CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.3390/2013
MA No.612/2016
MA No. 852/2014

Order Reserved on: 15.02.2016
Order Pronounced on: 09.08.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Dr. Ashok Kumar S/o S.S. Chauhan
Age 46 years, R/O Bungalow No. 57,
Takle Road, Forest Research Institute,
Dehradun, Uttarakhand. -Applicant

(By Advocate: Shri R.K. Kapoor)

Versus

1. The Director General,
Indian Council of Forestry Research and Education,
P.O. New Forest, Dehradun, Uttarakhand.

2. The Secretary, Union of India,
Ministry of Environment and
Forests, CGO Complex, Lodhi Road,
New Delhi.

3. The Director, Forest Research Institute,
P.O. New Forest, Dehradun, Uttarakhand.

-Respondents

(By Advocate: Shri Sanjay Katyal)

O R D E R

Per Sudhir Kumar, Member (A):

The applicant of this OA is a Scientist-D with the Forest Research Institute, Dehradun, Uttrakhand. Through this OA, he has challenged the Memorandum dated 05.09.2013 (Annexure-A) through which the adverse remarks recorded in his Annual Performance Appraisal Report

(APAR, in short) for the period of 2009-2010 by Shri G.S. Rawat, the then Director General (DG, in short), Indian Council of Forestry Research and Education (ICFRE, in short) had been communicated to him, and it was added that the representation against such adverse remarks submitted by him to Dr. V.K. Bahuguna, former DG, ICFRE praying for awarding full marks in respect of personal attributes in his APAR, and the consideration of his case for reduction in residency period, had been termed to be irregular, as Dr. V.K. Bahuguna, former DG, ICFRE was not the Appellate Authority for consideration of the appeal against the adverse remarks recorded in the applicant's APAR by his predecessor Dr. G.S. Rawat.

2. In fact, Dr. V.K. Bahuguna had through his order dated 16.06.2011 expunged the adverse remarks recorded in the APAR of the applicant, by his predecessor D.G. & CFRE, and had upgraded the remarks and grading to be that as recorded by the Reporting Officer, and agreed upon by the Reviewing Officer, but that order was later termed by the respondents to be without authority or jurisdiction, and not to be treated as valid, as the Appellate Authority in the case of Scientist-D of ICFRE is Secretary to the Govt. of India, Ministry of Environment and Forests (MoEF, in short), and who is also the ex-officio Chairman, Board of Governors of ICFRE. The respondents have, through the impugned Memorandum termed that action of the expunction of adverse remarks in the APAR of the applicant by Dr. V.K. Bahuguna, as an extra jurisdictional action. The impugned Memorandum had granted an

opportunity to the applicant to submit his representation within 15 days of the issuance of the said Memorandum, and it was stated that if he fails to submit his representation within the stipulated time, it will be presumed that he has no representation to make, and further action would be taken.

3. Instead of replying to the said Memorandum dated 05.09.2013, within the period of 15 days as mentioned in the said Memorandum, the applicant filed the present OA on 23.09.2013. In support of his action of not replying to the impugned Memorandum, in Paragraph-6 of his OA, "Details of Remedies Exhausted", the applicant has stated as follows:-

> **"Details of Remedies Exhuasted**
>
> That the applicant has not availed of any other remedy since the impugned memorandum is without jurisdiction, without competence issued mala fide in September 2013 with respect to the APAR for the year 2009-10 which had already attained finality and communicated to the applicant on 16th of June 2011 and thereafter the applicant was already promoted from Scientist D to Scientist E. Even otherwise no useful purpose would be served by making a representation against the memorandum which is without jurisdiction and competence and would not serve any purpose and more particularly when only 15 days time has been given. There can be no question of any review of the same and there are no such rules which give any power for such a reconsideration. In this background the applicant is not made any representation which would be an infructuous exercise".

4. In the result, he has sought for the following reliefs and interim reliefs through this OA:-

"Relief:

a) Declare the memorandum dated 5th of September 2013 (No. 35-558/1998-ICFRE) issued by the Director General, Indian Council of Forestry Research and Education, served on the applicant on 17th of September 2013, as null and void being without jurisdiction and set aside the same;

b) any other relief/order which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may also be passed in favour of the applicants and against the respondents,

c) award costs of the proceedings in favour of the applicants.

Interim Relief:

a) This Hon'ble Tribunal may pass an appropriate order staying the operation of the impugned memorandum dated 5th of September 2013 (No. 35-558/1998-ICFRE) issue by the Director General, Indian Council of Forestry Research and Education, (served on the applicant on 17th of September 2013), during the pendency of the Original Application;

b) grant any other relief/order which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case".

5. While the case was still pending for completion of pleadings, the applicant filed MA No. 852/2014 praying for grant of Interim Relief. Notice was issued on that MA on 20.03.2014, but when it was next listed, it was prayed that the same may be listed along with the main case for the purpose of hearing, which clubbing was allowed, and without completion of pleadings before the Registrar's Court, the case came to be listed before the Coordinate Benches on 10.07.2014 &

17.09.2014 onwards. The matter ultimately came to be heard in part on 09.02.2016, where-after the applicant filed MA No.612/2016 praying for directions upon the respondents to produce the original records. Later the original records were brought for perusal by the Bench, and the case was heard and reserved for orders on 15.02.2016 after the said MA No.612/2016 having been disposed of. Therefore, ultimately the MA No.852/2014 praying for grant of Interim Relief and the main OA both, thus, came to be heard and reserved for orders together.

6. The facts of the case lie in a very brief compass. The applicant submitted his APAR format for the period 2009-10, which is the bone of contention in the instant case, to his Reporting Officer Dr. H.S. Ginwal, Head, DG, ICFRE, while himself noting that the Reviewing Officer was Dr. S.S. Negi, Director, ICFRE. He had filled up the APAR format Part-2A: Research Component and Part-2B- Extension and Education Component and Part 2C-Institutional Research Management Component, and had included five typed pages thereafter, adding the points 7 to 24 in Part 2A Research Component, adding to points 2,6,7,9 & 11 in respect of Part 2B Extension and Education, and adding to points 1, 3 & 7 of Part 2C Institutional Research Management Component. In the evaluation by the Reporting Officer in Part-3A, 3B and 3C, consisting of Table-1 to Table-5, the Reporting Officer Dr. H.S. Ginwal awarded to the applicant certain overall score of profession index points on 22.07.2010. In respect of Part-4 Integrity and Ethics also, the Reporting Officer certified the integrity and standard of ethics of the applicant to be beyond any doubt.

The recommendations of the Reviewing Officer were recorded below Table-5 without any comment and in Part-5 of the APAR, the remarks of the Reviewing Officer, Director ICFRE, Dehradun, on 30.08.2010, were that he agreed with the comments of the Reporting Officer. When the APAR was then sent to the then Accepting Authority, Dr. G.S. Rawat, DG, ICFRE, Dehradun, he did not agree with the assessment of the Reporting Officer, concurred to by the Reviewing Officer, and recorded his own detailed comments. Since these comments were adverse to the applicant and have, therefore, already been communicated to him in writing also, there is no harm in our reproducing the comments of the Accepting Authority dated 11.01.2011 from the original APAR, as produced by the respondents after the conclusion of hearing of the case, which comments were as follows:-

> "I don't agree with the assessment of Reporting and Reviewing Officers. Information gathered from UCOST reveals that no award has been given to Dr. Ashok Kumar and he didn't participate in the said Conference. He is misleading to score the points which he doesn't deserve. His claim of assisting the organizers of the XIII World Forestry Congress Argentina is also misleading. His claim under Point No.15 in becoming key note speaker is frivolous. During the period under review while working as watch and ward officer he failed to control the unlawful involvement of PLO Dr. Paramjit Singh in womanizing at Scientist Hostel on 23.10.2009. Besides the Scientist is in the habit of spreading slander against the Council and Officials. I award him 12 marks in the personal attribute as under in Table 5:-
>
> 1) Interpersonal relationship and team spirit- 01
>
> 2) Development and use of managerial and administrative skills and problem solving ability -02
>
> 3) Initiative and willingness to shoulder additional responsibility, energy and enthusiasm -02
>
> 4) Punctuality, Discipline & General Conduct-02
>
> 5) Attitude towards Schedule Caste and Schedule Tribe- 05".

7. While communicating these adverse remarks of the Accepting Authority, a Memorandum dated 30.03.2011 was issued to the applicant in the nature of a Show Cause Notice through Annexure A-4 by Secretary, ICFRE in order to enable him to make a representation against such adverse remarks, which Memorandum the applicant has not assailed in this OA. This Annexure A-4 stated as follows:-

"Indian Council of Forestry Research and Education

(An autonomous body of the Ministry of Environment and Forests, Govt. of India)

P.O. New Forest, Dehradun 248 006 (Uttarakhand)

No. 40-299/2011-ICFRE Dated 30th March, 2011

MEMORANDUM

Dr. Ashok Kumar, Scientist D, Division of Genetics and Tree Propagation, FRI, Dehra Dun is informed that his Annual Appraisal Performance Report (APAR) for the period 01.04.2009 to 31.03.2010, it is intimated that the information gathered from UCOST reveals that no award has been given to Dr. Ashok Kumar and he did not participate in the said conference. He is misleading to score the points he does not deserve. His claim to assisting the organizations of the XIII World Forestry Congress Argentina is also misleading. His claim under Point 15 in becoming Key Note Speaker is frivolous. During the period under review while working as watch and ward officer he failed in control the unlawful involvement of PLO Dr. Pramjit Singh in womanizing at Scientist Hostel on 23.10.2009. Besides, the Scientist is in habit of spreading slander against the council and officials.

He has been awarded only 12 marks out of 25 marks in his personal attributes as under:

1	Interpersonal relationship	01
2	Development and use of management and administrative skills and problem solving ability	02
3	Imitative and willingness to shoulder additional responsibility, energy and	02

	enthusiasm	
4	Punctuality, Discipline and General Conduct	02
5	Attitude towards schedule caste and schedule tribe	05

It is to mention that marks below 15 out of 25 in Personal Attributes are treated as adverse.

Dr. Ashok Kumar, Scientist D, Division of Genetics and Tree Propagation, FRI, Dehra Dun is advised in his own interest and in the interest of Council work to remove the deficiencies pointed out above and score more than 15 marks out of 25 in Personal Attributes.

If, Dr. Ashok Kumar wishes to make a representation against above adverse entries and marks allotted to him in the Personal Attributes, he may do so within one month of receipt of this memorandum.

This memorandum may be acknowledged.

Sd-
Sudhanshu Gupta
Secretary, ICFRE"

8. Thereafter, in reply to this Memorandum dated 30.03.2011, the applicant submitted his representation on the adverse remarks of the Accepting Authority through Annexure A-5 dated 05.05.2011, which was a detailed representation and has been annexed as pages 37 to 56 of the paper book of the OA. In reply to that, through Annexure A-6 dated 16.06.2011, the applicant was informed that the DG, ICFRE has, after careful consideration of all the relevant records, decided that the remarks recorded by the Reporting Officer, agreed upon by the Reviewing Officer, may be treated as final, and that in view of this decision of the DG, ICFRE, the above reproduced Memorandum dated 30.03.20111 was ordered to be treated as withdrawn.

9. Thus, through the orders of the same Authority, namely DG, ICFRE, the net effect of this Memorandum dated 16.06.2011 was that the adverse remarks recorded by his predecessor the then DG, ICFRE on 11.01.2011, were ordered by the successor DG to be withdrawn, 5 months' later, through the Memorandum dated 16.06.2011. This Memorandum, issued with the approval of the successor DG, ICFRE, is the bone of contention in the instant case.

10. This change had happened only because there had been a change in the incumbent officer holding the post of DG, ICFRE. This Annexure A-6 dated 16.06.2011 could be issued because the then incumbent DG, ICFRE Dr. V.K. Bahuguna had, in the meanwhile, ordered a change in the Reporting/Reviewing/Accepting pattern of ACRs/APARs of Group 'A' Officers/Scientists, Group 'B' Officers and Group 'C' Officials of the ICFRE, through an order dated 10.06.2011 (Annexure A-8), a portion of which may be reproduced here as follows:-

"INDIAN COUNCIL OF FORESTRY RESEARCH AND EDUCATION

(An Autonomous Body of the Ministry of Environment and Forests, Govt. of India)

P.O. New Forest, Dehradun-248 006 (Uttarakhand)

No.40-10/2011-ICFRE Dated the 10th June, 2011

ORDER

In view of upgradation of the post of Director General, ICFRE to the Apex pay scale of Rs.80,000/- with effect from May, 2011, it has been decided that the following pattern for reporting/reviewing/accepting of ACRs/APARs in respect of Group 'A' Officers/Scientists, Group 'B' officers and Group 'C' officials of the Council shall be strictly adhered to officers and Group 'C' officials of the Council shall be strictly adhered to:-

S.	Category	Reporting	Reviewing	Accepting

No.	Officers/Scientists	Authority	Authority	Authority
1.	All Dy. Director Generals /Directors of Institute or officers of equivalent rank/ Secretary, ICFRE	Director General, ICFRE	D.G. ICFRE	Secretary, Govt. of India, MoEF
2.	IFS officers at the level of CFs, ADGs	DDG, ICFRE or immediate superior officer as the case may be	D.G. ICFRE	D.G. ICFRE
3.	xxxxxNot reproduced here.			
4.	Scientist 'G'/Head of Divisions/Registrar FRI/PLO	Director of the Institute	D.G. ICFRE	D.G. ICFRE
5.	xxx Not reproduced here.			
6.	Scientists upto the level of Scientists 'D' working in ICFRE and its institutes	Head of Division or superior officer	Directors of Institute/ DDG	Not required
7,8, 9,& 10	Not reproduced here.			

In addition to above, it has also been decided that the Annual Confidential reports in respect of Scientists working in ICFRE and its Institutes shall be completed in all respect upto the level of Director General, Indian Council of Forestry Research & Education. The decision of the D.G., ICFRE on the representations against remarks/adverse remarks in the ACRs of the Scientists shall be final and no further appeal in this regard shall be referred to any other authority.

Sd/-
(Sudhanshu Gupta)
Secretary, ICFRE"

11. These instructions were reiterated through Annexure A-9 dated 15.03.2013.

12. The applicant has also through Annexure A-10 pages 64 & 65 of the paper-book of the OA produced a copy of a Note sheet from a file, dictated by Dr. V.K. Bahuguna the then DG, ICFRE, which purports to be from file No.40-10/2011-ICFRE (though the applicant has not shown as to how he came to be in possession of this Note), which purports to

show that the said order dated 10.06.2011 had been issued when the Note of Dr. V.K. Bahuguna the then DG, ICFRE had been concurred with by the DG, Forests and Special Secretary (DGF&SS, in short) on 05.06.2011 on file, after which, on 08.06.2011, the DG, ICFRE had ordered for Annexure A-8 order dated 10.06.2011 to be issued.

13. The case of the applicant is that when through the Communication dated 16.06.2011, the adverse remarks recorded in his APAR for the period 2009-2010, as communicated to him through Memorandum dated 30.03.2011, have themselves been withdrawn, and the remarks of the then Accepting Authority Dr. G.S. Rawat have since been treated to be nullity, the respondents could not have issued the impugned Memorandum dated 05.09.2013 to him, stating that the expunction of the adverse remarks recorded by Dr. G.S. Rawat, former DG, ICFRE, by his successor former DG, ICFRE Dr. V.K. Bahuguna, was without authority or jurisdiction, and cannot be treated as valid, and that corrective action had been ordered in all cases wherever the former DG, ICFRE Dr. V.K. Bahuguna had taken any such extra jurisdictional action.

14. In his main submissions and rejoinder filed on 20.02.2015, as well as in the written submissions filed on 19.02.2016 after the case has been reserved for orders, the applicant had raised the issue that the then Accepting Authority Dr. G.S. Rawat had unauthorizedly downgraded his earlier awarded marks from 21 to 12 for personal attributes, without any substance, arbitrarily, and keeping aside the views/assessment of

Reporting and Reviewing Officers. He has submitted that recording of any adverse remarks in respect of his personal attributes by a too far placed authority was illegal, and not in order. He had further alleged that initially the Accepting Authority was in complete agreement with Reporting and Reviewing Authorities, but had then changed his assessment at a later date, by over cutting and/or over writing in an unwarranted manner, and that such adverse remarks were, therefore, baselessly recorded, without verifying facts. He has also alleged that since DoP&T had prescribed a time schedule for completion of APARs by 31st December of the year, hence any entries recorded by any authority on 11.01.2011 were null and void as time barred, and ultra-jurisdictional, and cannot be imposed upon him. He had further made certain allegations against the then Accepting Authority Dr. G.S. Rawat, which being of a personal nature, and the said Dr. G.S. Rawat not being a party to the present proceedings in his individual capacity to defend his stand, we need not advert to those submissions of his.

15. The further stand of the applicant is that in response to the previous Memorandum dated 30.03.2011 (Annexure A-4), he had submitted his representation through proper channel to the DG, ICFRE, duly supported by documentary proofs, and that the DG, ICFRE also happens to be the Appointing Authority of the applicant. His case is that if there was any administrative requirement to send representation to any other specified authority, it could have been forwarded appropriately

to the concerned authority, and that he had absolutely no role to play for taking any such course of action.

16. One more objection taken by the applicant is that the adverse remarks of the then Accepting Authority Dr. G.S. Rawat were written by him after only about seven months of supervision of the applicant's work, but for the full financial year 2009-2010, without specifying the duration of his assessment. Another contention of the applicant is that his reply dated 05.05.2011 to the earlier Memorandum dated 30.03.2011 (Annexure A-4) had been carefully examined and considered by the successor DG, ICFRE, and that he had accordingly referred the matter to the DGF&SS to the Govt. of India, and Special Secretary, Ministry of Environment, Forests & Climate Control (MoEF&CC, in short), as the Vice Chairman, Board of Governor, ICFRE, for expunging the adverse remarks, and seeking concurrence of the next higher authority in the present case, which concurrence had been accorded by the DGF&SS through the Note Sheet photocopies (apparently unauthorizedly obtained by the applicant) produced at Annexure A-10, through which, under the authority of DGF&SS to Govt. of India, MoEF and Vice Chairman, Board of Governor, who is an authority higher than the DG, ICFRE, the DG, ICFRE had been designated fully competent to decide/concur the cases for expunging adverse remarks in the APARs of the officers/scientists of ICFRE. His contention, therefore, is that the Memorandum dated 16.06.2011 issued to him thereafter, through Annexure A-6, had attained finality, and the matter had been settled, and therefore, no

further appeal in the matter is required to be made by him to any other authority, since the adverse remarks of the previous incumbent DG, ICFRE had not been found in order and expunged by his successor DG, ICFRE in an appropriate manner, and because of the expunction of the adverse remarks, the applicant has even been promoted to the next higher grade of Scientist-E also thereafter.

17. In the written submissions the applicant has alleged that his actions as Secretary, Forest Scientists' Association, in raking up cases pertinent to the Association, has irked ICFRE Administration, because of which the matter, which had attained finality, has been re-opened, and the impugned Memorandum had been issued without any jurisdiction, and that the matter once settled cannot be reopened and reviewed later by the same authority, as per the judgment of the Hon'ble Apex Court in **Dr. (Smt.) Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others (1987) 4 SCC 525,** a copy of which judgment was submitted during the course of the arguments itself. He had also submitted that in some other cases also the grading awarded by the Reviewing Authority had been treated as final grading, and the entries recorded by the Accepting Authority, including adverse remarks and grading, had been expunged, and therefore, his case is not the first case of its kind.

18. On the other hand, all the contentions raised by the respondents in their counter reply dated 16.09.2014 and in the reply to the MA filed by the respondents on the same date, and the oral arguments advanced

before the Bench, had been summarized and submitted by the learned counsel for the respondents in his written submission dated 22.02.2016, after the case had been reserved for orders.

19. The first preliminary objection on the point of law taken by the respondents is that as decided by the Hon'ble Apex Court in **Union of India & Anr. vs. Kunisetty Satyanarayana (2006) 12 SCC 28** (Annexure RW-1), a mere charge sheet or show cause notice does not give rise to any cause of action, unless the same has been issued by a person having no jurisdiction to do so, because it does not amount to an adverse order which affects the rights of any party. They pointed out that the Hon'ble Apex Court had further held that it is quite possible that after considering the reply to the Show Cause Notice, the authority concerned may itself drop the proceedings, or hold that the charges are not established. Therefore, a mere Show Cause Notice does not infringe the rights of anyone, and it is only when a final order imposing any type of penalties, adversely affecting a party is passed, that the said party can be said to have any grievance.

20. It was further submitted that this issue had been considered by the Hon'ble Delhi High Court also in the case of **Shashi Bala vs. Managing Committee, Sardar Patel Public Sr. Secondary School, 2000 (53) DRJ 494**, (RW-2), in which the Hon'ble High Court had held that when the matter was at Show Cause Notice stage itself, and the petitioner had not even given any reply to the Show Cause Notice, and had straightaway preferred the Writ Petition, that was premature and not maintainable,

and while dismissing that Writ Petition, it was held by the Hon'ble High Court that it is not a fit case where the Court should interfere, and if ultimately any order adverse to the petitioner is passed, the petitioner would be at liberty to challenge by filing an appeal. The respondents had also submitted that the judgment in the case of **Dr. Smt. Kuntesh Gupta** (supra) has no relevance to the present matter. We shall discuss that case shortly.

21. The contention of the respondents is that after repatriation of the predecessor DG, ICFRE, Dr. G.S. Rawat, to his parent cadre, when his successor Dr. V.K. Bahuguna joined as DG, ICFRE, he was not the Appellate Authority for consideration of any appeal against the adverse remarks recorded in the applicant's APAR by his predecessor, yet he had gone ahead, and ordered to expunge his predecessor's adverse remarks in the APAR of the applicant vide the order dated 16.06.2011 (Annexure A-6). It was submitted that such expunction was not permissible, as the Appellate Authority in the case of the applicant is Secretary, MoEF&CC, Govt. of India, who is also the Chairman, Board of Governor of ICFRE, and that the adverse remarks recorded by a predecessor DG, ICFRE could not have been expunged by his successor DG, ICFRE, who had no jurisdiction or authority to do so.

22. The respondents alleged that as the DG, ICFRE Dr. V.K. Bahuguna had committed many such irregularities, because of which the Ministry had directed ICFRE through letter/order dated 22.08.2013 (Annexure R-1) to take corrective measures, to set right the numerous irregularities

committed by the then DG, ICFRE Dr. V.K. Bahuguna, without any jurisdiction. It was submitted that only in compliance of this direction of the Ministry, the impugned Show Cause Notice had been issued to the applicant, for affording him an opportunity to submit his representation to the Competent Appellate Authority, the Secretary, MoEF&CC, without responding to which, the applicant has rushed to this Tribunal to file the present OA. It was further submitted that the reliance placed by the applicant on Annexure A-8 order dated 10.06.2011, issued under the orders of the then DG, ICFRE Dr. V.K. Bahuguna, portions of which have been reproduced by us above, was misplaced, and to prescribe one single officer to be the Reporting, Reviewing and Accepting Authority would be making a mockery of the entire APAR system. It had been pointed out by the respondents that at the 48th meeting of Board of Governors of ICFRE held on 25.07.2013, it was specifically decided to revoke the aforesaid order dated 10.06.2011 (Annexure A-8), which had been issued without the approval of the Board as the Competent Authority, and it was further decided to restore the ICFRE order dated 08.06.1992 regarding writing of ACRs/APARs of the Scientists of the council which had been in force for more than 20 years.

23. It was further submitted that as per the general guidelines for completion of ACRs/APARs after the Reporting and Reviewing Authorities have recorded their remarks, the Accepting Authority has been fully empowered to agree or disagree with the assessment of either the Reporting or the Reviewing Authority, or of both. It was further pointed

out that in the present case Dr. G.S. Rawat, the then DG, ICFRE, had recorded his adverse remarks with proper justifications and reasoning. In stating so, reliance had been placed upon the DoP&T OM dated 23.07.2009, which procedure has been followed by the ICFRE through the office order dated 08.06.1992, which had been followed in this regard and was produced as Annexure RW-3.

24. The contention of the respondents is that any representation against the above reproduced adverse remarks of DG, ICFRE could have been dealt with and decided either in favour or against the applicant only by any authority superior to the Accepting Authority, who had recorded those adverse comments, which could only have been the Secretary, MoEF&CC, as the Chairman, Board of Governors, ICFRE, and in that capacity his being the authority superior to the DG, ICFRE. Their contention is that firstly a successor, DG, ICFRE Dr. V.K. Bahuguna had no jurisdiction whatsoever to entertain and decide upon the representation made by the applicant against the adverse remarks in the APARs recorded by his predecessor as the Appellate Authority, and secondly, holding the same post as his predecessor, he could not have expunged the adverse remarks recorded by his predecessor, and, therefore, the order passed by him, leading to the issuance of the Memorandum dated 16.06.2011 (Annexure A-6), was without the sanction of law, and hence is a nullity. They had also referred to an order dated 06.10.2015 passed in OA No. 1696/2014 **Dr. Ajay Kumar Saxena vs. Secretary, Ministry of Environment and Forest** by the

same Bench, in Paragraphs 16 & 17 of which the aspect of complaints received regarding the administrative irregularities committed during the period of the said Dr. V.K. Bahuguna, the then DG, ICFRE, had been noticed by this Bench, in the case of another Scientist of ICFRE itself. Finally, the respondents contended that as per the original records produced by them for perusal, which we have perused, there had been no action taken in a *mala fide* manner by the then DG, ICFFRE Dr. G.S. Rawat, and that the applicant's contention in this regard is incorrect.

25. Heard. We have given our anxious consideration to the facts of this case.

26. In regard to the point of irregularities committed by the then DG, ICFRE Dr. V.K. Bahuguna, apart from the Paragraphs-16 & 17 in its order dated 06.10.2015 in OA-1696/2014 **Dr. Ajay Kumar Saxena** (supra), as pointed out by the respondents in their counter reply and written submissions, the same Bench had in Para-28 of that order recorded as follows:-

> ".....Having weighed the absence of the applicant having the full qualifications as per the Advertisement on the date of his submitting his application, and **the administrative jugglery and roundabout manner in which vacant posts were upgraded and shifted from one department to another by the then incumbent of the post of Respondent No.2,** in order to be able to somehow accommodate him for appointment against the post for which he had applied, we tend to agree with the conclusion of the respondents that the applicant's appointment itself was irregular, as he was not at all qualified for being appointed as Scientist-D (Bio-diversity) on the date of submission of his application".
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> (Emphasis supplied)

27. In regard to the judgment in the case of **Dr. (Smt.) Kuntesh Gupta** (supra), cited by the learned counsel for the applicant for advancement of his contentions, it is seen that in that case the Vice-Chancellor of the University had first passed an order on 24.01.1987, disapproving the order of dismissal of the appellant on the ground that the charges against her did not warrant her dismissal from service, and had directed that the appellant should be allowed to function as Principal of the College forthwith. In view of some restraints and constraints later placed upon the functioning of the petitioner, and her powers and duties as Principal, and directions to her to vacate the quarter in which she was residing, the matter had been once again carried before the Hon'ble High Court of Allahabad. The High Court had quashed the order imposing such restraints and constraints on the powers and duties of the appellant before it through its judgment dated 10.03.1987. However, while that matter was still pending before the Hon'ble High Court, at the instance of the appellant, 3 days before the judgment of the Hon'ble High Court was pronounced, the Vice Chancellor had passed another order dated 07.03.1987, reviewing her earlier order, disapproving the dismissal of the appellant from service. By the order dated 07.03.1987 passed in review, the Vice-Chancellor had this time approved the order of the Authorised Controller dismissing the appellant from service, on the basis of two reports of the Joint Director of Higher Education, U.P., regarding financial irregularities committed by the appellant. This order dated 07.03.1987 was not brought to the notice of the Hon'ble High Court before it had pronounced the judgment dated 10.03.1987. Therefore, the

Hon'ble Supreme Court firstly commented upon the fact that the passing of such an order should have been brought to the notice of the High Court. Secondly, when a Writ Petition was filed before the High Court later, challenging the said review order dated 07.03.1987, the High Court took a view that such an order could have been challenged before the Chancellor of the University, and had dismissed the Writ Petition on the ground of existence of an alternative remedy. After noting all the facts of the case, the Hon'ble Apex Court had then held as follows, in Paragraphs 11 & 12 of its judgment:-

> "11. It is now well established that **a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the Principal, acts as a quasi judicial authority.** It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the **Statutes of the University do not confer any power of review on the Vice-Chancellor.** In the circumstances, it must be held that **the Vice Chancellor acted wholly without jurisdiction** in reviewing her order dated January 24, 1987 by her order dated March 7, 1987. The said order of the Vice-Chancellor dated March 7, 1987 was a nullity.
>
> 12. The next question that falls for our consideration is whether the High Court was justified in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy. It is true that there was an alternative remedy for challenging the impugned order by referring the question to the Chancellor under Sec. 68 of the U.P. State Universities Act. It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Art. 226 of the Constitution on the ground of existence of an alternative remedy. In the instant case, the **Vice-Chancellor had no power of review and the exercise of such a power by her was absolutely without jurisdiction. Indeed, the order passed by the Vice-Chancellor on review was a nullity;** such an order could surely be challenged before the High Court by a petition under Art. 226 of the Constitution and, in our opinion, the High Court was not justified in dismissing the writ petition on the

> ground that an alternative remedy was available to the appellant under Sec. 68 of the U.P. State Universities Act".
>
> (Emphasis supplied)

28. In his arguments, learned counsel for the applicant relied upon the fact that in the above judgment the Hon'ble Apex Court had noted the well established law that availability of an alternative remedy is not an absolute bar to the maintainability of a Writ Petition, and when an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy, and that the same law would apply to the present proceedings before this Tribunal also.

29. We are unable to accept the applicability of this observation of the Hon'ble Apex Court (in the context of the powers of the Hon'ble High Court in its writ jurisdiction under Article 226 of the Constitution) to the present proceedings under the Administrative Tribunals Act, 1985. In fact, Section-20 of the Administrative Tribunals Act, 1985 specifically states that the Tribunal should not ordinarily admit an application, unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant Service Rules as to redressal of his grievances, and sub-section-2 of Section-20 also gives an example of the circumstances when a person shall be deemed to have availed of all the alternative remedies available to him under the relevant Service Rules, as follows:-

"20. **Applications not to be admitted unless other remedies exhausted.—**

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) xxxxxxxxxxx (Not reproduced here)".

30. In the present case, the applicant has in Para-6 of its OA, as already reproduced above, made an averment that he had not availed of any other remedy since, (according to him), the impugned Memorandum is without jurisdiction and illegal. He has further made a statement that no useful purpose would have been served by making a representation against the impugned Memorandum, which is without jurisdiction and competence, once again presuming that the impugned Memorandum to be illegal and being without jurisdiction and competence. But that aspect is the very crux of the case, with the *lis* arising out of that only, and his prayer before this Tribunal in Para-8 (a) of the OA also is to declare the said Memorandum as null and void and being without jurisdiction.

31. Therefore, it is clear that without the applicant's prayer at Para-8 (a) having been allowed, the applicant could not have himself decided that the impugned Memorandum is without jurisdiction and competence, and that it has been issued in a *mala fide* manner, and that no useful purpose would be served by making a representation, more particularly when only 15 days' time has been given in the Memorandum. If the applicant could file this OA within that very 15 days' time, he could have certainly filed a reply to the impugned Memorandum within that time period of 15 days, without taking it upon himself to declare the Memorandum as being without jurisdiction and competence. Therefore, we hold that no benefit would accrue to the applicant from the above observations of the Hon'ble Apex Court regarding maintainability of a Writ Petition under Article 226 of the Constitution before the Hon'ble High Court, in view of the specific legal provision binding this Tribunal under Section 20 of the Administrative Tribunals Act, 1985.

32. On the other hand, in fact the judgment cited by the learned counsel for the applicant operates against the applicant himself. In Para-11 of the Hon'ble Apex Court judgment in the same case **Dr. (Smt.) Kuntesh Gupta** (supra), as reproduced above, it has been held that an authority cannot review its own order, unless the power of review is expressly conferred on it by the Statute under which it derives its jurisdiction. The power to act as an Accepting Authority of the APAR of the applicant was vested with the incumbent officer occupying the post of DG, ICFRE, which had been lawfully exercised by the then DG, ICFRE on

11.01.2011. Therefore, by virtue of the operation of the common law principle, as re-stated by the Hon'ble Apex Court in Para-11 of the judgment cited by the applicant himself, the successor incumbent as DG, ICFRE could not have reviewed the adverse comments of his predecessor DG, ICFRE, and expunged them, since no power to undertake such a review, or to expunge any such adverse remarks written by a predecessor incumbent who was the Accepting Authority, vests in a successor incumbent who gets posted as the Accepting Authority, under the Rules as applicable for writing of the APARs. Therefore, instead of ensuring any benefit to the applicant, the Apex Court judgment in **Smt. Kuntesh Gupta** (supra) cited by the learned counsel for the applicant, actually operates against the applicant himself.

33. Further, as was pointed out by the learned counsel for the respondents in the extract of the Government compendium regarding Service Law in Chapter-8 relating to Annual Confidential Reports, Para 8.9 "Representation against adverse remarks", and in particular sub-para (ii) and (iii) of the same, have laid down the procedure as follows:-

> "(i) xxxxxx (Not reproduced here).
>
> (ii) **Authority deciding the representation against the adverse remarks should be the authority superior to Accepting/Countersigning authority.**
>
> (iii) All representations against adverse remarks should be decided expeditiously by the competent authority and in any case within three months from the date of submission of the representation. But this does not mean that if it is not done within this period, the adverse remarks get expunged automatically. The only provision is that when a representation has been submitted within the prescribed time-limit, no note will

> be taken on the adverse remarks during the period of pendency of the representation. The aggrieved employee may, however, approach the higher authorities for redressal of his grievance in this regard, if any".
>
> (Emphasis supplied)

34. Further, even in respect of the vast powers of Hon'ble High Courts of the various States of the Country under Article 226, which are much wider than the powers of this Tribunal to entertain original applications under Chapter-IV Section-19 & 20 of the Administrative Tribunals Act, 1985, the Hon'ble Apex Court had, in the case of **Union of India & Anr. vs. Kunisetty Satyanarayana** (supra), as pointed out by the learned counsel for the respondents, held as follows:-

> "11. Instead of replying to the aforesaid Charge Memo, the respondent filed an OA **before the Central Administrative Tribunal, Hyderabad which was disposed of vide order 15.3.2004 with the direction to the applicant to submit his reply to the Charge Memo dated 23.12.2003 and on submission of the said reply the Disciplinary Authority should consider the same. Instead of filing any reply the respondent filed a Writ Petition in the High Court which has been allowed, and hence this appeal.**
>
> 12. In our opinion, the High Court was not justified in allowing the Writ Petition.
>
> 13. **It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice** vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc.
>
> 14. The reason why ordinarily a writ petition should not be entertained **against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because**

> **it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.**
>
> (Emphasis supplied)".

35. In the case of **Shashi Bala** (supra), the Hon'ble Delhi High Court had also in Paragraphs 3,6 & 7 held as follows:-

> "3. **The matter is admittedly at a show cause stage and the petitioner has not given reply to the show cause notice and instead filed the present writ petition. Such a petition is clearly premature and not maintainable at this stage.**
>
> 4 & 5. xxxxxxxx(Not reproduced here).
>
> 6. **In view of the aforesaid position, it is not a fit case where this Court should interfere at this stage. If ultimately any order adverse to the petitioner is passed, petitioner shall be at liberty to challenge the same by filing appeal before the Delhi Education Tribunal as provided under the provisions of Delhi School Education Act. The petition filed at this stage is clearly premature and also not maintainable.**
>
> 7. The writ petition is accordingly dismissed. Rule is discharged.
>
> No order as to costs."
>
> (Emphasis supplied)

36. Therefore, firstly, it is held that the successor DG Dr. V.K. Bahuguna could not have reviewed and expunged the adverse remarks entered in the APAR of the applicant by his predecessor in the same office, as he was not competent to do so, and there is no prescription

under the Rules relating to writing or changing of APARs by the successors in office, who have not observed the work of the officer concerned during the relevant period, and they are not competent to be able to change the entries recorded in the APARs of concerned officials by their predecessor incumbents, who have seen and observed the work of the Officer/Scientist concerned during the relevant reporting period. Further, secondly, we reject the contention of the applicant that since the then DG, ICFRE Dr. G.S. Rawat had seen his work for only 7 months in the relevant reporting period year, he could not have recorded the adverse remarks when the APAR was put up to him as the Accepting Authority. It has been clearly laid down that any Reporting, Reviewing or Accepting Authority, who has seen and observed the work of an Officer/Scientist for a minimum period of at least 90 days in the relevant reporting period year, is competent to record remarks as such Reporting, Reviewing or Accepting Authority. Therefore, the then DG, ICFRE, having observed the work of the applicant for 7 months, was fully competent to record the observations which he did, as already reproduced above.

37. Further, thirdly, we do not find that the Annexure A-8 dated 10.06.2011 could not have ordered for the relevant instructions continuing since 08.06.1992 to be changed for the purpose of writing of APARs of the Officer/Scientist of ICFRE. Therefore, the order dated 16.06.2011, at Annexure A-6, also was without any authority or competence, as its source order dated 10.06.2011 (Annexure A-8), flowing from the two pages of Note Sheets at Annexure A-10, dated

05.06.2011, itself was without any basis or without any authority, and since those instructions wrongly obtained have since been struck down by the Board of Governors of the ICFRE.

38. Therefore, the OA is rejected, and a cost of Rs.25,000/- (Rupees twenty five thousand only) is imposed upon the applicant, payable to the Secretary, ICFRE, for his having indulged in frivolous litigation, and having made blatantly wrong and illegal averments in Para-6 "Details of Remedies Exhausted", presuming that the law is in his own hands, and unnecessarily filing the present OA, and consuming precious time of this Tribunal, instead of furnishing a reply to the impugned Memorandum dated 05.09.2013 (Annexure-A), which was fully within the competence of the DG, ICFRE to issue to him, as per the instructions of the MoEF issued in this regard.

39. The OA is, therefore, rejected with costs payable by the applicant as mentioned above.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.