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

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Date of decision: 11.10.2023

+ W.P.(C) 5740/2020

MUKESH KUMAR SINGH

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Ankur Chhibber and Mr. Nikunj Arora,
Advocates.

For the Respondents: Mr. Sushil Kumar Pandey, Senior Panel Counsel.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks quashing of orders dated 05.03.2019, 10.06.2019 and 08.01.2020 whereby, the representations of petitioner dated 11.10.2018, 02.04.2019 and 29.07.2019 respectively have been dismissed.

2. Petitioner had represented and sought expunction of remarks and lower grading of "GOOD" in APAR of the petitioner for the period 01.04.2017 to 05.01.2018.

3. Petitioner was enrolled in Central Reserve Police Force on 28.12.2002, he was promoted to the rank of Second-in-Command in January 2015.

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4. As per the petitioner he has got grading of “VERY GOOD” to “OUTSTANDING” for the period prior to the period in issue i.e. 01.04.2017 to 05.01.2018. For the subject period, the Initiating Officer was the Commandant and he gave a grading of “GOOD” to petitioner which is below benchmark.

5. The Reviewing Officer, who was of the rank of DIG, disagreed with the Initiating Officer and graded the petitioner “VERY GOOD”. Thereafter, the Accepting Authority agreed with the Reporting Officer and had given him a grading of “GOOD”.

6. Learned counsel for the petitioner submits that in May 2017 petitioner was made a Member of Board for procurement of sports equipment and as per him, the Commandant had required him to award the contract and make procurement from one particular individual and since petitioner disagreed with the same, the Initiating Officer i.e. the Commandant gave an adverse grading to the petitioner.

7. Learned counsel submits that prior to the said period and post the subject period, petitioner has attained above benchmark grading of “VERY GOOD” and even “OUTSTANDING”. He submits that in the period immediately preceding the period in issue, same Initiating Officer i.e. the Commandant had graded petitioner as “OUTSTANDING”.

8. Learned counsel submits that Accepting Authority is obliged to give reasons in case there is a disagreement between the remarks or grading given by the Initiating Officer and the Reviewing Authority.

9. Per contra, learned counsel for respondent submits that the petitioner had earned DG’s displeasure during the relevant period and as such the



Initiating Officer had graded petitioner “GOOD”. Learned counsel further submits that there is no material which substantiates the allegation of the petitioner that there was any direction by the Commandant to the petitioner to favor some individual in award of contract and since they are unsubstantiated, no credence can be given to the same.

10. Reference may be had to the Standing Order 56/2001 dated 18.10.2001 on the subject “Preparation and Maintenance of Annual Confidential Report of Officer”. Clause 6.16 thereof reads as under:

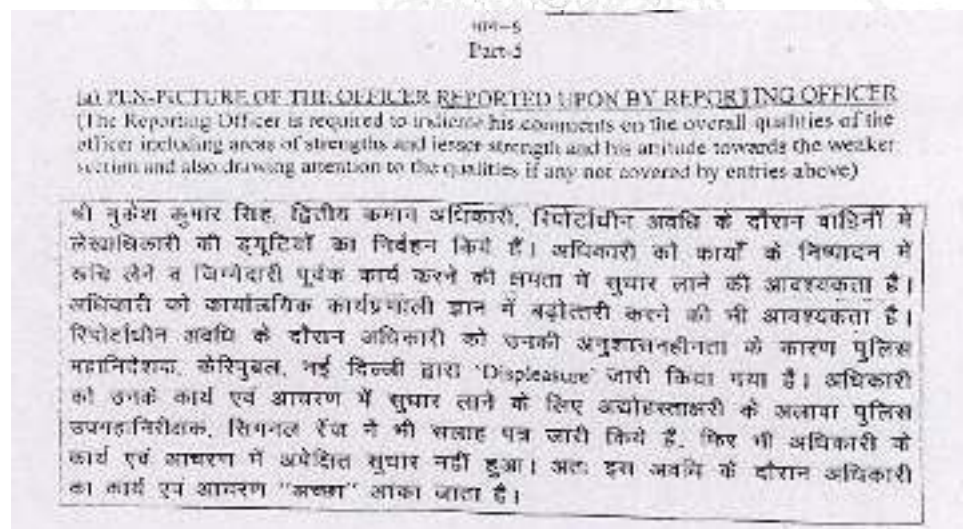
“6.16 The Reviewing/Superior Reviewing Officer with whom the ACR files are available should go through the assessment made by the reporting officer, and also, based on his personal knowledge can suo moto update or downgrade the ACR. If necessary, he should enquire about the reason for such sudden variation from the reporting/reviewing officers. However, the Reviewing/Superior Reviewing Officer should invariably record his reasons for such up-gradation/down-gradation of the ACR. In some cases, it has been noticed that the reviewing officer or SRO, while disagreeing the assessment made by the initiating officer, does not give reasons for his disagreement with the comments of the reporting officer which is a must. Some of the reviewing officers and SROs merely stated that the officer reported upon has been under rated or over-rated without giving any specific comments, which is bad in law. Various courts of law in their rulings and directions have categorically specified that in case reasons are not given, such gradings should not be taken into consideration. It is, therefore binding on all the reviewing officer/SROs that they should record specific reasons for their disagreement with a particular aspect of the report given by the reporting officer.”

11. Clause 6.16 of the Standing Order mandates the Reviewing/Superior Reviewing Officer to invariably record reasons for any up-gradation or down-gradation of an ACR in case of disagreement with the assessment made by the Initiating Officer.



12. Said clause further mandates that various Courts of law in their rulings and directions have categorically specified that in case, reasons are not given, such gradings should not be taken into consideration. Said clause makes it binding on all Reviewing Officers/SROs that they should record specific reasons for their disagreement with the particular aspect of the report.

13. We may also refer to the form of the Annual Performance Assessment Report. Particularly, the Part-5 which is the pen picture of the Officer reported upon by the Reporting Officer. The Part-5 in Hindi and its English translation reads as under:



"PART-5"

(a) PEN-PICTURE OF THE OFFICER REPORTED UPON BY REPORTING OFFICER

(The Reporting Officer is required to indicate his comments on the overall qualities of the Officer including areas of strengths and lesser strength and his attitude towards the weaker section and also drawing attention to the qualities if any not covered by entries above).



Sh. Mukesh Kumar Singh, Second-in-command has performed the duties of Accounts Officer during the period under report in the Battalion. The Officer is required to improve in the areas of taking interest in executing his tasks and to improve his ability to work with responsibility. There is a need for the Officer to enhance his knowledge in regard to Office Procedure. During the period under report, the Officer was issued 'Displeasure' by Director General of Police, C.R.P.F., New Delhi due to his indiscipline. In addition to the undersigned, Deputy Inspector General of Police, Signal Range has also issued advisory letters to the Officer for improving his work and conduct even then there has not been desired improvement in the work and conduct. Therefore, during this period, the work and conduct of the Officer is assessed as 'GOOD'.

14. Pursuant to the said remarks, the Reporting Officer graded the petitioner "GOOD". We may note that "GOOD" is below benchmark for the purposes of consideration for promotion. Part-6 which is to be filled by the Reporting Reviewing Officer in Row 2, the Reviewing Officer has to state whether he agrees with the assessment of the Reporting Officer and in case of disagreement specify reasons thereof.

15. In response thereto, the Reviewing Officer has recorded that he partly agrees, however, he has noted that the Reporting Officer has given low grading for the work done by the petitioner. In his remarks on the pen



picture, the Reviewing Officer has recorded as under:

Name: MUKESH KUMAR SINGH
Rank: Second-In-Command
No: SRA-5290

भाग-8
Part-6
(प्रतिष्ठान अधिकारी द्वारा भरा जाए)

(To be filled in by the Reviewing Officer)

1.	वर्तमान पुनरीक्षा अधिकारी के अधीन सेवा अवधि Length of service under the Reviewing officer	दिनांक 01/04/17 से 05/01/18
2.	क्या आप रिपोर्ट दिखाने वाले अधिकारी के मूल्यांकन से सहमत हैं ? असहमता होने पर हमसे वे कृपया इसमें दिए कारणों को स्पष्ट करें । क्या आप इसमें कुछ संशोधन करना या जोड़ना चाहते हैं ? Do you agree with the assessment of the Reporting officer ? In case of disagreement, please specify reasons therefor. Is there anything which you wish to modify or add ?	आंशिक तौर पर सहमत हूँ । रिपोर्टिंग अधिकारी द्वारा किए गये कार्यों का मूल्यांकन कम करके आया प्रभा है ।
3.	Do you agree with objective assessment made by Reporting Officer in respect of work output, personal attributes and functional competency (if not, please record in your own assessment column)	Yes: ☐ No: ☒
4.	In case of disagreement of grading given by Reporting Officer, Please indicate grading assessed by Reviewing officer.	Grading: 2.66 + 1.92 + 1.95 (A1+B1+C1) = 6.53 = 7

“PART-6

1.	Length of service under the Reviewing Officer.	From 01.04.17 to 05.01.18
2.	Do you agree with the assessment of the Reporting Officer? In case of disagreement, please specify reasons therefore. Is there anything which you wish to modify or add?	Partially agree. The Reporting Officer has undervalued the work done.
3.	Do you agree with objective assessment made by Reporting Officer in respect of work Output, personal attributes and functional competency (if not, please record in your own assessment column)	No

16. We note that the remarks given by the Initiating Officer and the Reviewing Officer are dramatically opposite to each other. The Initiating

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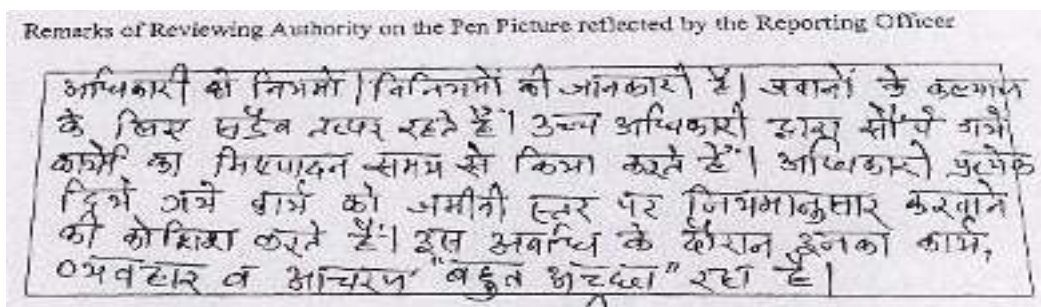
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Officer has recorded that the petitioner needs to improve his ability to take interest in execution of task and work responsibility and needs to increase the knowledge of official functioning. Whereas on the other hand, the Reviewing Officer has noted that the officer is aware of rules and regulations and executes the work assigned to him from time to time.

17. Reviewing Authority gave his remarks as under:



The Officer is well versed with the Rules/Regulations. He is always ready for the welfare of Army Personnel. The Officer always finishes the work entrusted to him by the Senior Officer on time. The Officer always endeavors to get the work done entrusted to him on ground level as per rule. During this period, his work, behavior and conduct have been "VERY GOOD".

18. The Reviewing Authority has recorded that the petitioner is aware of the rules and regulations and is always ready to work for the welfare of the Jawans and timely executes the work accorded by the senior officers and does every work at the ground level in accordance with the rules and regulations and accordingly graded the petitioner as "VERY GOOD".

19. Part-8 which is with regard to the remarks and grading of the Accepting Authority records as under:



भाग-8
Part-8

स्वीकृति प्रणाली की अंशगति व प्रतिक्रिया- (बताएं कि क्या आप रिपोर्ट लिखने वाले अधिकारी/पुनरीक्षण अधिकारी की अंशगति से सहमत हैं। अतिसहमति व अतिसहमत स्तर कम करने की स्थिति में कारण दें।)
Remarks and Grading of Accepting Authority: (State whether you agree with remarks of Reporting Officer / Reviewing Officer Give reasons for disagreement and downgrading of assessment (if any).)

Yes, I agree with the remarks of Reporting officer.

अंतिम प्रतिक्रिया (शब्दों में लिखें और टिक चिह्न से न दर्शाएं)
Final Grading (To be written in words and not to be indicated by tick mark)

उत्कृष्ट	Outstanding
बहुत अच्छा	Very Good
अच्छा	Good ✓ GOOD
अच्छा से नीचे	Below Good

20. The obligation of the Accepting Authority is to state whether the Accepting Authority agrees with the remarks of the Reporting Officer/Reviewing Officer and to give reasons for disagreement and downgrading of assessment, if any. In the instant case, the Accepting Authority has simply stated as under:

“Yes I agree with the remarks of the Reporting Officer”.

21. No doubt that the Accepting Authority has agreed with the remarks of the Reporting officer however, no reasons have been given by the Accepting Authority for disagreeing with the remarks given by the Reviewing Authority and grading given by him.

22. As noticed hereinabove, the Reviewing Authority had given the grading of “VERY GOOD” after giving reasons for disagreement with the Initiating Authority. It was obligatory on the Accepting Authority to give reasons for the disagreement with the remarks and grading given by the



Reviewing Authority. Merely stating that he agreed with the remarks of the Reporting Officer was not enough for the reasons that in the absence of any comments by the Accepting Authority, remarks and grading given by the Reviewing Authority would override the remarks given by the Initiating Authority.

23. In view of the fact that the Accepting Authority has failed to give any reasons for disagreement and downgrading the assessment done by the Reviewing Authority, the remarks and grading given by the Accepting Authority need to be set aside.

24. We find that there is no conflict between clause 6.16 of the Standing Order as well as the Appraisal Form for the reason that clause 6.16 makes it obligatory on the Reviewing and Superior Reviewing Authority (in the present case the Accepting Authority) to give reasons for any disagreement with the remarks given by the lower Reporting Authority. This is further fortified from the Appraisal Form itself which in Part-8 stipulates that the Accepting Authority has to state whether the Accepting Authority agrees with the Reporting Authority or the Reviewing Authority and then give his reasons in case of any disagreement and downgrading.

25. As noticed hereinabove the Reviewing Authority had given a grading of “VERY GOOD” and the Accepting Authority has simply accepted the grading and remarks of the Initiating Authority and no reasons have been given for disagreeing with the remarks of the Reviewing Authority who had given reasons for disagreeing with the remarks given by the Initiating Authority.

26. We may also note that in the case of the petitioner, for the immediately preceding year 2016-17 he was graded “OUTSTANDING”



and for 2018-19 “VERY GOOD”. We may further note that same Initiating Officer had graded petitioner as “OUTSTANDING” for the year 01.04.2016 to 31.03.2017 and gave the following remarks:

Mr. Name: MUKESH KUMAR SINGH
Mr. Rank: Second-In-Command
Mr. IRLA-5590

भाग-5
Part-5

(a) PEN-PICTURE OF THE OFFICER REPORTED UPON BY REPORTING OFFICER
(The Reporting Officer is required to indicate his comments on the overall qualities of the officer including areas of strengths and lesser strength and his attitude towards the weaker section and also drawing attention to the qualities if any not covered by entries above)

श्री एमकेएसिंह, द्वितीय कमान अधिकारी एक अनुभवी अधिकारी हैं। दिनांक 24/10/2016 को द्वितीय कमान अधिकारी के पद पर पदोन्नत हुए हैं एवं बाहिरी में लेखाधिकारी की दायित्वों का निर्वहन कर रहे हैं। अधिकारी पदोन्नति पूर्व जय कमान्डेंट (प्रशा) की दायित्वों का भी निर्वहन किए हैं। अधिकारी कार्यों के निष्पादन में लक्ष्य किया है व जिम्मेदारी पूर्वक किया है। अधिकारी को जो भी कार्य सौंपा गया है तत्परता से किया है। अधिकारी कमजोर वर्ग के प्रति व्यवहार सहयोगात्मक व सौहार्दपूर्ण है। इस अवधि के दौरान अधिकारी का कार्य निष्पादन एवं आचरण “उत्कृष्ट” रहा।

(b) Grading (on a score of 1-10)
(A+B+C)

3.2+2.4+2.45=8.05

Sh. M.K. Singh, Second-In-Command is an experienced Officer. On 24.10.2016, he has been promoted to the Post of Second-in-Command and is performing the duties of Accounts Officer in the Battalion. The Officer has performed the duties of Deputy Commandant (Admn.) before promotion. The Officer has taken interest in the accomplishment of work and done the same with responsibility. The Officer has earnestly performed the work assigned to him. The Officer has cordial and co-operative attitude towards the weaker section. During this period, the work and conduct of the Officer has been ‘Outstanding’.

27. In the subject APAR, same officer who had graded the petitioner “OUTSTANDING” in the previous year in the subject APAR has given remarks dramatically opposite to his own assessment with regard to



petitioner's ability to perform work and his knowledge of the rules and regulations.

28. The Reporting Officer in the subject APAR has not correctly graded the petitioner as was also noticed by the Reviewing Officer, whose reasons for disagreement have been extracted hereinabove.

29. In view of the above, the remarks and grading given by the Accepting Authority are set aside and the remarks and grading of the Reviewing Authority of "VERY GOOD" for the subject APAR are sustained.

30. Accordingly, the petition is disposed of holding that the petitioner has earned the grading of "VERY GOOD" for the relevant APAR for the period 01.04.2017 to 05.01.2018.

31. It is further directed that the consequences of the up-gradation of the APAR shall follow and respondents shall take appropriate steps in that regard, *inter alia*, holding of a review DPC preferably within a period of three months from today in accordance with law.

32. The petition is disposed of in the above terms.

33. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

October 11, 2023/SW