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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: November 03, 2023

+ W.P.(C) 14359/2023

RAJEEV GUPTA

..... Petitioner

Through: Mr.Pushpinder Yadav, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms.Bharathi Raju, Sr.Panel Counsel
with Mr.Hardik Bedi, Govt. Pleader
for respondents No.1, 2 & 4/UOI.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)**CM APPL. No.56839/2023** (*exemption*)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 14359/2023

1. The challenge in this writ petition is to an order dated 03.07.2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in O.A. 4485/2017 whereby the Tribunal has dismissed the OA filed by the petitioner herein by stating in paragraph 8 as under:

"8. The applicant has availed all the opportunities as per rules to represent against the gradation given by the reporting and reviewing-cum-accepting authorities in the APAR for the period



*from 01.04.2015 to 23.03.2016. The representation made against the APAR grading given by the reviewing cum accepting authority, dated 14.10.2016 has also been considered by the Competent Authority and vide order dated 30.01.2017, the adverse comments given by the reviewing authority have been expunged. Earlier the adverse comments given by the reporting authority were also expunged by the reviewing authority vide order dated 29.05.2017. In view of this, the applicant has availed due process through which he represented against the low grading i.e. 4.13 (Good) given by the reporting and reviewing cum accepting authority. We find that there is no breach of principles of natural justice in the instant case. The applicant has failed to substantiate any malafide or biasness on the part of the respondents so as to attract judicial review of the administrative action of grading the APAR at particular numerical point. We also agree with the contentions of the learned counsel for the respondents that the ratio of judgments in **Amritk Singh v. Union of India** (2001) 10 SCC 424 and **Rajinder Singh Sehrawat Vs. Union of India & Ors.** 93(2001)DLT 417 are squarely attracted in the present case. The Tribunal cannot act as an Appellate Authority and change the appraisal or grading given by the accepting authority. The Administrative authorities are in a best position to evaluate the performance of the applicant and assess and appraise the grading of an officer I employee. They have seen working of the official for the relevant period and according to their assessment the applicant deserves a particular grading in the APAR. Any interference in this matter is not warranted in judicial review.”*

2. The only submission made by learned counsel for the petitioner by drawing our attention to page 75 of the paperbook, which is part of ACR wherein the Reviewing Authority has made an assessment about the petitioner, is that the same Reviewing Officer acted as an Accepting Authority (who has to be a higher Officer than the Reviewing Officer), which is in violation of OM dated February 08, 1989 issued by the Cabinet



Secretariat, Government of India wherein paragraph 9 the following position has been stated:

“9. (i) The ACR of an officer should be initiated by the immediate Supervisory Officer and reviewed and accepted by the next two higher officers.

(ii) The Accepting Authority for various levels of officers in our organisation is given below for general guidance:

<i>(i) FA/SFA/equivalent</i>	<i>DC/US</i>
<i>(ii) AFO to FO/equivalent</i>	<i>AC/Director</i>
<i>(iii) SO/SFO/ATO/ARO/equivalent</i>	<i>Commissioner/ JT.Secy./equivalent</i>
<i>(iv) RO/TO/equivalent</i>	<i>JS/Addl.Secy</i>
<i>(v) Under Secretary/DC/equivalent</i>	<i>Addl.Secy/OSD</i>
<i>(vi) DS/Director/AS/equivalent</i>	<i>OSD/Secy.</i>
<i>(vii) Jt.Secy/Commissioner/equivalent</i>	<i>Secretary</i>

However, there may be cases where the ACR is initiated by an officer of the rank of Accepting Authority like an FO's ACR being initiated by a Director. In such cases, the ACR should be accepted by the next superior officer.

(iii) The ACRs of personal staff will continue to be written and accepted by the officer under whom they are working. Similarly, the ACRs of MT drivers will be written and accepted by the officer with whom they are attached.”

3. In that sense, according to him, there is no proper consideration of the ACR by the Accepting Authority, who has to be a Senior Officer.

4. On the other hand, Ms. Bharathi Raju, learned CGSC by drawing our attention to the reply filed by the respondents before the Tribunal at page 185 of the paperbook has referred to paragraph 4.6, which reads as under:



“4.6 The contents of Para No. 4.6 of the OA are denied. The IO has suitably mentioned cause and reasons for grading in Section V(1) as well as in Pen Picture of the applicant in the APAR. Hence, it is wrong to say that no cause and reason have been stated in APAR by the IO.

It is further mentioned that in Govt. of India, two tier system of reporting has been provided to minimise the operation of the subjective human element and of conscious/unconscious bias in reporting. However, in this office, a three tier system of reporting has been prescribed i.e. Initiating Officer (IO), Reviewing Officer (RO) and Accepting Authority(AA) to avoid any element of bias. As per DoP&T O.M. No. 21011/ 8/ 85-Estt.(A) dated 23.09.1985 (Annexure-R-1), RO/AA can be the same officer. Hence it is wrong to say that RO functioning as AA is bad in law.”

5. As according to her, in the Office of the respondents, a three tier system of reporting has been prescribed i.e. Initiating Officer (IO), Reviewing Officer (RO) and Accepting Officer (AO) to avoid any element of bias and as per DoP&T Instructions issued vide OM dated September 23, 1985, which is at page 196 of the paperbook, the same contemplates that where for a period of report there is no Reporting Officer with the requisite experience to initiate the report, the Reviewing Officer himself may initiate the report as a Reporting Officer, provided the Reviewing Officer has been the same for the entire period of report and he is in a position to fill in the columns to be filled by the Reporting Officer. The relevant portion of the OM dated September 23, 1985 reads as follows:

“..... when, in the case of an officer, there is no Reporting Officer having the requisite experience of three months or more during the period of report, as a result of which no Reporting Officer is in a position to initiate the report. It has been decided that where for a period of report there is no Reporting Officer with the requisite experience to initiate the report, the



Reviewing Officer himself may initiate the report as a Reporting Officer, provided the Reviewing Officer has been the same for the entire period of report and he is in a position to fill in the columns to be filled by the Report Officer. The relevant portion of the OM dated September 23, 1985 reads as follows: ”

6. On a specific query to the counsel for the petitioner whether the petitioner has made any representation against the ACR his answer is in the affirmative. In fact, he has drawn our attention to Annexure A-1 at page 65 of the paperbook whereby the representation of the petitioner dated February 27, 2017 has been rejected.
7. A plea has been taken by the counsel for the petitioner that the same has been rejected by Under Secretary (PERS.F) who is not an officer higher in rank than the Accepting Authority.
8. We are unable to accept such a submission of the learned counsel for the petitioner for the simple reason, paragraph 7 of the order dated May 25, 2017 reads that the same has been issued with the approval of the Competent Authority.
9. If that be so, the representation having been considered by the Competent Authority, we are of the view that no prejudice has been caused to the petitioner. We agree with the conclusion drawn by the Tribunal.
10. We do not see any merit in the petition. The same is dismissed.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 03, 2023/v