

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.887 of 2022

Rajib Ray

Son of Late Hiralal Ray, resident of College Road, Shibnagar, PO- Agartala,
PS-East Agartala, District-West Tripura, Pin-799001.

....Petitioner(s)

Versus

1. The State of Tripura

Represented by the Commissioner & Secretary to the Finance Department (Taxes & Excise), Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO-Kunjaban, PS- New Capital Complex, Sub-Division-Sadar, District-West Tripura.

2. The Commissioner & Secretary,

Finance Department (Taxes & Excise), Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO- Kunjaban, PS-New Capital Complex, Sub-Division-Sadar, District- West Tripura.

3. The Under Secretary,

Finance Department (Taxes & Excise), Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division: Sadar, District- West Tripura.

4. The Principal Secretary,

Tribal Welfare Department, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar, District- West Tripura.

5. The Principal Secretary, SC Welfare Department,

Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO-Kunjaban, PS- New Capital Complex, Sub-Division-Sadar, District-West Tripura.

6. The Commissioner of Taxes, Finance Department (Taxes & Excise), Government of Tripura, 3rd Floor, Khadya Bhavan, Pandit Nehru Complex, Gurkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Sadar, District-West Tripura, Pin-799006.

7. The Chairman, Tripura Public Service Commission

Akhaura Road, PO-Agartala, PS-West Agartala, Sub-Division: Sadar, District- West Tripura, Pin-799001.

....Official Respondent(s)

8. Sri Gautam Sen

Assistant Commissioner of Taxes, Kar Bhavan, Palace Compound, PO-Agartala, PS-East Agartala, District- West Tripura, Pin-799001

9. Sri Ramkrishna Halder

Assistant Commissioner of taxes, Office of the Superintendent of Taxes, Churaibari Enforcement Wing, PO & PS- Churaibari, District-North Tripura, Pin-799262.

....Private Respondent(s)

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. K. Chakraborty, Advocate
For respondent(s)	:	Mr. M. Debbarma, Addl. G.A Mr. Paramartha Datta, Advocate Mr. Raju Datta, Advocate Mr. P. Gautam, Advocate
Date of hearing and Delivery of Judgment & Order	:	02.08.2024
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGEMENT AND ORDER(ORAL)

By means of filing the instant writ petition, the petitioner has challenged his gradings in the ACRs for the period 2017-18, 2018-19 and 2019-20 as well as promotion of the private-respondents.

2. The main contention of the petitioner is that his gradings in the ACRs for the aforesaid three periods have been done most mechanically and arbitrarily. Furthermore, the grading below the benchmark for the said periods was not communicated to him within a reasonable period of time.

3. FACTS

3.1 Shorn of unnecessary details, the case of the petitioner is that he was appointed as Superintendent of Taxes (Group-B, Gazetted) under the Finance Department (Taxes & Excise), Government of Tripura. As per the Recruitment Rules, for consideration of appointment/promotion to the next higher post, i.e., Assistant Commissioner of Taxes (Group-A, Gazetted), an incumbent has to serve in the feeder post of Superintendent of Taxes for a minimum period of 5(five) years. The petitioner, having served in the said feeder post since 24.12.1996 became eligible to be considered for promotion

to the said post of Assistant Commissioner of Taxes w.e.f. 24.12.2001. The benchmark of ACR, requisite for promotion to the next higher post of Assistant Commissioner of Taxes is 'Very Good' for the preceding 5(five) years from the date of constitution of DPC.

3.2 The matter of promotion concerning the petitioner relates to the ACRs for the periods 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21. Out of the said ACRs, the petitioner was graded as 'Very Good' for the assessment years 2016-17 and 2020-21, but his ACRs were downgraded for the periods 2017-18, 2018-19 and 2019-20 as 'Good', 'Average', and 'Good' respectively.

3.3 The official respondents had taken an exercise to fill up the posts of Assistant Commissioner of Taxes from its feeder post. The names of the eligible candidates from the feeder posts were sent to Departmental Promotion Committee ('DPC', for short) for consideration of their suitabilities. DPC had considered the suitability of each of the officers in the feeder post including the petitioner. During consideration, the DPC found the petitioner 'unfit' since the shortfall in benchmark. As the petitioner was declared as 'unfit' by the DPC, respondent no.8 being his junior was promoted to the post of Assistant Commissioner of Taxes vide impugned notification dated 05.07.2022 (*Annexure-11* to the writ petition). The petitioner being aggrieved of the promotion of his junior, has assailed the present writ petition.

4. In the aforesaid backdrop of facts, I have heard Mr. K. Chakraborty, learned counsel appearing for the petitioner. I have also heard Mr. M. Debbarma, learned Addl. G.A appearing for the State-respondent

nos.1 to 6, Mr. Raju Datta, learned counsel appearing for the respondent no.7- TPSC, Mr. Paramartha Datta, learned counsel appearing for the private-respondent no.8 and Mr. P. Gautam, learned counsel appearing for the private-respondent no.9.

5. Submissions on behalf of the petitioner.

5.1 Mr. Chakraborty, learned counsel for the petitioner has advanced two-fold of submissions.

5.2 *Firstly*, the ACR gradings below the benchmark for years 2017-18, 2018-19 and 2019-20 were not communicated to him within reasonable period of time. It is the contention of Mr. Chakraborty, learned counsel that the ACR for the year 2018-19 where he was graded as 'Average' was communicated to the petitioner on 18.10.2021(*Annexure-2* to the writ petition). The ACR, grading him as 'Good' for the periods 2017-18 and 2019-20 were communicated to the petitioner on 25.01.2022(*Annexure -6* to the petitioner). The benchmark for consideration of promotion to the post of Assistant Commissioner of Taxes is 'Very Good' and since the petitioner could not obtain the benchmark for preceding 3(three) years, he was not considered for promotion to the post of Assistant Commissioner of Taxes when his junior, i.e. the respondent no.8 was considered for promotion. It is strenuously argued that non-communication of the grading of ACRs is illegal, arbitrary and discriminatory, and violative of Articles 14 and 16 of the Constitution of India.

5.3 The *second* fold of submission is that the ultimate gradings of the ACRs for the aforesaid periods were made most mechanically, capriciously, which evidently suffered from non-application of mind. As

such, the gradings below the benchmark are liable to be quashed and set aside, entitling the petitioner to be considered for promotion to the post of Assistant Commissioner of Taxes.

6. Submissions on behalf of State-respondents.

6.1 Mr. Debbarma, learned Addl. G.A for the State-respondents has submitted that ACRs were written by the concerned officers only after the exercise of promotion was carried out by a policy decision of the Government of Tripura. To a pointed query, learned Addl. G.A has fairly submitted that it is true that the gradings in the ACR for the relevant periods were not communicated to the petitioner when it was supposed to be communicated within a reasonable period of time. However, learned Addl. G.A has contended that none of the officers within consideration zone were communicated with their respective ACRs. So, according to learned Addl. G.A, there is no discrimination.

7. Submissions on behalf of Respondent No.8.

7.1 Mr. Datta, learned counsel for the respondent no.8 has submitted that the DPC found the respondent no.8 as 'fit' since he secured benchmark in his ACRs for the relevant periods which were taken into consideration. As such, the promotion of the respondent no.8, though he was junior to the petitioner, may not be interfered with. Mr. Datta, learned counsel has drawn my attention to a notification dated 20.06.2023 under which another process of promotion to the post of Assistant Commissioner of Taxes from the post of Superintendent of Taxes was exercised, but the petitioner did not challenge it in his writ petition.

8. Submissions on behalf of Respondent No.9

8.1 Mr. Gautam, learned counsel for the respondent no.9 has submitted that the respondent no.9 belongs to Scheduled Caste category. So, his promotion was considered against the vacancy reserved for Scheduled Castes. As such, the promotion of respondent no.9 should not be interfered with.

9 I have considered the submissions of learned counsel appearing for the parties and have also scrutinized the records, particularly, gradings of the petitioner for the relevant periods, i.e. 2017-18, 2018-19 and 2019-20 where he was graded below the benchmark, i.e. 'Good', 'Average' and 'Good' respectively.

10. At the outset, I would like to deal with the issue as to whether the ACRs for the periods 2017-18, 2018-19 and 2019-20 were communicated to the petitioner within reasonable period. It is admitted position that ACRs for the period 2017-18 and 2019-20 grading him 'Good' were communicated to the petitioner on 25.01.2022. Similarly, ACR relating to the period 2018-19 grading him 'Average' was communicated to him on 18.10.2022. Needless to say, it has become apparent that such communications were made to the petitioner when the gradings below the benchmark already became stale.

10.1 In view of the decision rendered by the Hon'ble Supreme Court in *Dev Dutt vs. Union of India and Ors.* reported in (2008) 8 SCC 725, the ACRs of every year has to be communicated to the officers within a reasonable period i.e., in my opinion, 3(three) months irrespective of the benchmarks one obtains including the grading of 'outstanding'. To say it

otherwise, all gradings be it poor, average, good, very good or outstanding are necessarily to be communicated to the officer concerned. This position of law was further affirmed by the Hon'ble Supreme Court of India in the cases of Sri ***Abhijit Ghosh Dastidar Vs. Union of India and Ors*** reported in ***(2009) 16 SSC 146*** and ***Sukhdev Singh vs. Union of India*** reported in ***(2013) 9 SCC 573***.

11. Ultimate conclusion is that, since the gradings relating to the ACRs of the petitioner were not communicated to the petitioner within a reasonable period of time, those cannot be taken into consideration while assessing the suitability of the petitioner for consideration of promotion to the post of Assistant Commissioner of Taxes. The objective of communication of ACRs to the respective employees is to give him/her an opportunity to improve his/her performance in discharge of his/her official duties. Keeping in view the objectives, the Government of Tripura also issued memorandum dated 05.08.2010(*Annexure-1* to the writ petition) directing all the departments to communicate the entries in the ACRs (*whether 'Poor', 'Fair', 'Average', 'Good', & 'Very Good'*) so that it can boost the moral of the employee and make him work harder, and such officers/employees can file representation seeking reconsideration/upgradation of his/her ACRs.

12. Now, coming to the second fold of submission that final comments made by the Reporting Officer were the reflection of non-application of mind and it was made mere mechanically, I may profitably make reference to the case of ***Union of India and Ors. Vs. G.R. Meghwal***

reported in *Air 2022 Supreme Court 4661: AIROnline 2022 SC 333*. Para 9 and 10 of the said decision may be reproduced here-in-below:-

“9. On perusal of what has been extracted by the Tribunal from the ACRs of 2005-06, we note that the respondent has been graded as “Very Good” since he has very good knowledge in technical field as well as of administrative matters; willing to assume responsibility; has good organizing capability; motivating ability and timely and proper guidance giving capability. The respondent has the capacity/resourcefulness to anticipate problems in advance as well as unforeseen situations. He has very good quality decision-making ability and is able to weigh pros and cons of alternatives and good capability of communication and present arguments in oral and written manner and good skill and capacity of evaluating and recording performance of subordinates in an impartial and objective manner.

Similarly in the remarks for the year 2006-07, it has been written that the respondent has very good technical knowledge as well as administrative knowledge. He has very good organizing capacity and was able to motivate and provide timely and proper guidance to subordinates. He has good skill and capacity in evaluating and recording performance of subordinates in an impartial and objective manner.

As against the aforesaid favourable remarks for the previous two years, in the year 2007-08 it has been stated that though the technical knowledge of the respondent is good, his financial and administrative knowledge is poor; that he has hardly understood the environment in anticipating change; that he was never willing to assume responsibility, and had poor organising capacity and cannot anticipate problems and unforeseen situations and does not take additional responsibility and has poor decision-making quality and average ability in communication and presenting case problems.

10. Therefore, in view of the above and in the facts and circumstances of the case and considering the fact that though the respondent was graded as "Very Good" in the ACRs for the years 2005-2006 and 2006- 2007 and was graded only "Good" in the ACR for the year 2007-2008 by the very same reporting and reviewing officer, despite the fact that specifically the respondent was given the opportunity against the ACR for the year 2007-2008. However, no valid reasons are given for rejecting the representation, we are of the opinion that in view of the aforesaid facts and circumstances, the learned Tribunal and the High Court have not committed any error in directing the Department to call for a review meeting of the Screening Committee to re-assess the suitability of the respondent for the purpose of grant of SAG and while doing so to exclude the ACR for the year 2007-08. Therefore, in the facts and circumstances of the case, no interference of this Court is called for.

In view of the above and for the reasons stated above, present appeal fails and the same deserves to be dismissed and is accordingly dismissed."

13. Keeping in view the above process of evaluation of merits of performance while recording the ACRs, I have scrutinized each and every remark made in the assessment sheets by the officer concerned. The assessment sheet for the years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21 may be reproduced here-in-below, for convenience, *in extenso*:-

(1) ***For the year 2016-17.***

"REMARKS BY THE REPORTING AUTHORITY
(Please read the instruction carefully before filling the form)

1. Length of service under the Reporting Authority during the period of report.

21/04/16 to 21/03/17

2. Specify whether the Reporting Authority has submitted his/her report within the prescribed period, if not reasons therefore.

No, as the self assessment was submitted late

3. State of health of the officer.

V.Good

4. Comments of self-assessment: (Please give details/aspects of performance with which you disagree or would like to elaborate)

V Good effort has been made by him to increase taxes as mentioned.

5. Performance Assessment.

5.1 Achievements against main duties, specific objectives.

V.Good.

(Please give your assessment of how effectively the officer has discharged his duties and responsibilities)

5.2 Inter-personal Relationship:- **V.Good**

5.3 Communication Skills (oral and written)

V.Good

6. Attitude of the officer towards SC/ST and other weaker sections.

V. Good

7. Integrity (Please see instructions attached)

Beyond doubt

8. Overall Grading:

✓

(**Outstanding/Very Good/Good/Average/Below Average**) (It should be based on the foregoing entries. An officer should not be graded outstanding, unless exceptional qualities and performance have been noticed, grounds for giving such a grading should be clearly brought out).

Sd/-

Place: _____

Date: _____

Signature of the Officer

Name: Debapriya Bandhar,

Designation:M.

Commissioner, AMC

(Ex-Commissioner of Taxes)”

(2) **For the year 2017-18.**

“REMARKS BY THE REPORTING AUTHORITY

(Please read the instruction carefully before filling the form)

1. Length of service under the Reporting Authority during the period of report.

2017-18

2. Specify whether the Reporting Authority has submitted his/her report within the prescribed period, if not reasons therefore.

As reported

3. State of health of the officer.

Good

4. *Comments of self-assessment: (Please give details/aspects of performance with which you disagree or would like to elaborate)*

Agree

5. *Performance Assessment.*

5.1 *Achievements against main duties, specific objectives.*

Has discharged his duties efficiently

(Please give your assessment of how effectively the officer has discharged his duties and responsibilities)

5.2 *Inter-personal Relationship:-*

Cordial

5.3 *Communication Skills (oral and written)*

Good

6. *Attitude of the officer towards SC/ST and other weaker sections.*

Cooperative

7. *Integrity (Please see instructions attached)*

Integrity Beyond doubt

8. *Overall Grading:*

(Outstanding/Very Good/Good/Average/Below Average) *(It should be based on the foregoing entries. An officer should not be graded outstanding, unless exceptional qualities and performance have been noticed, grounds for giving such a grading should be clearly brought out).*

Good

Sd/-

Signature of the Officer

Place: _____

Name: Dr. B. Kaur,

Date: _____

Designation: Ex- CT & E"

(3) For the year 2018-19.

"REMARKS BY THE REPORTING AUTHORITY

(Please read the instruction carefully before filling the form)

1. *Length of service under the Reporting Authority during the period of report.*

1 Yr.

2. *Specify whether the Reporting Authority has submitted his/her report within the prescribed period, if not reasons therefore.*

Yes

3. *State of health of the officer.*

Good

4. *Comments of self-assessment: (Please give details/aspects of performance with which you disagree or would like to elaborate)*

Agree

5. *Performance Assessment.*

5.1 *Achievements against main duties, specific objectives.*

Achieved

(Please give your assessment of how effectively the officer has discharged his duties and responsibilities)

5.2 Inter-personal Relationship:-

Ok

5.3 Communication Skills (oral and written)

Ok

6. Attitude of the officer towards SC/ST and other weaker sections.

Empathetic

7. Integrity (Please see instructions attached)

Beyond doubt

8. Overall Grading:

(**Outstanding/Very Good/Good/Average/Below Average**) (It should be based on the foregoing entries. An officer should not be graded outstanding, unless exceptional qualities and performance have been noticed, grounds for giving such a grading should be clearly brought out).

Average

Sd/-

Signature of the Officer

Name: Nagesh Kumar B.

Designation: IAS,

Commissioner of Taxes &

Excise

Government of Tripura

Place: _____

Date: _____

(4) **For the year 2019-20.**

“REMARKS BY THE REPORTING AUTHORITY

(Please read the instruction carefully before filling the form)

1. Length of service under the Reporting Authority during the period of report.

1 Yr

2. Specify whether the Reporting Authority has submitted his/her report within the prescribed period, if not reasons therefore.

Yes

3. State of health of the officer.

Good

4. Comments of self-assessment: (Please give details/aspects of performance with which you disagree or would like to elaborate)

Agree

Ok

5. Performance Assessment.

5.1 Achievements against main duties, specific objectives.

Achieved

(Please give your assessment of how effectively the officer has discharged his duties and responsibilities)

5.2 Inter-personal Relationship:-

Ok

5.3 Communication Skills (oral and written)

Ok

6. Attitude of the officer towards SC/ST and other weaker sections.

Compassionate

7. Integrity (Please see instructions attached)

Beyond doubt

8. Overall Grading:

(Outstanding/Very Good/Good/Average/Below Average) (It should be based on the foregoing entries. An officer should not be graded outstanding, unless exceptional qualities and performance have been noticed, grounds for giving such a grading should be clearly brought out).

Good

Sd/-

Place: _____

Date: _____

Signature of the Officer

Name: Nagesh Kumar B.

Designation: IAS,

Commissioner of Taxes & Excise
Government of Tripura”

(5) **For the year 2020-21.**

“REMARKS BY THE REPORTING AUTHORITY

(Please read the instruction carefully before filling the form)

1. Length of service under the Reporting Authority during the period of report.

1 Yr (2020-21)

2. Specify whether the Reporting Authority has submitted his/her report within the prescribed period, if not reasons therefore.

Yes

3. State of health of the officer.

Good

4. Comments of self-assessment: (Please give details/aspects of performance with which you disagree or would like to elaborate)

Agree but could have improved

5. Performance Assessment. **Good**

5.1 Achievements against main duties, specific objectives. **Good**

(Please give your assessment of how effectively the officer has discharged his duties and responsibilities)

5.2 Inter-personal Relationship:-

Good

5.3 Communication Skills (oral and written)

Good

6. Attitude of the officer towards SC/ST and other weaker sections.

Cooperative

7. Integrity (Please see instructions attached)

Beyond doubt

8. Overall Grading:

✓

(Outstanding/Very Good/Good/Average/Below Average) (It should be based on the foregoing entries. An officer should not be graded outstanding, unless exceptional qualities and performance have been noticed, grounds for giving such a grading should be clearly brought out).

Very Good

Sd/-

Signature of the Officer

Name: Dr. Vishal Kumar,

Designation: IAS,

Commissioner of Taxes & Excise
Government of Tripura”

Place: _____

Date: _____

14. Analysis and Conclusion.

14.1 If I analyse the remarks made in the ACRs for the period 2016-17, I find that self-assessment comments made by the officer was considered by the Reporting Officer and the final remark *qua* the “Overall Grading” was ‘*Very Good*’. In Comments of self-assessment, it is remarked ‘*V. Good effort has been made by him to increase taxes as mentioned*’. Then, against column no.-5.1 which relates to the Achievements, it was remarked ‘*V. Good*’; then against the column no.-5.2 relating to inter-personal relationship, remark was ‘*V. Good*’; then again against column no.-5.3, i.e., ‘*Communication Skills (oral and written) and attitude of the officer towards SC/ST and other weaker sections*’, it was remarked as ‘*V. Good*’. As regards his integrity, the petitioner was remarked as ‘*Beyond doubt*’. Based on the aforesaid remarks, the overall grading was made as ‘*Very Good*’.

14.2 Coming to the assessment period 2017-18, it is found that the Reporting Officer has agreed to the comments as regards self-assessment made by the petitioner himself. I have perused the petitioner's own summary appraisal of his performance where he has given all details of his achievements during this period. It appears that he has further increased tax collections. He has also indicated five items on priority wise to which the Reporting Officer was unable to disagree. The Reporting Officer has accepted the summary appraisal relating to the performance of the petitioner against the column no.-5.1 related to achievements. It was remarked as '*has discharged his duties efficiently*'. The inter-personal relationship was remarked as '*Cordial*', the communication skill according to the Reporting Officer was '*Good*' and the attitude was found to be '*cooperative*' and against 'Integrity' column no.-7, it is remarked that '*Integrity beyond doubt*'. But ultimately, the Reporting Officer graded as '*Good*'.

On careful perusal and application of mind, I find that the ultimate grading '*Good*' is inconsistent to the remarks made by the Reporting Officer under different columns of the relevant sheet meant for passing remarks by the respondents.

14.3 Next, coming to the assessment period 2018-19, I find that the Reporting Officer has *agreed* to the '*comments of self-assessment*' made by the petitioner himself. I have also scrutinized the '*Officer's own summary appraisal of his performance*' prepared by the petitioner and found that the petitioner had worked efficiently beyond the targets standards, and it comes to fore during the relevant period that he had further surged in tax collections. The competent authority accepted that the petitioner had

achieved specific objectives in respect of his main duties as it was reflected in column no.-5.1 relating to achievements. It was remarked as '*Achieved*'. The inter-personal relationship was remarked as '*ok*', the communication skill, according to the Reporting Officer, was also marked as '*ok*' and the attitude of the petitioner was found to be '*Empathetic*' and against '*Integrity*' at column no.-7, it was remarked '*Beyond doubt*'. But ultimately, '*Average*' grading was given to him.

On careful examination, I find that the ultimate grading '*Average*' has no consistency with the remarks made by the Reporting Officer under different columns of the relevant assessment sheet meant for writing ACR.

14.4 Coming up to assessment period 2019-20, I find that the Reporting Officer had no difference of opinion with the '*comments of self-assessment*' made by the petitioner himself, which shows that the petitioner had increased GST collection from 114.94 crores in 2018-19 to Rs.130.90 crores in 2019-2020 and also raised in Profession Tax collections. The competent authority '*accepted*' the same against column no.-5.1 of the ACR form related to achievements and remarked it as '*Achieved*'. The inter-personal relationship was remarked as '*ok*'; the communication skill as per Reporting Officer was remarked as '*ok*' and the attitude of the petitioner was found to be '*Compassionate*' and against '*Integrity*' column no.-7, it is remarked as '*Beyond doubt*'. But ultimately, '*Good*' grading was given to him

After reviewing the comments of the Reporting Authority, I find that the final grading '*Good*' has no parity with the remarks made by

the Reporting Officer himself under different columns of the relevant sheet meant for writing ACR.

14.5 Finally, I have analysed the remarks made in the ACRs for the period 2020-21, and I find that the Reporting Authority remarked '*Agree but could have improved*' as reflected in column no.-4, which relates to '*Comments of self-assessment*'. In Performance Assessment column, it is remarked as '*Good*'. Then, against column no.-5.2 relating to inter-personal relationship, remark was '*Good*'; then, against column no.-5.3, relating to Communication Skills and in column no.-6, i.e. Attitude of the officer towards SC/ST and other weaker sections, it was remarked as '*Co-operative*'. In respect to his integrity, the petitioner was remarked as '*Beyond doubt*'. Based on the aforesaid remarks, the overall grading was made as '*Very Good*'.

15. In the unique backdrop of the aforesaid facts, in my opinion, when grading below the benchmark affects the future prospect of an officer/employee, in that case, the officer who writes the ACRs must be conscious and assign sufficient reasons for grading him below the benchmark. It is well entrenched principle that reasons are the soul of all administrative actions. On scrupulous perusal and consideration of assessments downgrading the ACRs for the relevant assessment years, it can unmistakably be said that the ultimate overall remarks as '*Average*' and '*Good*' are evidently found to be inconsistent to the remarks made by the Reporting Officer under various columns at Part-II of the assessment sheets. Since I have already mentioned that the ultimate grading of '*Good*' for the assessment years 2017-18 and 2019-2020 and '*Average*' for the assessment

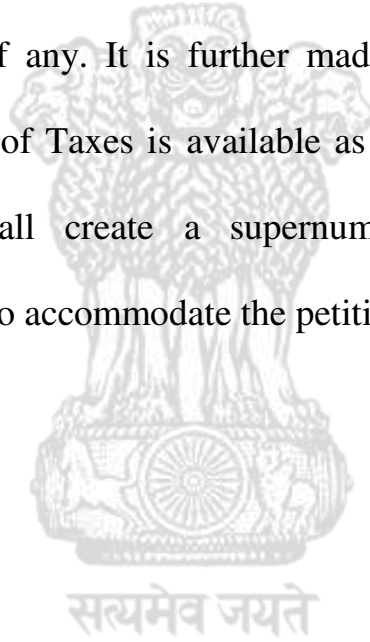
year 2018-19 are inconsistent to the overall remarks made under different columns, in my opinion, the grading of two 'Good' and 'Average' should be interfered with and accordingly, interfered with since no valid reasons are visible in the process of downgrading the ACRs relating to the petitioner. Even, the way the representation of the petitioner is disposed of clearly suggests that it suffers from non-application of mind. Accordingly, the downgraded ACRs for the periods 2017-18, 2018-19 and 2019-20 stand set aside and quashed. That apart, since I have already observed that the gradings in the ACRs of the aforesaid periods were only communicated to the petitioner vide communication dated 02.02.2022(*Annexure-7* to the writ petition), that is, much beyond the reasonable period, those gradings should not be taken into consideration for promotion of the petitioner to the post of Assistant Commissioner of Taxes from the post of Superintendent of Taxes.

16. In my ultimate analysis, the petitioner is entitled to be considered for promotion to the post of Assistant Commissioner of Taxes w.e.f the date the respondent no.8 being his junior was promoted to the said superior post. Accordingly, I direct the official respondents to call for a review meeting of the DPC to re-assess the suitability of the petitioner for the purpose of consideration of his promotion to the post of Assistant Commissioner of Taxes in line of the discussion and observations thereof made by this Court in the judgment. Needless to say, the promotion of the petitioner to the post of Assistant Commissioner of Taxes would entitle him to get all service and other consequential benefits including the next promotion to the higher/superior post. His salary and allowances would be re-fixed notionally from the date his junior (respondent no.8) was promoted.

There shall be no arrears. The entire process shall be completed within 6(six) weeks from the date, official respondents, particularly, the respondents no.2, 6 and 7 shall receive a copy of this judgment and order.

17. In terms of the above observation and directions, the instant writ petition stands allowed.

18. It is made clear that promotion of petitioner to the post of Assistant Commissioner of Taxes in no way will affect the promotion of respondent nos.8 and 9 to the post of Assistant Commissioner of Taxes and subsequent promotion, if any. It is further made clear that if no post of Assistant Commissioner of Taxes is available as of today, in that case, the official respondents shall create a supernumerary post of Assistant Commissioner of Taxes to accommodate the petitioner to the said post.



JUDGE