

**Neutral Citation No.-2024:AHC-LKO:23066-DB****Reserved**

**Case :-** WRIT-A No.1036 of 2024

**Petitioner :-** Union of India Thru. Secy. Ministry of Defence,  
New Delhi and others

**Respondent :-** Sanjay Kumar

**Counsel for Petitioner :-** Deepanshu Dass

**Counsel for Respondent :-** Shireesh Kumar

**Hon'ble Attau Rahman Masoodi, J.**

**Hon'ble Brij Raj Singh, J.**

***( Per: Attau Rahman Masoodi, J.)***

1. This writ petition under Article 226 of the Constitution of India has been filed seeking quashing of the judgement and order dated 10.08.2023 passed by the Central Administrative Tribunal, Lucknow Bench, Lucknow (for short "the Tribunal") in Original Application No.332/00333/2020, Sanjay Kumar Vs. Union of India, whereby the order dated 29.09.2020 rejecting the representation of the opposite party, has been quashed and adverse remarks given in the Annual Performance Assessment Report (APAR) of opposite party for the year 2018-19 have been expunged with all consequential service benefits.

2. The facts giving rise to the present writ petition are that opposite party, who is an Officer of 2005 batch of Indian Defence Accounts Service (for short "IDAS"), joined the services on 02.01.2006 as IDAS (Probationer). During the year 2018-19, opposite party was serving in the office of the Accounts Officer, Ordinance Factory, Kanpur in the

grade of Junior Administrative Grade (Selection Grade) of IDAS, for which the Annual Performance Assessment Report in question was recorded. The object of recording Annual Performance Assessment Report of an officer by his superior officer, is to guide the officer concerned about his performance and shortcomings while discharging his duties. Generally, the Annual Performance Assessment Report of an officer/employee is to be recorded every year in his/her character roll to know how he/she has performed the duties assigned to him/her, so that he/she can improve his/her working capability for achieving the requisite efficiency and to remove the shortcomings, if any. The numerical grading of Annual Performance Assessment Report of opposite party for the year 2018-19 was assessed by the Reporting Officer as 4.02; by the first reviewing officer as 3.15; by the second review as 3.15 and the accepting authority as 3.15, and in terms of the Department of Personnel and Training Office Memorandum dated 14.05.2009, the Annual Performance Assessment Report, including overall grade, assessment and integrity, was communicated to the opposite party vide Controller General of Defence Accounts letter dated 31.01.2020.

3. Feeling dissatisfied with the remarks given in the Annual Performance Assessment Report and downgrading the numerical grading, opposite party submitted representations, the last of which was dated 3.6.2020 to the Controller General of Defence Accounts for expunction of the remarks given in the Annual Performance Assessment Report and for up-gradation of the numerical grading, upon

which comments of the officers concerned were called for. After considering the comments of the officers concerned, the Controller General of Defence Accounts was of the view that there was no reason to disagree with the assessment made by the four officers as the Performance Assessment Report and the numerical grading was given on their direct supervision of the opposite party. Accordingly, the representation of the opposite party dated 3.6.2020 was rejected and the same was communicated to him vide order dated 29.09.2020.

4. Aggrieved by the aforesaid order, opposite party filed the Original Application before the Tribunal. During the pendency of the proceedings before the Tribunal, the opposite party also resorted to the criminal proceedings by filing complaint before the police authorities and an application under Section 156(3) Cr.P.C. before the Special Judge SC/ST Act, Kanpur Nagar by making bald allegations against the authorities concerned. Vide order dated 15.7.2021, the application under Section 156(3) Cr.P.C. preferred by the opposite party was disposed of by the competent court. The Tribunal after considering the entire facts and circumstances of the case and the pleadings of the parties, has allowed the Original Application filed by the opposite party vide impugned judgement/order. Hence, the present writ petition.

5. Sri S.B. Pandey, learned Senior Advocate and the Deputy Solicitor General of India, assisted by Sri Deepanshu Dass for the petitioners has submitted that Annual

Performance Assessment Report, over all performance and the numerical grading of the opposite party were made based on performance of opposite party as is evident from at Serial Nos.3 and 4 Part-II of the Annual Performance Assessment Report and the target achievement shown against 'No outstanding assets and liabilities' assigned by the Reporting Authority, reviewing officers and the assessment officer, who were part of assessing the overall performance of the opposite party for recording Annual Performance Assessment Report.

6. The second submission advanced by the learned counsel for the petitioners is that the Annual Performance Assessment Report of an officer/employee is to be recorded on the basis of the work, conduct, and overall performance and not only on the basis of overall performance. The work and conduct of the opposite party was not excellent, as alleged by him, and in the past, he has been issued several warnings and advisories against his work and conduct, which is evident from his service record.

7. The third submission of learned counsel for the petitioners is that the opposite party himself has not submitted his representation against the remarks given in the Annual Performance Assessment Report within the prescribed time limit, and the time frame fixed for preparation/completion of Annual Performance Assessment Report in the Office Memorandums issued from to time, is only a guideline and not mandatory. The numerical grading of the opposite party has been assessed considering his

work, conduct, targets achieved and the overall performance of the work assigned to him.

8. The fourth submission of learned counsel for the petitioners is that it is wrong to say that before recording the Annual Performance Assessment Report for the year 2018-19, the opposite party was not communicated any adverse communication and advisories as he was issued several warnings and advisories against his work and conduct in the past as is evident from the record. Further, opposite party had miserably failed to perform his duties properly and to this effect, the reporting authority had given remarks at Serial Nos.3 and 4 Part-II of the Annual Performance Assessment Report, which were duly approved by the three authorities. He has further submitted that in similar case, a Division Bench of the Delhi High Court in ***Writ Petition (C) No.725 of 2020, Krishan Kumar Agarwal vs. Director (Hr) Bharat Sanchar Nigam Limited and others***, decided on 6.4.2021 after considering the entire material placed before it, has dismissed the petition filed by the officer/employee for expunction of remarks given in the Annual Performance Assessment Report.

9. Lastly, it is submitted by the learned counsel for the petitioners that the Tribunal while passing the judgement/order impugned, has ignored all the material facts available on record, the guidelines issued in the Office Memorandums for recording Annual Performance Assessment Report, numerical grading of an officer/employee and has erroneously assessed and judged the performance of the

opposite party itself as if it is an assessing authority instead of remanding the matter to the concerned authority for consideration afresh, as the concerned authority is the best person to assess the overall performance of an officer/employee working under him. Further submission is that ordinarily, the Courts should be slow in interfering with the remarks given in the Annual Performance Assessment Report unless and until it is so warranted or it shows any *mala fide* intention of the authority concerned. Therefore, approach of the Tribunal expunging the remarks given in the Annual Performance Assessment Report; quashing the order dated 29.09.2020 and directing to grant all consequential benefits to the opposite party ignoring the material facts available on record, cannot be sustained in the eyes of law and the impugned judgement/order passed by the Tribunal is liable to be quashed.

10. In rebuttal, learned counsel for the opposite party has submitted that the procedure prescribed in the Office Memorandums issued from time to time for recording the remarks in the Annual Performance Assessment Report and for assessing the numerical grading of the opposite party was not followed by the competent authority while recording the remarks in the Annual Performance Assessment Report of the opposite party.

11. The second argument of the learned counsel for the opposite party is that the time limit prescribed for recording the remarks in the Annual Performance Assessment Report was not followed as the same were recorded beyond the

prescribed time period in order to malign the image and service record of the opposite party.

12. The third argument of learned counsel for the opposite party is that the order dated 29.09.2020 itself reflects that none of the submissions made by the opposite party in his representation were taken into consideration by the competent authority while taking the decision on the representation of the opposite party and by a non-speaking and unreasoned order, the representation of the opposite party has been decided merely by reiterating the comments furnished by the authorities, who had recorded the adverse remarks in the Annual Performance Assessment Report of the opposite party though the entire service record of the opposite party has been unblemished except for the year 2018-19. More over, there is no objective assessment of the work, conduct and performance of the opposite party for the year 2018-19. That apart, the object of awarding the remarks in the Annual Performance Assessment Report, should be reformative and not punitive. The senior officers never advised nor admonished the opposite party for improvement in his work, conduct and performance.

13. The last argument advanced by the learned counsel for the opposite party is that while downgrading the marks awarded by the reporting officer, both the reviewing authorities and the accepting authority have not recorded any valid reasons. Apart from it, in different columns, different marks have been awarded, but there is no objective assessment in the matter while granting the marks.

No specific or valid reason has been given by both the reviewing authorities while downgrading the marks, which is against the law propounded by the Supreme Court in the case of ***State of U.P. vs. Yamuna Shanker Misra and another***, (1997) 4 SCC 7. It is the bounden duty of both the reviewing/accepting authorities to record ample reasons while downgrading the marks awarded by the reporting authority. Therefore, the Tribunal has rightly quashed the order dated 29.9.2020 rejecting the representation of the opposite party abruptly, and expunged the remarks given in the Annual Performance Assessment Report, which are non-est in the eyes of law.

14. After hearing the learned counsel for the parties and going through the judgement/order impugned as well as the record, it is evident that the Tribunal while quashing the order dated 29.9.2020, whereby the representation of the opposite party was rejected, failed to go into each and every aspect of the matter minutely and the material in the light of which, the higher authorities had recorded the grading. Further, recording of the remarks in the Annual Performance Assessment Report of an officer/employee is exclusively within the domain of the authorities concerned as the same are to be recorded by considering the work assigned, conduct, and overall performance of an officer/employee, who is under their direct control. Ordinarily, the Courts should be slow in interfering with the remarks recorded in the Annual Performance Assessment Report of an officer/employee unless there is a glaring mistake and it shows *mala fide* intention on the part of the

authority concerned. From perusal of the Annual Performance Assessment Report of the opposite party for the year 2018-19, it transpires that while recording the remarks in the respective columns, the reporting authority has meticulously examined the work assigned, targets achieved by the opposite party, his conduct, shortcomings and overall performance. The said remarks have also been considered minutely and approved by the reviewing authorities and the accepting authority. Therefore, it cannot be said that the authorities concerned did not adhere the procedure prescribed in the Office Memorandums issued from time to time for recording the remarks in the Annual Performance Assessment Report.

15. So far as completion of recording the remarks in the Annual Performance Assessment Report of the opposite party within the time limit as per the norms prescribed in the Office Memorandum is concerned, the authorities have made all sincere efforts to complete the process of recording the remarks in the Annual Performance Assessment Report, but on account of some compelling circumstances, if the remarks could not be recorded in the Annual Performance Assessment Report within the time limit, the same cannot be said to be a ground to annul the whole process. The remarks recorded in the Annual Performance Assessment Report by the authorities concerned sufficiently reflects that there was an overall assessment of work, conduct and overall performance of the officer during the year in question and the same could not be set at naught on some technicalities and that too when the time limit is curable.

The record reveals that the opposite party himself submitted his representation beyond the time prescribed, rather he has filed the representation on 3.6.2020 i.e. almost five months after communication of the Annual Performance Assessment Report. More over, learned counsel for the opposite party has also not been able to show any valid reason for late submission of the representation against the remarks and for downgrading of marks by the respective authorities.

16. As regards the downgrading of marks is concerned, the record reveals that in paragraphs 2, 3 4 and 5 of Part-III of the Appraisal Report, the reporting officer has discussed all the relevant considerations with regard to work, targets achieved and conduct. The overall assessment was based on the reasoning that opposite party miserably failed to perform his duties with responsibility which he owed to the employer and mindfulness expected of a Government servant as per the service jurisprudence. That apart, it is apparent from the Annual Performance Assessment Report that warnings and advisories were issued to the opposite party by his senior officers regarding his slackness in work, conduct and performance, however, he did not mend his ways and continued to perform duties irresponsibly and in a manner unbecoming of a government employee. The reporting officer, however, taking a lenient view, has awarded more marks as compared to his work and conduct. The reviewing officers though agreed with the detailed comments/remarks given by the reporting officer, but dissented with the numerical assessment made by him and

by recording reasons in detail, the reviewing/accepting officers have downgraded the marks awarded by the reporting officer. The accepting authority has rather shown agreement with the remarks and downgrading of the marks by the reviewing officer.

17. In view of the above, it cannot be said that before awarding and further downgrading the marks in the Annual Performance Assessment Report, the opposite party has not been given any warning or advisory in regard to his work, conduct and performance of duties. Therefore, the finding of the Tribunal that no reason was assigned and no objective assessment was made by the reviewing officers and the accepting officer while downgrading the marks of opposite party, cannot be sustained and is accordingly quashed to that extent, and we hold that the marks awarded by the reviewing officers and the accepting authority should remain intact. The reasoning recorded by the learned Tribunal is not fully supported by the case law relied upon and the findings recorded are faulty. In these circumstances, interference under Article 226 of the Constitution of India is called for.

17. The writ petition is accordingly ***allowed*** and the impugned judgement and order dated 10.08.2023 passed by the Tribunal is hereby set aside. Consequences to follow.

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**(Brij Raj Singh, J.) (Attau Rahman Masoodi, J.)**

**Order Date :- 15<sup>th</sup> March, 2024**  
Rao/-