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

Reserved on: 29.01.2019

Pronounced on: 20.02.2019

+ W.P.(C) 6862/2018

VIPIN KUMAR

..... Petitioner

Through: Mr. Alakh Alok Srivastava and
Mr.Chandan Kumar Singh, Advs.

versus

HINDUSTAN PETROLEUM CORPORATION LIMITED & ORS

..... Respondents

Through: Mr. Raj Birbal, Sr. Adv. with
Ms.Raavi Birbal and Mr. Zahid Saifi,
Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby directing the respondents to set aside and quash the order dated 21.05.2018 passed by the respondents vide which the representation of the petitioner has been arbitrarily dismissed. He further seeks direction thereby to set aside and quash the downgraded ACR rating of '4' given by the respondents to the petitioner for the year 2014-15. Consequently, directing the respondents to promote the petitioner from the salary grade 'D' to the salary grade 'E' with

retrospective effect, upon ignoring the said illegal rating '4' given to the petitioner for the year 2014-15 and also to grant consequential benefits thereto.

2. The brief facts of the case are that the petitioner is a qualified engineer who joined the respondent Hindustan Limited Petroleum Corporation (hereinafter referred to as "HPCL") on 28.10.1991 as Officer Trainee (Management Employee) in the entry level salary grade 'A' and has completed 27 years of service. Presently he is posted as Senior Manager – Retail Upgradation in HPCL J&K Retail R.O. at Jammu. Till today the petitioner has served at 12 locations across the country and has played pivotal role in the construction of 7 depots/terminals and more than 250 retail outlets in the states of Delhi, Himachal Pradesh, Punjab, Uttar Pradesh, West Bengal, Odisha, Chhattisgarh, etc., including outlets like Tapri and Tunnuhatti in the most difficult terrains. Moreover, the petitioner has also implemented the new RVI/VRS and automation in Delhi, when these concepts were just started.

3. Further the case of the petitioner is that he was promoted from Salary Grade 'A' to 'B', from 'B' to 'C' and then to the present Salary Grade 'D' on 25.06.2007. The promotions are governed by the "HPCL

Promotion Policy-Management Employees” (updated as of March, 2009) which is annexed herewith and marked as Annexure P1. Vide office memorandum (OM) dated 14.05.2009, the Government of India categorically stated that the full APAR of an employee including the remarks of the reviewing/accepting authority are required to be communicated to him within a reasonable period. A copy of the same is marked as Annexure P2. The “Performance Appraisal System” of the respondents is governed by the Rule 8.1 of its personnel manual which is marked as Annexure P3. Certain portions of the aforesaid “HPCL Promotion Policy-Management Employees” have been amended by the respondents vide Minutes of Meeting dated 11.12.2014, duly communicated vide letter dated 09.01.2015 issued by the Company Secretary’s Desk. A copy of the same is marked as Annexure P4. However, in FY 2014-15, the petitioner submitted his goals and targets through Online Performance management System. The said goals and targets were required to be approved by the then reporting officer i.e. respondent no.4 and then in turn required to be approved by the reviewing officer of the petitioner i.e. respondent no.3 herein. On 06.09.2014, the goals and targets submitted by the petitioner were returned back to him by his reporting officer with certain

remarks. Accordingly, the petitioner modified his goals and targets as per those comments and then resubmitted the same on 18.09.2014. However, on 20.10.2014 the said modified goals and targets were returned back to him by his reviewing officer with certain more comments. Then the petitioner resubmitted his modified goals and targets on 04.12.2014 which were again returned by the reviewing officer on 31.12.2014 with certain comments. The petitioner once again resubmitted the same on 29.01.2015 which were approved by the reporting officer on 20.03.2015 and by reviewing officer on 15.04.2015.

4. Further the case of the petitioner is that as per the Annual Performance Management Report of the petitioner for the year 2014-15, he was remarked as 'Below Target' against 3 out of 32 counts in first six monthly assessment i.e. HRD-1 or 'H-1', however, he improved upon his performance and was subsequently marked as 'meeting target' in all those 32 counts in his next six monthly assessment i.e. HRD-2 or 'H-2'. Thus, by the end of the year 2014-15, the petitioner was marked as 'meeting target' against all counts annually. A copy of the same is marked as Annexure P5. In the month of October, 2015, the petitioner did not receive his monthly expected bonus/PRP (Performance Related Payment) and then he sensed

that he was given rating '4' in his Annual Confidential Report (ACR) for the year 2014-15. Though the respondents did not specifically communicate to the petitioner about his said rating '4'. However, on the basis of his presumption, the petitioner submitted a detailed representation dated 27.10.2015 to the respondents against the said rating '4' given to him which is marked as Annexure P6. Subsequently, vide letter bearing reference No.HRD:PM:CFD:DPC dated 15.01.2016, the respondents released list of the employees promoted during the DPC held in January, 2016 for the performance year 2014-15. The name of the petitioner did not figure into the said list which categorically indicated that the respondents had denied promotion to the petitioner on the basis of uncommunicated ACR for the year 2014-15.

5. Learned counsel appearing on behalf of the petitioner submitted that the petitioner submitted his grievance to the Management Employee Relations Committee (MERC) and subsequently made oral submission also before the MERC on 27.01.2016 regarding his rating '4' for the year 2014-15. However, after a lapse of about 8 months, vide a non-speaking and cryptic letter bearing HRD:PM:2016 dated 20.09.2016, the respondents arbitrarily dismissed the representation of the petitioner against the said

rating '4'.

6. Learned counsel further submits that it was on 20.09.2016 that the respondents agreed for the first time that the petitioner was given rating '4' for the year 2014-15, however, still no formal communication was sent to him in this regard. Thereafter, the petitioner kept on requesting the respondents to pass a speaking order for disposal of his captioned grievance. At last, a representation was sent by the petitioner to the respondents on 29.03.2017, but the respondents did not pay any heed to it. A copy of the same is marked as Annexure P8. Finding no option, the petitioner filed W.P.(C) 5795/2017 before this Court and the same was disposed of vide order dated 11.04.2018 by recording that details of the number of targets, which were not met by the petitioner, ought to have been spelt out in impugned rejection by the respondents. Accordingly, directed the respondents to reconsider the representation dated 27.10.2015 of the petitioner by passing a speaking order. However, vide their order dated 21.05.2018, the respondents have once again rejected the said representation without assigning any cogent reasons. Copy of the order dated 21.05.2018 is annexed and marked as Annexure P13.

7. Learned counsel for the petitioner further submits that downgrading

of ACR without assigning any reasons is unsustainable in law. Moreover, reasons of downgrading of ACR are mandatorily required to be communicated to the concerned employee within a reasonable period of time before relying upon the same for denial of his promotion. However, in the instant case, while downgrading the petitioner to the rating '4', the concerned reviewing officer has neither assigned any reason whatsoever nor has he supplied his remarks/comments to the petitioner. The respondents have miserably failed to even mention such comments/remarks made by the reviewing authority in their latest order dated 21.05.2018 vide which the representation dated 27.10.2015 of the petitioner has been dismissed. Thus, the downgrading rating '4' given to the petitioner by the reviewing officer is untenable in the eyes of law.

8. Further it is submitted that admittedly the ACR rating '4' for the year 2014-15 was not communicated to him before conducting the concerned DPC wherein the petitioner was denied promotion from Salary Grade 'D' to the Salary Grade 'E' solely on the basis of the said ACR. The petitioner had made his representation dated 27.10.2015 merely on the basis of presumption that he might have been given rating '4' as he did not receive his PRP in that year and there was no clear communication from the

respondents in this regard. The said representation dated 27.10.2015 cannot absolve a model employer from its bounden duty to specifically communicate such ratings in terms of the law settled by the Hon'ble Supreme Court in a plethora of judgments. Thus, present petition deserves to be allowed.

9. On the other hand, learned counsel appearing on behalf of the respondents submitted that the corporation has duly complied with the directions dated 11.04.2018 passed by this Court in W.P.(C) 5795/2017 and a detailed speaking order dated 21.05.2018 was passed. The appraisal and performance of the petitioner was reviewed at various levels by different Management superiors at Zonal level as well as headquarter level including MERC and appellate MERC which consists of the officers of very senior level management. Thus, in the light of the scope of judicial review in the matter, through a detailed reasoned decision, the petitioner had been communicated with regard to upholding of his performance rating as '4' for the year 2014-15. After the representation of the petitioner which was rejected on merits by the respondents, the same does not hold any ground, as such, the petition is liable to be rejected.

10. Learned counsel for the respondents has relied upon the case of *Saroj*

Kumar vs. Union of India: (2015) 12 SCC 198 whereby the Hon'ble Supreme Court has recorded that “..... we are in agreement with the High Court that after the ACRs have been communicated and representation has been rejected, the Tribunal should not have treated the remarks uncommunicated.”

11. He further relied upon the case of ***Dalpat Abasaheh Solunke and Ors. vs. Dr. B.S. Mahajan and Ors.: (1990) 1 SCC 305*** whereby the Hon'ble Supreme Court has held that “.....Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection etc.”

12. He further relied upon the case of ***Union of India and Anr. vs. S.K. Goel and Ors.: (2007) 14 SCC 641*** whereby the Hon'ble Supreme Court has held that “.....evaluation made by an expert committee should not be easily interfered with by the courts which do not have the necessary expertise.....”

13. Learned counsel further relied upon the case of ***State Bank of India and Ors. vs. Mohd. Mynuddin: (1987) 4 SCC 486*** whereby the Hon'ble Supreme Court has held that the selection process can be challenged only when the said selection is vitiated on the ground of bias, malafides or any other similar vitiating circumstances.

14. Learned counsel for the respondent further submitted that if the present petition is allowed then it will effect promotion of other persons but the petitioner has not made them party, therefore, the present petition is liable to be dismissed on non-joinder of the necessary parties. To strengthen this view, counsel for the respondents has relied upon the case of ***State Bank of Rajasthan vs. Ucchab Lal Chhanwal: (2014) 1 SCC 144*** whereby the Hon'ble Supreme Court has held that once the juniors who have been promoted earlier and have not been arrayed as parties to the lis, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice.

15. A similar view was taken in the case of ***J.S. Yadav vs. State of Uttar Pradesh & Anr.: (2011) 6 SCC 570*** whereby the Hon'ble Supreme Court has held that “.....*In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead atleast*

some of the successful candidates in representative capacity.....”

16. Learned counsel for the respondent submits that in view of the facts mentioned above, the present petition deserves to be dismissed.

17. I have heard learned counsel for the parties in length and perused the material on record. I do not dispute the cases cited by the counsel for the respondents.

18. However, the fact remains that in ***State of U.P. vs. Yamuna Shankar Mishra: (1997) 4 SCC 7***, the Hon’ble Supreme Court has held that “.....*The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer.....”*

19. In ***THDC India Ltd. vs. T.Chandra Biswas: 199 (2013) DLT 284***, this Court has held that “.....*providing to an employee gradings without the narrative is like giving a conclusion in judicial/quasi-judicial or even an administrative order without providing the reasons which led to the conclusion. If the purpose of providing ACRs is to enable the employee to assess his performance and to judge for himself whether the person writing*

his ACR has made an objective assessment of his work, the access to the narrative which led to the grading is a must.....”

20. In ***U.P. Jal Nigam & Ors. vs. Prabhat Chandra Jain and Ors. : (1996) 2 SCC 363***, the Hon’ble Supreme Court has held that if the graded entry is of going a step down, like falling from 'very good' to 'good' then the down grading authority is required to record reasons for such down grading on the personal file of the officer concerned, and inform him of the change in the form of an advice.

21. In case of ***Sukhdev Singh vs. Union of India & Ors.: (2013) 9 SCC 566***, the Hon’ble Supreme Court has held that the remarks made in the ACR of an employee are required to be communicated to him within reasonable time so as to enable him to make effective representation and also to improve upon.

22. In case of ***High Court of Judicature at Patna, through R.G. vs. Shyam Deo Singh & Ors.: (2014) 4 SCC 773***, the Hon’ble Supreme Court has recognized that the adverse remarks/comments recorded in the ACR are required to be communicated to the concerned employee.

23. In case of ***Daljit Singh Grewal vs. State of Punjab & Ors.: (2015) 9 SCC 680***, the Apex Court has held that downgrading of grading in ACR by

the reviewing officer without assigning any reason, is untenable in the eyes of law.

24. Moreover in OM dated 14.05.2009 issued by the Government of India categorically states that:

“2(ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the report is complete with the remarks of the reviewing officer and the accepting authority wherever such system is in vogue.”

25. Accordingly, the reviewing officer is not only bound to assign detailed reasons for such downgrading but he is further bound to communicate the said reasons to the concerned employee forthwith. Such responsibility of the reviewing officer becomes more binding when the downgradation of ACR results into the denial of promotion to the concerned employee.

26. Admittedly, in the instant case, while downgrading the rating from ‘3’ of the petitioner to the rating ‘4’, the concerned reviewing officer has neither assigned any reason whatsoever nor has he supplied his remarks/comments to the petitioner. Moreover, the respondents have miserably failed to even mention such comments/remarks made by the reviewing authority in their latest order dated 21.05.2018 vide which the representation dated

27.10.2015 of the petitioner has been dismissed.

27. It is no more res integra that uncommunicated ACRs cannot be taken into consideration for denial of promotion to an employee. The said view has been decided in case of ***Abhijit Ghosh Dastidar vs. Union of India & Ors.: (2009) 16 SCC 146*** whereby it has been held that uncommunicated entry in ACR should not have been taken into consideration for denial of promotion.

28. The same view was taken in case of ***Prabhu Dayal Khandelwal vs. Chairman, UPSC & Ors.: (2015) 14 SCC 427*** and ***Gurdial Singh Fiji vs. State of Punjab: (1979) 2 SCC 368***.

29. In case of ***Union of India vs. V.S. Arora & Ors. [order dated 31.05.2012 passed in W.P.(C) 5042/2012]***, the Division Bench of this Court has placed reliance on the ***Abhijit Ghosh Dastidar (supra)*** and took a view that below bench mark ACR which was not communicated, cannot be considered by the DPC and in such a situation, the DPC has to consider the ACRs of the period other than below benchmark ACRs of the period in question.

30. In ***R.K. Mishra vs. Union of India & Ors. [order dated 12.04.2017 passed in W.P.(C) 4855/2014]***, a Division Bench of this Court directed the

respondent employer to hold review DPC without taking into account the uncommunicated ACRs.

31. The same view was taken in *Amar Nath Singh Bisht vs. State of Uttarakhand & Ors.*: [order dated 02.09.2016 passed in W.P.(C) 101/2016], by a Division Bench of High Court of Uttarakhand at Nainital.

32. In the instant case, it is an admitted fact that ACR rating '4' of the petitioner for the year 2014-15 was not communicated to him before conducting the concerned DPC wherein the petitioner was denied promotion from Salary Grade 'D' to the Salary Grade 'E' solely on the basis of said ACR. The petitioner made his representation dated 27.10.2015 merely on the basis of presumption that he might have been given rating '4' as he did not receive his PRP in that year and there was no communication from the respondents in this regard.

33. The said representation dated 27.10.2015 cannot absolve a model employer like the respondent HPCL from its bounden duty to specifically communicate such ratings in terms of the proposition of law laid down by the Hon'ble Supreme Court in a plethora of judgments including in *Sukhdev Singh (supra)* and also in terms of the said OM dated 14.05.2009. Hence, the denial of promotion of the petitioner from salary Grade 'D' to Salary

Grade 'E', on the basis of such uncommunicated ACR, is ex-facie illegal and untenable in the eyes of law.

34. In addition to above, in *Sukhdev Singh (supra)*, it is held that every entry in ACR is required to be communicated by the employer to the concerned employee within a reasonable period of time.

35. In *Dev Dutt vs. Union of India: (2008) 8 SCC 725*, it is categorically held that non-communication of an entry in ACR in reasonable period of time is arbitrary and violative of Article 14 of the Constitution of India in terms of the decision of the Constitution Bench passed in *Maneka Gandhi vs. Union of India*.

36. In the present case, the captioned rating '4' of the petitioner for the year 2014-15 was never specifically communicated by the respondents to the petitioner by their own even till today. For the first time, the respondents admitted the said rating of the petitioner in their reply dated 20.09.2016, that too while responding to the representation of the petitioner. However, such admission in a reply cannot be equated with the specific communication which is required to be made by an employer in terms of the aforesaid judicial propositions, particularly in compliance of the *Sukhdev Singh (supra)* in its letter and spirit.

37. In addition to above, in the instant case while arbitrarily downgrading the rating from '3' of the petitioner to the rating '4', the respondents have miserably failed to show any objectivity, impartiality or fair assessment and have further lacked any sense of responsibility, which is evident from the fact that no cogent reason, as such, has been assigned by the reviewing authority or any other superior authority of such downgradation of ACRs. Such conduct of the respondents is in sheer violation of the proposition of law propounded by the Hon'ble Supreme Court of India in a plethora of judgments, including in *State Bank of India & Ors. vs. Kashinath Kher & Ors. (1996) 8 SCC 762*, whereby the Hon'ble Supreme Court has held that an officer writing confidential report must show objectivity, impartiality and fair assessment without any prejudices whatsoever and with the highest sense of responsibility.

38. As argued by the counsel for the petitioner, the impact of the illegal and arbitrary rating '4' is two fold. Firstly, it has debarred the petitioner from promotion under 'seniority-cum-merit' quota. Secondly, it has further debarred the promotion on 'stagnation basis' for 3 years. In this regard, it is pertinent to mention here that as per the previous "HPCL Promotion Policy-Management Employees" (updated as of March 2009), the officers having

overall rating of '4' were used to be considered as "Not Ready" for promotion only for one year. However, now upon amendment carried out by the respondents in the said policy, vide Minutes of Meeting dated 11.12.2014 duly communicated vide letter dated 09.01.2015 issued by the Company Secretary's Desk of HPCL, the new rule is that the officers having overall rating of '4' or '5' are now considered as "Not Ready" for promotion for three years. Hence, due to such illegal and arbitrary rating '4' given to the petitioner during the year 2014-15, he has been deprived of his promotion on 'stagnation basis' for next three years i.e. during the years 2016, 2017 & 2018. Hence, the aforesaid illegal and arbitrary rating '4' has completely spoiled the career progression of the petitioner with enormous adverse impact, causing patent prejudice and grave injustice to the petitioner. In addition, it has resulted into huge financial losses to the petitioner.

39. It is pertinent to mention here that the aforesaid amendment carried out by the respondents in the said promotion policy, vide Minutes of Meeting dated 11.12.2014 duly communicated vide letter dated 09.01.2015 issued by the Company Secretary's Desk of HPCL, stating that the officers having overall rating of '4' or '5' are now considered as "Not Ready" for

promotion for three years has also resulted into equating the rating '4' and '5' as there impacts are almost same. Resultantly, the respondent HPCL has only 4 effective ratings as of today – '1', '2', '3' and '4/5', which is in sheer violation of the DPE (Department of Public Enterprises, Government of India) guidelines stipulated in the office memorandum dated 03.08.2017 which categorically stipulates that there should be 5 gradings/ratings viz., (i) Excellent, (ii) Very Good, (iii) Good, (iv) Fair and (v) Poor. It is pertinent to mention here that other similarly situated PSUs like Bharat Petroleum Corporation Limited (BPCL) are strictly following the said DPE guidelines and have adopted 5 point gradings/ratings system. However, the respondent corporation has blatantly violated the said DPE guidelines.

40. As submitted by the counsel for the petitioner, as per the said DPE guidelines stipulated in the office memorandum dated 03.08.2017, the employees who have been rated '4' are also eligible for 25% bonus/PRP for the year 2014-15 solely on the basis of his rating '4' in utter violation of the said DPE guidelines causing enormous injustice to the petitioner.

41. It is further pertinent to mention here that the assessment of Annual Appraisal of the employees is divided into two comprising of 6 months each. The performance assessment pursuant to first 6 months of a year is termed

as HRD-1 or 'H-1' whereas the performance assessment pursuant to the last 6 months of a year is termed as HRD-2 or 'H-2'. The reporting officer assesses the performance of an employee in H-1 and flags the areas requiring more effort at the end of 6 months. Thereafter, the employee is given another 6 months' time to improve upon in those area so that he gets a final assessment after completion of last 6 months i.e. H-2. As the name suggests, the term 'ACR' or Annual Confidential Report is meant for assessment of "Annual" performance of an employee and not for six monthly assessment. Hence, even if an employee is found to be "Below Target" after H-1 assessment, he cannot be termed to be an under-performer, if he improves upon and achieves the parameter of "Meeting Target" at the time of H-2 assessment.

42. In the instant case, it is clear from the perusal of the enclosed Performance Management Report of the petitioner for the year 2014-15 that the petitioner has been marked as "Below Target" only against the H-1 assessment and not cumulatively against H-2 assessment. Accordingly, it is evident that the petitioner was able to achieve the parameter of "Meeting Target" in each of those 3 counts and hence, the same cannot be construed to be an indication of "Below Target" by any stretch of imagination. However,

the respondents have deliberately concealed the same in their impugned order dated 21.05.2018 and have tried to give an impression that the performance of the petitioner was “Below Target” on 3 counts, annually i.e. for the entire year 2014-15. Hence, the said malafide and misleading interpretation by the respondents is liable to be rejected.

43. While passing the impugned order dated 21.05.2018 pursuant to the direction passed by this Court, it is further evident from the fact that the respondents have concealed the specific details of the targets which were allegedly not met by the petitioner in the year 2014-15. The enclosed performance report of the petitioner for the year 2014-15 categorically reveals that the petitioner was found to be “Below Target” in H-1 against the following KPIs-

S. No.			H-1 Remarks	H-2 Remarks
1.	KPI-1: Survey of New Lighting Techniques and Fixtures	H-1 Input: Market Survey Done and Presentation Made. <u>Pilot Project Implemented at 8th Floor, GM Office Area</u>	Below Target	
		H-2 Input: <u>Pilot Project</u>		Meeting Target

		<u>Implemented</u>		
2.	KPI-4: Online Housing Maintenance System	H-1 Input: HMS is re-energized	Below Target	
		H-2 Input: HMS is re-energized		Meeting Target
3.	KPI-8: NPCB Canteen Renovation	H-1 Input: M/s Hindware yet to commence jobs. Site Handed Over.	Below Target	
		H-2 Input: PO Placed. Concept frozen. Job not yet commenced by the party.		Meeting Target

44. On perusal of the aforesaid Performance Management Report, it is quite clear that against the KPI-1, for the identically same input of “Pilot Project Implemented” recorded by the petitioner in both H-1 and H-2, the respondents have given their different remarks as “Below Target” for H-1 and “Meeting Target” for H-2. If the input of “Pilot Project Implemented” was sufficient to qualify for remark “Meeting Target” in H-2 then why the same was not also given as “Meeting Target” in H-1. This clearly shows that the sheer arbitrariness and non-application of mind on the part of the respondents while giving remarks of “Below Target” to the petitioner in H-1 towards this KPI-1 and thus such remarks are liable to be rejected.

45. In KPI-4, it is clear that against the aforesaid KPI-4, for the identically same input of “HMS is re-energized” recorded by the petitioner in both H-1 and H-2, the respondents have given their different remarks as “Below Target” for H-1 and “Meeting Target” for H-2. If the input of “HMS is re-energized” was sufficient to qualify for remark “Meeting Target” in H-2 then why the same was not also given as “Meeting Target” in H-1.

46. In KPI-8, it is clear that the petitioner has given his comments – “M/s Hindware yet to commence jobs. Site handed over.” In H-1 to which the respondents have given their remarks as “Below Target” in H-1 whereas when the petitioner has given his comments – “PO placed. Concept frozen. Job not yet commenced by the party.” then he has been given remarks of “Meeting Target”. The captioned NPCB Canteen Renovation meant that the office canteen of the GMO-North Zone, Scope Minar, Delhi, was required to be vacated for at least 3-4 months as lunch was being served to approximately 200+ employees in that canteen. Decision to put canteen out of service was only to be taken after discussions with different SBUs/ Department Heads and above all the non-management employees’ unions. More so, an agreement was to be reached regarding alternate source or type of lunch to be served for 3 months. Such large scale co-ordination with

different SBU heads and placing the PO was beyond the authority and control of the petitioner and at the most he could have requested his supervisor to expedite the same which he regularly and consistently did.

47. It is also pertinent to mention that subsequently, the petitioner was able to complete the entire NPCB Canteen Renovation work in record time of 1.5 months as against the total stipulated time of 6 months, for which rated “Exceeding Target” in the next performance year. Hence, such remarks of “Below Target” in the year 2014-15 is malafide and unfounded and thus is liable to be rejected.

48. It is not out of place to mention here that the petitioner had joined the respondent corporation in the year 1991 and is serving for the last more than 27 years. It is a matter of record that in his entire career of 27 years, the petitioner has never been rated with the low rating of ‘4’ except in the captioned year 2014-15. The ratings of the petitioner during last few years, are depicted herein as under:

Year	Remark	Rating
2005-06	VERY GOOD	2
2006-07	VERY GOOD	2
2007-08	VERY GOOD	2
2008-09	VERY GOOD	2
2009-10	GOOD	3
2010-11	GOOD	3
2011-12	GOOD	3

2012-13	GOOD	3
2013-14	VERY GOOD	2
2014-15	AVERAGE	4
2015-16	GOOD	3
2016-17	VERY GOOD	2

49. Keeping in view of the facts discussed above and settled legal position, I hereby set aside the order dated 21.05.2018 passed by the respondents.

50. Since the rating of '4' given by the respondents to the petitioner for the year 2014-15 has admittedly not communicated, I hereby set aside and quash the downgraded ACR rating of '4' for the aforesaid year.

51. Consequently, directed the respondents to promote the petitioner from Salary Grade 'D' to the Salary Grade 'E' with retrospective effect upon ignoring the said rating '4' given to the petitioner for the year 2014-15 with all consequential benefits.

52. The petition is, accordingly, allowed.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 20, 2019
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