

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**T.A. No. 19/2011,
T.A. No. 18/2011
and
O.A. No. 162/2012**

Reserved on: 09.04.2019
Pronounced on:18.04.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)**

T.A. No. 19/2011

G.S.Rathore
DEE/W/Dahod
[Now Sr.Safety officer/Elect./
HQ/SEC Railway, Bilaspur (CG)]
Mailing address – SMIG, 15 Parijat Extension Colony,
Nehru Nagar, Bilaspur (Chhatisgarh).

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

Union of India through General Manager
Western Railway, Churchgate, Mumbai.

...Respondent.

(By Advocate: Shri Anupam Agarwal)

T.A. No. 18/2011

G.S.Rathore
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[Now Sr.Safety officer/Elect./
HQ/SEC Railway, Bilaspur (CG)]
Mailing address – SMIG, 15 Parijat Extension Colony,
Nehru Nagar, Bilaspur (Chhatisgarh).

...Applicant.

(By Advocate: Shri Amit Mathur)

(2)

Versus

Union of India thru General Manager
Western Railway, Churchgate, Mumbai.

...Respondent.

(By Advocate: Shri Anupam Agarwal)

O.A. No. 162/2012

G.S.Rathore S/o Rewat Singh
Age-54, working as Dy.CEE/HQ/NWR/Jaipur.

Residential address – 238/45, Ist lane,
Gulab bari, Ajmer-305007.

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India
Through the Secretary, Railway Board
Rail Bhawan, New Delhi-110001.
2. General Manager
Western Railway, Churchgate, Mumbai-400001.
3. General Manager
North Western Railway, Jagatpura,
Jaipur – 302017.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: A. Mukhopadhaya, Member (A):

These three cases, (TA No.19/2011, TA No.18/2011 and OA No.162/2012), are being disposed of by a single order as they involve the same parties and very similar issues related to the expunging of remarks in the Annual Performance Appraisal

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Report/Annual Confidential Report, (APAR/ACR), of the applicant for the years 2002-2003, 2003-2004 and 2004-2005 respectively.

2. The facts common to all these cases are that the adverse remarks were made in the APAR/ACR of the applicant for the reporting year in question under one or more of the following heads:

- i) Nature and Quality of work
- ii) Task Relevant Knowledge
- iii) Quality of output
- iv) Attributes
- v) General assessment
- vi) Any adverse remarks including penalties imposed or warnings/displeasures communicated

3. The adverse remarks in question case wise and heading wise are reproduced below for ready reference:

TA No.19/2011:-

- i) Nature and Quality of work
- ii) Task Relevant Knowledge

"Task related knowledge is not adequate and he does not keep himself updated with latest instructions, though he has potential to do so."

- iii) Quality of output

"He did not sort out the problems amicably and his tendency is to put blame on others. This

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resulted non-execution of various works in time and some of the works could not be started."

TA No.18/2011:-

i) Nature and Quality of work

ii) Task Relevant Knowledge

"The officer has satisfactory knowledge of functions and related instructions but lacks application."

iii) Quality of output

"The officer can provide quality performance but lacks in output due to his negative approach and poor support base from his subordinates, colleagues and other agencies involved in the system. The adversely effects his standard of work, objectives and excellence in his work."

iv) Attributes:

- | | | |
|---|---|------------------|
| 1. Attitude towards work | - | "Average" |
| 2. Decision-Making ability | - | "Average" |
| 4. Ability to guide, inspire and motivate | - | "Average" |
| 6. Inter-personal relations, team work and coordinating ability | - | "Average" |
| 7. (ii) Approach to customers | - | "Average" |
| (iv) Human Resource Development | - | "Average" |
| (vi) Environment Improvement- | - | "Average" |

v) General assessment:

"He does not obey to his seniors and there is no effect to counseling on him".

vi) Any adverse remarks including penalties imposed or warnings/displeasures communicated:

"He was issued displeasure letters on 09.12.03, 23.12.03 and 24.12.03."

OA No.162/2012:-

i) Nature and Quality of work

ii) Task Relevant Knowledge

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iii) Quality of output

"Good"

iv) Attributes

v) General assessment:

"Under given circumstances his performance has been satisfactory. He uses Rajbhasa for most of his work".

vi) Any adverse remarks including penalties imposed or warnings/displeasures communicated:

"An average officer who has a potential to do better".

4. The applicant represented against the above-mentioned adverse remarks vide Annexure A/3 dated 18.08.2003 of TA No.19/2011, Annexure A/3 dated 15.10.2004 of TA No.18/2011 and Annexure A/3 dated 24.10.2011 of OA No.162/2012. However, these representations were rejected by the respondents vide their letters/order dated 20.09.2003, (Annexure A/4), 23.09.2005, (Annexure A/4) and 29.02.2012, (Annexure A/1) respectively. Aggrieved by this action of the respondents, the applicant has approached this Tribunal seeking the following relief:-

Relief

T.A. No. 19/2011

i) That this Tribunal summon the records from the respondents relating to ACR for the year in question and applicant be allowed inspection of the ACR and other relevant documents.

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- ii) That the ACR be declared as illegal and quashed and aside the same with consequential benefits including promotion to JAG/SAG.
- iii) That the respondents be directed to rewrite the ACR for the year in question and the applicant be graded as 'outstanding' in the ACR.
- iv) That costs of this OA be provided.
- v) That the Tribunal grant any other and further orders which are deemed fit in the nature and circumstances of the case.

T.A. No. 18/2011

- i) That this Tribunal summon the records from the respondents relating to ACR for the year in question and applicant be allowed inspection of the ACR and other relevant documents.
- ii) That the ACR be declared as illegal and quashed and set aside the same with consequential benefits including promotion to JAG/SAG.
- iii) That the respondents be directed to rewrite the ACR for the year in question and the applicant be graded as 'outstanding' in the ACR.
- iv) That cost of this OA be provided.
- v) That the Tribunal grant any other and further orders which are deemed fit in the nature and circumstances of the case.

O.A. No. 162/2012

- i) That this Tribunal summon the records from the respondents relating to ACR for the year in question and other relevant documents.
- ii) That the ACR be declared as illegal and void and also quashed and set aside ACR 2004-05.

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- iii) That the respondents be directed to rewrite the ACR for the year 2004-05 and the applicant be graded as 'outstanding' in the ACR.
- iv) That costs of this OA be provided.
- v) That the Tribunal grant any other and further orders which are deemed fit in the nature and circumstances of the case.

5. In all these cases, the applicant essentially contends that his performance during the period in question was not only such as not to merit any adverse remarks but that he should have been adjudged as "**outstanding**" in view of the excellent work done by him. The applicant further claims that his representations against adverse remarks were considered in a mechanical manner and that any delays and shortfalls referred to in the APAR/ACRs occurred either because his superior authorities did not take timely decisions on various matters, or again because of the non-performance/deficient performance of contractors appointed by the respondents. The applicant further states he brought out these delays and deficiencies on the part of his superiors and the contractors through repeated correspondence, but rather than the lapses in question being addressed, he was rewarded for his dedicated efforts by less than laudatory APAR/ACR assessments and adverse remarks. The applicant states that both in the APAR/ACRs in question as well as his representations against these adverse remarks, he brought the specific cases of delays

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and lapses on the part of his superiors and the respondents' contractors to the knowledge of the competent respondent authorities yet again but the respondents treated these representations in a mechanical manner and disposed of the same with cryptic orders without giving any detailed reasons. As per the applicant, the APAR/ACRs in question are thus biased and unfair.

6. In reply, the respondents contend that the applicant is habitual of making false and incorrect allegations against his superior officers as well as complaints against contractors instead of performing his own duties properly. They state that the adverse remarks in each APAR/ACRs are based on a collective assessment of the overall performance of the applicant. While averring that the prescribed procedure for the process of writing and finalising of APAR/ACRs was scrupulously followed, the respondents also cite the case of **Vijay Prakash vs. State of Haryana**, 2001 (5) SLR (Punjab and Haryana) 199 to plead that even should there be any technical breach of Government instructions relating to the matter, the APAR/ACRs in question do not get vitiated and being a matter of subjective satisfaction of the concerned officer, their correctness cannot be gone into by a Civil Court. The respondents aver that during the reporting years in question they remained in regular touch with the applicant who was advised to improve his functioning but this was to no avail.

7. As regards the manner in which the representations of the applicant were dealt with, the respondents affirm that in all these cases, the representations made by the applicant against the adverse remarks were duly considered by the competent authority before being rejected, a fact which has been explicitly mentioned in the communication of the rejection. On the question of the necessity for recording reasons for rejecting the applicant's representations, the respondents cite the case of **Goverdhan Lal vs. State of Punjab**, 1997 (7) SLR (Punjab and Haryana) (D.B.) 650 in which the court has ruled as follows:

"The Competent Authority while considering the representation against the adverse remarks is to see as to whether or not the adverse remarks are well founded. Once the authority is satisfied about the correctness of the remarks, it is not to make a detailed order or write a judgment as if it is a lis between the two parties. It is only to record the conclusion and decide the representation."

8. Thus, in sum, the respondents reiterate that the prescribed procedure was scrupulously and comprehensively followed in dealing with the applicant's APAR/ACRs and the adverse remarks in the same and therefore all these cases should be dismissed for want of merit.

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9. Learned counsels for the parties were heard and the material available on record was perused.

10. In addition to the averments made in the two TAs and one OA in question, learned counsel for the applicant cited the order dated 25.08.2015 of the CAT Principal Bench in **OA No.2808/2012** in which the Tribunal reiterated the ruling in the case of **Devendra Swaroop Saksena vs. Union of India and Ors.** (OA No.4258/2013 decided on 19.12.2014) as follows:

“9.18 (xi) The disposal of the representation must be made in a quasi judicial manner by a reasons order on due application of mind. This view has been further supported in Pala Singh Tanck Vs. Union of India [OA No. 1111/2011 decided on 05.01.2015] and Gunjan Parsad versus Union of India [OA No.1233/2014 decided on 28.04.2015], to mention a few.

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12. In this regard we are quite clear in our view that disposal of representation is a quasi judicial act and is to be done in a quasi judicial manner, therefore, the ideal situation will be that where an employee making representation seeks a personal opportunity to submit his case in person, he be allowed and his representation be disposed of after having taken the points raised therein by employee concerned into account. For the sake of argument, even where there is no prayer for granting an opportunity to the employee to plead his case in person, the competent authority is under obligation to dispose of his representation in consideration of the points raised, even it be in brief and in an objective manner.....”

11. He also cited the case of **Sukhdeo vs. The Commissioner Amravati and Another** 1996 (5) SCC 103 in which the Apex Court had ruled as under:

“....It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in waiting for improvement and yet was not availed of so that it would form part of the record.”.....

12. The applicant's counsel argued that these rulings were not followed in true spirit in the applicant's case; rather having become annoyed by the applicant pointing out delays and deficiencies in the performance of some of his superior officers as well as some contractors, the respondents gave the applicant a biased and unfair APAR/ACRs assessments including the adverse remarks in question. Learned counsel for the applicant clarified in this context however that he was not pressing any argument specifically alleging malafide against the respondent officers.

13. Learned counsel for the respondents, while reiterating the arguments made in the reply to the TAs and OA, drew the Tribunal's attention to the fact that the applicant has not

specifically sought quashing/setting aside of the orders made by the respondents vis-a-vis his representations against the adverse remarks in question. He contended that in the absence of this, the disposal of his representations in these cases attain finality. Consequently, these cases are not maintainable and should be dismissed outright. Respondents' counsel also drew attention to the fact that a plain reading of the adverse remarks made in different years under each of headings referred to earlier shows that barring the differences in language which are natural considering that the remarks have been made by different officers at different times, the sum and substance of the adverse remarks are essentially very similar in all three cases. He contended that this shows that the remarks in question were both fair and objective and not biased and subjective as alleged by the applicant. Learned counsel for the respondents also argued that these cases demonstrate that the applicant is in the habit of making incorrect allegations against his superior officers and other functionaries like contractors instead of performing his own duties properly and that he has filed a large number of OAs essentially seeking the same kind of relief as has been sought in these cases before different Benches of the Tribunal. He states that two such cases filed before the Jabalpur Bench of the Tribunal are presently being heard by this Bench here as these TAs, while out of the cases filed before CAT Mumbai totaling six in all, four were dismissed and two were allowed. In the latter case,

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the respondents' counsel states that the Hon'ble Bombay High Court has stayed the judgment in favour of the applicant and the cases are still pending.

14. Learned counsel for the respondents cited the case of **Union of India and Others vs. E.G.Nambudiri**, 1991 AIR 1216 SCR (2) 451 which relates to a case where a representation against adverse remarks was rejected by the competent authority. In this case, he points out that the Apex Court ruled as under:

"The question is whether principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for its decision as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority which has no statutory or implied duty to state reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for decisions. See: Regina v. Gaming Board

for Great Britain ex p. Benaim and Khaida [1970] 2 QB 417 at 431. Though the principles of natural justice do not require reasons for decision, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen, it is therefore desirable that reasons should be stated. There are however, many areas of administrative activity where no reasons are recorded or communicated, if such a decision is challenged before the Court for judicial review, the reasons for the decision may be placed before the court. The superior authority while considering the representation of a Government servant against adverse remarks, is not required by law to act judicially, it is under no legal obligation to record or communicate reasons for its decision to the Government servant. The decision, rejecting the representation does not adversely affect any vested right of the Government servant nor does it visit him with any civil consequences. In many cases having regard to infinite variations of circumstances, it may not be possible to disclose reasons for the opinion formed about the work and conduct or character of the Government servant. In the instant case adverse remarks as contained in item Nos. 1 to 4 were expunged but those at serial numbers 5 and 6 were not expunged and the respondent's representation to that extent was rejected. On a careful scrutiny of the two remarks, it would appear that observation contained in Item No. 5 "that nothing adverse has come to notice regarding your integrity" is not adverse to the respondent's work and conduct. These remarks are neutral in nature, and they do not adversely comment upon the respondent's work, conduct or character, though they are no commendatory in nature. As regards the remarks at Serial No. 6, they are self-

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explanatory, which show that in spite of oral and written warnings the respondent the respondent did not improve. If the superior authority was not satisfied with the explanation of the respondent as contained in his representation, what reasons could be stated, except that the authority was not satisfied with the explanation. The superior authority was not obliged to write detail judgment or order giving details of the warnings or the material on which he formed opinion.

There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. 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 reason. 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 office awarding the adverse entries and the officer counter-signing 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. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is

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generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the Government servant rejecting the representation does not contain any reasons, 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 alinude before the court to justify its action.

The President was under no legal obligation to record reasons in rejecting the respondent's representation against the adverse remarks. Consequently, the order of the president was not vitiated in law.”.....

15. Learned counsel for the respondents contended that the cases under consideration today are fully covered by the abovementioned ruling. In all the three cases in question, he reiterated that the applicant was given opportunities in the shape of oral and written advice as well as communication of displeasure on occasion in order to guide him and encourage him to improve his working but that this had been to no avail. He pointed out that while there is no requirement for communication of reasons for the rejection of the applicant's representations against the adverse remarks made in his APAR/ACRs, the letter communicating this rejection to the applicant had expressly stated in each case that the representations had been duly considered. Thus the requirements related to fairness and

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objectivity as well as the principles of natural justice had been fully met in these cases.

16. We have considered the material on record as well as the arguments and citations referred to and relied upon by the counsels for the opposing parties. What emerges undisputed in these cases is that the prescribed procedure with regard to conveying adverse remarks and considering representations made against the same has been substantively followed in these cases. Since the applicant has not specifically challenged the letters/orders conveying the rejection of his representations not citing detailed reasons when seeking relief, there remains little force in his belated contention at the arguments stage that such reasons were required to be recorded in explicit terms before rejecting his representations. The ruling of the Hon'ble Supreme Court in the case of **Union of India and Others** vs. **E.G.Nambudiri**, (supra), reproduced in detailed excerpt earlier, is very clear. The respondents' actions in these cases appear to be in substantive, if not comprehensive adherence to the principles laid down in this ruling. The applicant, on the other hand, while making wide ranging allegations of bias and lack of fairness and even hinting at malafide, (later withdrawn), has not been able to make out any case based on either law or logic for the acceptance of his case in general and certainly not for a case

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where the APAR/ACR grading given to him be substituted by an overall grading of "**outstanding**" as sought by him.

17. In sum, therefore, we find no merit in these two TAs and one OA and the same are accordingly dismissed.

18. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/