

## CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH

Original Application No.93 of 2014

Date of Hearing: This the 26.02.2019

**THE HON'BLE SMTI MANJULA DAS, JUDICIAL MEMBER  
HON'BLE MR.N.NEHSIAL, ADMIISTRATIVE MEMBER**

1. Shri Sushanta Kumar Ganguly  
Son of Late Bireswar Ganguly  
Residing at Village-Hijlock, P.O.Bagnan,  
District-Howrah, retired from Railway Service  
on 31.10.2013 as Divisional Commercial Manager  
(PA & TC), Chakradharpur,  
South Eastern Railway ..... Applicant

By Advocate: Mr.A.Chakraborty

-And-

1. The Union of India  
Service through the  
General Manager,  
South Eastern Railway, Garden /Reach,  
Kolkata-700043
2. Chief Commercial Manager  
South Eastern Railway, 14,  
Strand Road, 8<sup>th</sup> Floor,  
Kolkata-700001.
3. The Deputy Chief Personal Officer (Gaz.)  
South Eastern Railway, Garden Reach,  
Kolkata-700043
4. Smt. Indrani Banerjee  
ACM(Reservation) South Eastern Railway,  
now working as Senior Commercial Manager (P.)  
14, Strand Road, 9<sup>th</sup> Floor,  
Kolkata-700001.

5. The Joint Director, Central  
Bureau of Investigation, Patna Zone,  
Dr.S.K.Singh Path, Patna  
Bihar-800022.

6. Mr.Partha Sarathi Roy, Ex-CCM,  
South Eastern Railway,  
Residing at 26/E Naktala Lane,  
Kolkata-7000047

..... Respondents

By Advocate : S.E.Railway

### **ORDER**

**Per Mr.N.NEIHSIAL;MEMBER(A):**

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

“ (a) Speaking order dated 07.07.2012 issued by the General Manager, South Eastern Railway, GRC cannot be tenable in the eye of law and therefore, the same may be quashed.

(b) Revoke, cancel, withdraw the impugned adverse remarks recorded in the ACR of the applicant dated 26.03.2009 followed by refusal letter dated 05.05.2009.

(c) The applicant should given effect of up-gradation on and from 17.04.2008 and he should be paid the arrears of enhanced basic pay and other allowances on and from 17.4.2008 and his retirement benefit will also be fixed up in accordance with his revised pay.”

3. Heard learned counsel for the parties perused the pleadings and materials placed before us.

4. The facts of the case are that the applicant was promoted to the post of Assistant Commercial Manager of South Eastern Railway on 17.04.2005 at pay scale 7500-12500(grade pay 4800). As per rule he should be given upgradation on completion of three years i.e on and from 17.04.2008 to pay scale 8000-13500(grade pay 5400) but he was refused upgradation.

5. Learned counsel for the applicant submitted that the applicant after making enquiry was informed by the respondents vide their letter dated 09.06.2009(copy enclosed and marked as X-1) that DPC had not considered his name for upgradation on the basis of adverse remarks on ACR.(The report of DPC is enclosed and marked as "X-1A")

6. Learned counsel further submitted that the applicant was communicated only part of his ACR vide respondent's letter dated 26.03.2009 (Annexure "X-2") and

that was supplied after unreasonable delay approximately one year. He was not supplied full ACR but only part of it violating Supreme Court's Guideline let down in the case of Dev Dutta-Vs.- U.O.I & Ors. The applicant made a representation before G.M.S.E.Railway against the adverse remarks passed in ACR vide his letter dated 28.04.2009(Annexure "X-3") but his representation was rejected by the accepting authority i.e. CCM, SE Rly. And the adverse remark against the ACR was retained. That was informed to the applicant vide Respondent's letter dated 05.05.2009(Annexure "X-4"). As the result the applicant was deprived of upgradation and his next junior Smt. Indrani Banerjee was offered upgradation vide upgradation order dated 08.05.2009(Annexure "X-5").

7. Learned counsel further submitted that the applicant had filed an O.A (O.A 792 of 2009) before Hon'ble CAT, Kolkata with a prayer to revoke, cancel, withdraw the average remarks (Adverse remarks) in ACR and to direct the respondent not to give effect of the

upgradation. The Hon'ble CAT has passed an order dated 03.02.2012 (Annexure "X-6") directing the GM-SE Rly. to dispose the representation of the applicant. Accordingly, the GM had considered in compliance of this direction and issued a speaking order retaining the adverse remarks in the ACR for the year 2007-08 (Annexure "X-7A").

8. This is the second round of litigation. In this O.A., learned counsel for the applicant has submitted written argument on 27.02.2019. In the earlier O.A. No.792 of 2009 this Tribunal vide order dated 03.2.2012 directed the respondents is under:-

" Under the circumstances keeping in view that we have stated above we remand the entire matter to the General Manager for fresh consideration of the applicant's case for expunction of the remarks in his ACR for 2007-08. At first his entire ACR will be communicated for 2007-08 against which the applicant can file a fresh representation. If as desired by the applicant the General Manager will give a personal hearing to the applicant . In particular we would like the authorities to explain as to why the adverse remarks against the applicant was communicated so late so that he was not able to file his representation in time and consequently his chances for promotion were affected. It has also to be ascertained if the DPC papers contained only his adverse entry for 2007-08 or the entry along

with the rejection of his representation which came only shortly before the DPC meeting of 5.5.2009. The General Manager will dispose of the representation against the adverse remarks in his ACRs in the year 2007-08 within a period of three months by a speaking order bearing our observations in respect of the ACRs above. If the adverse remarks are expunged then a review DPC should be set up to consider the applicant's case for promotion and if found fit by such DPC he should be promoted from the date his immediate junior was promoted."

9. In compliance of the above direction the applicant had submitted an appeal to the General Manager, S.E.Railway, dated 14.06.2012. The Competent Authority, the General Manager has considered the representation and conveyed his decision vide letter No.Secy/G/4/Pt.1 dated 09.07.2012. The relevant portions of the speaking order were as under:-

"(A) Therefore, I have gone through the representation dated 28.4.2009 of Shri S.K.Ganguly, then ACM/Claims, now working as ACM/TC/ADA regarding appeal against "Average" remarks in the ACR. He mentioned that he has not been issued any warning letters, though he got GM's award in the past and there was no "Average" remarks passed against him before 2007-08.

(B) The ACR had been completed on 18.03.2009. It was observed that the Reporting Authority had filled the ACR on 17.07.2008 whereas the Reviewing Authority had written his portion of the ACR on 17.03.2009. The Reviewing

officer, who is no longer on the rolls of this railway, had been asked to explain the reasons for the delay. His reply has been received on 25.06.2012, in which he has mentioned that during some part(s) of this period, he was on leave/sick due to hospitalization. Further, he has mentioned that performance of Shri Ganguly was not to the mark and that he had been verbally counselled by him and CCM on several occasions.

(C) In compliance of the directions of the Hon'ble CAT, it has also been ascertained from the available papers that Shri Ganguly had been conveyed remarks recorded against certain items in his ACR for 2007-08 on 26.03.2009, i.e within few days of its finalization by the Accepting Authority, to which his representation dated 28.04.2009 was received. This had been examined by the Accepting Authority on 03.05.2009, who retained the communicated remarks. All the papers are available in the ACR folder of Shri Ganguly and the same folder was before the DPC also.

(D) Whenever a Reporting Officer initiates ACR of a particular officer, he does not have access to the ACRs of the officer for previous years. This ensures that the ACRs are filled without any bias. Therefore, the claim of Shri Ganguly that his ACRs for 2007-08 has been downgraded compared to his previous ACRs without advising him the reasons is not correct.

(E) Moreover, the said GMs award is for the performance in 2006 and not 2007-08, for which the instant ACR was written.

(F) In view of what has been explained above and having gone through the papers, I do not see any justification for any change in the grading in the ACRs for 2007-08 of the officer.

He may be advised accordingly" .

10. The concept of ACR is basically an instrument of Human Resource Management and not fault finding mechanism. The ACR contains 3 basic elements/aspects namely; attributes of an officer, the degree/level of performance/achievement during the period and the integrity. Keeping in of this, the Government of India from time to time used to issue circulars that an employee/officer must earn his gradings during period of the assessment.

11. We have gone through the examination, consideration and conclusion as arrived by the General Manager of South Eastern Railway in his speaking order dated 07.07.2012. We found that the competent authority has fairly applied his mind to the issues raised by the applicant in his representation dated 14.06.2012 and also other issues raised by him in the O.A. No. 792 of 2009 on the basis of which the Tribunal has issued directions. The delay aspect of finalizing his ACR has been duly explained in the speaking order dated 07.07.2012. The justification for alleged



ignoring award got by the applicant in the previous year has also been beautifully explained by the speaking order.

12. The ACR have to be recorded/assessed/reviewed and accepted by the superior authorities who had seen the work of officer at least for three months or more. Therefore, any other authority cannot possibly make a fair judgment on the attributes, performance and integrity of an officer than the authority had intimate knowledge of the works of the applicant. Therefore, the allegation of the learned counsel for the applicant at para 3(1) of the written argument submitted on 27.02.2019 that “*accepting authority cannot be judge of his own cause*” does not stand to this simple logic.

13. Keeping in view of the above and in similar logic this Tribunal is not in a position to direct the respondent authorities to upgrade his ACR or award a particular grading, after careful consideration, we found that the O.A. is devoid of merit and liable to be dismissed.

13. Accordingly, O.A. is dismissed. No order to the costs.

(N.NEIHSIAL)  
MEMBER(A)

(MANJULA DAS)  
MEMBER(J)

LM