

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A. No. 201/2018

Date Of Decision: 1st March, 2019.CORAM: R. VIJAYKUMAR, MEMBER (A).
RAVINDER KAUR, MEMBER (J).

Mahesh Kumar Agarwal,
working as Deputy Chief Engineer P-Way(HQ),
CAO(C) Office, First Floor, Churchgate,
Mumbai- 400 020.

Residing at : D-12, Nirmal Park,
Railway Officers Quarters, Dr. Ambedkar Road,
Byculla East, Mumbai- 400 027.

....Applicant.
(In person)

Versus

1. Union of India,
Through the Secretary,
Railway Board, Rail Bhawan,
Raisina Road, New Delhi- 100 001.
2. General Manager,
Central Railway HQ Office,
CSTM, Mumbai- 400 001.
3. Chief Engineer(TM),
Central Railway,
GM Building, IIInd Floor,
CSTM Mumbai- 400 001.
4. Principal Chief Engineer,
PCE Office, Second Floor,
Central Railway HQ Office,
CSTM, Mumbai- 400 001.
5. Member (Engineering),
Railway Board, Rail Bhawan,
Raisina Road, New Delhi- 100 001.

....Respondents.

(By Advocate Shri V D Vadhavkar)

Reserved on : 07.02.2019
Pronounced on : 01.03.2019

ORDER
PER:- R. VIJAYKUMAR, MEMBER (A).

This application has been filed on 05.03.2018 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"A. This Hon'ble Tribunal may graciously be pleased to quashed and set aside the order passed by the than Member Engineering (Annexure A-1 colly) on 20.08.2017.

B. This Hon'ble Tribunal may graciously be pleased to order the Railway Board that the APAR for the year 2013-14 (Annexure A-1 colly) should not be taken into consideration for the promotion/placement of the applicant.

C. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, penalise the respondent number 3 for using the power illegally for writing the adverse remarks without any legal basis when acted as reporting officer. The applicant humbly submits that this illegal use of power not only placement of the applicant in Selection Grade was denied and also the applicant is running pillar to post to rectify the illegality done by the respondent no.3. The applicant is humbly submitting that the reporting officer has himself admitted that he did not have any thing on

records to spoil the career of the applicant.

D. The respondent no.3 wrote the APAR placing reliance on verbal warnings and non-existent written warnings which were considered and decided by the competent authority for placing in the service records. The adverse APAR for one year will ruin the career of an officer. The honourable tribunal is pleased to debar the respondent no. 3 for writing APAR for the officers as the respondent no. 3 using his power on personal whims and fancy which is not allowed in the democracy.

E. The reporting, reviewing and accepting authorities wrote the adverse remarks on the basis of verbal warnings, which is not permitted as per law decide by the honourable Supreme Court and the Railway Board while deciding the representation also relied upon several verbal warnings, hence all the authorities relied on several verbal warnings which makes the adverse remarks and below bench mark grading given by the authorities as null and void. Hence all the adverse remarks should be expunged, APAR should be upgraded to OUTSTANDING grading.

F. The reporting, reviewing and accepting authorities wrote the adverse remarks and below bench mark grading for promotion on the basis of nonexistent written warnings, which is not permitted as per law decide by the honourable Supreme Court and hence all the adverse remarks should be expunged and the APAR should be upgraded to OUTSTANDING grading .

G. Costs of the application are provided for.

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

2. This is the fourth round of litigation by the applicant and in the previous round in OA No. 64/2016 decided on 03.04.2017, relief had been extended to the applicant by adopting the principle set judgments of Hon'ble Supreme Court in *Dev Dutt Vs. Union of India & Others* [2008(2) SCC(L&S) 771] and in *Sukhdev Singh Vs. Union of India* in C.A. No. 5892/2006, the respondent No. 5 who was the Member (Engineering) was superior officer to the accepting authority of the APAR and was accordingly directed to consider the representation of the applicant and pass necessary orders. This was particularly so because the applicant had directed his representation to this particular authority and the orders were expressly in accordance with his wishes.

3. The applicant argues that the

Member (Engineering) of the Railway Board was not serving in that post on 20.08.2017 when he decided his representation against the APAR of 2012-13. He also argues that the Member (respondent No. 5) should have considered the drop in grading for that year as against the grading for the previous and later years while deciding his representation. He has also denied being advised to improve his performance by his supervising authorities and argues that verbal observations made by the Reporting Officer should not have been accepted for the purpose of the APAR. While making allegations against the Reporting and Reviewing Officers, he has also stated that his allegations have not been properly considered by respondent No. 5 while deciding his representation.

4. The applicant has also urged mala fides against the respondent No. 5, who is the Member (Engineering) in this application but more in terms of he is not having carried out the exercise which the applicant

considered appropriate in his case.

5. The respondents have denied the personal allegations against the previous Members (Engineering) and Principal Chief Engineers. They have also denied all mala fides against the Reporting and Reviewing Officers. In particular, they mentioned that the applicant had worked under the Member (Engineering) in an earlier capacity and he was aware of his work and deny any attribution of mala fides. They state that Shri A K Mittal, Member (Engineering) retired only on 31.08.2017 and was on earned leave from 21.08.2017 to 29.08.2017 and was very much in position and at the station on 20.08.2017. Therefore, the allegation that he was not on duty and could not write his comments are without basis and are clearly an afterthought.

6. The records have been carefully seen and examined with reference to law. The applicant argued in person and was heard at length on the matter and also heard learned counsel for the respondents.

7. Reference to the impugned orders which comprise the speaking order of respondent No.5 on APAR 2012-13 show that all the aspects of his APAR have been duly considered. The applicant has contended that no specific written observations were made on his shortcomings by the Reporting and Reviewing Officers. However, the aspect of review has both an objective and highly subjective aspect. It may not be possible to place on record and communicate in writing every small aspect of behaviour or dysfunctional habit of an officer who has been reported upon. The APAR is written based on the individual's specific targets and performance but also in comparison with several other officers that the Reporting officers have encountered in their career. The overall remarks are also based on such a criterion. Therefore, unless vague and generalized remarks are made in an APAR, remarks based on specific aspects bear attention especially before a DPC which has to assess the comparative merits of various

officers in the zone of consideration. As pointed out in the observations of respondent No.5 at Para 3, the Reporting authorities had favourably assessed the knowledge of the applicant on several dimensions but found him deficient in some specific areas and particularly in terms of the quality of output. They have also remarked on his inability in the aspect of planning. The respondent No.5 has also made an assessment on the allegations of bias which had been made by the applicant and expressed his view that the remarks do not support such allegations and that they appear to be objective in nature. As mentioned by respondent No.5, out of 13 attributes in para iii(B), the applicant obtained 'Very Good' in one attribute, 'Good' in five attributes, 'Average' in six attributes and 'Not Applicable' in one attribute and therefore, he did not find the overall grading of 'Good' as requiring any upgradation.

8. In the circumstances discussed above, it is clear that the applicant has not been

able to support his claims for relief and the OA is accordingly dismissed without any order as to costs.

(*Ravinder Kaur*)
Member (J)

(*R. Vijaykumar*)
Member (A)

Ram.

