

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

OA No.1679/2015

New Delhi, this the 8th day of September, 2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

S.D. Pandey
Aged about 57 years
S/o sh.Harihar Prasad
R/o C/3/226, Chitrakood Scheme
Jaipur, Presently posted as Deputy Chief Engineer/Works/Jaipur

.....Applicant

(By advocate: Mr. M.K. Bhardwaj)

Versus

Union of India through,

1. Union of India
Through its Secretary, Railway Board,
Rail Bhawan, Raisina Road, New Delhi-1
2. The Member Engineering
Railway Board, Railway Bhawan, New Delhi
3. General Manager,
N. W.Railway, HQ Office, Jagatpura,
Jaipur-17 Respondents

(By Advocate: Mr. Shailendra Tiwary)

ORDER (ORAL)

Hon'ble Mr. P.K. Basu, Member (A)

The applicant, who is Deputy Chief Engineer (DCE) in the Railways, is aggrieved by the below bench mark entries in the APARs for the year 2012-2013 and 2013 -2014. For the post of DCE the reporting officer is the Chief Engineer, the reviewing officer is Chief Administrative Officer and General Manager (GM) is the accepting authority. He made representation dated 11.12.2014 against the below bench mark APARs for their up-gradation, which was rejected by the Ministry of Railways, Railway Board vide order dated 28.11.2014 at the level of General Manager. He filed appeal before Member Engineering on 09.12.2014, which was again rejected at the level of GM vide order dated 29.01.2015. This order has been challenged on the ground that this order has been passed by the authority who is not competent. In this regard, learned counsel for the applicant relied upon the following judgments passed by the Hon'ble High Court of Delhi (i) **Shri Tarsem Kumar vs Union of India and others**, in W.P. C No. 5649/2013, decided on 01.10.2014.(ii) **Union of India vs. Krishna Mohan Dixit**, in W.P (C) No. 6013/2010, decided on 0.10.2010. He also relied upon the judgment dated 06.12.2012 passed by the Principal Bench, of this Tribunal in OA No.983/2012 in **Dr.Rajendra Prasad vs. Union**

of India. The ratio decided in these judgments is that any representation against the adverse entries of ACR/APAR has to be decided by an authority higher than the authority who was made entries in the ACR/APAR. In light of these judgments, it is submitted that the representation should have been decided at the level of Member Engineering and not G.M. Learned counsel for the applicant states that the applicant now wishes to press for the relief clause 8(c) only which is as under:-

8.(c) To quash and set aside the impugned order dated 29.1.2015 and direct the Member Engineering, Railway Board to decide the representations dated 09.12.2014 and 02.01.2015 submitted against the APAR for the year 2012-13 & 2013-14 on merits.

2. In view of the ratio laid down by the Courts, learned counsel for the applicant prays that the order dated 29.01.2015 may be quashed and set aside. Also, issue a direction to Member Engineering, Railway Board to decide the representation dated 09.12.2014 and 02.01.2015 submitted against the APAR for the year 2012-13 and 2013-14.

3. Learned counsel for the respondents stated that in the background of DoP&T's Office Memorandum dated 14.05.2009 the Railway Board's instruction dated 23.12.2009 has clarified that such representations would be decided by the accepting authority. Therefore, his representation was decided

by the accepting authority who is the General Manager. It is, further, submitted that there is no provision of appeal in the circular mentioned above and therefore, the applicant was communicated impugned order dated 29.01.2015 that there is no provision for appeal in the letters dated 14.05.2009 and 23.12.2009.

4. Heard the learned counsel for the parties and perused the various judgments cited above and the ratio settled by the Apex Court. It is crystal clear that the ratio decided by the Courts is that representation against adverse ACRs/APARs should be decided by the authority higher than who have recorded the ACR/APAR. Since in the applicant's case the representation was decided by the same authority who recorded his APAR in the capacity of General Manager, therefore, the representation has to be decided by the next higher authority i.e. the Member Engineer. We, therefore, dispose of this OA with a direction to the Member Engineer, Railway Board to decide the representation dated 09.12.2014 and 02.01.2015 submitted by the applicant against the APARs for the year 2012-13 and 2013-14 on merits, giving detailed reasons. In case the Member Engineer takes a favourable view and upgrades these ACRs/APARs entries to 'bench mark' level, the respondents shall consider the case of the

applicant for promotion taking in view the new upgraded APARs. We set a time frame of 60 days from receipt of a certified copy of this order for Member Engineer to decide on the representation. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member A)

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