

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4432 of 2013**

Rajneesh Shrivastav S/o O.P.Shrivastav, aged about 42 years, R/o MCM (Signal) South East Central Railway, PS Torwa, Bilaspur Chhattisgarh 495004.

---- Petitioner**Versus**

1. Union of India, Through General Manager, South East Central Railway, PS Torwa, Bilaspur, Chhattisgarh, 495004
2. Divisional Railway Manager, DRM Office, South East Central Railway, PS Torwa, Bilaspur, Chhattisgarh, 495004
3. Senior Divisional Personnel Officer, DRM Office, South East Central Railway, PS Torwa, Bilaspur, Chhattisgarh, 495004
4. Senior Divisional Signal Telecom Engineer, South East Central Railway, PS Torwa, Bilaspur, Chhattisgarh, 495004

---- Respondents

For Petitioner	: Shri A.V.Shridhar, Advocate.
For Respondents	: Shri Prateek Sinha, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****07/04/2016**

1. We have heard Learned Counsel for the Petitioner and the Respondents.
2. The Petitioner assails order dated 13.11.2013 passed in Original Application No. 1124 of 2011 by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (hereinafter called 'the Tribunal'). The Tribunal held that the order of the Appellate Authority dated 21.3.2011 declining to upgrade the ACR of the Petitioner from 'average' to 'good' for the year 2007-2008 did not call for interference.
3. Learned Counsel for the Petitioner submits that on 14.5.2009, a panel was drawn up for promotion to the post of Junior Engineer-II. His name was not included. OA No. 540 of 2009 was disposed with liberty to prefer an appeal against

the 'average' grading in the ACR for the year 2007-2008. The appeal was rejected against which OA No. 1124 of 2011 was preferred from which the present writ petition arises. The Reporting Authority on 30.6.2008 had graded him as 'good'. The Reviewing Authority on 7.8.2008, because of certain adverse remarks, graded the Petitioner as 'average'. The adverse remarks having been expunged on 4.1.2010 pursuant to representation, the Reviewing Authority was required to upgrade 'average' to 'good' also as the very basis for the same no more existed.

4. Learned Counsel for the Respondents opposing the writ application submitted that grading and adverse remarks are separate issues. In the present case they were not interlinked. Grading is done on basis of overall assessment and performance. The performance of an employee is a matter of subjective assessment. The Appellate Authority has applied its mind to the issue if upgrading was required consequent to expunction and arrived at a reasoned conclusion. There are no allegations of mala fide or that extraneous materials have been taken into consideration, much less any materials have been relied upon behind the back of the Petitioner. The Petitioner has already been promoted as Junior Engineer-II in the year 2010.

5. We have considered the submissions on behalf of the parties and are of the opinion that the order of the Tribunal calls for no interference.

6. An ACR of an employee is a matter of subjective cumulative assessment by the employer who also has the opportunity to watch day to day performance. The Court cannot substitute its views or interfere unless malafides are present, there are non-communication of adverse entries, extraneous considerations are taken into account etc. None of these conditions exists presently.

7. The Reporting Authority, with regard to conduct, attendance, general intelligence, relation with others (those above and below) and general performance of duties has assessed the Petitioner as 'satisfactory'. With regard to his technical abilities, he was assessed as 'technically competent'.

8. The Reviewing Authority opined his technical competency to be below average. It is a matter of subjective assessment over which the Court cannot sit in judgment. The Reviewing Authority has the power to differ with the Reporting Authority. We do not construe this observation of the Reviewing Authority as an adverse remark but a statement of fact. The adverse remarks were that he was not interested in day to day signal maintenance, had dilatory attitude towards duties and responsibilities, did not obey instructions and found ways to avoid performing having casual attitude towards his duty. That has been expunged. The Reviewing Authority on the representation has specifically observed that seeing the overall performance, the over all grading of 'average' given earlier calls for no interference. It is not the case of the Petitioner that the Reviewing Authority has not applied his mind to the representation. Even otherwise, the order reflects complete application of mind when it refers to overall performance which we have also noticed from the report of the Reporting Authority.

9. The word 'satisfactory' has been defined in the Concise Oxford Dictionary as 'acceptable' or 'adequate'. The word 'average' has been defined in the same as of 'ordinary level' or 'common'.

10. Grading of a person in his ACR and adverse remarks, in the facts of a case can be separate issues or interlinked. In the facts of the present case, in absence of any allegations made of any nature, the two cannot be held to be inextricably linked. The differentiation during consideration is also reflected in the order of the appellate authority. The impugned order merits no interference.

11. The writ petition is dismissed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE