

**(1999) 11 PAT CK 0119**

**Patna High Court**

**Case No:** C.W.J.C. No. 2228/9818R

Tribeni Prasad

APPELLANT

Vs

M/s. Central Coalfield Ltd. and  
Others

RESPONDENT

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**Date of Decision:** Nov. 1, 1999

**Citation:** (1999) 3 PLJR 135

**Hon'ble Judges:** M.Y. Eqbal, J

**Bench:** Single Bench

**Advocate:** Anil Kumar Sinha and R. Krishna, for the Appellant; M.M. Banerjee and S.K. Laik, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

M.Y. Eqbal, J.

In this writ application the petitioner has prayed for issuance of an appropriate writ for quashing the confidential letter no. 2724 dated 8.8.97, letter no. 2708 dated 29.7.97 and letter no. 3114 dated 17.10.97 whereby and whereunder the A.C.R. of the petitioner has been written as "inadequate" for the years, 1994-95, 1995-96 and 1996-97 and further for a declaration that recording of A.C.R. for three consecutive years within a period of three months without following the guidelines is illegal, arbitrary and mala fide. The petitioner has also prayed for a direction to the respondents to pay subsistence allowance with effect from the date of deemed suspension of the petitioner. Petitioner's case is that he is working as a Deputy Personnel Manager in E-IV grade under the respondents at their Mines Rescue Station at Nai Sarai, Ramgarh in the district of Hazaribagh. On account of illegal supersession by his juniors and deprivation from genuine medical re-imbursement, the petitioner filed C.W.J.C. No. 2748/94 (R) which is still pending. It is alleged that because of the fact that the petitioner moved this court by filing the aforesaid writ application the respondents decided to punish the petitioner and for that purpose the respondents, in violation of C.R. rules, recorded the A.C.R. of the petitioner of

three years within a period of two months and gave inadequate rating. The said remark was communicated by the impugned letters as contained in annexure 1 series. Petitioner's further case is that A.C.R. was recorded in utter violation of C.R. Rules of Coal India Limited and also the guidelines of the Executive Performance Appraisal, 1987 as published by Coal India Ltd.

2. In the counter affidavit the respondents, inter alia, stated that the rating in the A.C.R. for the period mentioned above, has been given after observing all the formalities and seeing the performance of the petitioner during the relevant years. It is stated that so far question of review of his EER rating is concerned, as per the existant rules of the company, the executives who have been rated as "inadequate", their case is not required to be reviewed. Various other facts have been stated in the counter affidavit which are not relevant for the purpose of deciding the question raised by the petitioner with regard to the validity of recording the A.C.R. by the respondents.

3. I have heard Mr. A.K. Sinha, learned Sr. counsel appearing on behalf of the petitioner and Mr. M.M. Banerjee, learned counsel appearing for the respondents. I have also perused the relevant annexures referred by the learned counsels for the parties.

4. The petitioner has annexed a copy of the C.R. Rules applicable to the officers as contained in annexure 2. For better appreciation the relevant rules are quoted hereinbelow:

2.0. While writing and reviewing C.Rs. the guideline as given in the C.R. forms should be strictly followed. It should be ensured that comments are given on an objective basis based on actual performance and concrete data.

2.1. Before writing any adverse remarks it should be ensured that the officer concerned has been appropriately counselled during the period under review to enable him to make the necessary improvement by the time his ACR is written and mention of the officer having been informed accordingly should be made in the C.R. In cases where it is not possible to inform the officer beforehand, the reason therefore has to be mentioned in the C.R. failing which such adverse remarks will not be taken cognizance of.

12.0. All Heads of Departments should ensure that the Reporting/Reviewing Officers submit the C.Rs. relating to the officers working under them within 30 days of the end of the financial year under review while the Reviewing Officer may be given 15 days. In case of delay in submission of C.Rs. the concerned officer would run the risk of their own C.Rs. carrying a black-mark on account of the delay in submitting the C.Rs. of the officers serving under them.

5. From bare perusal of the Rules particularly the rules quoted hereinabove, it is manifest that while writing and reviewing the C.Rs. The authorities are required to

strictly follow the guideline further clear that the C.Rs. of the officers shall have to be submitted within 30 days of the end of the Financial year. Annexure 3 to the writ application is a copy of policy, rules and guidelines in connection with the Executive Performance Appraisal which states, inter alia, that with the completion of the assessment year he appraisee will be supplied with E.E.R. format by the Executive Established department strictly by the end of January so that the format may be available the appraisee latest by 28th February. Self appraisal in the printed to the filled in must be handed over to the Reporting Officer by 30th April. The Reporting Officer will complete his evaluation and send it to the First Level Reviewer by 15th May.

6. In the instant case, admittedly the A.C.R. of the petitioner was written within a period of three months and the same was communicated to the petition by the impugned letters. It is not disputed that before communication of the impugned letters, the petitioner was never informed about his performance nor any show cause notice was given of any communication was made for improvement his work. It does not appear from the records that the guidelines provided have been strictly followed and before writing the adverse remark the petition was properly counselled. Admittedly the C.R. was not submitted within 30 days end of the Financial year, rather, the evaluation report in respect of the petitioner for the year 1994-95 has been communicated after two years i.e. on 8.8.97. Similarly, evaluation report (E.R.) for the years, 1995-96 and 1996-97 was communicated on 29.7.97 and 27.10.97 respectively, within a period of two months 10 days which is against the provisions of C.R. rules applicable to the officers of Coal India Ltd. including the petitioner.

7. It is not the case of the respondents that the petitioner had poor confidential report earlier and he was warned about his poor performance and opportunity was given to him to improve the performance. It is well settled that the object of writing confidential reports and making entries in them is to give an opportunity to a public servant to improve the excellence. Equally the officers entrusted with the duty of writing confidential reports has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately as accurately as possible. Before forming an opinion to make adverse entry in the confidential reports the reporting/reviewing officers should share the information which is not a part of the record, with the officer concerned. This amounts to an opportunity given to the erring/corrupt officers to correct the errors of the judgments, conduct, behaviour or integrity. The reporting/reviewing officer should, therefore, confront the reported officer with his knowledge before forming an opinion to make adverse remark so that the reported officer gets an opportunity either to improve himself or to explain his conduct. In this connection reference may be made to a decision of the Apex Court in the case of [State of U.P. Vs. Yamuna Shanker Misra and another](#) .

8. As noticed above, the C.R. rules applicable to the petitioner very clearly provides that the reporting/reviewing authority while recording C.R. should strictly follow the guidelines. Admittedly, before recording the adverse remarks and communicating the same to the petitioner by the impugned letters, annexures 1 series, neither the rules nor the guidelines have been strictly followed by the respondents authorities. At this stage it is worth to take notice of the law laid down by the Apex Court in the case of [U.P. Jal Nigam and others Vs. Prabhat Chandra Jain and others](#), where their lordships observed as follows:

We need to explain these observations of the High Court. The Nigam has rules, where under an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from very good to "good" that may not ordinarily be an adverse entry since both are positive grading. All what is required by the Authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an undesirable situation. All the same the sting of adverseness, must, in all events, be not reflected in such variation, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service records of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jai Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court.

9. Having regard to the facts of the instant case and the principles of law discussed above, I am of the definite opinion that the manner and the procedure adopted by the respondents authorities in recording the A.C.R. of the petitioner, is illegal, arbitrary and unjustified and the same, therefore, cannot be sustained in law. The impugned letters of communication are, therefore, quashed.

10. So far the second relief claimed by the petitioner regarding payment of subsistence allowance is concerned, it appears from the supplementary affidavit filed by the petitioner that the petitioner was placed under suspension from 7.11.97 but subsequently he was allowed to resume his duty on and from 2.12.98 and the

respondents, M/s C.C.L. approved the release of suspension of the petitioners. In such circumstance, in my opinion, there is no reason why the petitioner should not be paid the subsistence allowances for the period when he was kept under suspension in the manner provided under the relevant rules applicable to the petitioner. In the result, this writ application is allowed but without any order as to costs.