



2025:DHC:8056-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3158/2023 & CM APPL. 20403/2025**

COL PRADEEP GOSWAMI Petitioner

Through: Mr. S. S. Pandey and Mr.
Roshan Kumar, Advs.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Satya Ranjan Swain, SPC
with Mr. Kautilya Birat, Mr. Ankush Kapoor
and Mr. Vishwadeep Chandrakar, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **10.09.2025**

C. HARI SHANKAR, J.

1. The petitioner is before us under Article 226 of the Constitution of India, assailing the order dated 24 January 2023 passed by the Armed Forces Tribunal¹ in OA 1068/2020.

2. We have heard Mr. S.S. Pandey, learned Counsel for the petitioner and Mr. Swain, learned SPC for the respondents.

3. Mr. Pandey submits that his challenge is only to the entries in

¹ "AFT", hereinafter



2025:DHC:8056-DB



the petitioner's Annual Confidential Reports² for the period January 2007 to November 2007 and January 2009 to May 2009.

4. We may reproduce, here, the findings of the AFT with respect to the challenge led by the petitioner, thus:

“Consideration of the Case

8. Having heard counsel on both sides at length, the only issue that remains to be adjudicated is, whether the two impugned CRs merit any further interference. We have also gone through the CR dossier submitted by the respondents and the files pertaining to the examination of the various applicants.

Non Empanelment and No.3 SB 2014

9. From the SB proceedings submitted by the respondents, it is seen that the applicant's overall merit at 90.212 was below the overall merit of the last approved officer which was 90.631. In the No.3 SB held in December 2014, the overall merit of the applicant was 90.217 as compared to the merit of the last approved officer, which was 90.631. However, consequent to the release of the additional vacancies for the combat support arms based on the orders of the Apex Court in the No. 3 SB held in 2016, the applicant was empanelled with his merit at 90.212 as against a new benchmark of 90.108.

Nomination for HC/HDMC Course

10. The applicant was considered for nomination to the high commander HDMC Course in 2019 and 2020. In 2019, the applicant had an overall merit of 94.420 as against the merit of the last officer nominated, whose merit was 95.415. In his consideration for nomination for the HC course in 2020, the merit of the applicant was 94.474 while the merit of the last officer to be nominated was 95.035. Thus, it is evident that the applicant was not nominated for the HC/ HDMC Course based on the overall comparative merit amongst the officers who were under consideration each time.

Complaints

² “ACRs”, hereinafter



2025:DHC:8056-DB



11. As part of the non-statutory complaint dated 02.07.2014, eight CRs that form part of the reckonable profile were examined, and based on the overall profile, six figurative grading of the RO in the CR from Jan 2007 to Nov 2007 were expunged on the ground of inconsistency with the overall profile. It is seen from the record that no other CR in the reckonable period merits any further interference. In the statutory complaint dated 02.02.2015, since the prayer was to expunge the CR, from Jan 2007 to Nov 2007 the issue was examined once again and the competent authority did not find any merit in the grounds canvassed for such action. Accordingly, since all CRs were well-corroborated, performance-based, and technically valid, the competent authority rejected the statutory complaint finding no merit in it. Having examined the CR dossier, we are of the opinion that none of the CRs in the reckonable period merit any further interference.

12. In light of the above consideration, the OA is dismissed being bereft of any merit.”

5. Mr. Pandey submits that, on his non-statutory complaint, the respondents themselves expunged certain entries which were below the prescribed benchmark for promotion but have left certain other entries intact. His grievance is that, owing to the inaction on the part of the respondents in expunging the other entries, the petitioner does not meet the benchmark to undertake the higher command course which would entitle him to promotion to higher grades.

6. To satisfy ourselves, we called for the relevant ACRs which have been produced before us.

7. As the ACRs pertained to the Army, we are necessarily constrained in specifically referring to their particulars. Suffice it, however, to state that the IO, RO and SRO, for both the periods forming subject matter of dispute have given the same overall grading



2025:DHC:8056-DB



to the petitioner and that the overall grading given to the petitioner is not discordant with the remarks entered by the IO, RO and SRO (in this context, we may note that a grading of 9, which is what the petitioner desires generally represents ‘outstanding performance’).

8. If the overall grading of the petitioner has fallen below that required for his undertaking the higher command course, that is only because of the cumulative grading after taking all the individual gradings into consideration, though the respondents submit that this is not in the nature of a mathematical average.

9. Learned Counsel for the respondents has drawn our attention to a judgment in **Brig Rohit Mehta v UOI**³, in which a Coordinate Division Bench of this Court has clearly stated that in the Armed Forces, the individual gradings to be assigned to an officer for specific attributes is essentially a matter within the subjective discretion of the IO, RO and SRO and that, in the absence of any *mala fides* or other clear arbitrariness, the Court would not interfere.

10. It is stated that the SLP preferred against this decision, has also been dismissed by the Supreme Court.

11. When we see the individual gradings granted to the petitioner against the individual attributes by the IO and RO, even though, in the case of certain attributes, the RO has given a slightly lower grading than the IO, we do not find any material to indicate that the grading is

³ 2024 SCC OnLine Del 1761



2025:DHC:8056-DB



vitiated by *mala fides* or otherwise arbitrary. The overall grading given by the IO, RO and SRO, as we have noted, is consistent and is also in line with the pen picture that they have entered.

12. Mr. Pandey has placed reliance on the judgment of the Supreme Court in ***Brig Sandeep Chaudhary v UOI***⁴. We reproduce paras 11 to 15 of the said decision, thus:

“11. We have given careful consideration to the submissions. Part I of the ACR in accordance with AO No.02/2016/MS consists of personal data, service record and authentication of data. Part II consists of personal and demonstrated performance, which consists of personal qualities and demonstrated performance variables. The personal qualities and demonstrated performance qualities include administrative acumen, motivation, development of subordinates, emotional stability, understanding viewpoints, foresight and understanding, loyalty and respect, judicious delegation, boldness, physical fitness and fluency in expression. The assessment is to be made by the IO and RO. The rating is given on a scale of nine to one. Then, there are pen pictures by the IO, RO and SRO. The pen pictures by RO and the SRO are not to be shown to the officer. Part III consists of the potential for promotion, which is to be shown to the officer reported upon. The Qualities to Assess Potential are termed as QsAP. There are five QsAPs. They are professional competence, vision and conceptual ability, selflessness and setting of personal example, integrity and moral courage and tolerance for ambiguity. The assessment is to be made by the IO, RO and SRO. The last portion of Part III is Box grading given by the IO, RO and SRO. This part is not to be shown to the officer.

12. As stated earlier, numerical values from 9 to 1 are used for assessment. The numerical value of 9 is stated as ‘outstanding’, and the numerical value of 7 or 8 is treated as ‘above average’.

13. Now, we turn to the finding recorded by the Tribunal. From paragraph 33 onwards, scrutiny of ACRs was made by the Tribunal. Paragraphs 34 to 36 of the first impugned order deal with the ACR of the appellant from 07/18 to 06/19. Paragraphs 34 to 36 of the first impugned order read thus:

⁴ 2025 SCC OnLine SC 1109



2025:DHC:8056-DB



“34. We have further examined the subsequent ACR of the applicant covering the period from 01.07.2018 to 30.06.2019, wherein the IO and the SRO remain the same whereas there has been a change of RO with effect from 01.01.2019. Compared to the previous report by the same IO, this report under examination almost has a similar pattern while grading the ratee in individual boxes in PQs (Personal Qualities) & DPVs (Demonstrated Performance Variables) which is shown to the ratee. The assessment of QsAP (Qualities to Assess Potential) is indicative of the potential of the ratee for his suitability in higher ranks in future, if promoted. The relatively lower ratings in QsAP by IO as well as the box grading which has been further endorsed by the RO has not been adequately justified by Respondents except for the reason of inaccurate initiation of Strength Return (IAFF 3008) of the officers of No 3 ABW and non-communication of adverse remarks in the ACR to a ratee officer under the applicant.

35. Curiously, it is important to note that the Respondent No.4 as IO has maintained some figurative assessment in the portion of the ACR which is to be shown to the ratee, i.e., applicant and signed as seen. Whereas it is only in the part of the ACR which is not to be seen by the ratee, the IO has awarded relatively low gradings. Confidential reports are meant to be the appraisal of performance of the ratees. By maintaining similar figurative gradings on the disclosed part of the ACR, the reporting officers have intended to indicate the ratee that there is no downward trend in his performance during the period of report whereas in the portion of the ACR that is not disclosed to the applicant the report has distinctively indicated the intent to affect lower figurative ratings intentionally masked from the knowledge of the applicant.

36. We further note that the SRO who remains common for both the reports has endorsed the report of IO & RO as justified and yet he has maintained same box gradings in both his reports under analysis. Therefore, the QsAPs and the Box gradings of the CR 07/2018 to 06/2019 by RO warrant interference and are required to be expunged.”

14. We had perused the ACRs of the appellant. The reasons recorded while dealing with the ACR of 07/18 to 06/19 can be summarised as under:



2025:DHC:8056-DB



- i. The assessment of QsAP is indicative of the potential of the ratee (appellant) for his suitability in higher ranks in future, if promoted;
- ii. Relatively lower ratings in QsAP by the IO and relatively lower ratings in Box grading by the IO endorsed by the RO have not been adequately justified by the respondents;
- iii. The fourth respondent, in his capacity as IO, has maintained the same figurative assessment in the portion of ACR to be shown to the ratee (appellant). However, it is only in the part of the ACR which is not to be seen by the ratee (appellant), the IO has awarded relatively low gradings;
- iv. SRO was the same for both the ratings who has endorsed the report of the IO and the RO as justified, but had maintained the same Box gradings; and
- v. Therefore, the Tribunal ordered expunction of figurative ratings by the IO and the RO in QsAPs and Box gradings in the second ACR (07/2018 to 06/2019).

15. The challenge before the Tribunal was to both the ACRs. We may note here that IO and SRO for both the ACRs are the same. IO is the fourth respondent. However, RO for the two ACRs was different. The Tribunal has found fault with the approach of the IO in awarding relatively low gradings in that part of the ACR which is not visible to the ratee (appellant). In fact, there is a finding of fact recorded in paragraph 35 of the first impugned order, which we have quoted above. The intent of the fourth respondent is also noted. The finding is that there was an intent to affect lower figurative ratings to the appellant which is masked from the knowledge of the appellant. After having perused the ACRs, we are of the view that the same reasoning is applicable to the ACR of the period from 12/17 to 06/18. Unfortunately, the Tribunal has considered the case of the first ACR only in the context of the performance counselling letter dated 9th February 2018. We may note here that the respondents have not challenged the finding recorded in paragraphs 35 and 36 of the first impugned order. We are, therefore, of the view that the first ACR cannot be treated differently from the second ACR.”

13. Clearly, the decision in **Brig Sandeep Chaudhary** turned in its own facts, in which there is a specific finding of deliberate lowering of



2025:DHC:8056-DB



the gradings by the IO, entered by the AFT.

14. In the present case, we find no basis to return any such finding.

15. In fact, the grievance of the petitioner does not appear to be so much against the gradings in his ACRs as the fact that, owing to relief having been granted on his non-statutory complaint only with respect to certain particular attributes, he has not achieved the overall grading as would enable him to secure promotion to the next grade.

16. We regret the fact that we cannot extend our jurisdiction beyond the legitimate peripheries of Article 226 of the Constitution of India. Moreover, we are not exercising original jurisdiction. Our jurisdiction is in the nature of *certiorari*. Within the parameters of Article 226 of the Constitution of India, we are not convinced, on a perusal of the ACRs of the petitioner, to arrive at any conclusion different from that at which the AFT has arrived.

17. We, therefore, regret our inability to come to aid of the petitioner. The writ petition is accordingly dismissed.

C. HARI SHANKAR, J

OM PRAKASH SHUKLA, J

SEPTEMBER 10, 2025/AR/GUNN