

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO.210/00064/2016

Dated this Monday the 3<sup>rd</sup> day of April, 2017.

CORAM:- HON'BLE SHRI. A.J. ROHEE, MEMBER (J).  
HON'BLE MS.B. BHAMATHI, MEMBER (A).

**Mahesh Kumar Agarwal**

## Working as

Assistant Chief Engineer (G II) HQ  
PCE Office, Second Floor,  
G.M. Building, Western Railway,  
Churchgate Mumbai 400020.

Residing at:

1/8 Railway Officers Quarters  
Nesbit Road, Mazgaon,  
Mumbai 400 010.

*...Applicant*

*(Applicant appeared in person)*

## Versus

## 1. Union of India through

Member Engineering,  
Railway Board, Rail Bhawan,  
Raisina Road, New Delhi 100 001.

## 2. General Manager,

Central Railway HQ Office,  
CST, Mumbai 400 001.

### *...Respondents.*

*(Respondents by Advocate Shri. V.D. Vadhavkar)*

**Reserved on :- 09.02.2017**

Pronounced on :- 03.04.2017.

## ORDER

Per : Arvind J. Rohee, Member (J)

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:-

**"a)** This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the

*same, order the respondent number 1 to pass reasoned speaking order in time bound manner after considering the applicant's representation, reporting and reviewing authorities remarks only without taking into consideration of any other record/communication as no copy of warning/displeasure/reprimand was annexed with the APAR i\on basis of which the adverse remarks entered in the APAR.*

*b) Costs of the application are provided for.*

*c) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."*

**2.** The applicant was promoted to the post of Executive Engineer in Group A on adhoc basis and it was subsequently regularized by the UPSC on 21.04.2004. Then he was promoted as Assistant Chief Engineer on 27.12.2013.

**3.** While working as Assistant Chief Engineer (Track Machine) HQ in the year 2013-14, he filled the self-appraisal on time and submitted the same to the office of the Chief Engineer (TM) CSTM. The then Chief Engineer (TM) CSTM acting as reporting officer, reported upon and the then Principal Chief Engineer Central Railway CSTM reviewed the APAR and the APAR was accepted by the GM, Central Railway.

**4.** As per policy, copy of the APAR for the year 2013-14 was supplied to the applicant on 09.09.2015, in which the applicant was graded as 'Good', when

benchmark grading for further promotion was "Very Good". The applicant, therefore, on 14.09.2015 made a representation to the next higher authority of the grading.

**5.** Applicant then filed OA No.628/2015 since no order was passed on his representation. By the order dated 21.10.2015 this Tribunal directed for early finalization of the representation. Applicant received a letter dated 22.12.2015 on 29.12.2015 by which the decision on applicant's representation was communicated to him and he submitted that the Assistant Secretary simply wrote that the competent authority has considered the applicant's representation.

**6.** Applicant further states that his inclusion in selection grade was due since 01.01.2016 and the APAR for the year 2013-14 was also considered for that. Therefore due to extreme urgency the applicant has telephonically sought clarification regarding the designation of the competent authority and the Assistant Secretary has confirmed that the then General Manager remarked in part VI of the APAR and acted as Accepting Authority has considered the representation.

**7.** Applicant has relied upon the judgment of the Hon'ble Supreme Court in case of **Sukhdev Singh Vs. UOI**

**Civil Appeal No.5892/2006, decided on 24.04.2013**

wherein the Court held that the representation is to be considered by an authority higher than who gave the remarks in the APAR and the representation is to be considered in quasi-judicial manner. The applicant's representation was considered by the incompetent authority and non-reasoned, no speaking order was passed.

**8.** Applicant has submitted that Railway Board issued the instructions regarding placing of warning and displeasure to the Railway officer in the personal file and relying on the same for filing the adverse remarks in the APAR vide para 815 of the Vigilance Manual it is provided as under:-

*"815. Instructions for placing of warnings/displeasure etc. in the CR/Personal file: the following instructions should be borne in mind and followed while recording or placing warnings on the CR/Personal file.*

*(a) Warning - A warning may be either oral or written; where warning is oral there is no need of mentioning it in the Confidential Report Files etc; of the official. A written warning may be either recorded or unrecorded in the CR file only when the competent disciplinary authority specifically decides it to be so for good and sufficient reasons but before a recorded warning is administered, it is necessary that the official concerned had been given an opportunity to explain the lapses for which the warning is administered. If, however, the warning is intended to be unrecorded, though written, the communication should not obviously, be mentioned by the reporting officer in the CR files unless such a mention is really necessary for a truly objective*

assessment of the official's work.

(b) *Conveying displeasure*:- This, like warning, is an action of a corrective nature to be resorted to when the lapse on the part of the official is such that it may be considered necessary to convey to the official the sense of displeasure over it but is not serious enough for administering a warning. Such displeasure is actually communicated in the form of a letter and a copy of it may, if so decoded, be placed on the Character Roll of the official. Therefore, on the question whether displeasure should be recorded or not, the criterion can be the same as that for recorded warning.

(c) *Bringing lapses and short-comings to the notice of the official, admonishing, cautioning, counseling, etc.* - The above mentioned actions also have no penal element in that they are intended to assist the official concerned to correct his faults and deficiencies. These are, therefore, not to be recorded in the confidential report of the official. There should scarcely by any occasion for the reporting officer also to refer to these in the CRs, unless the reporting officer considers it absolutely necessary for a truly objective assessment. However, if any of the above actions has to be mentioned in the character roll of the officer, it should be done after issuance of a show cause notice; otherwise there is no necessity of issuing show cause notice. The employee would be entitled to represent against such administrative action. The format for issuing memorandum of admonishing/ counseling/ cautioning/warning (as the case may be) is circulated to the Railway vide Board's letter No. 2004/V-1/DAR/1/3 dated 16.08.2004.

{Board's letter No. E (D&A) 77RG-20 dated 10.05.77, 2004/V-1/DAR/1/3 dated 16.08.2004 and 2005/V-1/DAR/1/3 dated 06.10.2005)}

**9.** No documents has been referred in the APAR on the basis of which the adverse remarks viz. below bench mark grading was given to the applicant. No copy

of warning/displeasure/reprimand was annexed with the APAR, required as per Railway Board's guide lines to write adverse remarks in the applicant's APAR.

**10.** In the reply, the respondents have denied and disputed the contentions in the OA. It is stated that as per DoPT OM dated 14.05.2009 and 13.04.2010, w.e.f. the reporting period 2008-09, entries in the APAR are to be communicated to the officer concerned for representation if any, and the representation on APARs received are to be considered by the competent authority in a quasi judicial manner on the basis of material placed before it. The competent authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and also take the view from the reporting and reviewing officer and in case of upgradation of the final grading given in the APAR give specific reasons in the order.

**11.** APAR for the period 2013-14 of the applicant pertains to the period when the officer was working as Dy. CE/TM/HQ Central Railway. His APAR was also considered by GM, who communicated the decision of the competent authority on 22.12.2015.

**12.** As regards the applicant's contention that his representation against the APAR for the period 2013-14 was considered by incompetent authority, it

may be mentioned that as per DOPT instructions dated 14.05.2009, APAR from the period 2008-09 have been communicated to the officer concerned for representation, if any, within fifteen days of communication. Before that only adverse entries in the ACRs were considered by the accepting authority, as per extant instructions.

**13.** In terms of DOPT OM dated 14.05.2009 the competent authority for considering adverse remarks under the existing instructions may consider the representation, if necessary in consultation with the reporting and/ or reviewing officer and shall decide the matter objectively based on the material placed before him, within a period of thirty days from the date of receipt of the representation.

**14.** In view of the DOPT instructions representation on the APAR was considered by the competent authority, who was considering representations against the adverse remarks. There are Board's instructions dated 16.09.1998 regarding considering representation against adverse remarks in this connection.

**15.** As per Railway Board's instructions dated 23.12.2009, the representation has to be considered by the accepting authority. Applicant's representation was also considered by GM, the accepting authority who

is competent authority. As per instruction dated 20.02.2002 it is not necessary to communicate the reasons for rejection while considering representation against APAR gradings.

**16.** Respondents have stated that the Hyderabad Bench of this Tribunal vide order dated 16.03.2001 in OA No.1093 of 2000 after relying upon several judgments of Hon'ble Supreme Court held that "rejecting the representation cannot be rendered invalid on the sole ground of absence of reasons and further held that "the officers were assessed not only on the basis of ACRs, but on the assessment of totality of reports which are reflected only in the ACRs and the overall gradings of the officers given by DPC. The Hon'ble Tribunal dismissed the OA on limitation as well as on merit.

**17.** In OA No.790/2014 this Tribunal also relied upon the decision of the Hon'ble Supreme court. The OA was dismissed vide order dated 30.07.2015. The said order is binding on this Tribunal.

**18.** It has been further submitted that there are no columns in the APAR for recording any displeasure notes or warning, and no additional documents are to be kept with APAR. Such cases are to be dealt with separately.

**19.** In the rejoinder filed by the applicant it is

submitted that the Hon'ble Tribunal on 22.08.2016 in OA No. 12 of 2016 after considering the same submissions and all the judgments now relied by the respondents decided that the representation against the below bench mark grading is to be considered by the authority higher than the accepting authority and the authority should pass a reasoned and speaking order in a time-bound manner.

**20.** We have gone through the O.A. along with Annexures A-1 to A-6, Rejoinder to respondents' reply and the papers pertaining to RTI query filed on behalf of the applicant.

**21.** We have also gone through Annexures R-1 to R-3 and original records filed on behalf of the official respondents.

**22.** We have heard the applicant who appeared in person and reply arguments of Shri V.D. Vadhavkar, the learned counsel for the respondents. We have carefully considered the facts and circumstances, law points and rival contentions in the case.

#### **FINDINGS**

**23.** This is the second stage litigation inasmuch as the previous O.A.628/2015 filed by the applicant challenging the grading in APAR for the year 2013-2014 and sought its upgradation from 'Good' to 'Very Good' which is the benchmark for further promotion and

during pendency of the said O.A. the impugned order dated 22.12.2015 (Annexure A-1) was passed, by which applicant's representation dated 14.09.2015 seeking for the said relief was rejected. Hence the applicant was permitted to withdraw the previous O.A.628/2015 with liberty to him to file fresh for challenging the said impugned order. Accordingly the same is challenged in this O.A.

**24.** It is obvious from perusal of record that the impugned order has been challenged mainly on the ground that it has been passed in contravention of the decision rendered by Hon'ble Supreme Court in **Sukhdev Singh Vs. Union of India, Civil Appeal No.5892/2006 decided on 23.04.2013** i.e. by incompetent authority and that the representation has not been decided in a fair manner inasmuch as no reasons are recorded. It is also stated that the representation has been decided by the same accepting authority which has approved the gradings given by the Reporting Officer and Reviewing Officer and it should have been decided by the authority higher than the accepting authority viz. Member (Engineering), Railway Board, New Delhi (Respondent No.1).

**25.** It is obvious that the post decision in **Dev Dutt Vs. Union of India & Others [2008(2) SCC(L&S) 771]**, it was obligatory on the part of the authorities

to furnish copies of the entire APAR including the gradings given by the Reporting Officer, Reviewing Officer and Accepting Officer (if any), and prior to that, it was the practice that only adverse grading in the APAR were being communicated. Vide DOP&T OM dated 13.04.2010, instructions were issued to all the Departments that while deciding the representation of the employees by the Competent Authority against the remarks in the APAR or for the upgradation of the final grading in the APAR, all the relevant factors should be considered objectively. It is further clarified in the subsequent OM dated 31.01.2014 which speaks about the manner of disposal of representations, it was submitted by the applicant that while deciding the representation either allowing or dismissing it, it is necessary for the Competent Authority to record reasons therefor. It is also stated that if reasons are not recorded while rejecting the representation, it cannot be said that it has been disposed of in a quasi judicial manner and hence the impugned order is liable to be set aside.

**26.** In this respect it may be stated that in the former O.M. dated 13.04.2010 it is stated that the representation against the adverse remarks or for upgradation of the grading in the APAR may be taken objectively after taking into account views of the

concerned and following instructions were issued in the said OM:-

"3. All Ministries/Departments are therefore requested to inform the competent authorities while forwarding such cases to them to decide on the representations against the remarks or for upgradation of the grading in the APAR that the decision on the representation may be taken objectively, after taking into account the views of the concerned Reporting/Reviewing Officers if they are still in service and in case of upgradation of the final grading given in the APAR, specific reasons therefor may also be given in the order of the competent authority."

**27.** In the subsequent OM dated 31.01.2014 further instructions are issued as mentioned below:-

"3. It is reiterated that proper disposal of representation in a quasi-judicial manner as outlined in this Department's OM dated 13.04.2010 is mandatory before the under consideration ACR/APAR may be placed/considered before/by the DPC."

**28.** From the combined reading of both the above paras of OMs, it is revealed that great responsibility is cast upon the competent authority while considering the representation against the adverse entries or for upgradation of remarks in the APAR. It is true that it is obligatory to record the reasons for rejection of representation in order to show that there was application of mind by the Competent Authority to the contents and grounds raised in the representation.

However, so far as decision to be taken on such representation against the adverse entries or upgradation of remarks, it is only required that the competent authority may call for the remarks of the Reporting Officer and Reviewing Officer and after considering the grounds raised in the representation, should take a conscious decision whether to expunge the adverse remarks or to upgrade it as prayed. The file noting in which the representation was processed should however show that there was application of mind by the competent authority to the grounds raised in the representation and the comments of the Reporting Officer and the Reviewing Officer were considered while deciding the representation. In this context the impugned order which may be described as one line order reads as under:-

**"CENTRAL RAILWAY**

**General Manager's Office  
Confidential Cell  
CST, Mumbai**

No.CON.216/APAR/Communication.Dated: 22<sup>nd</sup> December, 2015.

**Shri M.K. Agrawal,  
Now Dy.CE(Bridge) HQ, CCG  
(then Dy.CE/TM/HQ/C.Rly.  
Western Railway,  
Churchgate.**

**Through GM/W.Rly.**

Sub: Communication of entries recorded in the APAR for the year 2013-14- Case of Shri M.K. Agrawal, ex.Dy.CE/TM/HQ (now Dy.CE (Bridge) HQ, CCG.

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The Competent Authority after considering your representation dated 14.09.2015 against entries recorded in the APAR for the year 2013-14 have decided to retain the grading as "Good".

Kindly acknowledge receipt."

Sd/-  
(Kamala L. Dasan)  
Asstt. Secretary (Confld.)  
For General Manager."

**29.** It is thus obvious that no reasons are recorded in the impugned order of rejection. However, in this behalf the respondents have rightly placed reliance on the decision rendered by Hyderabad Bench of C.A.T. in **O.A.1093/2000, T.P.V.S. Sekhara Rao Vs. Union of India and others decided on 16.03.2001** in which the decision rendered by Hon'ble Supreme Court in **Union of India Vs. E.G. Nambudiri (1991) 3 SCC 38** was relied upon. It has been held in Para 11 of the order of Hyderabad Bench as under:-

"11. The contention that the orders of rejection should contain the reasons is also not acceptable. The superior authority while considering the representation of the Govt. Servant against the adverse remarks is not required by law to record or communicate reasons of its decision to the Government servant. The Supreme Court in "Union of India vs. E.G. Nambudiri [(1991) 3 SCC 38]" held,

"In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a government servant against the adverse entries the competent authority is not under any obligation to record reasons.

But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons."

xxxx xxxx xxxx xxxx  
xxxx           xxxx           xxxx           xxxx

If the order as communicated to the government servant rejecting the representation does not contain any reason, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action."

The above view of the Supreme Court was approved in "Chandra Gupta v. Secretary, Govt. Of India [1995 (1) SCC 23]". Thus, it is clear that the orders of the General Manager rejecting the representation can not be rendered invalid on the ground of absence of reasons. In order to be satisfied whether a fair deal was given to the applicant or not and whether his representations were properly considered by the competent authority, we have perused the records and we are satisfied that for good and proper reasons, the authority did not accede to delete or expunge the remarks. We do not, therefore, find any warrant to interfere with the orders of rejection."

**30.** It is thus obvious from the decisions

rendered by the Hon'ble Supreme Court on which the decision rendered by Hyderabad Bench of C.A.T. is based, that it cannot be insisted that reasons should be recorded in the order of rejection of representation itself. However, the file noting should contain sufficient material to show that there was application of mind by the competent authority and that grounds stated in the representation were considered while rejecting or allowing it.

**31.** It this case, we have called the orginal record from the respondents in respect of applicant's representation and we have carefully perused it.

**32.** It is obvious that so far as impugned APAR of 2013-14 is concerned the applicant was graded as "Good" by the Reporting Officer Shri Ajay Goel, CE/TM which was approved by the Reviewing Authority Shri P.K. Saxena, GM/SWR/Ex.PCE/CR, and finally by Shri S.K. Sood, General Manager, the Accepting Authority. It is needless to say that for promotion post the Benchmark is "Very Good" and hence the applicant submitted a representation for upgradation of the grading given in APAR of the year 2013-14. Perusal of the original record shows that this was considered after calling remarks from the Reporting Officer and the Reviewing Officer. However, representation was considered and decided by the same General Manager

itself, who acted as the Accepting Authority on 04.12.2015.

**33.** So far as this aspect of the case is concerned the applicant submitted that representation has to be considered and decided by the authority higher than the accepting authority, especially when he has confirmed the grading given by the Reporting Officer and the Reviewing Officer. In other words, representation should have been considered and decided by the Respondent No.1 who is the next higher authority to the General Manager the Accepting Authority.

**34.** In support of this contention the learned Advocate for the applicant relied upon the decision rendered in Sukhdev Singh's case (referred supra). The decision in Sukhdev Singh pertains to a reference made to a Larger Bench by Division Bench since the Division Bench noticed that there was inconsistency in the decisions of the Hon'ble Supreme Court in **U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others, (1996) 2 SCC 363** and **Union of India and another Vs. Major Bahadur Singh, (2006) 1 SCC 368**. In that case also representation was made for upgradation of grading from "Good" to "Very Good" for promotion post. A further question was raised whether down grading of ACR would amount to adverse remarks and whether it would be required to be communicated or not. It is

observed that Hon'ble High Courts and various Benches of C.A.T. in their judgments followed the decision in UP Jal Nigam to hold that in the event the said adverse remarks are not communicated causing deprivation to the employees to make effective representation against such remarks, the same should be ignored. The referal Court observed that it is of the opinion that the judgment in UP Jal Nigam cannot held to be applicable only to its own employees and hence the matter was referred to a Larger Bench.

**35.** The Larger Bench after considering and discussing the decisions rendered by Hon'ble Supreme Court in various matters including Dev Dutt and particularly referring para 17, 18, 37 and 41 in Dev Dutt's case, the Larger Bench recorded complete agreement with the view taken in Dev Dutt's case in the above paragraphs and approved the same.

**36.** During the course of arguments the applicant has referred the observations recorded by the Larger Bench in para 37 and 41 in Dev Dutt's case and submitted that a representation must be decided by the authority higher than the one who gave the entry. Those observations are reproduced here for ready reference:-

"We further hold that when the entry is communicated to him the public servant should have a right to make a

representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. **We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar.** All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."

**37.** Further the significance and importance of writing the ACR and proposed communication of every entry in ACR to a public servant, is also elaborately stated which would help him/her to work harder and achieve more that helps him in improving his work and give better results. It is also held that communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes remarkable

conforming to the principles of natural justice. Although the Civil Appeal was disposed off on the ground that the appellant therein has already been promoted, liberty was granted to the appellant to make a representation to the concerned authority for retrospective promotion, in view of the legal provisions stated in the above decision.

**38.** It is thus obvious that once representation is made for upgradation of remarks in the ACR it needs to be decided by the authority higher in rank than the Reviewing/Accepting Authority and not by the same authority, in order to avoid instances of confirming the same grading given by them.

**39.** Further the applicant relied upon a decision rendered by this Tribunal in O.A.12/2006 filed by him against the present respondents decided on 22.08.2016 and authored by me. It pertains to upgradation of adverse remarks 'Average' for the year 2014-15 to 'Very Good'. A representation dated 22.10.2015 was made in this behalf by the applicant to the Member (Engineering) i.e. next higher authority to the General Manager who was the Accepting Authority. However, by that time the same Accepting Authority became Member (Mechanical) and has considered the representation and rejected it. This was challenged by the applicant in the said O.A.12/2016 and on its

basis submitted that the applicant had been deprived of justice since the same person who accepted the adverse remarks given by the Reporting and Reviewing Officer decided his representation against those adverse remarks. This Tribunal after referring the decision rendered in Sukhdev Singh's case (referred supra) held that although the Member (Mechanical) is the higher authority but since the said authority happened to be Accepting Authority earlier, it was held that representation could have been decided by any other higher authority. Since the objection regarding non-recording of reasons in the rejection order was also raised, this Tribunal considered the decision rendered by Hon'ble Supreme Court in E.G. Nambudiri (referred supra) and allowed the said O.A.

**40.** It is obvious that although it is not necessary to record the reasons in the rejection order but the same must exist on file noting. As stated earlier, in the present case the reasons are available on record. However, the same Accepting Authority has considered the representation and rejected it in view of the law laid down in Dev Dutt's case which was approved by the Larger Bench in Sukhdev Singh's case, it is required that representation against adverse entries or for upgradation of remarks in APAR should be decided by the authority which is higher in rank

than the one who gave the entry. In the present case it is obvious that the representation dated 14.09.2015 (Annexure A-3) submitted to the Respondent No.1 against the below Benchmark grading in APAR of the year 2013-2014 was decided by the same Accepting Authority viz. the General Manager who has recorded the said below Benchmark remark 'Good' in the said APAR. In view of this, although it is obvious from perusal of original records that the reasons are recorded by the Accepting Authority while rejecting the representation, it is needless to say that the same is contrary to the decision rendered in Dev Dutt's case which is affirmed by the Larger Bench in Sukhdev Singh's case, since same accepting authority has decided the representation.

**41.** So far as this aspect of the case is concerned the applicant tried to justify the action of the respondents on the strength of Railway Board's instructions dated 23.12.2009 by which the Accepting Authority itself is authorised / empowered /entrusted to consider and decide representation made by the Government servant for upgradation of remarks in APAR or for expungement of adverse remarks in the APAR. In this respect it may be mentioned here that vide DOP&T OM dated 14.05.2009 under the caption "Maintenance and preparation of Annual Performance Appraisal Reports-

communication of all entries for fairness and transparency in public administration", it is provided in Para 2(vi) of said O.M. as under:-

"(vi) The competent authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the material placed before him within a period of thirty days from the date of receipt of the representation."

**42.** The above instructions were slightly modified in subsequent DOP&T OM dated 13.04.2010 of which para 3 reads as under:-

"3. All Ministries/Departments are therefore requested to inform the competent authorities while forwarding such cases to them to decide on the representations against the remarks or for upgradation of the grading in the APAR that the decision on the representation may be taken objectively after taking into account the views of the concerned Reporting/Reviewing Officers if they are still in service and in case of upgradation of the final grading given in the APAR, specific reasons therefor may also be given in the order of the competent authority."

**43.** It is thus obvious that the DOP&T OM simply states that the representation submitted by the Government employee shall be considered by the Competent Authority. In other words it does not refer to the Accepting Authority to decide the

representation. In the present case it is obvious that as per Railway Board's instructions the Accepting Authority of the APAR itself is treated as Competent Authority to consider and decide such representations. This is clearly contrary to the decision rendered by the Hon'ble Supreme Court in above referred Sukhdev Singh's and Dev Dutt's case, in which it has been specifically laid down that such representations need to be considered and decided by an Authority higher than the Accepting Authority. In view of this it is necessary for the Railway Authority to issue modified instructions in consonance with the decision rendered in Sukhdev Singh's and Dev Dutt's case referred above in order to remove any anomaly.

**44.** Hence we direct the Railway Authority to take appropriate steps in this behalf and issue modified instructions in consonance with the decision rendered in Sukhdev Singh's and Dev Dutt's case, so that in future representations are decided by the authority higher than the Accepting Authority, in order to curb recurrence of such mistake, as was done in the present case since applicant's representation was decided by the same Accepting Authority and not by any higher authority. The modified instructions as above would also ensure in minimising the litigation.

**45(a).** The O.A. is, therefore, allowed.

**(b)** . The impugned order dated 22.12.2015 passed by the same Accepting Authority rejecting the representation is held to be non-est and it is liable to be ignored.

**(c)** . The Respondent No.1 to whom the representation dated 14.09.2015 is addressed by the applicant is hereby directed to consider the same after referring the comments of the Reporting and Reviewing Authority which are already sought by the Department for consideration of the said representation and all other relevant record and then pass a reasoned and speaking order on the said representation on the file noting of the case in accordance with law and then communicate the final decision to the applicant at the earliest for taking further steps in the matter.

**(d)** . The above exercise shall be undertaken and completed by Respondent No.1 within a period of six weeks from the date of receipt of certified copy of this order.

**(e)** . In case the applicant's grievance still persists, he will be at liberty to approach the appropriate forum.

**(f)** . No order as to costs.

**(Ms. B. Bhamathi)**

**Member (A)**

H/srp\*

**(Arvind J. Rohee)**

**Member (J)** .

