

From:
Madhulika Choudhary,
AD&SJ/Special Judge (E.C. Act),
Court No. 4
District Courts, Rampur, U.P.

To
Hon'ble. District Judge,
District Courts,
Rampur, U.P.

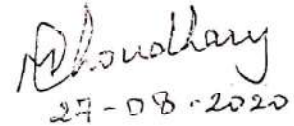
Sub: : Representation Against The Adverse Remarks In Annual Confidential Report (ACR). For The Period From 01.04.2019 to 31.03.2020

Respected Madam,

1. I wish to represent against the adverse remarks endorsed by Sh. Ashok Kumar Singh-III, Hon'ble District Judge, Kanpur Nagar, in my ACR for the year 2019-2020.
2. It is humbly prayed that my representation may kindly be forwarded to Hon'ble High Court for further necessary action.

Thanking you with due regards.

Yours sincerely,


27-08-2020

Date: 27 Aug, 2020
Place: Rampur, UP

(Madhulika Choudhary)
AD&SJ/Special Judge (E.C. Act),
Court No. 4, District Courts, Rampur, UP

Attachments:

1. Representation along with Annexures (Total no. of 58 pages)

Representation Against The Adverse Remarks In Annual Confidential Report
(ACR). For The Period From 01.04.2019 to 31.03.2020

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From,

Madhulika Choudhary,
Additional District & Sessions Judge/Special Judge (E.C.) Act
Court No.- 4
Rampur.

To,

The Registrar General,
Hon'ble High Court of Judicature at Allahabad.

Through,

The District Judge,
District Court,
Rampur.

Subject: Representation Against The Adverse Remarks In Annual Confidential Report (ACR). For The Period From 01.04.2019 to 31.03.2020 Communicated Through eServices For Judicial Officers Portal of Hon'ble High Court.

Most respectfully and humbly showeth:

1. That I, Madhulika Choudhary, am a Judicial Officer of 2014 batch and was appointed as AD&SJ on 02.07.2015.
2. That after my appointment, I was posted at Budaun. From Budaun, I was posted to Kanpur Nagar in April 2019 and worked under Shri Vinod Kumar Srivastava-IV from 16.04.2019 to 30.06.2019, and Shri Ashok Kumar Singh III from 16.07.2019 to 29.07.2020 (*up to 31.04.2020 for the purpose of ACR for the period 2019-2020*).
3. That I have found out about the adverse remarks made by Shri Ashok Kumar Singh-III, Worthy District & Sessions Judge, Kanpur Nagar/Learned Reporting Officer, hereinafter referred to as "*Ld. Reporting Officer*", through *eServices for Judicial Officers*, website of Hon'ble High Court, for the period from 01.04.2019 to 31.03.2020, while I was posted at Kanpur Nagar judgeship. However, the adverse remarks, made by the Ld. Reporting Officer in my above mentioned ACR, have not yet been conveyed to me by the Ld. Reporting Officer. Copy of the Self Assessment, along with the Remarks/Endorsements of Ld. District Judge, Kanpur Nagar (Reporting Officer), downloaded and printed from the web site "*eServices for Judicial Officers*", is attached herewith as **Annexure 1**.
4. That this submission is a representation against the unjustifiable adverse remarks endorsed in my above stated ACR.

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Synopsis and Background

5. I wish to respectfully state that, because of my integrity and impeccable record/performance during my first three years in service, I was rated "Very Good" in all three ACRs. My fourth ACR (for period 2018-2019) was rated as "Good" by Dr. Ajaya Krishna Vishvesha, Worthy District Judge, Budaan and Ld. Reporting Officer for me, for the relevant period, despite the fact that I had been conscientiously diligent and comprehensively effective in carrying out my assigned duties. As has been laid down in para 26(d) of "The Instructions for Writing Up of Confidential Reports" by Lok Sabha Secretariat, New Delhi, as under:

"(d) Where the remarks are 'not adverse' in the strict or narrow sense but the effect of those remarks cumulatively on the service prospects of the officer is adverse, e.g. there was a fall in the standards of an officer's performance compared to his own past performance....."

Further In the case of *U.P Jal Nigam & Others vs. Prabhat Chandra Jain & Others*, Hon'ble Supreme court had held that :

".... while writing the confidential reports, if the official were to be downgraded from the previous reports, "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 a positive grading. All that is required by the authority recording confidential 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 to be not permissible, then the very purpose of writing annual confidential reports would be frustrated...."

It therefore follows that even though the report was not "adverse", yet it unfairly implied a drop in my performance. Therefore, in good consciousness, I exercised my right to represent and filed for reevaluation and up gradation of this ACR. This obviously did not go well with the Ld. Reporting Officer.

6. That even though, filing of representation was well within my rights but the Ld. Reporting Officer did not take it kindly and in right perspective. Which is evident from the fact that on the occasion of first introduction/meeting at the time of Ld. Reporting officer's arrival from Mathura and taking over the

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charge of Kanpur Nagar Judgeship as District & Sessions Judge, the first sentence he spoke to me was "So you are Madhulika", the manner and tone, in which the above sentence was spoken clearly indicated the Ld. Reporting Officer had preconceived ideas about me and was trying to give a face to the name.

7. That the Ld. Reporting Officer rarely treated me as a fellow judicial officer or as a member of team should be treated. On a number of occasions, the Ld. Reporting Officer humiliated me by using harsh language in rude tone in the presence of my colleagues and juniors. Initially, even after working most unreservedly and with due diligence, doing everything possible, within my power, I was at loss to understand the reasons for such a harsh behavior, of the Ld. Reporting Officer towards me, even though it was due to no fault of mine. There were a number of incidents, where the Ld. Reporting Officer overstepped his authority and which caused me a tremendous amount of humiliation and distress, enough to provoke me to seek redress of my predicament, but I constraint myself in the best interest of our organization. However, the reasons for the unbecoming, discriminating and biased behavior of the Ld. Reporting Officer became apparent when the Ld. Reporting Officer issued a *DO letter no. 2/2020 dated 02.03.2020*, (**Original Annexed as Annexure 2**), on false and baseless grounds and the Ld. Reporting Officer's two page *Comments/Remarks, dated 11.06.2020*, hereinafter referred to as '*said remarks*', (**Original, as received, Annexed as Annexure 3**), subsequent and in response to *Confidential Letter dated 09.06.2020*, hereinafter referred to as '*said reply*', (**Copy Annexed as Annexure 4**), my reply to the DO letter (*supra*).
8. That due to transfer/promotion of judicial officers in the Kanpur Nagar judgeship, vide Hon'ble High Court notification no. 396/Admin. (Services)/2019, dated August 20, 2019, Ld. District Judge Kanpur Nagar, in the month of Sept./Oct. 2019, asked for the list of all the pending cases in various courts and transferred excess cases to the courts of newly promoted ADJs, however, ADJ court no. 4 (Special Court (E.C) Act), i.e., my court, was singularly singled out, from which the Ld. District Judge/Reporting Officer withdrew all the civil and criminal files, other than the cases under Electricity Act and execution cases. The Ld. Reporting Officer made a deliberate effort to deprive me of an opportunity to work on regular civil and

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criminal matters. **Copy of the order, transferring the files from ADJ court no. 4 is attached herewith as Annexure 5.**

9. That on 04.12.2019, Ld. District Judge/Reporting Officer passed an order; **(Copy Annexed as Annexure 6)**, giving dates of annual inspection of courts in the judgeship. Annual inspection of my court was scheduled for 17th and 18th January, 2020.
10. That I was detailed for training at IIPA, New Delhi from 13.01.2020 to 17.01.2020. All the papers/questionnaires related to annual inspection were got prepared and signed by me, before leaving for the training at New Delhi. The class III employee, Sh. Anil Kumar Tiwari, Case Clerk, deputed in my court, was properly instructed for the conduct of annual inspection. On joining back the office after training on 20.01.2020, I came to know from the court staff that the office of Ld. District Judge had issued a letter no. Nil dated 16.01.2020, **(Copy Annexed as Annexure 7)**, instructing me to ensure the compliance and have the statements submitted to the office of Ld. District Judge by 4 PM, on the same day, even though the Ld. District Judge was fully aware that it was not possible for me to act upon the same, as I was at New Delhi attending the training on that day. However, as per the laid down norms and procedure, the aforementioned letter should have been addressed to the PO/Link Officer, who was in-charge of the Court and could take action in my absence, however, the Ld. Reporting Officer chose to address it to me, further the Ld. District Judge postponed the inspection vide order no. 27 dated 17.01.2020 **(Copy Annexed as Annexure 8)**, another letter citing a false reason, blaming the clerk. In fact, it was the Ld. Reporting Officer himself who had gone out of station on leave. Hence it is apparent that the above mentioned letter was an effort to fabricate a false paper trail, in order to intimidate me and harm my career.
11. That On 20.01.2020, when I was apprised, by the court staff, on my arrival from New Delhi, of the letter no. Nil dated 16.01.2020 and order no. 27 dated 17.01.2020, I immediately asked for an explanation, on reasons for postponement, from Sh. Anil Kumar Tiwari, Case Clerk, as he was the person detailed for getting annual inspection done. On being asked to explain, Sh. Anil Kumar Tiwari, Case Clerk, informed me that he was on leave on 16.01.2020, further, vide his written explanation dated 21.01.2020, **(Copy Annexed as Annexure 9)**, Sh. Anil Kumar Tiwari stated that on 17.01.2020,

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he went to the office of Ld. District Judge, along with all the relevant papers/questionnaire, at around 11 AM, on being called for inspection and got 1-2 pages of inspection typed also, however, Sh. Santosh Bajpai, Ld. District Judge's steno got up for lunch and asked him to come after lunch for the rest of the work. When he went after Lunch, to complete the inspection work, Mr. Santosh Bajpai informed him that the inspection has been postponed and returned all the papers, even the papers he had submitted earlier. Later on, I came to know that the inspection of the court was postponed because the Ld. District Judge was proceeding on leave and had left early on 17.01.2020.

12. That on 02.03.2020, Ld. Reporting Officer in DO letter (*supra*), made false and baseless observation against me, in the garb of an advice. A simple reading of the DO letter (*supra*) will affirm the fact that none of the observations made by the Ld. Reporting Officer were based upon any specific fact/incident. All the observations seem imaginary and more like purposefully fabricated in order to victimise, punish and harm my career for no fault of mine.
13. That the Ld. Reporting Officer in his DO letter (*supra*) raised some imaginary doubts about my attitude and capabilities and grave aspersions were cast on my suitability as a Judicial Officer sans any guidance or the course of action I should take to improve myself.
14. That on 24.05.2020, at 10 AM, a meeting was held at the Official Residence of the Ld. Reporting Officer, wherein, the Ld. Reporting Officer asked me, as to "*how many urgent applications are fixed in my court for 26.05.2020?*", to which I, told the Ld. Reporting Officer that "*no urgent/bail application is listed in my court for 26.05.2020*", which happened to be the correct position of my court on the day, i.e., 24.05.2020, as per the court diary. (**Copy of the relevant page of court diary showing pending bail applications in my court is annexed as Annexure 10**). However, in the evening of 24.05.2020, Ld. Reporting Officer called me thrice, in quick succession, on my Mobile Phone and spoke to me in a very harsh tone, alleging that I have provided wrong information. Even though the Ld. Reporting Officer was fully aware of the fact that it was lockdown period and the courts were closed for all the judicial officers and I only had, entries made in court diary and orders passed by Ld. District Judge with regards to fixing general dates, as the most authentic record, to determine the cases listed,

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moreover, Ld. Reporting Officer had all the information, he wanted, available to him, in his own office, as all the dates were being fixed by the office of Ld. Reporting Officer. Still, I tendered an apology, through the official phone of the Ld. Reporting Officer, in deference to the status of Hon'ble District Judge. It is also noteworthy here that in order to harass me and justify his harsh and rude tone (even though using harsh language/tone with a fellow judicial officer or for that matter any subordinate can never be justified and is against the code of conduct and cannot be termed as an officer like behaviour) and create a ground for an adverse comment, later on, the Ld. District Judge listed 14 Bail Applications in my court on 26.05.2020. (Copy of the cause list for 26.05.2020, duly signed by the Ld. Reporting Officer, is Annexed as Annexure 11). I was shocked and surprised to find that 10 out of the 14 Bail Applications had already been decided by me. Some of them as far back as Sep./Oct 2019. Details of the decided bails is as under:

S.No.	Case No.	Name of Party	Date of disposal
1	3355/2019	Vikas Tripathi vs. State	16.10.2019
2	2975/2019	Sushant Vs. State	20.09.2019
3	4374/2019	Cheddu Vs. State	21.12.2019
4	4373/2019	Arshad Sageer Vs. State	21.12.2019
5	4353/2019	Jagdish Kumar Gautam Vs. State	20.12.2019
6	3465/2019	Avinash@Avanish Bajpai Vs. State	28.11.2019
7	3360/2019	Ram Kumar Gupta Vs. State	16.10.2019
8	3879/2019	Rajjan Lal Vs. State	26.11.2019
9	309/2020	Pushpa Vs. State	20.01.2020
10	191/2019	Mohd. Adil Vs. State	13.09.2019

Table: Details of the Decided bails

(Copies of relevant pages of disposal register maintained in my court showing disposal of 09 bails and bail order downloaded from Ecourt services for bale at sr.no. 8 in the above table are annexed as Annexure 12 (Colly.)) Rest of the four, i.e., case nos. 982/2020, 979/2020, 1113/2020, and 1292/2020 appearing at serial no. 8, 10, 11 and 12 of the attached cause list respectively, were taken from the court diary, wherein the listing date shown was 24.05.2020. Ld. District Judge/Reporting Officer, vide his order no. 154 dated 19.05.2020, (Copy of the order annexed as Annexure 13), had in para (d) of the attached order, fixed dates for the bails listed on 19, 20 and 21 of July 2020 for 27, 28 and 29 July 2020 respectively, hence, the bails fixed for 24.05.2020 would have been listed after 29.05.2020 as per the

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criterion adopted by the Ld. District Judge/Reporting Officer. Moreover the general dates for the bails listed on 24.05.2020, couldn't have been fixed prior to the meeting, i.e., 10 AM on 24.05.2020. In fact, The Ld. District Judge/Reporting Officer did fix general dates in case nos. 979/2020 and 1292/202 for 02.06.2020 and 01.06.2020 respectively, as is evident from the Daily Status for case nos. 979/2020 and 1292/2020 downloaded from *Ecourt Services Website*. (**Copy of Daily Status downloaded from *Ecourt Services Website* is annexed as Annexure 14 (Colly.)**). However, Ld. Reporting Officer, without passing any order to the effect, deliberately and with full knowledge of situation, listed the aforementioned four bail applications on 26.05.2020, by advancing the dates for case nos. 979/2020 and 1292/202 and arbitrarily fixing the date 26.05.2020 for other two. As this couldn't have been done prior to the meeting at 10 AM on 24.05.2020, this is another incident of manipulative discretion of Ld. Reporting Officer, towards me. Hence it is clear from the above that at the time of meeting, when I provided the information, to the Ld. District Judge/Reporting Officer, there was no bail application listed for 26.05.2020 in my court. In addition to the above, in order to further discomfort me, the Ld. Reporting Officer allotted a total of 30 minutes on the video system to conduct the virtual court and was asked to dispose of 14 Bail applications, i.e., about two minutes per bail application. A point worthy of note is, that a total of 09 courts were functional in the Kanpur Nagar judgship on 26.05.2020, including that of Hon'ble District Judge. All the other courts had 05 or fewer cases listed in their courts. In fact 05 of the 09 courts had *Nil* cases listed, but still they were allotted the time slot for same duration, i.e., 30 minutes. This is yet another incident of irrational indulgence of the Ld. Reporting Officer against a fellow junior judicial officer, for whom, he is suppose to act as a friend, philosopher and guide,

15. That, on receipt of the DO letter (*supra*), I became highly disturbed/demoralized and felt tremendous amount of mental stress, pain, agony and pressure besides feeling de-motivated and harassed. However, the meeting of 24.05.2020 and Ld. Reporting Officer's pursuit of vindictive and intimidating attitude towards me in preparing the cause list for 26.05.2020, proved to be too overbearing and intimidating that I found it necessary to respond in order to put the record straight, therefore, I decided to write a reply to the DO letter (*supra*) issued by the Ld. Reporting Officer, vide Confiden-

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tial Letter dated 09.06.2020, to respond to all the baseless and adverse observations against me in DO letter (*supra*).

16. That in the said reply, I, in most politest of manner and with utmost humility, expressed my anguish and concern over the baseless allegations and issues raised by the Ld. Reporting Officer and stated/clarified my stand in detail on each and every issue raised by the Ld. Reporting Officer in the DO letter (*supra*). Besides stating/clarifying my stand and giving detailed explanation on each issue, paragraph by paragraph, I also requested the Ld. Reporting Officer to provide me with specific incidents, along with guidance, as to where I have strayed, so that I could improve myself in future, if warranted. I, in my said reply reiterated a number of times that the Ld. Reporting Officer should have faith in me and my abilities and I was always open to any guidance.
17. That on 11.06.2020, in response to the 'said reply' of mine, Ld. Reporting Officer sent me two pages of 'remarks' (without any security classification) on the contents of the said reply. It is a settled law that any information, unauthorized disclosure of which could be expected to cause damage to the individual or could be prejudicial to the individual's interest or could embarrass the Individual and breach his/her privacy, should be classified as *Confidential*. It is pertinent to mention here that even though the Ld. Reporting Officer was fully aware that the contents of said remarks, written by him, were sensitive and confidential in nature, but still the Ld. Reporting Officer chose to make the said remarks unclassified, i.e., without any security classification, which is clearly and evidently a breach of my privacy and in violation of the ethical code of conduct, on part of the Ld. Reporting Officer. It is also pertinent to mention here that the said remarks, though mention me by name in its contents, but do not carry the name of the addressee and signatory nor it is signed, evidently to create a probable cause of deniability. As the Ld. Reporting Officer has made this particular remark/communication as a part of my ACR, it becomes imperative on my part to expose the lies and put the correct position on record.
18. That a simple reading of the said remarks provided answers to many a questions, which were troubling my mind and I did not have slightest of an idea. The said remarks also provide an insight into the thinking pattern and the mindset of the Ld. Reporting Officer. The first thing which stands out from the said remarks is that the Ld. Reporting Officer doesn't believe in anybody

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giving explanations to the accusation leveled against them, as is evident from the fact that the Ld. Reporting Officer has stated in the very first/opening paragraph of the said remarks that:

"....some guidance for future improvement were given to her and She was not expected to submit any explanation in response...."

Above remark is totally opposite to the principles of natural justice. It becomes a matter of serious concern if it is coming from a responsible person like the Ld. Reporting Officer, who has been entrusted with the responsibility of dispensing justice and has been deciding the fate of multitude of people for almost three decades now. It is very unfortunate that such a responsible person feels that any person, who tries to put forward a just explanation for himself/herself is trying to contradict/prove him wrong. Another disturbing and insinuating remark, by the Ld. Reporting Officer, in the opening paragraph of the said remarks, is:

"Being a lady Judicial Officer, she is trying to put pressure on head of institution under whose subordination she is working."

It is very unfortunate that an officer, of the stature of the Ld. Reporting Officer, resorting to such a perfunctory gender coloured (sexist) remark to justify comments. It is very humbly submitted that I have done nothing to deserve the Ld. Reporting Officer's such a vicious insinuation. After making the aforementioned, uncalled for comment, Ld. Reporting Officer further stated that:

;"Ms. Madhulika Choudhary who has service length of about 04 years only, is in habit of committing mistakes and she is also casual in nature".

In support of the comment he goes on to cite a couple of totally false incidents, which have been addressed by me in the succeeding paragraphs.

19. That in the said remarks, Ld. Reporting Officer has referenced an incident of 24.05.2020. In response to the same, contents of para 10 above are reaffirmed and reiterated, as the same is not being repeated here for the sake of brevity and prolixity. It is absolutely clear from the facts and the documents submitted that the incident is another attempt, by the Ld. Reporting Officer, to fabricate grounds against me. The Ld. Reporting Officer has further mentioned the incident of Annual Inspection, in response to the same, contents of paras 9, 10 and 11 above are reaffirmed and reiterated. Reference to the

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annual inspection is another slanted/biased effort by the Ld. Reporting Officer to fabricate grounds against me.

20. That in the last three paragraphs of the said remarks Ld. Reporting Officer has made three very significant points:

- (a) First being that it is the prerogative of the District Judge to give advice and directions to the judicial officers. It is humbly submitted that I have never questioned the authority of the Ld. District Judge, on the contrary, I took the issuance of the DO letter (*supra*) in the right spirit, in the said reply, I have, sincerely and with utmost humility, requested the Ld. District Judge/Reporting Officer for guidance and the ways to improve myself. However, it will not be out of place to say that no one has the license to act arbitrarily and try and fabricate grounds against any person just to satisfy his/her ego. The Ld. Reporting Officer should have acted in a fair and just manner. In fact, it is the violation of my fundamental rights. It is also pertinent to mention here that I have an experience of approx. 9-9½ years as an advocate of decent repute and 5 years as a judicial officer. I was no. 7 in seniority, holding ADJ court no. 4, amongst about 70 officers posted at Kanpur Nagar Judgeship of which, at least 18 were freshly appointed officers, who had joined the judicial service in Nov./Dec. 2019. The question which I ask myself again and again is how many officers of the judgeship were issued DO letters for advice and directions, especially the ones who had, less than 4-5 months of service, in March 2020, or is it only me, in the whole judgeship of about 70 officers, who was singled out for such a partial treatment and was in need of advice/guidance and rest of the officers are/were perfect to the fault, the animus in the mind of the Ld. Reporting Officer is clearly evident from this.
- (b) Second point the Ld. Reporting Officer has stressed upon is that I am in a habit of raising voice against the head of the institution; it is a strange selection of words and shows the thought process and mindset of the Ld. Reporting Officer. In the present scenario, I, represented against a step down in my grading in ACR, a matter which had the potential to harm my career as a judicial officer and I have every right to do so, a right granted to me by law. It is in every sense a professional action and by no stretch of imagination can be termed as raising voice against any person or authority whatsoever. However, the Ld. Report-

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ing Officer, even though, concedes the fact that it is well within my rights, but considers it as a personal attack on the head of the institution. Ld. Reporting Officer considers my standing up for truth and propriety is a rebellious behavior, which creates problems on the administrative side and should be suppressed and dealt with "*iron hand*".

- (c) Last but not the least, the Ld. Reporting Officer's advice to me is, not to waste time in replying and just keep on taking whatever is dished out to me, whether good or bad. This kind advice by the Ld. Reporting Officer, clearly indicates his self aggrandizing and domineering attitude. It is most unfortunate thinking and mindset and if it happens to be a judicial officer of considerable experience, holding a high position as that of a District Judge, then certainly that has a story to tell
21. That on 23.07.2020 I was posted out of Kanpur Judgeship to Rampur vide Hon'ble High Court notification no.1390/Admin. (Services)/2020 dated Allahabad, July 23, 2020.
 22. In spite of the fact that the Ld. Reporting Officer was not kindly disposed towards me, before relinquishing the charge and leaving the station for Rampur, I called on the Ld. Reporting Officer at his home-office, as a courtesy. However, The Ld. Reporting Officer did not extend even the most basic and simple courtesy to invite me, a fellow judicial officer, inside his home-office, to which I, being a fellow officer was entitled to, instead the Ld. Reporting Officer made me sit outside in the verandah. It was a humiliating experience for me, as all the subordinate staff/class IV employees were standing around in the same area. During the course of conversation, while sitting in verandah, the Ld. Reporting Officer bragged about his superiority to me. To put it in his own words "अगर मेरे जैसा अफसर कोई रिमार्क लिख देगा तो कोई ऊपर वाला भी नहीं हटा सकता उसे. जाओ हम आपका अहित नहीं करेंगे"
 23. That in view of the aforementioned facts supported by documentary proof, it is evident that the Ld. Reporting Officer has not been objective, fair, dispassionate and accurate while writing my ACR and remarks thereto. The thought is further strengthened by the fact that the Ld. Reporting Officer is not even aware of the details regarding my service/activities, as he has erroneously mentioned in the said remarks "*Ms. Madhulika Choudhary who has*

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a service length of about 04 years only", whereas I have put in more than 5 years of unblemished service, further in para 3 of the said remarks Ld. Reporting Officer stated that I was away on training to JTRI, Lucknow, whereas I was attending the training at IIPA, New Delhi and with the permission of the Ld. Reporting Officer. Further, the timing and contents of the DO letter (*supra*) clearly indicates that the Ld. Reporting Officer has deliberately planned and manufactured the grounds to harm and sabotage my career.

24. That In view of the above mentioned events and background I wish to state that the Ld. Reporting Officer has unfairly made the following adverse comments/observation in my ACR as explained in the succeeding paragraphs leading to the present predicament I find myself in, I have strong objections to the following remarks, endorsed by, in the aforementioned ACR:

Objections

25. I may kindly be permitted to make head wise submissions as follows:

(a)

01 (g)	Whether disposal of work is adequate. (Give percentage and reasons for short disposal, if any)	Disposal of work is adequate. She has achieved 2680.45 units against 1200 units. I have gone through 25 SST decided by her in the month of Jan and 30 SST decided in the month of Feb 2020. She has shown these cases decided as contested and claimed 8 full units while these are those cases which are decided on the basis of compounding. To claim full quantum of work officer has recorded statement of one prosecution witness in all these cases and then recorded statement of accused u/s 313 cr.p.c. and pronounce judgment of acquittal to show that she has decided them as contested case. Judgments written by her in these cases not upto mark and plain reading of these judgments show that these are not contested judgments.
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In the above remark the Ld. Reporting Officer has stated that I have achieved 2680.45 units against 1200 units and the work was adequate, whereas the fact is that I have achieved 2680.45 units against the total requirement of only 763.77 units, and not 1200 as stated by the Ld. Reporting Officer. The Ld. Reporting Officer has conveniently ignored to account for exclusions as per Annexure E, point No. 12 of G.L. No. 11/IV-h-14/2018

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Dated: Allahabad: March 02, 2019 as well as omitted to mention the percentage of the work done by me, which is 350.95%, i.e., 250.95% in excess of the total work required as per the General Letter (*supra*). Ld. Reporting Officer has further mentioned that he has gone through a total of 55 SSTs, decided by me. Ld. Reporting Officer has further stated that I have shown these cases decided as contested and claimed 8 full units while these are those cases which are decided on the basis of compounding. To claim full quantum of work officer has recorded statement of *one prosecution witness in all these cases* and then recorded statement of accused u/s 313 Cr.P.C. and pronounced judgment of acquittal to show that she has decided them as contested case, which is a false statement by the Ld. Reporting Officer, it is difficult to remember all the cases, decided off hand, however, I do remember a case I decided in the month of Feb. 2020, in the matter of **State Vs. Ramjivan**, where two prosecution witnesses were examined, which proves the fact that the Ld. Reporting Officer has not gone through the cases, as claimed by him in the aforementioned remark. The point I wish to respectfully submit is, that Sec 134 of Indian Evidence Act as follows:

134. Number of witnesses. — No particular number of witnesses shall in any case be required for the proof of any fact.

It does not stipulate the number of witness to be examined to prove a case. It is the prerogative of prosecution and the defense, that how many witnesses they want, to be examined, in order to prove their respective case and the court is bound by law to pronounce the judgment on the basis of whatever no. of witnesses produced and examined by the prosecution and defense. Hence, to blame me for the number of witnesses examined in a case shows clearly that the Ld. Reporting Officer is not fair and objective while writing the above remark, which at best, besides being unfounded/misplaced is also a product of prejudice/malice on the part of Ld. Reporting Officer. It is safe to assume by the language of the remark that the Ld. Reporting Officer is implying that I have followed wrong procedure and it was wrong to claim full quantum of 08 units for the same. Should it be then assumed that the real reason for withdrawing all the criminal and civil cases from my court in the month of Sep./October was to ensure that I should not be able to claim any work unit for the rest of the year, so that I can be blamed for inefficiency/inadequacy of work at the time of ACR. Further, the Worthy Reporting Officer has omitted to mention that all these SSTs were tried under sections

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135 to 140 or section 150 of the Electricity Act 2003. As per the provisions of sec. 152(1) of the Electricity Act 2003, which is as under:

Section 152. (Compounding of offences): --- (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act,

It is absolutely clear from the above section that offences under the Act are not compoundable at the level of the Court and it does not have the power of Compounding. Sec 152(4) further stipulates as under:

(4) The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.

The offences under the Electricity Act, 2003 are cognizable, non-bailable and punishable up to Five years of imprisonment. As per proviso of the section 154(3) of the Electricity Act, 2003, the cases are to be tried according to the provisions of The Code of Criminal Procedure for trying such offences if not tried summarily. In all these cases the charges were framed much earlier to the date of Judgment. It is the duty of the court to ensure the proper compliance of law. In view of the Sec 152 (4) as quoted above Court has to ensure that the provisions of the aforementioned sec are complied with, however, the court has no means to establish the compliance of sec 152(4) except by way of recording evidence. Ld. Reporting officer has not considered the legal position that once a charge is framed in a case, the accused could not be discharged and the court has to pronounce the Judgment on merits only. Once the charge has been framed, the accused has to be put on trial and thereafter convicted or acquitted, he cannot be discharged. Moreover, as regards to claiming full 8 points for the SST, it is submitted that I have decided the cases honestly, sincerely and in accordance with the law and is entitled to the points for the quantum of work done, as per the rules laid down by the Hon'ble High Court vide it GL (*supra*). It is also pertinent to mention here that Hon'ble High Court vide General Letter (*supra*) has made no distinction in allocating points for the cases decided on the basis of compounding report or otherwise, under the head District Judge(s) and Additional District Judge(s). Ld. Reporting Officer has further remarked that the judgments written by me are not up to the mark, it has been clearly laid down in various

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guidelines on the subject, including in the format of ACR, filled by the Reporting Officer, that "give reasons if any", wherever there is a possibility of adverse remarks, however, the Ld. Reporting Officer has omitted to mention whether the judgments are bad on facts, or on law, or on reasoning or language, which clearly shows that the aforementioned remark by the Ld. Reporting Officer is unfounded and unsubstantiated and is coloured by prejudice and malice. It is also pertinent to mention here that the 'column 01 (g) of the ACR' only require the information whether the work done was adequate or not and if there is a shortage than the reasons for the same, hence the aforementioned remark in column 01 (g) by the Ld. Reporting Officer is not only misplaced but also shows the preconceived bias on part of the Ld. Reporting Officer. It is fairly evident from the above averments that the Ld. Reporting Officer was neither objective nor fair nor was he dispassionate or accurate, while writing the above remark in my ACR. Another fact, worth mentioning here is that I had completed the quantum of work units required for the entire period under review, i.e., 01.04.2019 to 31.03.2020, even before taking over the charge as Special Judge (E.C.) Act Court on 16.08.2019 and the Ld. Reporting Officer could not find any fault, in any of my work, even after trying so hard and putting me under a microscope, should stand testimony to my dedication, sincerity, work ethics and hard work. It is also pertinent to mention here that the Ld. Reporting Officer was fully aware of my working, as I sent my monthly progress statements along with the quota claimed to the office of Ld. District Judge/Reporting Officer for his perusal. However, Ld. District Judge/Reporting Officer not even once raised any objection or asked for any explanation from me, with regards to the same. Which clearly implies, that the above remark is nothing but a result of prejudice and malice on part of the Ld. Reporting Officer. In view of the explanations above and double standards adopted by the Ld. Reporting Officer, the above comment should be expunged and suitably rephrased.

(b)

01 (h)	Control over the Office and Administrative capacity and tact	She does not have effective control over class-III employee as remark dated 11.6.2020 given by me on her confidential letter dated 9.6.2020 written by her.
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In response to the above remark, it is submitted that the incident referred to, in this context is, that of 24.05.2020 and doesn't relate to the period under review. However, contents of para 14 of *Synopsis and Background* above are reaffirmed and reiterated, as the same is not being repeated here for the sake of brevity and prolixity. Though, it is pertinent to mention here that the staff deputed in my court, did not provide any wrong information as explained earlier. It is also worthy of note that the staff of Ld. Reporting Officer, did dare to provide wrong information to the Ld. Reporting Officer, as is evident from the said remarks that I have *only 04 years of service* and has also stated that I was away on *training to JTRI*, whereas I have more than 05 years of service and was away on training to IIPA, New Delhi. Another instance, of which Ld. Reporting Officer has already been apprised of, vide said reply and is worthy of mention is, that a class III employee, Shri Santosh Bajpayee, currently working/deputed in the office of Ld. Reporting Officer, had the audacity to approach me for a favour in a Bail Matter (case crime no. 196/19 in the matter of Faisal Anwar vs. State) insisting upon me to grant bail to the accused/applicant. This incident speaks volumes, on the kind of control, Ld. Reporting Officer has over the class III employees working in his own office. Hence, as per the yardstick, used by the Ld. Reporting Officer, to determine my control over class III employees, should it be assumed that the Ld. Reporting Officer has no *effective control over his own class-III employees*. In view of the explanations above and double standards adopted by the Ld. Reporting Officer, the above comment should be expunged and suitably rephrased.

(c)

01 (i)	<i>Relations with members of the Bar(mention incidents, if any)</i>	So So
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That the Ld. Reporting Officer has recorded remark as "So So", without mentioning any incident/occurrence, even though it has been specifically asked for in the *column 01(i)*, on which the Ld. Reporting Officer has based such a perfunctory remark. It is most respectfully submitted that following observations of their Lordships of the Hon'ble Supreme Court made in the matter of: 'K' A JUDICIAL OFFICER, IN RE, 2001 (1) SCR 959:

"A Judge entrusted with the task of administering justice should be bold and feel fearless while acting judicially and giving expression to

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his views and constructing his judgment or order. It should be no deterrent to formation and expression of an honest opinion and acting thereon so long as it, within four- corners of law that any action taken by a subordinate judicial officer is open to scrutiny in judicial review before a superior forum with which its opinion may not meet approval and the superior court may upset his action or opinion. The availability of such fearlessness is essential for the maintenance of judicial independence. However, sobriety, cool, calm and poise should be reflected in every action and expression of a Judge."

To put it more succinctly, a judge administers justice and he does not sit to please litigants or members of bar. It is a universal truth that all are not happy when a judge acts as per law, however, the judge should not bow down to the pressure tactics of the litigants and or advocates, while discharging his/her duties as judge. Having stated this, I reiterate that my relations with the bar are very good and cordial and there has never been a complaint, written or oral, to the best of my knowledge. Moreover, the entry in a column of ACR cannot be vague, it has to be definitive, as it has been laid down in the instructions in *Report On Annual Confidential Reports* published by National Judicial Academy that the *Reporting Authority has to mark him or her on his performance on the basis of it being outstanding, very good, good, fair or poor*. The remark itself is contrary to the remark mentioned in column 01(b) where Ld. Reporting Officer has recorded that I am fair and impartial to the public and Bar. My fairness and impartiality on its own proves that my relations with the Bar are good. Therefore, the aforesaid remark is fit to be expunged and suitably rephrased.

(d)

01 (m)	<i>Whether amenable to the advice of the District Judge and other superior officers?</i>	<i>Trying to be amenable</i>
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The above remark has a very negative connotation to it. It is most humbly submitted that I have tried to execute all my assignments most unreservedly and diligently. I have followed all the directions given to me by my superiors. It is on record that whatever task was entrusted to me, by the Ld. Reporting Officer, it was completed to the full satisfaction of the entrusting officer. In fact the Ld. Reporting Officer has himself accepted in his remark in

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reponse to column 01 (k) that Officer carried out the inspection of Civil Judge II (SD) and Library on his behalf and the Inspections were full and effective. It is also pertinent to mention here that I was made in-charge of litigation during my entire stay at Kanpur Nagar Judgeship, a task of great responsibility and requiring constant interaction with the Hon'ble High Court, in the matter of various directions and litigations. It is worthy of note here that I always completed my task at hand on or before time. In fact, I completed and submitted a detailed narratives/comments on a writ petition filed by Shri Akhil Kumar Bajpai, an official of Kanpur Nagar Judgeship, pending in the Hon'ble High Court, to the Office of Ld. District Judge/Reporting Officer, before relinquishing the charge, even after I was posted out of the Kanpur Nagar Judgeship to Rampur and the Ld. Reporting Officer was fully satisfied with the narratives/comments written and submitted by me. Hence, it becomes a pertinent question here that if I am not amenable to the Ld. District Judge, then why such an important task was entrusted to me. It is also on record that once, when a bail application was presented, after Court hours, in my court, I decided the bail application even after the court hours on the directions of the Ld. District Judge/Reporting Officer. The above facts clearly indicate that I am fully amenable to my superior officers; hence, it is evident that the adverse import in above remark is without any basis, hence needs to be expunged and suitably rephrased.

(e)

4	Other remarks, if any	I rated her overall "good" because she is honest otherwise she is less experience, create problems in administrative side, she lacks tact to conduct her court effectively. She requires a lot of improvement to become an ideal judicial officer. She has been suggested to improve herself vide DO letter no. 2/2020 dated 02.03.2020 and by remarks dated 11.06.2020 passed by me on her confidential letter dated 09.06.2020. It is matter of pleasure that she is improving gradually.
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A critical and objective perusal of my profile picture as scripted by Ld. Reporting Officer will clearly indicate an absolutely prejudiced and biased outlook and perspective towards me. In three short sentences the Ld. Reporting Officer has remorselessly sought to wreck my career prospects, who have all

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along been assiduously dedicated to my professional responsibilities with utmost dedication and integrity. With due respect and humility, I would like to bring to your kind notice that during my brief tenure under the Ld. Reporting Officer, instead of being a guiding and motivating boss and mentor, he continued to deride and harass and demoralize me by fabricating and leveling sham and bogus insinuations against me. The Ld. Reporting Officer has claimed that he rated me overall "good" simply because he found me to be honest. While appreciating his forthrightness in recognizing/admitting my "integrity", I cannot understand his uncharitable view about me stating that "she is less experience". I wish to state with due humility that I have put in 05 years of unblemished service as a judge and during my tenure I have exercised my judicial credential with absolute acumen and integrity and all the decisions/judgments dispensed by me have been appropriate and just. Besides it will be pertinent to mention that prior to joining HJS, I had actively practiced law as an advocate of decent repute for about 9-9½ year. During which time, I handled a large no cases, of almost every type, including civil, criminal, commercial, family matters, motor accident etc. amongst others, which totals up to almost 15 years of experience in court work. I also fail to understand how exercising my rights could be termed as "create problems in administrative side". Contents of para 20(b) above are reaffirmed and reiterated here, as the same is not being repeated here for the sake of brevity and prolixity. Further, he has suggested that I lack "tact" to conduct court effectively. This insinuation is absolutely misplaced. There is absolutely no scope and function of any type of "tact" and "guile" being applied in administration of justice. As a judicial officer, ethically and formally, I am duty bound to conduct the court proceeding strictly as per prescribed norms and judicial practices. And that is what I have been pursuing with unreserved dedication and integrity ever since I joined this noble profession. The Ld. Reporting Officer has further mentioned that I require a "lot of improvement to become an ideal judicial officer." and he has referenced the DO letter (*supra*) and remarks there to. The contents of the DO letter (*supra*) have been already comprehensively rebutted vide the said reply which is self explanatory. However, in reference to the said *remarks dated 11.06.2020*, contents of paras 18, 19, and 20 (a), (b), (c) above are reaffirmed and reiterated here. It is also worth mentioning here that according to Ld. Reporting Officer I have control over the file in proper fixation of cause list, avoids unnecessary ad-

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jourments, disposed more than required number of old cases, Judgments are sound and well reasoned and am punctual and regular in sitting on Dias in court. I fail to understand that even after having these qualities, what tact is lacking for conducting the court effectively and what more is required to become an ideal Judicial Officer. At the cost of repetition it is submitted that Sri Ashok Kumar Singh III took over as Hon'ble District Judge, Kanpur Nagar on 16.07.2019 and during eight months time no advisory, DO letter or any other communication was made by him. It is in the last month of Financial Year, when ACRs were to be recorded, one and only DO Letter dated 02.03.2020 was issued. It appears face apparent that by way of the DO letter he tried to lay foundation for recording the Adverse remarks in the ACR. In the said DO letter he issued so called advisory on seven counts on the alleged complaint from the Bar, but has not dared to cite even a single detail of any such complaint. It is further submitted that all the seven counts of the aforesaid DO letter are properly answered herein above at relevant places and not even a single one has been substantiated. Hence, in view of the above, it is most respectfully submitted that aforementioned adverse remark should be expunged and rephrased suitably in the interest of justice.

Grounds

26. In light of the above and in the interest of justice, I respectfully represent for the expunction of the adverse remarks in the aforementioned ACR, amongst others on the following:
 - a. That the manner in which the endorsements in ACR have been made by Ld. Reporting Officer are in complete violation of guidelines laid down by the Hon'ble Supreme Court in catena of cases, wherein it has been stressed that the adverse remark/guidance for improvement, to be consistent and acceptable, are to be supported by the figurative assessment, which is not so in the present case.
 - b. It is a standard practice and settled law that Adverse remarks in the Confidential Reports should be made with care and responsibility. The Reporting Officer should, make every effort to bring to the notice of the officers and staff working, under him, their defects, as and when noticed, with a view to remedy them. Ordinarily, it is only when efforts so made prove of little avail, that adverse remarks should be recorded in the Confidential Report, While doing so, the Reporting Officer should also indicate the efforts made by him to remedy the de-

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facts noticed by him and the results. However, in my case, the Ld. Reporting Officer did not point out any defect in my conduct besides issuing the DO letter (*supra*) and raising unfounded and unsubstantiated allegations.

- c. That the adverse remarks are sketchy, vague and essentially subjective and devoid of any real basis. As, I was not asked to explain, any circumstances/incident, agitating the mind of Ld. Reporting Officer. It was only on 02.03.2020, that I was issued a DO letter (*supra*), to which I duly replied and stated my stand, vide the said reply, however, The Ld. Reporting Officer has unfortunately taken the said reply, personally and considered it as an attack on his authority, hence, the Ld. Reporting Officer has endorsed the above remarks with a prejudiced and vengeful mind clouding his better judgment. It has been very clearly laid down in the *Report On Annual Confidential Reports* published by National Judicial Academy as under:

No employee should be adversely affected by prejudicial reports recorded without fullest consideration and also no one should be rewarded with extremely flattering reports not based on the fact. All instances of good and bad work coming to the notice of the reporting officers should be promptly noted in the memo of services. The entry in the memo of services should be based on the facts

As has also been held by Hon'ble Supreme Court in the case of *State of U.P v. Yamuna Shankar Mishra* as under:

The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances."

Further the Hon'ble Supreme Court, in the case of *S. Ramchandra Raju vs. State Orissa* has observed as under:

"This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proc-

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livity or predilections and to make objective assessment, it is needless to emphasise that the career prospect of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive comments/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the concerned officer/employee during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy."

It is most humbly submitted these reports, are important documents on which my future and official career depends to a large extent. It is essential that they should be as objective and accurate as, possible and give a well balanced opinion on my work. However in the present case, the Ld. Reporting Officer has neither acted objectively, fairly and dispassionately nor has he founded the adverse remarks upon facts or circumstances. Hence, the adverse remarks which are neither supported by record, nor based on objective material, cannot be allowed to stand in way of my career.

- d. That I have an unblemished service record and there is not even a single ACR of mine with adverse entries except the one in hand.
- e. That the Hon'ble Supreme Court, with regards to the conduct of Reporting Officer in the case of *R. Ramesh v. Bharath Sanchar Nigam Limited*, highlighted the following:

"....The officer should show objectivity, impartiality and fair assessment without any prejudices whatsoever with highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralized, which would be deleterious to the efficacy and efficiency of public service."

However, Learned Reporting Officer paid no heed to guidelines such as impartial, forthright and unambiguous for assessing my performance while recording ACR.

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- f. That the adverse report is a stigma on my service career, hence, liable to be expunged in aforesaid circumstances in the interest of justice.

PRAYER

In the aforementioned circumstances it is humbly prayed that this representation may kindly be placed before the Hon'ble High Court for:

- (a) expunction and suitably rephrasing of all the adverse remarks in the ACR for the year 2019-2020;
- (b) to reassess and upgrade the overall rating on the basis of actual records, work and conduct of the applicant; and
- (c) to afford an opportunity for personal hearing in the above matter, if deemed necessary to the Hon'ble.

Yours sincerely,

Choudhary
27-08-2020

Madhulika Choudhary,

AD & SJ Special Judge (E.C.) Act,

Rampur.

Place: Rampur

Date: 27 August 2020

Office of the District Judge

RAMPUR

No. 394/5 Dated 27-8-2020

FORWARDED

1/c District Judge *SP*
27-8-2020