Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1973/2014

Reserved on: 30.10.2015
Pronounced on: 27.11.2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)

Tushar Ranjan Mohanty
S/o Shri Rabi Narayan Mohanty
SAG Officer of the Indian Statistical Service
Deputy Director General,
Research and Publication Unit,
Coordination and Publication Division,
Central Statistics Office,
Ministry of Statistics and Programme Implementation,
Room No.6,Wing No.6, Ground Floor,
West Block No.8, R.K. Puram,
New Delhi – 110 066.

Resident of:

G-31, HUDCO Place Extension,
New Delhi-110 049. ...Applicant

(Applicant in person)

Versus

1. Union of India through
   The Chief Statistician of India and Secretary,
   Ministry of Statistics and Programme Implementation,
   Sardar Patel Bhawan, Parliament Street,
   New Delhi – 110 001.

2. Prof. TCA Anant,
   Chief Statistician of India and Secretary,
   Ministry of Statistics and Programme Implementation,
   Fourth Floor, Sardar Patel Bhawan, Parliament Street,
   New Delhi – 110 001.

3. Shri Swapan Kumar Das,
   Former Director General
   Central Statistical Office,
   Ministry of Statistics and Programme Implementation,

Service Through

Chief Statistician of India and Secretary,
Ministry of Statistics and Programme Implementation,
Fourth Floor, Sardar Patel Bhawan, Parliament Street,
New Delhi – 110 001.

4. Shri A.K. Bhatia,
Former Additional Director General,
Coordination and Publication Division,
Central Statistical Office,
Ministry of Statistics and Programme Implementation,

Service Through

Chief Statistician of India and Secretary,
Ministry of Statistics and Programme Implementation,
Fourth Floor, Sardar Patel Bhawan, Parliament Street,
New Delhi – 110 001. …Respondents

(By Advocate: Shri R.N. Singh)

O R D E R

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

The applicant, by means of the instant Application filed under Section 19 of the Administrative Tribunals Act, 1985 assailing the below benchmark APAR for the year 2011-12, has prayed for the following relief(s):-

"8.1 to allow the present Application;

8.2 to quash and set aside the adverse comments and below benchmark grading in the Annual Performance Appraisal Report for the year 2011-2012 (Annexure A-1) of the applicant;
8.3 and as a consequence thereto, direct the respondent Ministry to upgrade the Annual Performance Appraisal Report for the year 2011-2012 (Annexure A-1) of the applicant and grant 10 (ten) marks out of 10 (Ten) to the applicant;
8.4 to pass suitable strictures against Respondent No.2 and Respondent No.4 and also other Officers manning the Indian Statistical Service who are guilty of negligence as evidenced from the official files;

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

8.6 to allow exemplary costs of the application."

2. The applicant in this Application running into more than 530 pages has drawn our attention to the factual matrix of his case. Admittedly the applicant is a direct recruit Officer of the Indian Statistical Service (ISS) (Group-A Service) of 1981 Batch under the Government of India, being controlled and governed by the Indian Statistical Service Rules, 2013 [hereinafter referred to Rules of 2013]. The applicant submits that he has been engaged in a long drawn legal battle with the respondents, which is continued without there being any sign of abatement. He was granted SAG of ISS on regular basis w.e.f. 29.05.2009 vide order dated 04.11.2011. The applicant further submits that he received a letter dated 16.12.2013 from the respondent Ministry seeking his representation against the adverse and below benchmark APAR for the year 2011-2012 to which he submitted a comprehensive representation on 24.01.2014.

3. The applicant has consumed 225 pages to state the facts running into 259 paragraphs. He has consumed another 305 pages, *inter alia,* submitting 107 grounds for

striking down the impugned APAR. Many of these grounds simply state that the APAR has been recorded in violation of some judgments of the Hon'ble Supreme Court, but the applicant has failed to show as to how the ratio of the relied upon judgments has been contravened and how the same would be applicable to the facts of the instant case. To cite an example, we reproduce the first nine grounds adopted by the applicant:-

> "*5.1 Because the impugned Annual Performance Appraisal Report for the year 2011-12 (Annexure A-1) has been issued without proper application of mind;*
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> *5.2 Because in this regard the impugned Annual Performance Appraisal Report for the year 2011-2012 (Annexure A-1) is vilative of the judgment of the Hon'ble Privy Council in* ***Emperor V. Sibnath Banerji,*** *AIR 1945 PC 156;*
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> *5.3 Because in this regard the impugned Annual Performance Appraisal Report for the year 2011-2012 (Annexure A-1) is violative of the judgment of the Hon'ble Supreme Court of India in* ***Jagannath V. State of Orissa,*** *AIR 1966 (SC) 1140;*
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> *5.4 Because in this regard the impugned Annual Performance Appraisal Report for the year 2011-2012 (Annexure A-1) is violative of the judgment of the Hon'ble Supreme Court of India in* ***Abdul Rajjak Wahab v. Commissioner of Police,*** *(1989) 2 SCC 222;*
>
> *5.5 Because in this regard the impugned Annual Performance Appraisal Report for the year 2011-2012 (Annexure A-1) is violative of the judgment of the Hon'ble Supreme Court of India in* ***Reita Rahman V. Bangladesh,*** *50 DLR (1998);*
>
> *5.6 Because in this regard the impugned Annual Performance Appraisal Report for the year 2011-2012 (Annexure A-1) is violative of the judgment of the Hon'ble Patna High Court held in the case of* ***Rina Sen v. CIT*** *[1999] 235 ITR 219, 225-26 (Pat.];*
>
> *5.7 Because in this regard the impugned Annual Performance Appraisal Report for the year 2011-2012 (Annexure A-1) is violative of the judgment of the*

Hon'ble Calcutta High Court in ***New Central Jute Mills V. Dwijen-dralal Brahmachari*** *[1973] 90 ITR 467 (Cal.);*

5.8 Because in this regard the impugned Annual Performance Appraisal Report for the year 2011-2012 (Annexure A-1) is violative of the judgment of the Hon'ble Supreme Court of India in ***Jai Singh V. State of Jammu & Kashmir,*** *1985 (1) SCALE 105, (1985) 1 SCC 561, 1985 (17) UJ 410;*

5.9 Because in this regard the impugned Annual Performance Appraisal Report for the year 2011-2012 (Annexure A-1) is violative of the judgment of the Hon'ble Supreme Court of India in ***Ghaziabad Zila Sahkari Bank Ltd. Vs. Additional Labour Commissioner and Ors.,*** *JT 2007 (2) SC 566, 2007 (2) SCALE 165, (12007) 11 SCC 756, [2007] 1 SCR 1007."*

4. It would appear from the above that the Tribunal has been left with the task of studying all those judgments and applying the ratio as to how the same would support the case of the applicant. We are afraid that if we start doing so, it would add to the bulk of the order unnecessarily without contributing to its quality. Therefore, as a solution, we have relied upon the oral submissions made by the applicant appearing in person. These are as follows:-

(i) The basic and principally relied upon ground is that of *mala fide* against the applicant. The case of the applicant is that appointment of the respondent no.2 was totally against the provisions of rules and had been challenged by one S.K. Das vide OA No. 1653/2010 in which the applicant appeared as Intervener. According to the applicant,

he had argued the case himself before the Tribunal in the aforementioned OA, and it was on account of brilliance of his arguments, the applicant contends, that the issue was finally clinched and the appointment of respondent no.2 to the post of Statistician General had been struck down by the Tribunal, vide order dated 20.10.2011. However, this order of the Tribunal was challenged before the Hon'ble High Court of Delhi in WP(C) No.8124/2011 wherein the applicant herein did not appear. The Hon'ble High Court, while deciding the WP(C) No. 8124/2011, set aside the Tribunal's order, vide order dated 17.09.2013. The applicant submitted that S.K.Das, who had been the applicant in OA No.1653/2010, did not pursue the matter before the Hon'ble Supreme Court for his personal reasons. However, this has given rise to a deep rooted grouse on part of the respondent no.2 resulting in series of actions against the applicant motivated by the above malice. The applicant submits that he was posted in line of hierarchy of the respondent no.2 vide Office Order dated 04.11.2011. He further submits that he had been warned personally by the respondent no.2 that he

would see to it that the applicant does not get promoted. It is this malice which formed the basis of the present below benchmark APAR and lot of other actions against the applicant, some of which are pending consideration before the Tribunal. Therefore, the applicant submits that on this ground alone, the impugned below benchmark APAR deserves to be quashed.

(ii) The second ground which the applicant has adopted is that in his line of hierarchy of APAR, ADG was the Reporting Officer and the DG of the Central Statistical Service was the Reviewing Officer. Of these, the Reviewing Officer was particularly aware of the sterling qualities of the applicant with all his output. However, contrary to provisions of relevant rules, the respondent no.2 introduced a new system on 05.03.2012 of accepting authority and became applicant's accepting authority himself. The respondent no.2 thereby became the accepting authority of the applicant with the sole motive of harming him by recording below benchmark APAR in his respect. The illegality of introduction of accepting authority without having taken the approval of the DOP&T or

consultation with it in a hasty manner has been challenged by the applicant in OA No.2252/2014 decided on 25.08.2015. However, as the respondent no.2 had not had an opportunity to watch the performance of the applicant, he should not have been the accepting authority for the period under consideration and should have precluded from recoding his remarks as accepting authority.

(iii) In the third place, the applicant submits that a Time Schedule has been prepared by the DOP&T for preparation/completion of APAR which, for the sake of better clarity, is reproduced hereunder:-

"Time Schedule for preparation/completion of APAR (Reporting year – Financial year)

Sl. No.	*Nature of action*	*Date by which to be completed*
1	*Distribution of blank CR forms to all concerned (i.e. to officer to be reported upon where self-appraisal has to be given and to Reporting Officers where self-appraisal is not to be given)*	*31st March (This may be completed even a week earlier)*
2	*Submission of self-appraisal to Reporting Officer by officer to be reported upon (where applicable)*	*15th April*
3	*Submission of report by Reporting Officer to Reviewing Officer.*	*30th June*
4	*Report to be completed by Reviewing Officer and to be sent to Administration or CR Section/ Cell or accepting authority wherever provided.*	*31st July*
5.	*Appraisal by accepting authority, wherever provided*	*31st August*
6.	*(a)Disclosure to the officer reported upon where there is no reporting authority.* *(b) Disclosure to the officer reported upon*	*01st September*

	where there is accepting authority.	*15th September*
7.	*Receipt of representation, if any, on APAR*	*15 days from the date of receipt of communication.*
8.	*Forwarding of representations to the competent authority* *Where there is no accepting authority for APAR* *Where there is accepting authority for APAR*	 *21st September* *06th October*
9.	*Disposal of representation by the competent authority*	*Within one month from the date of receipt of representation.*
10.	*Communication of the decision of the competent authority on the representation by the APAR Cell.*	*15th November*
11.	*End of entire APAR process, after which the APAR will be finally taken on record.*	*30th November.*

From the above, it transpires that blank form of APAR needs to be distributed to the officer reported upon for recording self appraisal by 31st March. This could be distributed even a week earlier. It is the case of the applicant that the APAR Form was never provided to him till 11.04.2012. When the applicant was compelled to procure a copy of APAR Form and fill it himself, he submitted the same to the reporting officer.

(iv) The applicant further submits that he had completed his targets with a margin to spare and, therefore, he should have been graded 'Outstanding'. However, he has only been graded 7 out of 10 points by the

reporting officer. He further submits that in column-1 Part-III of the APAR [page 253 of the paper book) the reporting officer has agreed with his statement except the statement made in Part-III (Item no.5) by stating the same to be highly exaggerated, and in respect of column-2, the reporting officer did not agree with the statement of the applicant stating that the contribution of the applicant was quite insignificant in case of SYB 2011, SYB 2012 or BRICS work. These happened to be contradictory.

(v) The applicant has argued that APAR is not an instrumentality of punishing an officer but is a means to bring about improvement in his performance. It is also a stated policy of the Government that where the performance of an officer is being noticed as 'unsatisfactory', he should be called and advised to improve his conduct. The applicant contends that not even a single recordable warning had been delivered to him during the whole year, which was mandatorily required.

(vi) The applicant also submits that a time-schedule has been prescribed for recording the APARs including one month for accepting authority for recording its remarks. Instead, the accepting authority has taken

more than a year to record APAR of the applicant thereby vitiating the entire process.

5. The respondents have filed counter affidavit almost matching with the applicant in bulk rebutting all the submissions made by the applicant. The basic submission made by the learned counsel for the respondents is that the introduction of 3-tier system for writing APARs is under challenge, and so long as the challenge is not adjudicated by the Tribunal, the applicant is precluded from taking a plea that the introduction of 3-tier system for writing APARs is wrong and, therefore, this ground is not available to him. On the issue of *mala fide* heavily relied upon by the applicant, the learned counsel for the respondents submitted that the applicant had only been an intervener in OA No.1653/2010 and not the applicant in that OA. Moreover, the Tribunal's order dated 20.10.2011 passed in the aforesaid OA had been set aside by the Hon'ble High Court of Delhi vide order dated 17.09.2013 in WP(C) No. 8124/2011 in which the applicant had not even been allowed to represent/argue. Therefore, the ground of *mala fide* is not tenable.

6. Drawing attention to the report of the reporting officer, it has been argued that applicant's contribution was

insignificant, however, the reporting officer called the applicant temperamental, working according to his own style, which was inconvenient at times. The reviewing authority agreed with some of the remarks given by the reporting officer but not all of them. He acknowledged the good points of the applicant that he was very intelligent and meticulous in his working with good output. However, he needed to maintain discipline and graded him 7.8. The accepting authority has factually recorded for the period for which he was on compulsory waiting and his contribution to BRICS publication as insignificant. He also referred to his own style of working. The accepting authority has graded him 5.

7. It would appear from these remarks that the accepting authority has been generous and fair in his assessment and no ill motive could be attributed to him. Respondents have also denied of not providing blank APAR form to the applicant as it had been uploaded on the respondent's website which is deemed to be sufficient for the purpose. To the contrary, the applicant submitted his APAR on 16.08.2012, after the retirement of reporting officer, which bears the date as 15.05.2012. As per DOP&T instructions, the APAR is submitted one month after the prescribed time limit for submission of self-appraisal i.e. April 15 of every

year. The applicant cannot plead delay on part of the respondents having submitted his self-appraisal himself beyond the prescribed time limit and this line of defence is closed to him. The reporting officer had signed the APAR on 30.08.2012 within 15 days of its receipt while the reviewing officer had signed the same on 29.11.2012. Thereafter, the accepting authority had signed the APAR within one month which fact would be clear from perusal of the file. In any case, there is no prejudice caused to the applicant, contends the learned counsel for the respondents. Referring to the letter written by the applicant dated 15.09.2014 to the Secretary of the Department – respondent no.2 [page 586 of the paper book], the learned counsel for the respondents strongly objected to the said letter and drew particular attention to para 8 and para 29 which he found to be downright, insubordinate and insulting not worthy of Government communication. Further, the respondents' counsel argued that this OA is not maintainable as the applicant submitted a representation on 24.01.2014 and without having waited for six months filed the instant OA on 28.05.2014. It is further contended that during the pendency of the present OA, the Minister-in-charge disposed of applicant's representation on 14.10.2014. The learned counsel for the

respondents strongly argued that the applicant was devoting most of his time appearing before different courts/tribunals instead of contributing to his official duties. The learned counsel for the respondents pleaded that the remarks being consistent and justified, OA deserves to be dismissed.

8. We have carefully gone through the pleadings of rival parties, and also patiently heard the applicant, who appeared in person, and the learned counsel for the respondents. We have also taken note of the fact that this OA is yet another link in a war of legal attrition between the parties. Therefore, we are extremely circumspect, in our consideration of the matter which has been made strictly based on facts and legal submissions without taking into account extraneous considerations which have sought to be introduced in this OA.

9. It is agreed that the appeal of the applicant is dated 24.01.2014 while the OA has been filed on 28.05.2014. We do find that the OA has been filed without having waited for a period of six months for the competent authority to decide his appeal. However, as submitted by the learned counsel for the respondents, the appeal of the applicant was finally disposed of by the Minister-in-Charge on

14.10.2014. In this regard, we take note of Section 20 of the A.T. Act, 1985, which provides that this period of six months, as provided under Section 20(2)(b), is not mandatory in all cases, and power has been vested into the Tribunal for taking up the OA even earlier under the word 'Ordinarily'.

10. Considering the complexity of the issues and vehemence with which they have been argued, we deem it proper to decide the issue on their merits. In order to fully comprehend and adjudicate the dispute, we feel that the following issues are germane to this OA:-

1. *What is scope and purpose of writing APARs?*

2. *Whether the remarks recorded by the respondents are hit by time-line prescribed by DOP&T instructions?*

3. *Whether the remarks recorded in the APAR of the applicant get vitiated by providing blank form of APAR belatedly to the applicant?*
4. *Whether non-delivery of caution to the applicant to maintain his conduct vitiates the proceedings altogether?*

5. *Whether the remarks recorded in the APAR of the applicant are hit by mala fide?*

6. *What relief, if any, could be granted to the applicant?*

11. Insofar as the first of the issues is concerned, we start by stating the generic principle that the purpose of writing APAR is not to settle scores but to give an opportunity to the concerned employee to improve upon. This has been considered by the Tribunal at length in ***Gunjan Prasad versus Government of India*** [MANU/CA/0278/2015], relevant portion whereof is extracted hereunder for the sake of better clarity:-

> *"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:-*
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> > *"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 vesus 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 two fold i.e., to given 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 of dislikes of a superior.

(viii)The Apex Court in Nambudiri's case after 'eferring 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 means anything which affect 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 Misras case has emphasized the need for sharing information before forming an adverse opinion. The Apex court in Amar Kant Choudhary 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".

In view of the above discussion, we do not consider that there is need to further elaborate this issue.

12. Insofar as second and third of the issues are concerned, it is true that as per DOP&T OM on the subject, the blank APAR Form should have been provided to the applicant by 31st March, 2012, if not earlier. However, we also take into account the argument of the learned counsel for the respondents that the form had been placed at the website of the department for the purpose, and, therefore, if for any reason the form could not be received, the applicant was duty bound to submit his self-appraisal in time after downloading the blank APAR form from the departmental website. In any case, it appears that the format has been signed on 11.04.2012. The applicant has admittedly submitted his self-appraisal on 15.05.2012, which is late by one month. However, as it appears from the Chart, the recording of remarks by reporting, review officers had been done within time. Now the question arises is as to what prejudice has been caused to the applicant when both the reporting and reviewing officers had given 7 and 7.8 to him. Moreover, we take into account that even if the blank APR Form had not been received by the applicant, since it was available on website, it could have been downloaded and submitted by him within the prescribed time limit. Had he

done so, the ball would have rested in respondents' court. However, if the version of the applicant were to be accepted, even then he could have submitted the form within time.

13. Having submitted the self-appraisal late, the applicant cannot now turn around to say that the entire exercise has been vitiated by providing the form late to him. As per the remarks of the accepting authority having received almost one year late, we note that there is no date given below the remarks of the accepting authority. It appears from para 3 of the counter affidavit that the APAR was disclosed to the applicant vide OM dated 16.12.2013. For the sake of greater clarity, we reproduce the relevant portion of the same, which reads as under:-

> "*3. The applicant has made representation on 24.1.2014 (copy enclosed at pages 263-523 of the OA), whereas the APAR was disclosed to him vide OM dated 16.12.2013 i.e., much after time line of 15 days of the permissible time limit. The applicant, who has all along in his representation, has made out a case of the remarks of Reporting and Accepting Authority being vitiated one on account of the same being made contrary to the time line as per the DOPT's instructions, has himself submitted the representation after the time limit.*"

14. From the above, it can be deduced that the accepting authority had recorded his remarks sometimes between 29.11.2012 and 16.12.2013. We also take note of the argument of the learned counsel for the respondents that

the applicant had himself submitted his appeal on 24.01.2014. We further find that there is a representation dated 15.09.2014 on record at page 586 of the paper book. On the other hand, this OA has been filed on 28.05.2014.

15. On the basis of above, we note that the applicant has been vigilant in exercise of his rights and, therefore, the balance of convenience must weigh in his favour. In absence of any other proof on record, we accept that the accepting authority had recorded his remarks after the statutory period of one month. At the same time, we also take into account that the remedies available to the applicant have all been exhausted by him and, hence, what prejudice may have been caused to the applicant at this stage is indeterminate. Moreover, this Tribunal, not being the appellate authority for the remarks, cannot go into the merits of the remarks but it is only concerned with as to whether the procedures have been followed correctly and whether any prejudice has been caused to the applicant on that account.

16. In respect of issue no.4, we take note of the fact that nowhere does the counter affidavit or the learned counsel for the respondents specify that when the performance of the applicant was found wanting, a caution was delivered

to him or he was advised to improve upon his conduct. Therefore, we take it as an admitted fact that no warning of any kind had ever been delivered to the applicant prior to downgrading his APAR particularly by the accepting authority. This, to our mind, appears to be clearly contrary to the principles of writing APARs and commenting upon the performance of the employee concerned. The Hon'ble Supreme Court in ***Dev Dutt versus Union of India*** [2008 (8) SCC 725] has observed as under:-

> *"8. Learned counsel for the respondent relied on a decision of this Court in Vijay Kumar vs. State of Maharashtra & Ors., 1988 (Supp) SCC 674, in which it was held that an un-communicated adverse report should not form the foundation to deny the benefits to a Government servant when similar benefits are extended to his juniors. He also relied upon a decision of this Court in State of Gujarat & Anr. vs. Suryakant Chunilal Shah, 1999 (1) SCC 529, in which it was held :*
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> > *"Purpose of adverse entries is primarily to forewarn the Government servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the Government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance".*
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> *On the strength of the above decisions learned counsel for the respondent submitted that only an adverse entry needs to be communicated to an employee. We do not agree. In our opinion every entry must be communicated to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved."*

17. It flows from extension of the principles of natural justice that before an adverse APAR is recorded, the concerned employee is required to be called and cautioned since the very purpose of writing APAR is to bring about improvement in the performance of the officer reported upon. This, as we have already noted, is not found to have taken place in respect of the applicant. The question may now arise as to whether the word 'caution' is confined only to the reporting authority or it shall apply equally to the reviewing and accepting authorities as well. To our mind, since both the reviewing and accepting authorities are recording APAR of the officer reported upon and the APAR having civil consequences for such officer, they are in a position to observe the performance of the officer. Therefore, it was all the more necessary to deliver caution to the applicant to improve upon his conduct in whatever manner he may deem fit. Of course, it goes without saying that this need not be a recordable warning since it would amount to punishment for which different procedures are to be followed. In the instant case, as we have stated earlier, this has not happened. We, therefore, let this issue rest at this point.

18. Insofar as the fifth of the issues is concerned, we would like to place the record in appropriate matrix in form of following two Charts:-

I.

Remarks of reporting officer with grading	*Remarks of reviewing authority with grading*	*Remarks of accepting authority with grading*
Sh. Mohanty is extremely dynamic and knowledgeable. However, he is temperamental and works according to his own style which is little inconvenient at times. He needs to take more interest and initiative in his work especially as he is quite intelligent and has a potential to contribute more. He is also expected to develop a greater spirit rather than following coercive techniques to extract their cooperation. It will help in optimizing overall output. *Grading: 7.0 – Very Good.*	*I agree with some remarks given by the Reporting Officer in the Pen Picture but not with some remarks given by the Reporting Officer. The officer is very intelligent and quite meticulous in his work. The quality of output of his work is very good. He was to maintain a strict discipline in his Division. He is very sympathetic towards backward section of the society and deals with them with care and affection.* *Grading : 7.8.*	*In the period under report Shri T.R. Mohanty DDG was on compulsory wait from 1.4.2011 till 04.11.2011, he worked as DDG in RPU for little less than 5 months in the year.* *The reporting officer has termed Shri Mohanty's claim of exceptional contribution as exaggerated. He states that his contribution to SYB 2011, SYB 2012 and the BRICS publication as insignificant. He states that Mr. Mohanty is temperamental and works according to his own style which is a little inconvenient at times. He also would like him to develop greater learning spirit. I agree with his observations. Shri Mohanty though intelligent and quite knowledgeable he needs to be systematic in his work and develop the quality of an effective leader. Overall, I would rate his work and competency as 'Good"* *Grading: 5.*

II.

Sl.No.	Nature of Action	Date by which to be completed	Actual date on which completed.
1	Distribution of blank CR to the concerned employee for self-appraisal.	31st March, 2012 (this may be completed even a week earlier)	Not provided
2	Submission of self-appraisal to Reporting Officer to be reported upon.	15th April, 2012	Submitted on 15.05.2012.
3	Submission of report by reporting officer to Review officer.	30th June, 2012.	30th August, 2012
4	Report to be completed by Reviewing Officer.	31st July, 2012	29th November, 2012
5	Appraisal by accepting authority, wherever provided.	31st August, 2012	No date mentioned.

19. The grounds adopted by the applicant for alleging *mala fide* are that the applicant had challenged the appointment of respondent no.2 in OA No.1653/2010 because of which the said respondent has come to bear deep grudge against him. Therefore, it is an act of *mala fide*. This issue has already been discussed by the Tribunal under Issue No.3 in OA No. 2252/2014 filed by the applicant herein, which was decided on 25.08.2015. This very point which has been raised by the applicant and the respondents was also covered in the afore decision of the Tribunal and has been conclusively decided. Hence, no useful purpose would be served in discussing this issue afresh. For the present, we would like to rest contended by

reproducing the relevant portion of the order, which reads thus:-

> *"21. Insofar as the third of the issues relating to malice is concerned, the principal ground of the applicant is that in OA No. 1653 of 2010 (Sh. S. K. Das Vs. UOI), the appointment of respondent no. 2 was quashed by the Tribunal on the basis of his arguments. Though stated ambiguously, the applicant invariably created the impression in his pleadings and oral submissions that he has had major contributions in getting the appointment of Respondent No. 2 quashed by this Tribunal vide order dated 20.10.2011 in the afore OA for which he has not been forgiven by the latter to this date. Per contra, we also take note of submissions of the Respondents that the applicant had appeared only as intervener in OA No. 1653/2010 in which one S.K. Das had been the applicant. The applicant was also not a party to the Writ Petition No. 8124/2011 filed before the Hon'ble High Court of Delhi wherein the afore order of the Tribunal had been quashed vide order dated 17.09.2013. It had also been submitted by the respondents that when the applicant wanted to make submissions on behalf of the respondent in the above Writ Petition, he was not permitted to do so by the Hon'ble High Court of Delhi as he had not been a party to the proceedings. Moreover, his CM for recall of the order dated 17.09.2013 had been dismissed by the Hon'ble High Court of Delhi at the admission stage itself without having issued notice to the Ministry. In view of the claims and counter claims, it is difficult for us to assert with any degree of certainty as to what extent the applicant can legitimately claim the laurels for the orders passed in OA No.1653/2010 as they were passed on 20.10.2011. However, we take note of the argument of the respondents that the case had been filed and contested by the applicant S.K. Das in OA No.1653/2010 and the matter does not survive as the order of the Tribunal had been set aside by the Hon'ble High Court of Delhi, as referred to above, and that the Government does not act on the basis of malice against persons who had contested its decisions before courts.*
>
> *22. Now, we go into the definition and nuance of the term 'mala fide', which has been defined by the Apex Court in the case of* ***State of Punjab & Another versus Gurdial Singh & Others*** *[(1980) 2 SCC 471] while discussing what is mala fide and how it is to be proved and held as under:-*
>
> > *"9. The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power -*

sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat..... that all power is a trust- that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action mala fides on fraud on power vitiates the acquisition or other official act."

23. Further, in the case of ***Ravi Yashwant Bhoir versus District Collector Raigarh & Others*** *[2012 (4) SCC 407], the Hon'ble Supreme Court made a comprehensive view of its own earlier judgment and held as under:-*

"47. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice- in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.

48. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is

in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law. (See: Addl. Distt. Magistrate, Jabalpur v. Shivakant Shukla, AIR 1976 SC 1207; Union of India thr. Govt. of Pondicherry & Anr. v. V. Ramakrishnan & Ors., (2005) 8 SCC 394; and Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors., AIR 2010 SC 3745)."

24. In the case of in ***Institute of Law versus Neeraj Sharma*** *Manu SC0841/2014 the Hon'ble Apex Court has held as under:*

"29. Further, we have to refer to the case of ***Akhil Bhartiya Upbhokta Congress*** *v.* ***State of M.P. and Ors.*** *(2011) 5 SCC 29, wherein this Court has succinctly laid down the law after considering catena of cases of this Court with regard to allotment of public property as under:*

50. For achieving the goals of justice and equality set out in the Preamble, the State and its agencies/instrumentalities have to function through political entities and officers/officials at different levels. The laws enacted by Parliament and the State Legislatures bestow upon them powers for effective implementation of the laws enacted for creation of an egalitarian society. The exercise of power by political entities and officers/officials for providing different kinds of services and benefits to the people always has an element of discretion, which is required to be used in larger public interest and for public good.....In our constitutional structure, no functionary of the State or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and is an antithesis to the concept of the rule of law.

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54. In Breen v. Amalgamated Engg. Union, Lord Denning MR said: (QB p. 190, B-C)

... The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the

decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by Padfield v. Minister of Agriculture, Fisheries and Food which is a landmark in modern administrative law.

55. In Laker Airways Ltd. v. Deptt. of Trade Lord Denning discussed prerogative of the Minister to give directions to Civil Aviation Authorities overruling the specific provisions in the statute in the time of war and said: (QB p. 705, F-G)

Seeing that the prerogative is a discretionary power to be exercised for the public good, it follows that its exercise can be examined by the courts just as any other discretionary power which is vested in the executive.

56. This Court has long ago discarded the theory of unfettered discretion. In S.G. Jaisinghani v. Union of India, Ramaswami, J. emphasised that absence of arbitrary power is the foundation of a system governed by rule of law and observed: (AIR p. 1434, para 14)

14. In this context it is important to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law.....

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59. In Kasturi Lal Lakshmi Reddy v. State of J&K, Bhagwati J. speaking for the Court observed: (SCC pp. 13-14, para 14)

14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid....

61. The Court also referred to the reasons recorded in the orders passed by the Minister for award of

dealership of petrol pumps and gas agencies and observed: (Common Cause case, SCC p. 554, para 24)

> *24. ... While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category....*

62. In Shrilekha Vidyarthi v. State of U.P. the Court unequivocally rejected the argument based on the theory of absolute discretion of the administrative authorities and immunity of their action from judicial review and observed: (SCC pp. 236, 239-40)

> *29. It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional....*

25. In the light of the above mentioned cases, we have to record our finding that the discretionary power conferred upon the public authorities to carry out the necessary Regulations for allotting land for the purpose of constructing a public educational institution should not be misused.

26. In another land mark case of ***Sardar Prakash Singh Badal Vs. V.K. Khanna & Ors.*** *(2001) 2 SCC 330, the Hon'ble Supreme Court has further held that:*

> *"(2.) THE concept of fairness in administrative action has been the subject matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependent upon the facts and circumstances of each matter pending scrutiny before the Court and no straight jacket formula can be evolved therefor. As a matter of fact, fairness is synonymous with reasonableness. And on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed - it is the appreciation of this common man's perception in its proper perspective which would prompt the Court to*

determine the situation as to whether the same is otherwise reasonable or not. It is worthwhile to recapitulate that in a democratic polity, the verdict of the people determines the continuance of an elected Government - a negative trend in the elections brings forth a change in the Government - it is on this formula that one dominant political party overturns another dominant political party and thereby places itself at the helm of the affairs in the matter of the formation of a new Government after the election. The dispute in the appeals pertains to the last phase of the earlier Government and the first phase of the present Government in the State of Punjab : Whereas the former Chief Secretary of the State of Punjab upon obtaining approval from the then Chief Minister of Punjab initiated proceedings against two senior colleagues of his in the Punjab State Administration but with the new induction of Shri Prakash Singh Badal as the Chief Minister of Punjab, not only the Chief Secretary had to walk out of the administrative building but a number seventeen officer in the hierarchy of officers of Indian Administrative Service and working in the State of Punjab as a bureaucrat, was placed as the Chief Secretary and within a period of 10 days of his entry at the Secretariat, a notification was issued, though with the authority and consent of the Chief Minister pertaining to cancellation of two earlier notifications initiating a Central Bureau of Investigation (CBI) enquiry. The charges being acquisition of assets much beyond the known source of income and grant of sanction of a Government plot to Punjab Cricket Control Board for the purposes of Stadium at Mohali. A worthwhile recapitulation thus depict that a Government servant in the Indian Administrative Service being charged with acquiring assets beyond the known source of income and while one particular Government initiates an enquiry against such an acquisition, the other Government within 10 days of its installation withdraws the notification - is this fair? The High Court decried it and attributed it to be a motive improper and mala fide and hence by appeal before this Court.

6. In Girija Shankar Pant's case (supra) this Court having regard to the changing structure of the society stated that the modernisation of the society with the passage of time, has its due impact on the concept of bias as well. Tracing the test of real likelihood and reasonable suspicion, reliance was placed in the decision in the case of Parthasarthy (S. Parthasarthy v. State of Andhra Pradesh4), wherein Mathew, J. observed :

"16. the tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reason- able man would in the circumstances infer that there is real likelihood of bias. the Court must look at the impression which other people have. This follows from the principle that Justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not con- duct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. the Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and Others, etc.: 1968(3) WLR 694 at 707). We should not, however, be understood to deny that the Court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings."

27. In the case of ***Kumaon Mandal Vikas Nigam Ltd. V. (2001) 1 SCC 182,*** *the Apex Court has held as under:-*

5. Whereas fairness is synonymous with reasonableness - bias stands included within the attributes and broader purview of the word 'malice' which in common acceptation means and implies 'spite' or ill will'. One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a malafide move which results in the miscarriage of justice (see in this context Kumaon Mandal Vikas Nigam v. GiriJa Shankar Pant & Ors.1. In almost all legal enquiries, "intention as distinguished from motive is the all important factor' and in common parlance a malicious act stands equated with an intentional act without just cause or excuse. In the case of Jones Brothers (Hunstanton) Ltd. v. Steuens2, the Court of Appeal has stated upon reliance on the decision of Lumley v. Gye3 as below :

"For this purpose maliciously means no more than knowingly. This was distinctly laid down in Lumley v. Gye, where Crompton, J. said that it was

> *clear that a person who wrongfully and maliciously, or, which is the same thing, with notice, interrupts the relation of master and servant by harbouring and keeping the servant after he has quitted his master during his period of service commits a wrongful act for which is responsible in law. Malice in law means the doing of a wrongful act intentionally without just cause or excuse : Bromage v. Prosser, [1825(1) C. & P. 673], "Intentionally" refers to the doing of the act; it does not mean that the defendant meant to be spiteful, though sometimes, as, for instance to rebut a plea of privilege in defamation, malice in fact has to be proved."*

*28. We also find that the respondents have relied upon the case of **E.P. Royappa Vs. State of Tamil Nadu & Anr.** AIR 1974 SC 555 wherein the Hon'ble Supreme Court has gone to emphasize the necessity of proof":*

> *"..Secondly, we must not also overlook that the burned of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility".*

*29. We have already stated that the instant OA is one amongst a chain of long running legal feud where arguments are more or less standardized on the issue of mala fide and are repeated with regularity in almost every case. In **R.K. Rai v. Union of India and Ors.** (OA No. 3132/2014 decided on 12.012.2015) this Bench of the Tribunal has gone into the issue of mala fide as alleged in those cases on the same ground and conclusively rejected the same. In that case this Tribunal had held that action may be wrong at times but every wrong committed not imply that it is actuated by mala fide, which needs to be proved on the facts of each case.*

30. In conclusion of the issue, we have already held that this is another case in long standing legal feud raging between the applicant and the respondents. At one time, the Hon'ble High Court had tried to broker peace and had granted major concessions to the applicant including withdrawal of criminal case which had withstood the challenge at several legal fora including before the Chief Metropolitan of the Delhi. However, the situation has gone back to the stage where it originally stood prior to the peace efforts by the Hon'ble High Court, or has become even worse.

31. In the instant case we are swayed by primarily three considerations. In the first place, it does not appear legitimate on part of the applicant to claim that it was on the basis of the arguments of the applicant that the

appointment of the respondent no.2 had been quashed. He was merely an intervener in OA No.1653/2010 whereby the appointment of the applicant had been quashed. He was not even the party to the Writ Petition (C) No.8124/2011 before the Hon'ble High Court of Delhi and was not, therefore, permitted by the Hon'ble High Court to argue in that case. In the second place, mala fide could have been more plausibly pleaded on part of the said S.K. Das, the applicant in OA No.1963/2010 before this Tribunal. We do not find any complaint of any mala fide filed by the said S.K. Das against the Respondent No. 2. Had there been any such act of harassment against the said S K Das it would have been brought to our notice. In the third place, as per the litigation policies of the Government of India, this Tribunal is thronged by persons seeking relief against the Respondent authorities. However, it is not often that such authorities have acted in a vengeful manner. In addition in the decision of ***R.K. Rai and Anr V. State of Union of India*** *(supra), this matter has been gone into depth by this Tribunal. Therefore, we find that the applicant has failed to discharge the burden of proof that lies upon his shoulder. This issue is accordingly decided against the applicant."*

20. The issue of *mala fide* in the instant case is not to be decided on the basis of the pleadings on *mala fide* alone but in consonance with other issues raised in this OA.

21. We find that though earlier we have held, as stated above, that the allegation of *mala fide* was held not sustainable in his earlier OA No.2252/2014 decided on 25.08.2015 on the sole ground that he had been an intervener in OA No.1653/2010 decided on 20.10.2011 (S.K. Das versus UOI), which was set aside by the Hon'ble High Court in WP(C) No.8124/2011 decided on 17.09.2013. However, in the instant case, we are influenced by two other factors. In the first place, we find that there is a

departure in showing the APAR to the applicant as per the procedure prescribed. In the second place, we find that no recordable warning has been delivered to the applicant. As we have already discussed in respect of Issue No.1 above that the purpose of recording APAR is to bring about improvement in the performance of an employee in whose respect, the APAR is being recorded, therefore, wherever the employee concerned is performing below par, he ought to be advised on the subject. We have also seen in respect of Issue No.4 that such advice had been missing. We have further taken note in respect of both in not showing the APAR to the applicant and non-delivering of any advisory to improve upon his performance, and viewed that allegations of the applicant regarding his role in exposing the acts of corruption in the department and in opposing other actions of the respondent no.2 point towards creation of a bias against the applicant. Whenever something is done out of course and sufficient explanation is not forthcoming, it is an indication of *mala fide*. Therefore, in the instant case also, we find the *mala fide inferred* from the unbroken chain of incidents.

22. We also take into account the decision of the Hon'ble Supreme Court in ***M.A. Rajasekhar V/s. State of Karnataka*** [1996 (10) SCC 369] wherein adverse remarks

made for the year 1988-89 were under challenge. The Hon'ble Supreme Court was guided by the fact that there was nothing adverse relating to the integrity of the officer and that when all ten aspects of work required to be assessed by the rules were satisfactory, the adverse remarks got considerably diluted. The Hon'ble Supreme Court was also guided by the fact that the petitioner was not given an opportunity to correct his mistake, which should have been given so that he could improve his conduct. In this regard, para 5 of the judgment is being extracted as below for the sake of greater clarity:-

> *"5. It was found that his integrity was not doubted and his work also in all those respects was found to be satisfactory. Under those circumstances, the remark that he "does not act dispassionately when faced with dilemma" must be pointed out with reference to specific instances in which he did not perform that duty satisfactorily so that he would have an opportunity to correct himself of the mistake. He should be given an opportunity in the cases where he did not work objectively or satisfactorily. Admittedly, no such opportunity was given. Even when he acted in a dilemma and lacked objectivity, in such circumstances, he must be guided by the authority as to the manner in which he acted upon. Since this exercise has not been done by the respondents, it would be obvious that the above adverse remark was not consistent with law."*

23. We do not find the signatures of the applicant anywhere below the remarks of the accepting authority. This could possibly indicate two things (i) that this provision has not been complied with and (ii) it is also a pointer that the remarks were not accepted by the accepting authority within the stipulated period of one

month and this is how this provision has not been found complied with. It was only on 16.12.2013 that the remarks were formally communicated. Had the remarks been recorded within a period of one month then perhaps the applicant would have been able to rebut earlier.

24. In conclusion, we hold that the purpose of recording APAR is reformative one to bring about improvement in future conduct of the employee concerned, but the allegation of *mala fide* is not found to be substantiated against the respondent no.2. However, we have found that the remarks were not recorded by the accepting authority within a period of one month and the requirement of APAR in the form of a Certificate by the officer reported upon has also not been complied with. Further, we do not find anywhere nor has it been asserted by the respondents that the applicant had been advised to improve upon his future conduct. Therefore, we have no option except to hold that the requirement of APAR as laid down in law has not been complied with. We have already referred to the decision of the Hon'ble Supreme Court in ***Dev Dutt Versus Union of India*** (supra) which makes recording of APAR subject to rules of principles of natural justice and its reformative purpose.

25. In view of above discussion, we allow the instant OA holding that since the APAR of the applicant in question gets vitiated on account of lacunae mentioned in the body of the order, and set aside the impugned adverse APAR recorded by the Accepting Authority. The remarks recorded by the Reporting and the Reviewing Authorities shall continue to stand. There shall be no order as to costs.

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

(Syed Rafat Alam)
Chairman

/AhujA/