

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

OA-3971/2016

New Delhi, this the 30th day of November, 2016.

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Rahul Gosain, aged 43 years (DOB 11.9.1973)
S/o Late Sh. Jatinder Bal Gosain,
Presently working as Director (On deputation basis),
Department of Electronics & Information Technology,
Room No.2019-20, Electronics Niketan,
6, CGO Complex, Lodhi Road, New Delhi.
r/o D-II/123, Kaka Nagar, New Delhi-110003. Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary
Ministry of Railway, Rail Bhawan,
New Delhi.
2. The General Manager,
North East Railway, Gorakhpur-273012.
3. The Chief Mechanical Engineer,
N.E. Railway, Gorakhpur-273012. Respondents

(By Advocate: Shri R.N. Singh)

ORDER(ORAL)

Hon'ble Mr. Justice Permod Kohli

Issue notice.

Learned counsel Sh. R.N. Singh appears and accepts notice on behalf of the respondents.

2. The applicant is aggrieved by grading awarded to him in his APAR for the period from 01.04.2014 to 07.07.2014 and from 08.07.2014 to 31.03.2015. He made a representation against the grading awarded to him for the said period on 27.07.2015. The said representation has been rejected vide impugned order

dated 11.12.2015 as communicated to the applicant vide communication dated 14.12.2015.

3. Sh. Yogesh Sharma, learned counsel appearing for the applicant, has challenged the validity of the aforesaid rejection order on two grounds. Firstly, that the representation has been decided by the accepting authority, who is one of the competent authority to consider the grading awarded to the applicant and thus the representation should have been considered by an authority higher to the accepting authority. Secondly, that the impugned order is a non-speaking one and without any reasons, which has greatly prejudiced the applicant.

4. We have examined the impugned order. There is a specific averment in Para 4.8 of the OA that the General Manager is the accepting authority and the representation has been disposed of by him. However, from the representation we find that it has been addressed to the General Manager, North Eastern Railway, Gorakhpur, who is the accepting authority. As a matter of fact, the applicant himself should have represented to a higher authority. Learned counsel for the applicant submits that as per instructions to the applicant, he was asked to make representation to the accepting authority. From the impugned order we find that the accepting authority has justified the consideration of representation of the applicant. This is contrary to law and otherwise also cause prejudice to the applicant. Sh. Sharma, has also relied on a judgment of this Tribunal dated 08.09.2016 passed in OA No. 1679/2015 wherein this Tribunal has made following observations:

“4. Heard the learned counsel for the parties and perused the various judgments cited above and the ratio settled by the Apex Court. It is crystal clear that the ratio decided by the Courts is that representation against adverse ACRs/APARs should be decided by the authority higher than who have recorded the ACR/APAR. Since in the applicant's case the

representation was decided by the same authority who recorded his APAR in the capacity of General Manager, therefore, the representation has to be decided by the next higher authority i.e. the Member Engineer. We, therefore, dispose of this OA with a direction to the Member Engineer, Railway Board to decide the representation dated 09.12.2014 and 02.01.2015 submitted by the applicant against the APARs for the year 2012-13 and 2013-14 on merits, giving detailed reasons. In case the Member Engineer takes a favourable view and upgrades these ACRs/APARs entries to 'bench mark' level, the respondents shall consider the case of the applicant for promotion taking in view the new upgraded APARs. We set a time frame of 60 days from receipt of a certified copy of this order for Member Engineer to decide on the representation. No costs."

Even if the applicant had faulted by making representation to the accepting authority, it should have at least forwarded the same to a higher authority for consideration, which does not seem to have been done. To the contrary, accepting authority has justified consideration of the representation. Such practice has to be deprecated particularly in view of clear mandate of aforementioned judgment of this Tribunal.

5. Otherwise also, we find that no reasons have been recorded by respondent no. 2 while disposing of representation of the applicant. The order impugned is thus not sustainable in law. Keeping in view the grounds of challenge, this OA is accordingly allowed. Impugned order is hereby set aside. Respondent no. 2 is directed to forward representation of the applicant to higher authority. Such higher authority shall independently consider representation of the applicant and decide the same by reasoned and speaking order within a period of three months from the date of receipt of certified copy of this order.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/ns/