

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 07.09.2018

ORIGINAL APPLICATION NO. 060/ 00136/2017

Chandigarh, this the 12th day of September, 2018

...
**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

...
Manjit Singh Bhullar, aged 58 years son Sh. Sawarn Singh Bhullar, presently working as Additional Registrar, Railway Claims Tribunal, Chandigarh.

....APPLICANT

(By Advocate: Shri R.K. Sharma, Advocate)

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Operations Manager, Northern Railway, Baroda House, New Delhi.

....RESPONDENTS

(By Advocate: Shri Yogesh Putney)

ORDER

AJANTA DAYALAN, MEMBER (A)

The present Original Application (O.A.) has been filed by applicant Manjit Singh Bhullar feeling aggrieved by impugned letter dated 12.7.2016 (Annexure A-1) conveying his APAR for the year 2015-16 wherein the Accepting Authority has graded him as average and found him unfit for promotion. The applicant has also sought quashing of letter dated 2.12.2016 (Annexure A-2) rejecting his representation for deletion of the adverse entry recorded by the

Accepting Authority. Besides, he has sought quashing of last line of letter dated 10.12.2015 (Annexure A-3) whereby this letter has been placed in his APAR dossier for record.

2. The facts of the case are not in dispute. Briefly stated the applicant joined Northern Railway as Traffic Inspector in the year 1978. While working as Divisional Operating Manager (G), Amritsar, a recommendation was made on behalf of the applicant by Dr. Raj Kumar Verka, Vice Chairman, National Commission for Scheduled Castes for posting him as Senior Divisional Commercial Manager. It is not denied even by the applicant that this was in violation of Rule 20 of Railway Servants (Conduct) Rules, 1966 (for short the Rules). So advisory letter dated 10.12.2015 (Annexure A-3) was issued to the applicant. This letter, interalia, mentioned that in his total career of 35 years of railway service, he has worked in Firozpur Division itself for 34 years. He is an officer of Junior Administrative Grade and liable for posting anywhere in India and as such, he should refrain himself from seeking another posting in Firozpur Division in future. It was further stated that since as per record, this was the first instance on his part for having sought to use external influence on the Railway Administration to further his personal interest in service matters, he is counselled and advised to refrain himself from repeating such violation of Rule 20 of the Rules. It was also informed that this letter was being placed in his APAR.

3. Subsequently, the applicant was conveyed adverse entries in his APARs for 2015-16 vide letter dated 12.7.2016. In the APAR, he

was graded as 'Good' by the Reporting and Reviewing Authorities. However, the Accepting Authority downgraded the entry from 'Good' to 'Average' on the ground that he was counselled for violation of Rule 20 of the Rules.

4. He made a representation dated 22.10.2016 on the ground that as per instructions contained in Printed Serial No. 8808, if an employee violates Rule 20 for the first time, he needs to be only counselled not to repeat the violation and there is no need to place such counselling in his APAR dossier. His representation was rejected by respondent no. 2 vide letter dated 2.12.2016 (Annexure A-2) stating that the said PS No. 8808 is not applicable in his case as that pertains to initiation of disciplinary action for violation of Rule 20 but does not place any restriction on adverse entry being made in the APAR of the officer.

5. The case of the applicant is that the cited instructions only allow counselling for the first violation, as in the instant case. In spite of these instructions, the counselling/advisory letter has been made part of his APAR dossier and has also resulted in downgrading of his APAR, adversely affecting his confirmation as Junior Administrative Grade Officer. The learned counsel for the applicant argued that downgrading of APAR is against the standing instructions and is due to extraneous considerations.

6. The respondents have argued that Part IV of the APAR which is to be filled by the Reporting Authority is clear. There is a specific entry in the format namely 'Any adverse remarks including penalties imposed or warnings/displeasure communicated'. Hence,

this was an obligatory information to be furnished by the Reporting Officer in all cases. In the instant case, the Reporting Officer left this column blank. This omission was not noted or got corrected by the Reviewing Officer. The same was done by the Accepting Officer who in para 7 has recorded as follows:

'The Appraisee Officer was counselled for violation of Rule 20 of Railway Servants (Conduct) Rules, 1966, vide COM/NR letter no. E-141/2345/Dept./E (D&A) dated 10-12-15. He is, therefore, graded as 'AVERAGE' only and not fit for promotion'.

7. The respondents have further stated that violation of Rule 20 is not denied even by the applicant himself. Even the counselling/advisory letter dated 10.12.2015 is not being opposed by the applicant. Only the last line i.e. placing of the same in APAR dossier is being impugned. It is, therefore, clear that there is no doubt about the truth of the content of the letter.
8. As regards the instructions being relied upon by the applicant at Annexure A-5, the respondents have argued that the instructions provide that for the first violation, the Government servant needs to be advised/counseled; and a copy of this counselling/advisory letter need not be placed in APAR dossier (this is the translated version, the original is in Hindi). However, the instructions do not mandate that it **shall** not be so placed. Discretion is apparently left to the competent authorities.
9. We have heard the learned counsels for opposing parties, have carefully gone through the record and have given our thoughtful consideration to the matter.

10. We are of clear view that the fact that in the instant case, Rule 20 of the Rules has been violated by the applicant is not in dispute. The only question being raised by the applicant is that as per Railway's own instructions, the counselling letter need not have been placed in his APAR dossier, this being the first instance. He has also questioned the entry made by the Accepting Authority.

11. On close reading of PS 8808, the position becomes quite clear. These instructions give three separate courses of action- for the first violation - only counseling or advice; for the second violation - warning; and for any subsequent violation - disciplinary action. For the first violation, the instructions provide that the officer needs to be advised/counseled 'but the advisory counselling letter need not be placed in the APAR dossier. This provision distinguishes it from second violation when such letters are to be compulsorily placed in the APAR dossier. For any subsequent violations, disciplinary action is to be initiated. Though the words used are 'need not be placed in APAR dossier' (the original is in Hindi), but, reading of whole PS makes the letter and spirit very clear. The intent is clearly not to place counseling or advisory letters in APAR dossier. Even the words used are different. For the first violation, the word used is 'advice'. For the second violation, the word used is 'warning'.

12. As regards the APAR, we find that the format makes it mandatory for the Reporting Authority to indicate 'any adverse remarks including penalties imposed or warnings/displeasures communicated'. However, as discussed above, this letter was only

an advisory letter and not warning. Hence this column was correctly left blank by the Reporting Officer. No fault, therefore, can be found with the Reporting/Reviewing Authorities on this ground.

13. As regards the downgrading of the APAR, we are of the view that the Accepting Authority can change the grading given by the Reporting and Reviewing Authorities. However, in the instant case, no ground or reasoning has been given by the Accepting Authority except the issue of advisory letter. And as discussed above, this letter was not to be a part of APAR dossier as per PS 8808 and as such the Accepting Authority's downgrading does not have justifiable basis and needs to be expunged.

14. We, therefore, find merit in the prayer of the applicant and allow the O.A. The order dated 2.12.2016 rejecting the representation of the applicant is quashed and the advisory letter dated 10.12.2015 is ordered not to be placed in his APAR dossier. The entry made by the Accepting Authority in APAR 2015-16 of the applicant is also expunged. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 12 .09.2018
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