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

+ **WP (C) No.5299/2011**

Date of Decision: 24th August, 2017

GOVT. OF N.C.T DELHI THROUGH COMMISSIONER OF
POLICE, DELHI Petitioner

Through: Mr. Santosh Kumar Tripathi,
ASC with Mr. Rizwan, Adv.

versus

RAM SINGH

..... Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition impugns the order dated 24.12.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1628/2008, whereby the Tribunal has allowed the Original Application filed by the Respondent herein, with a direction to the Petitioners to promote him to the post of Head Constable with all consequential benefits with reference to promotion 'A' List Test 2007.
2. Notice was issued in the present petition vide order dated 28.07.2011, whereafter Mr. Sachin Chauhan, Advocate had appeared

on behalf of the Respondent on a number of dates. But it transpires from the record, that none has been appearing on behalf of the Respondent after 29.09.2015. In these circumstances, we are proceeding to hear the matter on merits.

3. The Respondent, who is an ST candidate, was appointed as a Constable(executive) in Delhi Police/ Petitioner on 01.08.1994. Vide order dated 11.05.2005, the Respondent was placed under suspension and a Departmental Enquiry was initiated against him. The Respondent's suspension was revoked on 09.08.2005 and though he was re-instated in service, but the Departmental Enquiry against him continued during this period. Based on the enquiry report-wherein he was found guilty of the charges, the Respondent was dismissed from service vide order dated 07.02.2006, passed by the Deputy Commissioner of Police. On his appeal, the Joint Commissioner of Police (Appellate Authority), vide his order dated 16.03.2006, reduced the punishment of dismissal from service to forfeiture of 5 years of approved service with cumulative effect. The period from the date of his suspension to the date of his joining duty i.e. from 11.05.2005 to 09.08.2005, was treated as 'period not spent on duty' for all intents and purposes.

4. Aggrieved by the penalty imposed upon him, the Respondent filed OA No. 1130/2006 before the Tribunal challenging the punishment of forfeiture of five years of approved service. This Original Application was allowed by the Tribunal vide its order dated 19.12.2006 and the penalty awarded to the Respondent vide orders dated 07.02.2006 and 16.03.2006, was set aside and it was further

directed that the period from the date of his dismissal to the date of his reinstatement would be treated as 'periods spent on duty'.

5. In 2007, the Respondent appeared in the 'A' List Test for promotion to the post of Head Constable, in which he was awarded 109 marks as per the Standing Order No.91/2006, which lays down the criteria, standard and guidelines for regulating promotions of Constable to the rank of Head Constable. It may be apt to reproduce here the relevant extracts of Standing Order which prescribes marks to be allocated for the service record & seniority:-

“(iv) **SERVICE RECORD & SENIORITY**

There shall be 50 marks for service record and seniority to be allocated as per details given below:-

(a) **Length of Service:**

Maximum 15 marks to be awarded as under:-

- (i) 1 marks for one year completed qualifying service.
- (ii) No marks for less than one year completed service.

(b) **Total absence of punishment:**

There shall be 15 marks allotted to candidate whose service record is free from punishment. However, for each major and minor punishment, as defined in Rules 5 & 6 of the Delhi Police (Punishment & Appeal) Rules, 1980, 5 and 2 marks respectively shall be deducted.

(c) **Commendatory entries:-**

Maximum 5 marks shall be allotted for commendatory entries as under:-

- Gallantry Award - 4 marks
- Police Medal for Meritorious Service - 2 marks
- Commendation Roll from C.P., Delhi - 1 mark
- Ashadharan Karya Purashkar - 1 mark

(d) ACRs:

Maximum 5 marks shall be allotted for Annual Remarks for the last 5 years as under:-

- Very Good/Outstanding - 1 mark
- Good - 0.5 mark
- Satisfactory - zero mark
- Adverse Report - Not eligible to appear in test.

(e) Professional Courses :

A maximum of 10 marks shall be awarded for certain professional courses undergone by a candidate as listed below:-

Name of the Course	Duration	Marks
Drill Instructor	9 months	3
Un-armed Combat	2 ½ months	1
Commando Instructor	2 ½ months	5
NSG		
Weapon & Tactics	2 ½ months	1
(Manesar/Bhanu Ambala)		
VIP Security	2 ½ months	1
(Manesar/Bhanu Ambala)		
Karate Course		
(ITBP Academy Mussoorie)	6 months	2
PT (ITBP)	3 months	3
Judo (ITBP/Bhanu Ambala)	3 months	1
BDS	40 days	2
LLB Law Graduate or higher		
(Govt. Recognized University)		2
BCA or higher		
(Govt. Recognized University)		2"

6. Placing reliance on the order of the Tribunal setting aside his penalty, the Respondent made a representation for adding five marks

in the score obtained by him, as 5 marks had been deducted on account of the major penalty awarded to him. The Respondent's representation was favourably considered and his marks were increased to 114. Although these marks were equal to the cut off marks fixed for ST candidates, but due to availability of a limited number of vacancies for ST candidates, the ST candidates who were appointed on or before 01.11.1989, and had obtained 114 marks or more, could only be considered for inclusion of their names for promotion List 'A'. The Respondent had been appointed during the year 1994 and, therefore, he did not come within the purview of consideration.

7. The Respondent, therefore, approached the Tribunal by filing the present Original Application, wherein he prayed for a direction to Petitioners to allocate him 0.5 marks for each of his last three ACRs in which he had been graded as 'Satisfactory B' and, consequently, given zero marks as per the Standing Order. His plea before the Tribunal was that his 'B' grading with general remarks of 'Satisfactory' should be treated as 'Good', and he should be granted 0.5 marks accordingly for each of the three ACRs.

8. The Tribunal, while considering as to whether a grading of 'B' with remarks of 'Satisfactory' could be treated as 'Good', went on to presume that the Respondent had been given the Grading of 'Satisfactory B' during the period he was out of service and, accordingly, held that there was no basis to grade him as 'B', during the period from 24.05.2004 to 21.07.2006. The Tribunal also called for all the ACRs of the Respondent and by analyzing each of three

ACRs opined that on basis of the Respondent's performance, the grading of 'Satisfactory' was inadequate and insufficient, and the same should have the effect of being considered as 'Good'. The Tribunal further held that either the three Satisfactory 'B' grading of the Respondent in his last three ACRs should be taken as 'Good' for which he should be given additional 1.5 marks or, in the alternate, his last three years entries should be ignored and the entries in the ACRs for the preceding three years-wherein he had received 'A' grading, should be considered and he be given '3' additional marks.

9. The Tribunal therefore held that the Respondent would stand qualified for the promotion in the List 'A' 2007 and accordingly directed the Petitioners to promote him with all consequential benefits including seniority of arrears, pay and allowance.

10. Aggrieved by the aforesaid order, the Petitioner/Govt. of N.C.T Delhi has filed the present petition. As noticed above, none has appeared for the Respondent for the last many dates. The Counsel for the Petitioner has urged that the order passed by the Tribunal is wholly perverse. He has contended that the Tribunal has, by directing the Petitioner to consider the 'Satisfactory' grading of the Respondent as 'Good'-with a consequential direction to grant him additional marks for the same, committed a manifest error as there was no material or justification for the Tribunal to come to such a conclusion that the grading of 'Satisfactory' ought to be treated as 'Good'. According to him, the Tribunal has over stepped its jurisdiction by analysing the qualities and attributes mentioned in the ACR gradings, to hold that the ACRs should be considered as 'Good'. He has further contended

that the Tribunal has, while coming to the conclusion that the grading of 'Satisfactory' 'B' was given to the Respondent when he was out of service, committed a manifest error, as it has overlooked the fact that the Respondent was under suspension from 11.05.2005 to 09.08.2005, and under dismissal from 07.02.2006 to 16.03.2006, and thus it is contended that he was very much in service for a substantial part of the period from 01.04.2005 to 31.03.2006. Accordingly, he had been graded as 'Satisfactory B' based on his performance.

11. Counsel for the Petitioner has drawn our attention to the gradings of the Respondent in the last many years, which are reproduced herein for the sake of convenience:-

SI. No.	Period of ACR	Grading
1.	16.08.94 to 14.06.95	Satisfactory "B"
2.	15.06.95 to 24.02.96	Excellent "A"
3.	01.04.96 to 31.03.97	B
4.	01.04.97 to 31.03.98	B
5.	01.04.97 to 31.03.98	Very Good "B"
6.	01.05.98 to 31.03.99	B
7.	01.04.99 to 31.03.2k	B
8.	01.04.2k to 31.03.01	Very good "A"
9.	01.04.01 to 31.03.02	Excellent "A"
10.	01.04.02 to 21.06.02	Excellent "A"
11.	22.06.02 to 31.03.03	Satisfactory "B"
12.	01.04.03 to 18.02.04	Good "B"
13.	24.04.04 to 31.03.05	Satisfactory "B"
14.	<u>01.04.05 to 31.03.06</u> 01.04.05 to 10.05.05 11.05.05 to 09.08.05 10.08.05 to 06.02.06	<u>Satisfactory "B"</u> <90 days Under Suspension

	07.02.06 to 16.03.06 17.03.06 to 31.03.06	Dismissed <90 days
15.	17.03.06 to 21.07.06	Satisfactory "B"
16.	21.07.06 to 30.09.06	Good "B"
17.	01.10.06 to 31.03.07	Good "B"
18.	01.04.07 to 07.01.08	Satisfactory "B"
19.	11.01.08 to 31.03.08	Good "B"
20.	27.06.08 to 31.03.09	Excellent "A"
21.	01.04.09 to 31.03.10	Good "B"
22.	10.05.10 to 13.07.10	<90 days
23.	01.04.10 to 20.09.10	Good "B"
24.	21.09.10 to 31.03.11	Very Good "B"
25.	01.04.11 to 05.01.12	Good "B"
26.	06.01.12 to 31.03.12	Very Good "A"
27.	01.05.12 to 02.05.12	<90 days
28.	03.05.12 to 12.10.12	Good "B"
29.	13.10.12 to 31.03.13	Good "B"
30.	01.04.13 to 31.03.14	Satisfactory "B"
31.	01.04.14 to 09.11.14	Satisfactory "B"
32.	10.11.14 to 31.03.15	Good "B"

12. Counsel for the Petitioner has thus contended that the Judgment of the Tribunal is liable to be set aside.

13. We have considered the submissions made by the counsel for the Petitioner and also perused the impugned judgment and the record.

14. Having given our thoughtful consideration to the issues raised by the Petitioner, we find that the order of the Tribunal cannot be sustained. The Respondent has been given different gradings from time to time, based on his performance and once there is a policy of the Petitioner for grading its employees on the basis of their performance, it is not open for any Court to analyse the attributes of the employee and

come to the conclusion, that the overall grading may be treated in a different manner than the one given by the Reporting Officer.

15. We also find from the Impugned Order that the Tribunal has, after calling for the records, perused each of the three ACRs of the Respondent and by considering the qualities and attributes mentioned therein, held that the grading of 'Satisfactory' be considered as 'Good'. We however find no reasoning given by the learned Tribunal in coming to this conclusion that the grading of 'Satisfactory' ought to be treated as a grading of 'Good'. It appears that the Tribunal has overlooked the basic principle that gradings in the ACRs are based on the performance of the employee, and these gradings ought not to be interfered by the Court, except in those circumstances where *mala fides* are alleged, or there is some basic illegality. We may refer to the decision of this Court in the case of **Mohan Chandra Bhatt V. Union of India & Ors.** reported as 2006 (89) DRJ 88(DB) on this aspect and para 11 thereof reads as under:-

11. *In view of the aforesaid decision of the Supreme Court , which is squarely applicable to the facts of the present case, we are of the view that in the instant case the petitioner can have no cause for grievance. We are also of the firm view that this Court by exercising its powers under Article 226 of the Constitution can not exercise the powers of judicial review in the matter of promotion of concerned officers, when there are specific rules framed for the aforesaid purpose, which have been adhered too by the competent authorities, nor it can moderate the appraisal of Annual Confidential Reports and alter the grading given to the officers in their Annual*

Confidential Reports. The down toning of his Annual Confidential Report under the rules governing the case of the petitioner were not required to be communicated to him and the petitioner can have no cause for grievance in this regard, more so as the remarks were not adverse in nature. The petitioner apparently was not selected on the basis of comparative merit and overall profile for the post of Addl. Deputy Inspector General, and hence was denied promotion.

16. Reference may also be made to the judgment of the Supreme Court in the case of ***Union Public Service Commission V. L.P. Tiwari & Ors.*** reported as (2006) 12 SCC 317 wherein it has been held that evaluation made by experts should not be easily interfered with by the courts. Paras 12 and 13 of the judgment in the said case read as under:-

12. It is now more or less well-settled that the evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. Such view was reiterated as late as in 2005 in the case of U.P.S.C. v. K. Rajaiah and Ors. reported in AIR 2005 SC 2853, wherein the aforesaid Regulations for the purpose of promotion to the I.P.S. Cadre were under consideration. Apart from the above, at no stage of the proceedings, either before the Tribunal or the High Court or even before this Court, has any allegation of mala fides been raised against the Selection Committee and the only grievance is that the Selection

Committee erred while making assessment of the comparative merits of the respective candidates. While concluding his submissions, Mr. Rao had pointed out that the direction given by the High Court to the appellant to hold a Review Departmental Promotion Committee was also erroneous since the Regulations provided for selection to be made not by a Departmental Promotion Committee but by a Selection Committee constituted as per the Regulations.

13. Although, on behalf of the respondents it has been urged that there was no bar which precluded the Tribunal from looking into the original ACRs of the respective candidates, what we are required to consider is whether it was at all prudent on the part of the Tribunal to have adopted such a procedure which would amount to questioning the subjective satisfaction of the Selection Committee in preparing the Select List.

17. The Tribunal, in our view, was wholly unjustified in tinkering with the gradings given in the Respondent's ACRs, especially when there is no reason given as to why the gradings should be treated as 'Good'. Thus, the direction of the Tribunal to treat the 'Satisfactory' grading 'B' as 'Good' is wholly without any basis and liable to be set aside.

18. We also find, force in the submission of the counsel for the Petitioner, that the Respondent remained out of service for only a very short period from 11.05.2005 to 09.08.2005-while he was under suspension, and then from 07.02.2006 to 16.03.2006 when he was

dismissed and, therefore, the Tribunal was wholly unjustified in concluding that the grading given to him during the period 01.04.2005 to 31.03.2006 was not based on actual performance, but only on imagination.

19. In our view, the Tribunal has not even applied its mind to the basic facts of the case, and has in a most laconic manner observed that it was difficult for the Tribunal to understand as to what was the mythology used to grade Respondent as 'B', when he was out of service. This in itself shows that the Tribunal while dealing with the Original Application, had not at all considered the admitted fact, that the Respondent was in service for a substantial part of the period from 01.04.2005 to 31.03.2006, and had completed more than the mandatory 'Ninety Days' period in service during that period. He was given the gradings based on his actual performance.

20. From a perusal of the Impugned Order, we are unable to find any justifiable reason given by the Tribunal to come to a conclusion that the grading of 'Satisfactory B' was in any manner not commensurate with his performance, or that there was any material on record to direct the Petitioners to treat this said grading of 'Satisfactory' as 'Good'.

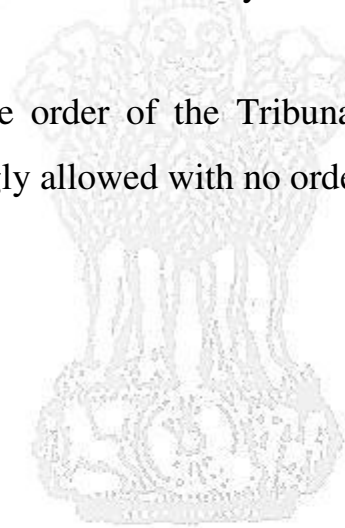
21. To say the least, we find the approach of the Tribunal in directing the grading of 'Satisfactory B' to be treated as a grading of 'Good B' to be mechanical. The same is wholly flawed and contrary to the well settled legal principles.

22. In our view, an ACR grading can be interfered with only in very exceptional cases, which we do not find at all in the present case and, therefore, we are of the view that the Tribunal has erred in directing that

the grading of 'Satisfactory B' granted to the Respondent be treated as 'Good'. The order of the Tribunal is not at all sustainable and is set aside.

23. We have also been informed by the learned counsel for the Petitioner, that vide order dated 28.06.2009 the Respondent, based on his performance in the subsequent year, has been added in the promotion List 'A'. He was promoted as Head Constable (executive) on ad hoc basis w.e.f. 28.06.2009, and thereafter granted regular promotion w.e.f. 03.09.2010 and that may be the reason why none has appeared on his behalf.

24. Consequently, the order of the Tribunal is set aside, and the Writ Petition is accordingly allowed with no order as to costs.



(REKHA PALLI)
JUDGE

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(VIPIN SANGHI)
JUDGE

AUGUST 24, 2017
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