

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

OA/310/01598/2015

Dated Friday the 19th day of August Two Thousand Sixteen

PRESENT

HON'BLE MR. R. RAMANUJAM, Member(A)

A.K. Silekar,
Chief Engineer (Valuation)
Valuation Cell,
Income Tax Department,
Kannamai Building 5th Floor,
Anna Salai, Chennai.

...Applicant

**By Advocate M/s.V. Vijay Shankar
Vs**

1. The Union of India,
Rep by the Secretary,
Ministry of Urban Development,
Nirman Bhavan, New Delhi – 11.
2. The Director General,
Central Public Works Department,
Nirman Bhavan,
New Delhi.
3. The Additional Director General,
Central Public Works Department (S and P)
Nirman Bhavan,
New Delhi.

...Respondents

By Advocate Dr. G. Krishnamurthy

ORDER

(Pronounced by Hon'ble Mr.R. Ramanujam, Member(A))

Heard both.

2. This OA has been filed seeking the following relief:

"To call for the records of the 2nd respondent in its no. F.NO. 10/12/2014/CE/CR cell dated 21.11.2014 and the consequential order passed by the 1st respondent in its F.No. 10/14/2014/CE/CR dated 21.09.2015 and quash the same and consequently direct the respondents to expunge the adverse entries made in the APAR for the year 2013-2014 by awarding him "Very Good" grading and consequently direct the respondents to grant him financial upgradation under the career advancement scheme."

3. The applicant is aggrieved by a 'Below bench mark/Adverse entries' in his APAR for the year 2013-2014. It is stated that the respondent No.2 had uploaded the Annual Performance Assessment Report(APAR) for the said period on the CPWD website on 24.07.2014 and it was intimated that representation, if any against the APAR should be submitted before 23.08.2014. However, the applicant could not submit his representation within the time limit, because of heavy work load. He was pre-occupied with certain committed programme including visits of important dignitaries. He also had personal reasons such as serious ailment of his father who had undergone surgery and was in critical condition due to which he could not pay his undivided attention to the issue of APAR. As the respondents rejected his representation dated 15.09.2014 on the ground of delay, by a representation dated 16.03.2015, he appealed to the authorities to waive the delay of a mere 22 days in the submission of the representation. However, the respondents, by

impugned order dated 21.09.2015 quoting DOPT's OM dated 14.5.2009 have rejected his representation and treated the APAR uploaded on the website as final. Aggrieved by this decision, the applicant is before this Tribunal, seeking the aforesaid relief.

4. The respondents would point out that as per Annexure R-2 Office Memorandum of the DOPT dated 14.5.2009, the officer concerned could only be given an opportunity to make a representation within a period of 15 days from the date of receipt of the APAR. The representation shall be restricted to specific factual observations contained in the report leading to the assessment of the officer in terms of attributes, work output etc. While, communicating the entries it was made clear that in case, no representation was received within 15 days, it shall be deemed that he/she had no representation to make. As the APAR section did not receive any information from the officer on or before 15 days from the date of disclosure, the APAR was treated as final. The respondents had only acted in compliance of the DoPT OM in rejecting the representation of the applicant.

5. I have carefully considered the submissions made by the rival sides. It is not in dispute that the applicant made a representation against the 'adverse / below benchmark entries' on 15.9.2014 wherein he had explained his performance and achievements made during the year in the face of adverse circumstances. The respondents without going into the substantive merit of his representation have rejected it merely on the ground of a 22 days' delay quoting the aforesaid OM of the DoPT. In a matter like the APAR which determines the career progression of an officer it is incumbent on the authorities to consider the

legitimate grievance of the officer concerned. The stipulation of a time limit of 15 days in the OM dated 14.5.09 by the DoPT could not be taken to mean that the competent authority would have no right to waive any delay attributable to valid and credible reasons or circumstances beyond the control of the officer.

6. In view of the above, I have no hesitation to hold that the rejection of the representation of the applicant citing the OM of DoPT is arbitrary and without due application of mind to the merits of the case. Accordingly, the orders dated 21.11.2014 and 21.09.2015 rejecting the representation and treating the APAR of the applicant as final are set aside.

7. The respondents are directed to consider the representation of the applicant on merits within a period of six weeks from the date of receipt of copy of this order and pass a speaking order.

8. OA is disposed of accordingly. No order as to costs.