

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.477 of 2021

Sri Sumendra Debbarma,
S/o-Late Subindra Debbarma,
R/o-Suparibagan, Krishnanagar, Near Dasarath Bhavan,
P.O.-Agartala, P.S.-Agartala, District-West Tripura,
Pin-799001, Aged about-42 years.

....Petitioner(s)

Versus

- 1. The District and Sessions Judge,**
Dhalai Judicial District, P.O. & P.S.-Ambassa, District-Dhalai Tripura,
Pin-799289.
- 2. The Additional District and Sessions Judge,**
Dhalai Judicial District, P.O. & P.S.-Kamalpur, District-Dhalai Tripura,
Pin-799285.
- 3. The Sub Judicial Magistrate,**
Kamalpur, Dhalai Judicial District, P.O.& P.S.- Kamalpur, District-
Dhalai, Tripura, Pin-799285.
- 4. Sri Hrishikesh Chakraborty,**
at present posted as Judge, Family Court, P.O. & P.S.-Khowai, District-
Khowai Tripura, Pin-799202.
- 5. Sri Subhasish Sharma Roy,**
at present posted as District and Sessions Judge, Ambassa, P.O. & P.O.-
Ambassa, District-Dhalai Tripura, Pin-799289.
- 6. Smt. Arpita Chakma,**
presently serving as Office Superintendent (Group-B, Non Gazetted),
notice to be served through District & Sessions Judge, Khowai Judicial
District, P.O. + P.S.-Khowai, District- Khowai, Pin-799202.
- 7. Sri Arup Chakma,**
presently serving as Office Superintendent (Group-B, Non Gazetted),
notice to be served through District & Sessions Judge, Unakoti Judicial
District, Kailashahar, P.O. + P.S.- Kailashahar, District-Unakoti Tripura,
Pin-799277.
- 8. Sri Joy Datta Chakma,**
presently serving as Office Superintendent (Group-B, Non Gazetted),
notice to be served through District & Sessions Judge, Sepahijala
Judicial District, Sonamura, P.O.+ P.S.-Sonamura, District- Sepahijala
Tripura, Pin-799181.
- 9. Sri Sandipan Chakma,**
presently serving as Office Superintendent (Group-B, Non Gazetted),
notice to be served through District & Sessions Judge, North Tripura
Judicial District, Dharmanagar, P.O.+ P.S.- Dharmanagar, District-North
Tripura, Pin-799250.
- 10. Sri Pradip Debbarma,**
presently serving as Office Superintendent (Group-B, Non Gazetted),
notice to be served through District & Sessions Judge, West Tripura

Judicial District, Agartala, P.O.-Agartala, P.S.-West Agartala, District-West Tripura, Pin-799003.

....Respondent(s)

For the Petitioner(s)	:	Mr. A. Bhaumik, Advocate
For the Respondent(s)	:	Mr. D. Bhattacharya, GA Mr. S. Saha, Advocate
Date of hearing & delivery of judgment & order	:	25.09.2023
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)

Heard Mr. A. Bhaumik, learned counsel appearing for the petitioner. Also heard Mr. D. Bhattacharya, learned GA assisted by Mr. S. Saha, learned counsel appearing for respondent nos.1 to 5.

2. By way of filing the present writ petition, the petitioner has challenged the grading recorded in his Performance Appraisal Report(for short, P.A.R.) as 'Good' affecting his next promotion in the year 2020 and prayed for setting aside the communication dated 31.03.2021 and the communication dated 19.02.2021.

3. The case of the petitioner, in a nutshell, is that while he was discharging his duties under the District Judiciary, he was graded 'Very Good' for the reporting year 2018 and 2019. However, for the assessment year 2020, he was graded 'Outstanding'. It is the further case of the petitioner that the District & Sessions Judge, Dhalai Judicial District, Ambassa vide communication dated 19.02.2021 intimidated the petitioner that he was graded as 'Outstanding' in the P.A.R. by the Accepting Authority for the reporting year 2020(Annexure 4 to the writ petition). However, vide another communication dated 31.03.2021, the same District & Sessions Judge, Dhalai Judicial District had communicated the petitioner that he was inadvertently communicated mentioning his grading as 'Outstanding' and that mistake had occurred due to the clerical error which was written as 'Outstanding' instead of 'Good'. The relevant extract of the communication may be reproduced hereunder:

“Therefore, the grading “Outstanding” of your P.A.R./A.C.R. for the reporting year, 2020 as communicated to you vide No.118, dated 19-02-2021 will not effect and your original grading awarded by the Accepting Authority for the reporting year, 2020 is “Good”.”

4. Being aggrieved of such grading as “Good”, the petitioner has approached this Court urging this Court to set aside or quash the grading as “Good” in exercise of its discretionary and extraordinary jurisdiction under Article 226 of the Constitution of India.

5. Mr. Bhaumik, learned counsel appearing for the petitioner has submitted that the assessment and grading of the petitioner as “Good” amounts to downgrading of the P.A.R./A.C.R. of the petitioner from “Outstanding”. Next submission of the learned counsel for the petitioner is that the petitioner was not given reasonable opportunity to submit representation against such communication. Learned counsel for the petitioner has emphatically submitted that it is the requirement of law that the authority concerned should state in the communication that the employee concerned, the petitioner herein should submit representation. According to Mr. Bhaumik, learned counsel for the petitioner, due to such grading, the petitioner’s promotion to the next higher post had been affected and his juniors, the private respondents herein had been promoted. During promotion it was considered that “Outstanding” would be given 10 marks, “Very Good” would be given 8 marks and “Good” would be given 6 marks. The petitioner at the time of consideration of promotion, secured 6 marks since he was graded as “Good” for the reporting year 2020.

6. Opposing the submissions of learned counsel for the petitioner, learned GA appearing for respondent nos.1 to 5 has drawn my attention to the statements made in the counter affidavit and contended that the petitioner has suppressed the actual facts. During the reporting year 2020, the conduct of the petitioner forced the Reporting Officer, Reviewing Officer and the Accepting Officer to assess his performance as “Good”. In support of his submission, learned GA has referred para 14 of the counter affidavit, which is reproduced here-in-below:

“14. That, with respect to paragraph-12, I say, that, the averments made in para 12 of the Writ Petition are all false, fabricated and frivolous. The petitioner has most illegally referred name of some staff members in the Writ Petition who were graded “Outstanding” in the P.A.R. for the reporting year 2020 claiming that those staff members had enjoyed more leave than the petitioner in the year 2020. But the fact remains that those staff members have been serving at Kamalpur station for long time and also with the satisfaction of their higher authorities.

The petitioner most illegally made the statement on oath before the Hon’ble High Court that the petitioner availed only 5(five) Casual Leaves out of 12(twelve) casual leaves in the reporting year and he also availed only 5(five) earned leaves in the said reporting year.

But it is revealed from the office records that petitioner Sri Sumendra Debbarma joined in the establishment of the District & Sessions Judge, Dhalai Judicial District at Ambassa on 14.01.2020 being transferred from Longtharai Valley. Subsequently, petitioner Sri Sumendra Debbarma was transferred to Kamalpur on 17.03.2020 from Ambassa and the petitioner joined at Kamalpur on 18.03.2020 i.e. the petitioner could perform his official duty in the establishment of District & Sessions Judge, Dhalai Judicial District, Ambassa only for 63 days and during such period, the petitioner enjoyed full days Casual Leave on 20.01.2020, 29.02.2020 and 13.03.2020 and he also enjoyed half days’ Casual leave on 12.02.2020, 28.02.2020 and 10.03.2020.

Record also shows that on 31.01.2020 petitioner, Sri Sumendra Debbarma was absent from his official duty but he did not file any prayer seeking any kind of leave for that day till the end of the year 2020.

On the other hand, it is revealed from the office records available with the respondent No.2 that during the reporting year, petitioner availed 8(eight) Casual Leaves at Kamalpur station on 19.05.2020, 20.05.2020, 21.05.2020, 03.06.2020, 06.07.2020, 01.07.2020, 21.12.2020 and 22.12.2020.

From the office record available with the Sub-Divisional Judicial Magistrate, Longtharai-Valley, Dhalai Judicial District, it is revealed that petitioner also enjoyed casual leave on 08.01.2020 during his posting at Longtharai-Valley.

So, from the official records it is revealed that the petitioner most illegally enjoyed total 13(thirteen) and half days Casual Leaves in the year 2020 though he was entitled to enjoy only 12(twelve) days Casual Leave in a year.

Apart from this, petitioner also enjoyed 3(three) days Earned Leaves on 04.07.2020, 07.12.2020 and 17.12.2020 and filed an application to his authority on 07.01.2021 for granting such earned leaves whereas, as per rule a Government employee cannot enjoy earned leave without prior approval of the sanctioning authority.

Petitioner enjoyed 04(four) days Casual Leaves on 19.05.2020 to 21.05.2020 and 03.06.2020 but filed application to the sanctioning authority on 25.06.2020.

Petitioner enjoyed casual leave on 01.12.2020 but filed application on 03.12.2020.

Petitioner also enjoyed 02(two) days casual leaves on 21.12.2020 and 22.12.2020 but filed application to the sanctioning authority on 07.01.2021.

So, from the conduct of the petitioner, it is very much evident that he was always trying to enjoy more leaves unauthorised for which the petitioner intentionally filed application on 7th January, 2021 for granting casual leaves for two days of the previous year i.e. on 21.12.2020 and 22.12.2020.”

7. This Court in exercise of its discretionary power of judicial review will not revisit the assessments made by the Reporting Authority, Reviewing Authority and the Accepting Authority. The Court will be confined only to examine whether the grading, whatever it may be, has been communicated to the employee concerned.

8. In the instant case, it is found that the first communication mentioning the P.A.R./A.C.R. of the petitioner as “Outstanding” was made inadvertently which was rectified later on by issuance of a communication dated 31.03.2021 from the Office of the District & Sessions Judge, Dhalai Judicial District, Ambassa. On receipt of this communication, the petitioner did not submit any representation and directly has approached this Court challenging the assessment and grading as well.

9. The grievance of the petitioner is that he was not given opportunity to submit representation. It is difficult to digest this argument of learned counsel appearing for the petitioner that the communication must state that the employee concerned should submit representation. The settled legal position is that every entry in the P.A.R./A.C.R. must be communicated to the employee concerned within a reasonable period, irrespective of the fact that he was graded as “Outstanding, Very Good, Good or Poor”. After receipt of such communication, it is the right of the petitioner to submit representation. सत्यमेव जयते

10. In the opinion of this Court, there is no requirement of law that such communication must state that the employee concerned should submit representation. It is the wisdom of the employee concerned whether he would submit representation or not. To re-iterate, the legal position is very clear in respect of the fact that the assessment and grading thereof, whatever it may be, must be communicated to the public servant.

11. In this regard, I may profitably refer to the case of **Dev Dutt vs. Union of India and Ors.** reported in (2008)8 SCC 725 where the Hon’ble Supreme Court held thus:[SCC p.733, paras 17 and 18]

“17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period,

whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] that arbitrariness violates Article 14 of the Constitution.

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.”

12. Added to it, I do not find any ground to form an opinion that the assessment made by the Reporting Officer, Reviewing Officer and the Accepting Officer suffers from any perversity since the petitioner was found to be absent on so many days on this particular assessment year.

13. Learned counsel appearing for the petitioner has placed reliance upon a decision of Hon’ble Supreme Court in **Union of India and Anr. Vs. Major Bahadur Singh, (2006) 1 SCC 368** to substantiate his submission that before making final assessment, the respondents had to follow 3 stages, that is, there should be counselling, necessary advice and instruction.

14. I have perused the cited decision which is related to an army officer where there are Standing Instructions of the Government of India which prescribe procedures of making assessment and ultimate grading

thereof. The present case before this Court is not the case under any Army Act or Rules where certain instructions are found laying down as such kind of procedures.

15. In the context of the case, the service of the petitioner being regulated by CCS(CC & A) Rules, he is only entitled to be communicated with the assessment and the grading thereof, which was duly communicated to him.

16. For the reasons stated above, I do not find any element of violation of the principles of natural justice *qua* any infirmity in the grading of the petitioner since it is already held that the law as regards the communication of the P.A.R./A.C.R. does not postulate that it must contain the statement that the concerned public servant should submit representation.

In the result, the present writ petition is devoid of merit and accordingly stands dismissed.

Pending application(s), if any, also stands dismissed.

JUDGE

Snigdha