officers of the Indian Statistical Service was illegal.”

14. It is an admitted fact that though the same document, i.e., representation of the applicant dated 24.01.2014 has been relied upon in both cases, i.e., in the instant OA and OA No.216/2014 with MA No.1034/2014, but the relief sought for is slightly different. OA No.216/2014 is still under consideration and has not been decided so far. Hence, we find that the instant OA is not barred by *res judicata* on the simple account that the OA No.216/2014 is under consideration and has not been finally decided. Moreover, we are of the opinion that even if the same documents have been relied upon in both cases, it will still not attract the provisions of *res judicata* as the reliefs sought for in both the cases are different. This issue is accordingly decided in favour of the applicant.

15. In so far as the third issue is concerned we start with examination of scope of the executive powers of the State as conferred under the Constitution of India.

Article 74 of the Constitution provides as under:-

“74. Council of Ministers to aid and advise President,- (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercises of his functions, act in accordance with such advice.

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advises tendered after such reconsideration.

(2) The question if any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.”

Article 77 of the Constitution of India relates to conduct of business of the Government of India which provides as under:-

“77. “Conduct of business of the Government of India.—(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.”

16. In the case of ***State of Uttar Pradesh versus Pradhan Sangh Kshetra Samiti*** [AIR 1995 (SC 1512], the Hon'ble Supreme Court had further held that "it is not necessary for the President to be personally satisfied in exercising the executive power".

17. Whenever the Constitution requires the "satisfaction" of the President for exercising any administrative power or functions, it is not his personal satisfaction, but in the constitutional sense, the satisfaction of his council of ministers on whose aid and advice President's opinion, satisfaction or decision is constitutionally secured when his ministers arrive at such opinion, satisfaction or decision. It has also to be seen that whether the validity of executive action depends upon prior legislation [***H.C. Mehta versus Union of India*** (2004) 12 SCC 118] and where, the Constitution does not require legislation, and there is no contrary law in force on the subject matter, it is open to the Executives to issue administrative orders or instructions and even to confer rights and duties [***Raghunandan versus State of Orissa*** (1975) 1 SCC 106].

18. It has been further held in ***Union of India versus Naveen Jindal*** [AIR 2004 (SC) 1559] that executive instructions are not "law" under Article 13 through such instructions might have the force of law for some other

purposes, as for example those instructions which are issued as a supplement to legislative power under Article 77(1) of the Constitution.

19. It has been further held in ***Chairman of L.I.C. of India versus Kalangi Samuel Prabakar*** [AIR 1997 (AP) 304] that the executive circulars, directions, instructions and regulations are issued under appropriate laws: and below statutory rules. They are not policy decisions, but means of implementation of predetermined policies. In ***H.C. Mehta's*** case (Supra) the Hon'ble Supreme Court further made it clear that a statutory notification cannot be notified by issue of a circular.

20. The aforesaid views have been further fortified by the Hon'ble Supreme Court in a series of cases – ***Nagendra versus Commissioner*** [AIR 1958 (SC) 398(413)]; ***Sant Ram versus State of Rajasthan*** [AIR 1967 (SC) 1910] and ***Union of India versus Joseph*** [AIR 1973 (SC) 303], to mention a few.

21. In ***SR Bommai vs Union of India 1994(3) SCC 1*** the Hon'ble Supreme Court holds that Articles 74 and 77 are complementary to each other, though they operate in different fields. Article 74(1) deals with acts of the President done in exercise of his functions whereas Article 77 speaks of the

executive action of the Government of India which is taken in the name of the Government of India. In so far as the executive action of the Government of India is concerned it has to be taken by the Minister/officer to whom the business is allocated by the rule of business made under clause (3) of Article 77 for more convenient transaction of the Government of India. All orders issued and the instrument executed relatable to the executive action of the Government of India have to be authenticated in the manner and the officer empowered in that behalf. The President does not relay come to the picture in so far as Article 77 is concerned. All business of the Government of India is transacted by the Minister or other officer empowered in that behalf, of course, in the name of the President. Orders are issued, instruments are executed and other acts done by various Ministries and officers, none of which reach the President or be placed before him for consideration. There is no occasion for such cases being for any aid or advice being considered to the President by the Council of Ministers. Though expressed in the name of the President they are the acts of the Government of India. In this regard we deem it necessary to extract the relevant part of the judgment in ***Shamsher Singh (supra)***:

”31. Further the rules of business and allocation of business among the Ministers are relatable to the provisions contained in Article 53 in the case of the President and Article 154 in the case of the Governor, that the executive power shall be exercised by the

President or the Governor directly or through the officers subordinate. The provisions contained in Article 74 in the case of the President and Article 163 in the case of the Governor that there shall be a Council of Ministers to aid and advise the President or the Governor, as the case may be, are sources of the rules of business. These provisions are for the discharge of the executive powers and functions of the Government in the name of the President or the Governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's Department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister (See Halsbury's Laws of England 4th Edn. Vol. I, paragraph 748 at p. 170 and *Carltona Ltd. v. Works Commrs.*, (1943) 2 All ER 560 (CA)).

39. This Court in ***Bejoy Lakshmi Cotton Mills Ltd. v. State of West Bengal***, reported in (1967) 2 SCR 406 = (AIR 1967 SC 1145) considered the validity of a notification signed by the Assistant Secretary in the Land and Revenue Department of the State Government. It was contended that the executive power of the State is vested in the Governor under Article 154(1) of the Constitution, and, therefore, the satisfaction of the Governor was contemplated under Sections 4 and 6 of the Land Development and Planning Act under which the notification would be made. Under the Rules of Business made by the Governor under Art.166 (3), the Governor allocated to the Minister certain matters. The Minister-in-charge issued a Standing Order specifying the matters which were required to be referred to him.

40. The Rules of Business in the ***Bejoy Lakshmi Cotton Mills case*** (1967) 2 SCR 406 = (AIR 1967 SC 1145) (*supra*) indicated that the business of the Government was to be transacted in various departments specified in the Schedules. Land and Land Revenue was allocated as the business of the Department of the Minister with that portfolio. The Minister-in-charge had power to make standing order regarding disposal of cases. This Court held that the decision of any Minister or officer under Rules of Business is a decision of the President or the Governor respectively. The Governor means, the Governor aided and advised by the Ministers. Neither Article 77 (3) nor Article 166 (3) provides for any delegation of power. Although the executive power of the State is vested in the Governor actually it is carried on by Ministers under Rules of Business made under Article 166 (3). The allocation of

business of the Government is the decision of the President or the Governor on the aid and advice of Ministers.

41. This Court in **Jayantilal Amritlal Shodhan v. F. N. Rana**, (1964) 5 SCR 294 = (AIR 1964 SC 648) considered the validity of a notification issued by the President under Article 258 (1) of the Constitution entrusting with the consent of the Government of Bombay to the Commissioners of Divisions in the State of Bombay the functions of the Central Government under the Land Acquisition Act in relation to the acquisition of land for the purposes of the Union within the Territorial jurisdiction of the Commissioners. The notification issued by the President was dated 24 July, 1959. The Commissioner of Baroda Division, State of Gujarat by notification published on 1 September, 1960, exercising functions under the notification issued by the President notified under Section 4(1) of the Land Acquisition Act that certain land belonging to the appellant was needed for a public purpose. On 1 May, 1960 under the Bombay Reorganisation Act, 1960 two States were carved out, viz., Maharashtra and Gujarat. The appellant contended that the notification issued by the President under Article 258 (1) was ineffective without the consent of the Government of the newly formed State of Gujarat.”

22. The question of allocation of the business amongst the ministers arises out of the fact that the President being a constitutional head is to act on the advice of the Council of Ministers. It is physically impossible that each and every decision must be taken by the Council of Ministers personally. The Hon’ble Supreme Court has observed candidly in **Shamsher Singh vs Union of India AIR 1974 SC 2192** that the wheels of the Government will come to a grinding halt if every decision is required to be taken by the Council of Ministers. Hence, in order to in exercise of the powers conferred by clause (3) of article 77 of the Constitution Government of India (Allocation of Business) Rules, 1961 for

the allocation of the business of the Government of India had to be framed referred hereinafter as the Allocation of Business Rules, 1961. Rule 2 of the business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule to these rules (all of which are hereinafter referred to as "**departments**"). For sake of greater clarity the Rules 2 & 3 of the Allocation of Business Rules, 1961 are extracted as below:

3. Distribution of Subjects -

1. The distribution of subjects among the departments shall be as specified in the Second Schedule to these Rules and shall include all attached and subordinate offices or other organisations including Public Sector Undertakings concerned with their subjects and Sub-rules (2), (3) and (4) of this Rule.
2. The compiling of the accounts of each Department shall stand allocated to that Department with effect from the date from which the President relieves, by order made under the first proviso to sub-section (1) of Section 10 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971; the Comptroller and Auditor General from the responsibility for compiling the accounts of that Department.
3. Where sanction for the prosecution of any person for any offence is required to be accorded-
 1. If he is a Government servant, by the Department which is the Cadre Controlling authority for the service of which he is a member, and in any other case, by the Department in which he was working at the time of commission of the alleged offence;
 2. If he is a public servant other than a Government servant, appointed by the Central Government, by the Department administratively concerned with the organisation in which he was working at the time of commission of the alleged offence; and
 3. In any other case, by the Department which administers the Act under which the alleged

offence is committed; Provided that where, for offences alleged to have been committed, sanction is required under more than one Act, it shall be competent for the Department which administers any of such Acts to accord sanction under all such Acts.

4. Notwithstanding anything contained in sub-rule (3), the President may, by general or special order, direct that in any case or class of cases, the sanction shall be by the Department of Personnel and Training.”

23. It is not possible for even the most hardworking of the Ministers to attend to every business of his Ministry personally nor is he expected to burden himself with the day-to-day administration, his primary function being to lay down policies and programmes of his Ministry while the Council of Ministers settles the major policies of the Government. This gives rise to the need for making provisions for more convenient transaction of business with each Ministry. This is done by the Rules of Business by designating particular civil servants or officials within the Ministry who shall be competent to take decisions or dispose of business of the Government subject to the control of the Minister-in-charge or directions issued by him through the standing orders **[Sanjeevi vs State of Madras, 1970(1) SCC 443]**. The Hon’ble Supreme Court has further held in **Shamsher Singh (supra)** that any action taken by the specified officials designated by the Rules of Business is an action of the Government because the officials designated by the Rules of Business are limbs of Government, not its delegates. The rules of business and allocation of business

rules among ministers of the said business all indicate that the decision of the minister or the officer U/A 77(3) is the decision of the President. Where functions entrusted to a Minister are performed by an official deployed in the minister's department, this is in law no delegation because constitutionally the act or the decision of the official is that of the Minister. The decision in ***Shamsher Singh (supra)*** is further supported by a decision of the Hon'ble Supreme Court in ***Municipal Corporation of Delhi vs Birla Cotton and Spinning and Weaving Mills AIR 1968 SC 1232*** that the official is merely machinery for discharge of the functions entrusted to the Minister. In short, by the Rules of Business made by the Government on advice of the Council of Ministers the President cannot only allocate the various subjects amongst particular Ministers but may go further and designate a particular official to discharge any particular function.

24. The afore stated legal position takes care of the arguments of the applicant that prior consultation had not been made with Department of Personnel and further that approval of the Minister-in-charge had not been obtained for the changes. Per contra the respondents have submitted in their counter-affidavit that the proposal had been approved by the Minister-in-charge. Thus, we posit that it is within the competence of the department to introduce a three tier system

in terms of Accepting Authority in assessment of APARs and further that even if consultation has not been made with DoPT that would, by itself, be insufficient to vitiate or nullify the order, as this action has been taken in exercise of the executive powers of the President. We are further swayed by the fact that earlier an additional mark had been incorporated for exceptional work done by the ISS/SSS officers taking the maximum grading to 11 instead of 10. Accordingly, the APARs of ISS and SSS officers for the years 2009-10 and 2010-11 had been recorded in a scale of 1:11. However, since all the DPCs tend to evaluate APARs of officers on a scale of 1:10 as per the existing instructions of DoPT, the newly introduced scale of 1:11 had been creating problems in evaluation. The matter was, therefore, examined in the Ministry and it was decided to do away with the scale of 1:11. It was further decided to do away with the 1 extra mark for exceptional work performed from 2011-12 onwards vide the impugned order dated 5.03.2012. The same order introduced Accepting Authority. The relevant part of the impugned order is extracted below:-

“3. All the DPCs including DPCs held in UPSC tend to evaluate the APARs of the officers being considered on the scale of 1 to 10 in accordance with the instructions of DoP&T. The column for awarding extra mark for exceptional work included in the APAR format of ISS and SSS Officers has been creating problems/complications while holding DPCs. Therefore, the matter has been examined in this Ministry and it has been decided to remove altogether the relevant column pertaining to extra

mark for exceptional work from the APAR formats of ISS & SSS officers from the year 2011-12 onwards on the ground that the extra mark for the exceptional work is already covered under the attribute 'assessment of work output' and this extra mark is just a duplication. However, the issue remained alive for the two years i.e. 2009-10 and 2010-11, when the APARs of the ISS and SSS officers were recorded/reported on the revised format on the scale of 1 to 11. The extra mark awarded during these years is still creating problems/complications at the time of holding DPCs etc. In view of this, the matter has been re-examined and it has been decided to ignore the extra mark awarded to ISS and SSS Officers in their APARs for the years 2009-10 & 2010-11 for the exceptional work done by them for the purpose of DPCs on the same ground on which the decision has been taken to remove the relevant column for awarding extra mark for exceptional work from the APAR formats of ISS and SSS officers from the year 2011-12 onwards, as mentioned above.

4. Accordingly, the relevant column for awarding extra mark for exceptional work to ISS and SSS Officers in their APARs for the period 2009-10 and 2010-11 would be ignored for all DPCs and the evaluation of gradings for these years would be done on the scale of 1 to 10."

25. It follows from the above that the respondent department had introduced the system of 1 mark for extra ordinary work done by the officer being assessed on its own. The decision to do away with the extra 1 mark for exceptional work had also been taken by the department at its own volition without there being any consultation with the DoP&T. This extra 1 mark had withstood the test of the DPC. However, it had to be rescinded in view of practical difficulties being created. The Accepting Authority has been introduced by the same letter which had done away with the extra 1 mark, i.e., the impugned order dated 05.03.2012. While on one hand the

introduction of extra 1 mark or its abolition had been made without consultation with the DoP&T and there is no record of any objection being taken by the DoP&T to which it logically follows the introduction of an Accepting Authority is not available to challenge.

26. Schedule 2 of the Allocation of Business Rules 1961 provides the following allocation in respect of the respondent Ministry:

**MINISTRY OF STATISTICS AND PROGRAMME
IMPLEMENTATION
(SANKHYIKI AUR KARYAKRAM KARYANVAYAN
MANTRALAYA)**

I. STATISTICS WING

1. Act as the nodal agency for planning integrated development of the statistical system in the country.
2. Coordination of statistical work with a view to identifying gaps in data availability or duplication of statistical work in respect of Departments of the Government of India and State Statistical Bureaux (SSBs) and to suggest necessary remedial measures.
3. Laying down and maintenance of norms and standards in the field of statistics, evolving concepts, definitions and methodology of data collection, processing of data and dissemination of results.
4. Advise the Departments of the Government of India on statistical methodology and on statistical analysis of data.
5. Preparation of National Accounts as well as publication of annual estimates of national income, gross/net domestic product, Government and private final consumption expenditure, capital formation, savings, capital stock and consumption of fixed capital, quarterly estimates of Gross Domestic Product, preparation of National Input-Output Transactions Table, State level estimates of domestic product and fixed capital formation of supra-regional sectors, preparation

of comparable estimates of State Domestic Product (SDP) at current prices.

6. Compilation and release of the Index of Industrial Production (IIP) every month in the form of Quick Estimates, conducting Annual Survey of Industries (ASI) and providing statistical information, to assess and evaluate the changes in the growth, composition and structure of the organised manufacturing (factories) sector.

7. Development of Environment Statistics, development of methodology, concepts and preparation of National Resource Accounts for India.

8. Organisation and conduct of periodic all India economic census and follow-up sample surveys.

9. Conducting nation-wide sample surveys on various socio-economic aspects, such as, employment, consumer expenditure, housing conditions, debt and investment, land and livestock holdings, literacy, education, health, family welfare, unorganised manufacturing and services etc, to provide the database needed for development, research, policy formulation and economic planning.

10. Conducting quality checks and auditing of statistical surveys and data sets through technical scrutiny and sample checks and generate correction factors and alternate estimates, if required.

11. Undertaking the processing of survey data collected through various socioeconomic surveys and follow up surveys of Economic Census and Annual Survey of Industries by National Sample Survey Organisation and Central Statistical Organisation.

12. Dissemination of statistical information through a number of regular or adhoc publications to Government, semi-Government or private data users/agencies, and dissemination of data, on request, to United Nations Agencies like United Nations Statistics Division, Economic and Social Commission for Asia and the Pacific, International Labour Organisation and other relevant international agencies.

13. Giving grants-in-aid to registered non-governmental organisations and research institutions of repute for undertaking special studies or surveys,

printing of statistical reports and finance seminars, workshops or conferences relating to different subject areas of official statistics.

14. Functioning as the Cadre Controlling Authority and dealing with all aspects of managing the Indian Statistical Service including all matters pertaining to training, career planning and manpower planning.

15. The Indian Statistical Institute and ensuring its functioning in accordance with the provisions of the Indian Statistical Institute Act, 1959 (57 of 1959).16. Compilation and release of monthly Consumer Price Index Numbers for Urban Non-Manual Employees.

17. Undertaking methodological studies and pilot surveys for evolving better sampling techniques and estimation procedures including small area estimates.

27. It follows from above particularly with regard to provision 14 that the department is to act as the Controlling Authority and is empowered to deal with all aspect of managing the ISS including all matters pertaining to training, career planning and manpower planning. This power, as already discussed, is being exercised as executive power of the President.

28. In view of the aforesaid discussions, we do not find that the impugned decision of the respondents to introduce a 3rd year assigning authority in the shape of Accepting Authority is barred by the procedural latches on account of lack of consultation with the DoP&T and not having the powers to introduce the Accepting Authority at the level of the department itself on account of the earlier discussions.

29. With regards to the fourth issue, it is admitted position that the impugned order was issued on 05.03.2012. The date

of reporting for the period from 04.11.2011 to 31.03.2012 for the APAR of the applicant 2011-2012 was 30.08.2012. In order to examine this issue fully, we have to delve into the purpose of writing the ACR. This issue has been gone into detail by this Tribunal in the matter of **Gunjan Prasad vs. Government of India** (OA No.1233/2014 decided on 28.04.2015), wherein this Tribunal has examined the purpose of recording the ACRs and the modalities in detail. For the sake of convenience, we reproduce para 21 of the same, which reads as under:-

“21. In the case of Devendra Swaroop Saxena vs. Union of India & Ors. in OA No 4258/2013 decided on 19.12.2014, the objects of recording confidential ACR have been dealt with in Para 18 of the order, which is being reproduced as hereunder:-

“18. Additionally, we have consulted decisions of the Apex Court in Amar Kant Chaudhary versus State of Bihar [AIR 1984 (SC) 531]; State of Haryana versus P.C. Wadhwa [AIR 1987 (SC) 1201]; Union of India versus E.G. Nambudiri [AIR 1991 (SC) 1216]; S. Ramachandra Raju versus State of Orissa [1994 (5) SLR 199]; Sri Rajasekhar versus State of Karnataka [1996 (5) SLR 643]; State Bank of India versus Kashinath Kher [AIR 1996 (SC) 1328]; State of U.P. versus Ved Pal Singh [AIR 1997 (SC) 608]; Swatantar Singh versus State of Haryana [AIR 1997 (SC) 2105]; Union of India versus N.R. Banerjee [1997 SCC (L&S) 1194]; State of U.P. versus Yamuna Shanker Misra [1997 (4) SCC 7]; State of Gujarat versus Suryakant Chunilal Shah [1999(1) SCC 529]; P.K. Shastri versus State of M.P. & Ors.[1999(7) SCC 329], B.P. Singh versus State of Bihar [2001 SCC (L&S) 403] and also the decision of Ahmedabad Bench of this Tribunal in the matter of A.P. Srivastava versus Union of India & Ors [OA No.673/2004 decided on 09.01.2007] on the basis of which following principles could be culled out:-

“(i) Article 51(A)(j) enjoins upon every citizen to constantly endeavour to prove excellence individually and collectively. Given an opportunity an individual employee strives to improve excellence and thereby efficiency of administration would be augmented.

(ii) The object of writing confidential reports is twofold i.e., to give an opportunity to the officer concerned to remove the deficiencies, to improve his performance and to realize his potential and secondly to improve the quality & efficiency of the administration.

(iii) The object of communicating adverse ACR to the officer concerned is to enable him to make amends, to reform, to discipline himself and show improvement towards efficiency, excellence in public administration.

(iv) One of the uses of ACR is to grade him in various categories like outstanding, very good and satisfactory and average etc.

(v) Purpose of adverse entries is to be forewarn an employee to mend his ways and improve his performance.

(vi) The ACRs must be recorded at two levels.

(vii) The ACRs must be recorded objectively and after a careful consideration of all the materials. It should not be a reflection of personal whims or fancies or prejudices, likes or dislikes of a superior.

(viii) The Apex Court in Nambudiri’s case after referring to the Constitution Bench decision in Mohinder Singh Gill and G.S. Fijji has held that principles of natural justice apply to administrative orders if such orders inflict civil consequences. Civil consequences mean anything which affects a citizen in his civil life. Unjust decision in an administrative enquiry may have more far reaching consequences than a decision in a quasi-judicial enquiry.

(ix) The Apex Court in Amar Kant Chaudhary and Yamuna Shankar Misra case has emphasized the need for sharing information before forming an adverse opinion. The Apex court in Amar Kant Chaudhary had asked the

Executive to re-examine the existing practice of writing of ACRs to find a solution to the misuse of these powers by officers, who may not be well disposed.

(x) Representations against adverse/below benchmark entries must be disposed of by the prescribed competent authority and not by other.

(xi) The disposal of the representation must be made in a quasi judicial manner by a reasons order on due application of mind.”

30. From the perusal of the above, it appears that the object of writing ACRs is twofold i.e., to give an opportunity to the officer concerned to remove the deficiencies, to improve his performance and to realize his potential and secondly to improve the quality & efficiency of the administration. We do not understand as to how the applicant is put to a prejudice in such a case where an additional authority has been introduced as an Accepting Authority. Once the filled in appraisal form has been submitted, it is for the authorities to assess it in a fair and equitable manner without prejudice on the merit and performance of the employee concerned. Therefore, even if one person is to be assessed by the three authorities in place of two, we do not find that the interest of the applicant is harmed in any way or a prejudice being created against him. Moreover, we also take into account that the purpose of recording ACRs/APAR is that the interest of the organisation should also be served by improving the efficiency and performance of the employee. It appears from the note of the respondent No.3, which needs to be extracted in detail,

that the purpose of introducing the third year was twofold. In the first place, when the APAR has been revised in 2008-2009, an extra mark has been included for exceptional work, taking the maximum grading to 11 instead of 10. As all the DPC and even UPSC tend to evaluate on 10 points, this anomaly had to be removed. The second reason for introducing the Accepting Authority is that where there is a difference between the reporting officer and the reviewing authority, the same ought to be reconciled and set at rest. Hence, the Accepting Authority was needed as the reconciling authority before the Minister take a view on the performance of the senior officer.

31. In view of the above consideration, we find that the applicant has not been put to any prejudice on account of introduction of the Accepting Authority. It matters little after having submitted that the submission whether the applicant is assessed by two authorities or three authorities unless there was a case of malafide, which issue is the next one which we shall be taking. For the time being, it suffices to say that we do not find merit in this assertion of the applicant, and it is accordingly decided against the applicant.

32. The grounds on which the applicant has relied for assuming the malafide mainly dependent on the fact that he appeared as an Intervener in OA No.1653/2010 decided on 20.10.2011, wherein, one Swapan Kumar Das has challenged

the appointment of respondent No.2 in the instant OA in the capacity of Chief Statistician of India through the Deputy Director General, National Statistics and Programme Implementation, the Tribunal set aside the order. The applicant claims that the order has been mainly resisted on the arguments of the applicant and thereafter the respondent No.2 has acquired a deep rooted bias against the applicant which is clearly visible in this case. This has been denied by the respondents stating that the order of the Tribunal had been quashed by the Hon'ble High Court vide its order dated 17.09.2013 in WP(C) No.8124/2011. The applicant was not a party to the proceeding and was not allowed to appear in that case. Therefore, the question of malafide by respondent No.2 having harbouring grouse against the applicant does not arise. The same issue and facts pleaded by both the parties had been considered earlier in OA Nos.2732/2012 with OA No.3782/2012 decided on 23.09.2014. This Bench of the Tribunal in these cases had considered and rejected the charges of malafide. For the sake of convenience, we reproduce the relevant part of the order, which reads as under:-

“4. It is also contended that Respondent no.2 is biased against the applicant. The learned counsel for the applicants draw my attention to a letter dated 11.10.1999 written by the Secretary of the Association to Respondent No.1. Several vague allegations are made in this letter which, to my mind is only made by the Secretary

with the malafide intention against the officer concerned. No cogent grounds are made out in order to challenge the order on the ground of malafide. I do not find any substance in the contentions raised by the learned counsel.”

33. Having once adjudicated the matter on same facts to consider and decide it otherwise would be barred by the principles of *res judicata*. Hence, this issue is decided against the applicant.

34. In conclusion, we have already noted that the OA is neither barred by limitation nor by *res judicata*. We have further noted that the impugned order is not vitiated by the procedural irregularities in not taking the prior approval of the DoP&T as well as it is the authorities who are within their constitutional rights to issue the order in view of the discussions in respect of Articles 74 & 77 of the Constitution of India. We have held that the applicant is not put to any prejudice on account of the system being introduced in respect of the assessment year 2011-2012 in so far as the system is concerned; it is a different thing that in the instant case the impugned entries have been made in the APAR of the applicant. Moreover, we find that the applicant has alleged charges of malafide in his several earlier OAs with identical defence on part of the same respondents, which stood conclusively adjudicated insofar as this point is concerned. Accordingly, we do not find the allegations levelled against the respondents sustained in the eyes of law. Therefore, nothing

remains in this OA and the same, being devoid of merit, is dismissed but without any order as to costs.

(Dr. B. K. Sinha)
Member (A)

(Syed Rafat Alam)
Chairman

/neha/pj/