

Form No. J.(2)
Item No. 66
Court No. 1
PG

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 08.12.2025 & 09.12.2025
DELIVERED ON: 09.12.2025

CORAM:
**THE HON'BLE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

**WP.CT. 157 of 2019
Susanta Kumar Ganguly
Versus**

The Union of India & Ors.

Appearance:-

Mr. Phatick Ch. Das

Ms. Soma Chowdhury (Bandhu)

.....For the Petitioner

Mr. Anirban Mitra

.....For the C.B.I.

JUDGEMENT (ORAL):

SUJOY PAUL, ACJ:-

1. This petition filed under Article 226/227 of the Constitution assails the order dated 11.04.2019 passed by Central Administrative Tribunal, Calcutta Bench (Tribunal) in O.A. No.93 of 2014.

FACTUAL BACKDROP:

2. The petitioner, while working as Assistant Commercial Manager in the scale of Rs.7,450/- to Rs.20,000/- with effect from 01.04.2005 alleged that there was a case of unauthorized stock of iron ore by one private party and accordingly, submitted a note on 29.01.2007 to his next higher authority i.e. Dy. CCM (FS)/SER/Kolkata. The said note was forwarded by Dy. CCM

(FS)/SER/Kolkata to Chief Commercial Manager, South Eastern Railway on 29.01.2007. Sri P.S. Roy, the then Chief Commercial Manager after receipt of that note did not take any action for realization of railway dues. The case of petitioner is that the CCM had connived with the defaulting party for his unlawful gain by evading the railway stack charges. The petitioner allegedly gave a verbal statement before Deputy Chief Vigilance Officer, S.E. Railway recording the said default by the private party.

3. The case of the petitioner is that the Government suffered a huge loss because of such incident pointed out by the petitioner. The reviewing and accepting authorities were annoyed with petitioners because the petitioner brought the said incident into light wherein they were involved. This resulted into downgrading the ACRs of the petitioner for the year 2006-2007 and 2007-2008.

CONTENTION OF PETITIONER

4. Sri Das, learned counsel for petitioner submits that prior to recording of the impugned ACRs of the said two financial years, the petitioner's ACRs were either 'outstanding' or at least not 'average'. The petitioner was never held to be 'unfit' for promotion. On 04.04.2007, the petitioner was granted General Manager's Award for outstanding performance in realization of outstanding railway dues and also for increasing railway traffic earnings by carrying out necessary marketing activities. The petitioner became entitled for upgradation of higher scale of pay i.e. Rs.8,000/- - Rs.13,500/- after completion of three years of residency period on the post of Assistant Commercial Manager (Group – B). The petitioner was served with adverse remarks for the year ending 2006-2007 and 2007-2008 by communication

dated 26.03.2009. In turn, petitioner submitted his representation on 28.04.2009 to the General Manager. Since the said representation was not decided, the petitioner filed O.A. 792 of 2009 before the learned Tribunal. In turn, Tribunal directed the General Manager to decide the said representation by passing a speaking order. Resultantly, by order dated 09.07.2012, the General Manager rejected the representation by issuing a speaking order.

5. Aggrieved, petitioner filed the instant O.A. before the Tribunal challenging the validity of speaking order and also the said ACRs for the aforesaid period. After completion of pleadings and hearing the parties, the Tribunal declined interference and passed the impugned order dated 23.12.2019, which became subject-matter of challenge in the present petition.
6. Sri Das, learned counsel for petitioner submits that prior to communication of the impugned ACRs, petitioner's ACRs were never 'average' and he got General Manager's Award for his excellent performance. The Reviewing Officer and Accepting Officer were hands in gloves with the erring private party, who cheated the Government and, therefore, they deliberately spoiled the ACRs of the petitioner. The said officers being superior to the Reporting Officer, must have influenced the Reporting Officer as well, who graded the petitioner as 'average' for the year 2006-2007 and 2007-2008.
7. Learned counsel for petitioner further submits that in view of the judgment of the Supreme Court reported in **(1997) 4 SCC 7 (State of U.P. Vs. Yamuna Shanker Misra & Anr.)**, before forming an opinion for recording an adverse ACR, the officer reported upon must be informed about his shortcomings so that he gets an opportunity to improve his conduct,

behaviour and integrity etc. In the instant case, the Reporting Officer has not given him any such opportunity and for this reason alone, the ACRs in question became vulnerable.

8. Sri Das further urged that petitioner being an honest and sincere officer of the department, did his duty and apprised the higher officials about the misdeeds and corruption going on in the department and paid price for the same in terms of getting his ACRs spoiled. Thus, impugned speaking order and the ACRs in question are liable to be interfered with. Petitioner's ACRs deserve upgradation and accordingly, a review DPC must be convened to consider the petitioner for getting the Pay Scale of Rs.8,000/- - Rs.13,500/. Sri Das specifically stated that he is not claiming any relief against the C.B.I.
9. Sri Mitra, learned counsel for C.B.I., in view of said submission of Sri Das, has not chosen to put forth his case. However, he apprised the court that in view of previous order of this Court, the C.B.I. has already filed a report.

FINDINGS :

10. Sadly, nobody appeared for Railway Administration. Sri Das informed that they have been separately served and proof of service is placed on record. Ms. Aparna Banerjee, learned counsel, who ordinarily appears for the Railway Administration is present in the Court. We deem it proper to convey our displeasure to the Railway Administration for such absence in the matters before us despite service. It is noteworthy that this is not the only case where nobody entered appearance for Railway Administration. In sizeable matters of Railway Administration we find no representation of counsel. We request Ms. Banerjee to convey our displeasure to the

appropriate authority in order to ensure that Railway Administration is represented in their matters.

11. In view of first order of tribunal passed in OA 792 of 2009, the General Manager passed the order dated 09.07.2012. In this speaking order he stated that he requisitioned the comments from the Reporting Officer as well. The then Reporting Officer categorically stated that the performance of the petitioner during the period in question was indeed 'average'. The petitioner was verbally counselled by the Reporting Officer on several occasions. Similar counselling was made by CCM on several occasions.
12. It is noteworthy that the allegations of malice are levelled by the petitioner only against the Reviewing Officer and Accepting Officer. No malice is alleged against the Reporting Officer. The Reporting Officer has not been impleaded *eo nomine*. Thus, we find no reason to reach to any conclusion against the Reporting Officer. The ACRs travelled before the Reviewing and Accepting Officers only with the comments of the Reporting Officer. Before that, there was no occasion by the Reporting Officer to get influenced with any opinion of Reviewing and Accepting Officers.
13. In the speaking order, it was further mentioned that when ACRs reached the Reporting, Reviewing or Accepting Officers, they were never equipped with the previous ACRs of the officer reported upon and therefore, the question of any bias or pre-determination of mind does not arise. There is no material available on record to establish that the Reporting Officer for ACRs of 2006-2007 and 2007-2008 was influenced by the Reviewing or the Accepting Officer. The relevant portion of remarks of Reporting Officer is reproduced by General Manager in his impugned speaking order.

14. A microscopic reading of the entries made therein shows that the entries are made on the basis of the performance seen by him. We cannot sit in appeal to adjudge or give a different opinion. Reporting Officer is best suited to record such finding. At the cost of repetition, no *mala fides* are alleged against the Reporting Officer making his grading vulnerable.
15. Apart from this, merely because in previous year, petitioner was graded better or got an award that does not mean that the findings recorded by the Reporting Officer in the subsequent years of 2006-2007 and 2007-2008 are factually incorrect or legally improper.
16. So far judgment of Supreme Court in ***Yamuna Shanker Misra & Anr. (supra)*** is concerned, it is noteworthy that in the 'speaking order' the General Manager recorded that the petitioner was verbally counselled on several occasions by the Reporting Officer and the CCM. Although in the OA., the petitioner disputed the same, we cannot decide this disputed question of fact in this petition. In ***Yamuna Shanker Misra & Anr. (supra)*** it is nowhere held that such counselling should be in writing. Since no malice is alleged against the Reporting Officer, we find no reason to disbelieve his communication, wherein he stated that he and CCM, for the period in question, verbally counselled the petitioner on several occasions. For this reason, the judgment of Supreme Court in ***Yamuna Shanker Misra & Anr. (supra)*** cannot be pressed into service.
17. To sum up, we do not find any procedural irregularity or manifest illegality in the decision making process. The ACRs were recorded in accordance with the procedure laid down for the same. Merely because Reporting, Reviewing and Accepting Officers for the periods in question treated the

petitioner as 'average' officer, it cannot be said that such finding is illegal or perverse in nature.

18. In view of the foregoing analysis, no case is made out for interference. The petition fails and is hereby **dismissed**.

(SUJOY PAUL, ACJ.)

I agree.

(PARTHA SARATHI SEN, J.)