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

% *Date of Decision: 03rd March, 2023*

+ W.P.(C) 11516/2017

NARESH KUMAR SHARMA

..... Petitioner

Through: Mr. Rajat Aneja and
Ms. Aparna Shukla, Advocates.

versus

THE DISTRICT & SESSION JUDGE
(HEADQUARTERS)

..... Respondent

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Ms. Tania Ahlawat,
Mr. Nitesh Kumar Singh, Ms. Palak
Rohmetra, Ms. Laavanya Kaushik and
Ms. Aliza Alam, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CM APPL. 2786/2021 (urgent hearing)

1. Present application has been preferred on behalf of the Petitioner seeking early hearing of the writ petition.
2. In view of the fact that the matter is being heard today, application has been rendered infructuous.
3. Application is disposed of as infructuous.

W.P.(C) 11516/2017

4. Present writ petition has been filed by the Petitioner seeking a direction to the Respondent to upgrade the existing gradings in the Annual Confidential Reports ('ACRs') for the years 2014, 2015 and

2016 with respect to Columns No. '6' and '8' in the 2014 ACR and Columns No. '5', '6' and '8' in 2015 and 2016 ACRs, after expunging the existing gradings/remarks therein. Mandamus is also sought by the Petitioner to direct the Respondent to grant promotion to the post of Judicial Assistant with all consequential benefits at par with his batch.

5. Narrative of facts captured in the writ petition is that Petitioner is an Ex-serviceman, who served the Indian Air Force for 15 years and took pre-mature retirement in the year 2000, on account of his medical condition. He joined the Respondent i.e. District and Sessions Judge (HQs), Tis Hazari Courts, Delhi on 26.06.2003 as a Lower Division Clerk and started working as an Assistant Ahlmad.

6. Petitioner avers that in his 14 years of service, he has dedicatedly performed his duties to the best of his ability and had the privilege of working under Senior Judicial Officers. Till March, 2014, Petitioner had high gradings in his ACRs and no show cause notice or memorandum was ever issued to him. Save and except, for few 'Average' gradings, in most of his ACRs, Petitioner was graded 'Good'/'Very Good' by his superiors over a period of 12 years. Petitioner was granted first financial upgradation under the MACP Scheme in 2013, on completion of 10 years of unblemished service.

7. Despite this background profile over a decade, Petitioner was initially graded 'Below Average'/'Poor' in some Columns in 3 consecutive ACRs for the years 2014 to 2016, while he was working as Ahlmad in the Court of Metropolitan Magistrate, Patiala House Courts. Detailed chart of the gradings/remarks for the said period, as brought forth in the writ petition is as follows:-

S. No.	Point on which information is required	Remarks of the Presiding/Reporting Officer		
		Year 2014	Year 2015	Year 2016
1.	Industry	Average	Average	Average
2.	Handwriting and Neatness	Good	Average	Average
3.	Punctuality and Regularity	Average	Average	Average
4.	Capacity and Intelligence	Average	Average	Good
5.	Acquaintance with rules and orders	Average	Poor	Below Average
6.	Manners and Power to work with others	Below Average	Poor	Below Average
7.	Quickness with dispatch of business	Good	Average	Average
8.	Integrity	Average (some oral complaints)	Not doubtful	Average
9.	Proficiency in Hindi	Average	Average	Average
10.	Overall Grading	'B' Average	'B' Average	'B' Average

8. It is further averred that no show cause notice or memorandum was issued to the Petitioner in the relevant period and there were no complaints of incompetency or laxity in his work or conduct. For the first time, vide letter dated 05.05.2015, Respondent's Office communicated the adverse grading/remark recorded in Column Nos. 6 and 8 pertaining to 'manners and power to work with others' and 'Integrity' in the 2014 ACR, wherein the grading in Column No. 6 was 'Below Average' and 'Average' in Column No. 8 pertaining to Integrity with a remark 'some oral complaints'. Treating the ACR to be adverse, Petitioner was given liberty to file a representation, if he so desired.

9. In response to the letter dated 05.05.2015, Petitioner made a detailed representation dated 13.05.2015, explaining that he had always dedicatedly completed the entire pending work assigned to him, including the pending work of the erstwhile Ahlmad, who had left without even completing the *Goshwara* Register for the period March, 2013 to February, 2014. Petitioner pointed out that he had also completed the entire work pertaining to pending files of DSIC server with the help and co-operation of the other staff members of the Court and the entire records were updated. With respect to Column No. 8, it was stated that the remark 'some oral complaints' reflected adversely on his integrity and was uncalled for as the Petitioner had never committed any act of commission or omission and nor were any pointed out to him either orally or by a memo/show cause notice. Petitioner thus requested the Respondent to upgrade the ACR and expunge the endorsement.

10. Subsequently, vide letter dated 20.05.2016, Respondent communicated the adverse gradings in Column Nos. 5 and 6 pertaining to 'acquaintance with rules and orders' and 'manners and power to work with others' in the 2015 ACR. Petitioner represented on 28.05.2016 for expunging/upgrading the adverse gradings, highlighting that all assigned tasks were accomplished by him, without any delay which included assisting in replying to circulars/queries under the Right to Information Act, 2005, monthly/quarterly statements, questions of Rajya Sabha and Lok Sabha and there were no complaints of laxity/inefficiency in his work. Questioning the 'Poor' grading in Column No. 6, Petitioner explained that despite heavy workload of the Court, which was handling jurisdiction of four Police Stations, Petitioner worked cordially with all staff

members, rendering full co-operation and gave no cause of complaint to anyone.

11. Petitioner states that on the basis of Petitioner's representation dated 13.05.2015, 'Below Average' grading in Column No. 6 in the 2014 ACR was upgraded to 'Average/B', however, grading/remark in Column No. 8 remained intact, leading to the Petitioner making another representation on 29.07.2016, which was rejected. However, the 'Poor' gradings in Column Nos. 5 and 6 in the 2015 ACR were upgraded to 'Average/B'. Respondent communicated the adverse gradings in the 2016 ACR to the Petitioner and on his representation dated 05.06.2017 for expungement, the 'Below Average' gradings in Column Nos. 5 and 6 were upgraded to 'Average/B'.

12. It is averred that on 23.08.2017, Respondent promoted 868 Junior Judicial Assistants to the post of Judicial Assistant, which included those who were junior to the Petitioner in the seniority list. Request made by the Petitioner for considering him for promotion did not yield any positive response, upon which the Petitioner took recourse to Right to Information Act, 2005 and demanded copies of his ACRs from 2003 to 2016, along with comments by the Reporting Officers on his representations and the reasons for not upgrading his ACRs and/or for his non-promotion. Respondent did not part with any information/documents sought and Petitioner again represented on 14.09.2017 for upgrading the impugned ACRs. On 27.11.2017, Petitioner received copies of his ACRs for the years 2003 to 2016, along with notings/documents sought and equipped with them, Petitioner approached this Court.

13. Contentions raised on behalf of the Petitioner are that:
(a) Petitioner has an unblemished service record and during his entire

service of 14 years, not a single memorandum or show cause notice was issued to him and thus, there was no reason to downgrade the ACRs for the years 2014 to 2016; (b) low grading of 'Average' in the Integrity Column No. 8 in 2014 ACR is not justified and secondly, Reporting Officer has made a remark 'some oral complaints' without any basis and without putting the Petitioner to any prior notice by way of a memorandum or show cause notice and calling for his reply/response, as this has a serious impact on the integrity of the Petitioner; (c) Integrity Column has not been endorsed in accordance with the procedure laid down by the DoPT O.M. dated 20.05.1972, which prescribes maintaining a confidential diary in which instances creating suspicion about integrity should be noted and action is to be taken to verify the truth expeditiously and at the time of recording the ACR, the diary is to be consulted. It further provides that if the Column is not filled on account of unconfirmed nature of the suspicions, the Column should be left blank and a separate secret note should be simultaneously recorded and followed up. If as a result of follow up action officer is exonerated, his integrity should be certified and entry made; (d) the 2015 ACR is not as per the format of grading inasmuch as the Reporting Officer can only grade as Outstanding/Very Good/Average/Below Average and the remark 'Not Doubtful' does not fall in any of the standard gradings and further the word 'not' has been subsequently added and there is overwriting in the ACR, which is impermissible; (e) in all the three ACRs from 2014 to 2016, Reporting Officer in Column No. 6, pertaining to 'manners and power to work with others' has graded the Petitioner 'Below Average' or 'Poor' and although subsequently, these gradings were upgraded to 'Average', they continue to be on the lower side and inconsistent with

the past ACRs having gradings of 'Good'/'Very Good'; and (f) *albeit* the 'Poor' and 'Below Average' gradings in Column No. 5 i.e. 'acquaintance with Rules and Orders' in ACRs 2015 and 2016, respectively, have been upgraded to 'Average', however, on account of these entries being inconsistent with/downgraded from the past 'Good'/'Very Good' ACRs, call for an interference and deserve to be expunged and upgraded.

14. Arguing on behalf of the Respondent, Ms. Ahlawat submits that Petitioner joined the office of the Respondent as LDC on 26.06.2003. On completion of 10 years of service, Petitioner was granted 1st financial upgradation under the MACP Scheme in 2013 which shows that there was no bias against the Petitioner. Petitioner was graded 'Average' i.e. 'B' by his respective Reporting Officers in the ACRs for the years 2005 and 2007-2010, prior to the impugned ACRs and there is no inconsistency or downgrading as alleged.

15. It is further submitted that in Column Nos. 6 and 8 in the 2014 ACR, Petitioner was initially graded 'Below Average' and 'Average' respectively, with the remark 'some oral complaints' in the Integrity Column but being adverse, the gradings/remark were communicated to the Petitioner. Petitioner represented and after calling comments from the concerned Reporting Officer and affording personal hearing to the Petitioner, the gradings were re-visited and the 'Below Average' grading in Column No. 6 was upgraded to 'Average'. Likewise, the ACRs for 2015 to 2016, to the extent they had the grading 'Poor' or 'Below Average' in Column Nos. 5 and 6 being adverse, were communicated to the Petitioner and on receiving his representations and finding his grievances to be justified, the gradings were upgraded to 'Average'. Resultantly, the 3 impugned ACRs of the Petitioner for

the years 2014 to 2016 have an overall grading of 'Average' i.e. 'B', which are based on the performance of the Petitioner as assessed by his Reporting Officer and warrant no interference.

16. It is submitted that it is wrong for the Petitioner to contend that the impugned ACRs are inconsistent with the past ACRs and/or there is downgrading. The ACR dossier reflects that Petitioner's past ACRs, at least from the year 2007 onwards, taken as a ready reckoner are 'Average', save and except, one or two where the gradings are 'Good'. In any case, ACR is an annual assessment of the performance of an employee and is rendered based on assessment of the performance/conduct and factors in the given year. Law, as it has developed over the years, only obliges an employer to communicate to the employee an adverse grading or remark and afford him an opportunity to represent. Once the representation is made and the Competent Authority, after applying its mind to the record and the performance of the employee, decides to retain a particular grading, ordinarily, Courts would not interfere in the limited scope of judicial review.

17. I have heard the learned counsels for the parties and examined their rival contentions.

18. There can be no two opinions that an ACR is an Annual Performance Assessment report of an employee and is initiated each year, based on the assessment of performance of the employee in the given year and is a mirror reflection of his good performance in a given year as also an indicator of the deficiencies/shortcomings and/or drop in performance. ACR serves a dual purpose of commending the good work of an employee by award of high gradings and at the same time wherever required, cautioning him that he needs improvement on

certain parameters by lowering his grading, with or without remarks. Certainly, where an employee has performed well consistently over the years and has received high gradings, a sudden downgrading calls for a re-look and in that case, the onus shifts on the employer to justify the downgradation in a given APAR/ACR. To put it differently, I may quote from a judgment of this Court '*a leopard does not lose his spots overnight and least become a jackal*'. It is equally true that no employee can claim as a matter of right that once he has received a high grading, the same should continue for the rest of his tenure, irrespective of a downfall in his performance/conduct etc., no matter that there is a change in his performance.

19. With this in the backdrop, I have perused the ACRs shown during the course of hearing for the period 2007 to 2013, since one of the grounds for seeking expungement of the impugned ACRs is alleged inconsistency in reporting and downgrading. Having seen the ACRs of the period prior to the impugned ACRs, in my view, Respondent is factually correct that barring two ACRs, all other ACRs of the Petitioner from 2007 to 2013, are more or less 'Average' in almost all the parameters in the different columns of the ACRs. Therefore, it is not correct for the Petitioner to contend that all his past ACRs were 'Good'/'Very Good' and the impugned ACRs are in stark contrast and downgraded, deserving expungement on ground of inconsistency.

20. Petitioner is right that the initial 'Poor' or 'Below Average' gradings were unjustified, however, it is an admitted position and matter of record that being adverse, the gradings were communicated to the Petitioner and he was given an opportunity to make representations. Upon examining the representations, the Competent

Authority has upgraded all the 'Poor'/'Below Average' gradings in Column Nos. 5 and 6 of the three impugned ACRs from 2014 to 2016 to 'Average'. Therefore, to this extent, the action of the Respondent is compliant with the settled law that adverse gradings/remarks or the entries amounting to downgradation must be communicated to the employee, enabling him to represent against them and if there is merit in the case of the employee, the ACRs are required to be upgraded/expunged.

21. The relief sought by the Petitioner, however, as evident from the pleadings in the writ petition goes beyond, calling upon the Court to interfere and direct upgradation of the 'Average' gradings in the impugned ACRs, upon re-appreciation of his performance/conduct and output of the work assigned to him such as updating the pending files on DSIC server, completing the *Goshwara* Register, replying to the circulars pertaining to RTI information, monthly and quarterly statements etc. in his capacity as an Ahlmad of the Court. I am afraid this is beyond the scope of interference by this Court, as endorsement of gradings in an ACR is the domain and prerogative of the Reporting Officer and thereafter, the Reviewing and the Accepting Officer, who are the best judge of the performance of an employee for whom the ACR is required to be initiated. Depending on the performance of the Petitioner in the concerned years, it was purely for the Reporting Officer to judge as to what grading the Petitioner deserved, based on his judgment and assessment of the quantity and quality of the Petitioner's work. This Court cannot in a writ jurisdiction substitute its assessment for that of the Reporting Officer and re-write the ACRs in Column Nos. 5 and 6, which importantly relate to knowledge of Rules, manner of working with others etc. and are best assessed/

judged by the Reporting Officer and/or reviewed in the hierarchy by the Reviewing Officers.

22. Insofar as Column No. 8, which pertains to 'Integrity', is concerned, in 2015 ACR, no doubt, as rightly contended by the Petitioner, the word 'not' appears to be added subsequently prior to the word 'doubtful'. Be that as it may, the ACR as it stands today has an endorsement 'not doubtful' and this fact is not disputed by the Respondent. Therefore, once the Integrity Column has an endorsement 'not doubtful' by the Reporting Officer, it shall be so treated and the Petitioner can have no grievance on this aspect.

23. As far as 2014 ACR is concerned, the grievance of the Petitioner is completely justified with respect to Column No. 8. The Integrity Column has a grading of 'Average' with a remark 'some oral complaints'. It is trite that it is not open to Reporting Officer to endorse remarks in the integrity of an employee, unless the required procedure detailed in DoPT O.M. dated 20.05.1972 has been followed. For ready reference, para 18 of the said O.M., which prescribes the procedure for filling up the column relating to integrity, is extracted hereunder:-

"18. Procedure for filling up the column relating to integrity- The procedure for filling up the column relating to integrity is as follows:-

(a) Supervisory Officers should maintain a confidential diary in which instances which create suspicion about the integrity of a subordinate should be noted from time to time and action to verify the truth of such suspicions should be taken expeditiously by making confidential enquiries departmentally or by referring the matter to the Special Police Establishment. At the time of recording the Annual Confidential Report, this diary should be consulted and the material in it utilized for filling the column about integrity. If the column is not filled on account of the unconfirmed nature of the suspicions, further action should be taken in accordance with the following sub-paragraphs.

(b) *The column pertaining to integrity in the Character Roll should be left blank and a separate secret note about the doubts and suspicions regarding the officer's integrity should be recorded simultaneously and followed up.*

(c) *A copy of the secret note should be sent together with the Character Roll to the next superior officer who should ensure that the follow up action is taken with the due expedition.*

(d) *If, as a result of the follow-up action, an officer is exonerated, his integrity should be certified and an entry made in the Character Roll. If suspicions regarding his integrity are confirmed, this fact can also be recorded and duly communicated to the officer concerned.*

(e) *There are occasions when a Reporting Officer cannot in fairness to himself and to the officer reported upon, either certify integrity or make an adverse entry, or even be in possession of any information which would enable him to make a secret report to the Head of the Department. Such instances can occur when an officer is serving in a remote station and the Reporting Officer has not had occasion to watch his work closely or when an officer has worked under the Reporting Officer only for a brief period or has been on long leave, etc. In all such cases, the Reporting Officer should make an entry in the integrity column to the effect that he has not watched the officer's work for sufficient time to be able to make any definite remark or that he has heard nothing against the officer's integrity, as the case may be. This would be a factual statement to which there can be no objection. But, it is necessary that a superior officer should make every effort to form a definite judgment about the integrity of those working under him, as early as possible, so that he may be able to make a positive statement.*

(f) *There may be cases in which after a secret report/note has been recorded expressing suspicion about an officer's integrity, the enquiries that follow do not disclose sufficient material to remove the suspicion or to confirm it. In such a case, the officer's conduct should be watched for further period, and in the meantime, he should, as far as practicable, be kept away from positions in which there are opportunities for indulging in corrupt practices.*

Specific mention should be made in the confidential reports on officers working in or holding charge of Top Secret / Secret Sections about their trustworthiness in matters affecting departmental security."

24. Admittedly, the aforementioned procedure has not been followed by the Respondent prior to filling up the Column of

Integrity and in the absence of any memo or show cause notice or any disciplinary proceedings and in the absence of following the mandatory procedure as detailed above, it was not open to the Reporting Officer to have endorsed Column No. 8 of the ACR in the manner in which it has been done and to this extent, Column No. 8 of the 2014 ACR deserves to be expunged, directing the Respondent to follow the procedure and take further action in accordance with law.

25. It cannot be overemphasized that the Column regarding Integrity is very vital to an employee and therefore, it is imperative that the said Column is filled with greatest care and caution. Therefore, if in a given case, the remarks are found to be filled in a perfunctory or casual manner or for extraneous consideration, the Court can interfere to test the authenticity or correctness of the mark. In the present case, Respondent has not been able to substantiate in the counter affidavit as to what were the complaints against the Petitioner for which an annotation has been made in the Integrity Column and assuming that there were any complaints, there is no material on record to show if the same were put to the Petitioner and that he was given a chance to respond to them. Therefore, the endorsement of 'some oral complaints' can have serious impact on the career of the Petitioner and is not justified in the absence of recourse to the procedure mandated in law. Additionally, the grading of 'Average' also cannot be sustained as it is against the procedure and manner of endorsing the 'Integrity' Column in an ACR. This Court is unable to fathom how an employee's integrity can be 'Average'. Integrity can only be assessed as 'Doubtful' or 'Beyond Doubt'. This is clearly prescribed by the DoPT O.M. dated 11.02.2016 and the relevant paras are as follows:-

"No.21011/27/2015-Estt. (A-II)

*Government of India
Ministry of Personnel, P. G. and Pensions
Department of Personnel & Training*

North Block, New Delhi-110001

Dated: 11th February, 2016

Office Memorandum

Subject: Instructions/Guidelines relating to filling up the Integrity Column of Annual Performance Assessment Reports-regarding.

The undersigned is directed to refer the existing instructions/guidelines of this Department on filling up the column relating to integrity in ACRs (now APARs). It has been brought to the notice that many a time Reporting Officers do not make clear and categorical mention about the integrity of the officer reported upon. Further, it has also been seen that in case of doubt of integrity of the officer reported upon, the procedures prescribed for filling up the integrity column in APARs are not being followed appropriately.

2. Now, it has been decided to reiterate the followings instructions/guidelines contained in para 5.2 of this Department OM No. 51/5/72-Ests. (A) dated 20th May, 1972 on procedures prescribed for filling up the column relating to integrity in APARs:

xxx

xxx

xxx

3. It is further conveyed that the remarks against the integrity column of APARs of the officer reported upon shall be made by the Reporting Officer in one of three options mentioned below:

(a) Beyond doubt.

(b) Since the integrity of the officer is doubtful, a secret note is attached.

(c) Not watched the officer's work for sufficient time to form a definite judgement but nothing adverse has been reported to me about the officer.

4. All Ministries/Departments are requested to bring it to the notice of all concerned for strict compliance."

26. It is true that the 2016 ACR also contains a grading of 'Average' in the Integrity Column and therefore, for the aforesaid reasons and in view of the DoPT O.M, the grading is untenable in law and deserves to be expunged.

27. In view of the aforesaid, this Court comes to a conclusion that the impugned ACRs 2014 to 2016 do not merit interference insofar as

the gradings in Column Nos. 5 and 6 thereof are concerned, including the grading in the Integrity Column in the 2015 ACR. However, as far as the 2014 ACR is concerned, the grading of 'Average' and the remark 'some oral complaints' are expunged in the 'Integrity' column. Respondent shall follow the procedure stipulated in the DoPT O.M. dated 20.05.1972 and endorse the said column, in accordance with law. Likewise, the grading of 'Average' in the 'Integrity' Column of 2016 ACR is also expunged, directing the Respondent to fill the said column, in accordance with the norms and prescribed procedure pertaining to 'Integrity' Column in ACRs.

28. Writ petition is allowed to the aforesaid extent, directing the Respondent to complete the entire exercise within four months from today, leaving it open to the Petitioner to take recourse to remedies available in law, in case of any surviving grievance, to the extent the Court has interfered in the impugned ACRs for the years 2014 and 2016. Petitioner shall be entitled to all consequential benefits including holding of Review DPC, in accordance with the fresh endorsements.

29. Writ petition stands disposed of in the above terms.

JYOTI SINGH, J

MARCH 03, 2023/rk/shivam