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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.32720 of 2023

In the matter of an Application under Articles 226 and 227 of the Constitution of India, 1950

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Smt. Snehaprava Das,
Aged about 43 years
Wife of Manoj Kumar Khatei
Care of Sanatan Das
Plot No.216, Lane No.06
Chintamaniswar Area,
PS: Laxmisagar, Bhubaneswar,
At present serving as
Deputy Director (Sr.)
Madhusudan Das Regional Academy
of Financial Management
Chandrasekharpur
Bhubaneswar. ... Petitioner.

-VERSUS-

1. Chief Secretary to Government of Odisha
Lokseva Bhawan, Bhubaneswar.

2. State of Odisha
represented through
Principal Secretary to Government
Finance Department
Lokseva Bhawan, Bhubaneswar.

3. Special Secretary to Government
General Administration &

Public Grievance (SE) Department
Lokseva Bhawan, Bhubaneswar.

4. Controller of Accounts, Odisha
Bhubaneswar. ... Opposite parties.

Counsel appeared for the parties:

For the Petitioner : Mr. Jagannath Patnaik,
Senior Advocate
assisted by M/s. A. Patnaik,
Ms. Soma Patnaik, R.K. Pati,
T. Patnaik, and S. Deepak,
Advocates

For the Opposite parties : Mr. Shantanu Das,
Additional Standing Counsel

P R E S E N T:

HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN

Dates of Hearing : 21.11.2024 :: Date of Judgment :20.12.2024

JUDGMENT

MURAHARI SRI RAMAN, J.—

Challenge is laid to the Letter in D.O. No.898— GAD-SEA-OFSREV-0008/2023/S.E., dated 28.06.2023 (Annexure-2) issued by the Additional Secretary to Government, General Administration and Public Grievance (SE) Department, wherein the rating in Performance Appraisal Report (PAR) of the petitioner "as good Officer under overall grading" has been

treated as adverse as well as the D.O. No.1287/S.E., dated 11.09.2023 (Annexure-4) issued by the Under Secretary to Government, General Administration and Public Grievance (SE) Department, whereby the representation dated 14.08.2023 of the petitioner against such adverse remark has been stated to be considered and disposed of by continuing such adverse remark on PAR for the year 2021-22 (01.04.2021 to 31.03.2022).

1.1. The petitioner, invoking extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India, has filed the instant writ application with the following prayer(s):

"It is, therefore, most humbly prayed that this Hon'ble Court may graciously be pleased Admit the writ application, to issue rule nisi calling upon the opposite parties to show cause as to why the prayers made hereunder be not allowed,

Upon showing insufficient cause/no cause make the said Rule absolute,

And be pleased to quash the adverse remark communicated vide DO letter dated 28.06.2023 under Annexure-2 and order of rejection of representation dated 11.09.2023 under Annexure-4 declaring the same to be illegal, arbitrary and unconstitutional

And be further pleased to expunge the adverse remark by directing the authorities to grant all consequential

service and financial benefits which were denied to the petitioner taking into account the aforesaid adverse remark.

And/or may pass such other writ/writs, order/orders, direction/directions as this Hon'ble Court may think fit and proper for the ends of justice.

And for this act of kindness the petitioner as in duty bound shall ever pray."

Facts as stated in the writ petition:

2. The petitioner, Group-A Officer under the Odisha Finance Service, after working in different Departments of the Government of Odisha, was posted in the Office of the Controller of Accounts, Bhubaneswar during 2017-2021. Though no adverse remarks were ever found place in the Performance Appraisal Reports (PARs) against the petitioner, the Additional Secretary to Government of Odisha in General Administration and Public Grievance (SE) Department *vide* Memo No.899/S.E., dated 28.06.2023 (Annexure-2) communicated the following decision, while working as the Deputy Director in the Madhusudan Das Regional Academy of Financial Management:

"Review of your annual PAR for the period 2021-22 (01.04.2021 to 31.03.2022) reveals "She causes insubordination in many occasions. Behaviour is not

satisfactory. She has poor control over her Branch. She is badly dependent on the sub-ordinates including Retired persons engaged as OSD. She lacked self-confidence. In spite of repeated instructions, she issued objections six months after receipt of the proposals in most of the cases. She has not maintained the prescribed Registers under RTI Act properly. She bypassed the reporting authority in several cases and put up the files directly to the Controller of Accounts. She feels the job of authorization of pension as a "stereotyped work" instead of a "noble work". She writes to the Head of the Office to relinquish her from the office on her transfer. This shows her attitude towards her job."

You have been rated as a Good Officer under Overall Grading.

Government hopes that your will try to improve.

If you wish to make any representation against the above adverse remarks, you may do so within 45 days of receipt of this letter."

2.1. To such communication dated 28.06.2023, the petitioner on 14.08.2023 had submitted the following explanation/representation, which reads thus:

"In inviting, a kind reference to the subject cited above, I have been asked to make representation against the adverse remarks as communicated by the Government in General Administration and Public Grievance (SE) Department vide the letter under reference. In this context, I am to put forth herewith the following few

lines for your kind consideration and sympathetic orders.

1. *That, being an Odisha Finance Service Officer, I have an unblemished service career of more than 12 years in different capacities as posted by the Government from time to time. At least I have worked in three different stations at different point of time under different authorities within 12 years of service so far. To the best of my knowledge I have worked diligently all through in different stations.* ***My performance in all these stations can be well verified from the Performance Appraisal Reports of last 12 years as given by different authorities for the respective years*** *and the fact of which may be taken into cognizance while deciding my present case regarding communication of adverse remarks.*

2. *Regarding the adverse remark of in-subordination in many occasions, I intend to state that this is purely a false allegation against me. As I believe my official conduct is always satisfactory for my good behaviour and helping attitude towards everyone in the office and as well towards the retired Government employees,* ***the fact of which may be ascertained by conducting an enquiry in this regard****.*

3. *As regards the adverse remark of poor control over the branch of the office, I am to say that during the FY 2021-22,* ***I was assigned with the work of pension section, RTI cell, Disposal of Grievances, work of computer cell and G & C section. For all these works of different***

sections I have worked diligently with disposal of 1859 no. of pension cases and have disposed all the applications received under RTI Act and the grievance petitions, the fact of which can be well verified from the registers maintained in the office in the RTI cell and registers maintained in the helpdesk for grievance petitions. *In this context, I am further to reiterate that I was having sufficient involvement in work as assigned to me by the authority and as such was having full control over the branches functioning under me.* ***Not only that I have also trained my subordinates like ASOs working under me in different branches, the fact of which may be enquired upon from the ministerial staffs now working in the said office. Further, in this context I am to submit herewith that as a matter of practice I always maintain a register regarding the work done by me on day to day basis, the extract of the said register for the specified period is annexed herewith as Annexure-A.***

4. *Regarding the adverse remark of my dependency on the sub-ordinates, and retired person engaged as OSDs, it is just a matter not to be relied upon as being the branch head I was allocating day to day work of the sections to my subordinates and the OSDs at the beginning of each day and reviewing their work performance in a periodical manner.* ***The OSDs were attached to each of the officers in pension and GPD sections of that office and the files were coming through***

them in online mode and physical mode as well. Since this was a common phenomena of the office, the allegation regarding my dependency on the sub-ordinates including OSDs is purely baseless and far from truth and hence it is not to be relied upon. *Further in this context, I am to reiterate that during the year 2021-22, at some point of time, the Controller of Accounts, i.e., the Head of Office had disengaged the OSDs for the reasons best known to him, the fact of which can be well verified from the office records. And as such my dependency on the OSDs is just not true rather it is a false and baseless allegation.*

5. *Regarding the adverse remark of raising of objections intentionally is never a fact and the office record will itself speak whether the objections as made by me during the period were valid or not.* ***However, I have always tried to dispose of the pension cases favourably at an early date once the objections are getting complied.*** *It is again not a fact that the files were lying with me for more than six months. The office record will clearly speak the date of receipt of file by me and the date and manner of disposal.*

6. *Again the adverse remark that bypassing the reporting authority in several cases and putting up the files directly to the Authority is just a misnomer, the fact of which can be well verified from the office records.* ***However, it was an instruction of the Controller when the reporting authority is not available/on leave, the file may be sent directly to him without***

any wastage of time. *As such at any point of time, I have never disobeyed my authority nor have bypassed the Reporting Authority deliberately.*

7. ***Further, the adverse remark that I treat the authorization of pension cases as a "stereotyped" work is never a fact as the pension cases are not the same in each case rather it varies from case to case. So under no circumstances, authorization of pension can be treated as a stereotyped work.*** *The authority before giving any such adverse remark should have studied properly the pension cases and applied his mind to find out whether all the cases are similar or different in some cases.*

8. *In view of my narration as above against the adverse remarks, it can thus be safely concluded that deliberately the Head of Office, i.e., the Controller of Accounts has given adverse remarks against me in spite of my sincere and best efforts to my work.* ***The motive of the Controller of Accounts was not all good as on several occasions as he has humiliated me before others in the office and even has no hesitation to humiliate me in official meeting in presence of other staffs.*** *Being a lady officer I was feeling intolerant for his bad behaviour as I was not inclined to succumb to his ulterior motive of ill intension to do something wrong with me. Being a lady I am not in a position to describe all such events that depicts his nefarious activities and ill intention for me.* ***This being the fact, I voluntarily represented for my transfer from***

that office without any further indulgence to aggravate the situation. I also personally met the Principal Secretary, Finance Department, with the representation and after due consideration I got transferred from that office. *Even there was a situation when I was contemplating to go to higher forums to ventilate his ill intention against me.*

9. *As regards the adverse remark of the request to relinquish the charge I am to say that when I got transferred, I gave it in writing to Controller of Accounts to relieve me immediately or to allow me to relinquish charges just to get rid of the unhealthy situation in the office as no substitute was given against me.*

All these adverse remarks are deliberate and when I didn't concede to the bad will of the Controller, out of anger he has given me deliberately adverse remarks as narrated vide the letter under reference. *In this contest, I am further to say herewith that during periodical review of work performance of the officers the Controller in many occasions in his own handwritings has given the remark as 'very good' for the work done by me.* ***It is not understood as to how the Controller can give adverse remarks about me in the PAR when at some point of time he has also appreciated my work performance during the first month of his joining as Controller in the said office, which contradicts his own remarks.*** *The extracts of such review reports in which he has given 'very good' remark against my work performance are annexed herewith as Annexure-B.*

In this context, I am further to state that I worked in Controller of Accounts office for a period of 05 years starting from the year 2017. My tenure with the present Controller of Accounts who has given adverse remark against me is just 08 months and right from his joining in that office his attitude towards me was not good because of his ill intention towards me. My Performance Appraisal Reports as given by the then Controller of Accounts for the year 2017-18, 2018-19, 2019-20 and 2020-21 may be taken into cognizance to ascertain the genuineness of the fact as to whether I am entitled to receive any adverse remarks or not and to decide the case accordingly.

In view of the above narrated facts, I therefore request your good self to kindly examine the facts and pass necessary favourable orders and for which act of your kindness I shall remain ever obliged."

2.2. The said representation dated 14.08.2023 was disposed of and decision thereon has been communicated *vide* D.O. No.1287/S.E. dated 11.09.2023 (Annexure-4) by the Under Secretary to Government, General Administration & P.G.(SE) Department which reads as follows:

"Please refer to your representation dtd.14.08.2023 on the subject cited above. I am desired to say that after careful consideration, Government have been pleased to continue the adverse remark on your PAR for the year 2021-22 (01.04.2021 to 31.03.2022) which was

communicated to you vide this Department D.O. Letter No.898/SE, dtd.28.06.2023."

2.3. While not expunging the adverse remarks on the PAR of the petitioner for the period 2021-2022, the batch mates and the junior colleagues have been given promotion to the next higher rank. Dissatisfied thereby, with a prayer to wield power of writ of *certiorari* to quash the decisions communicated in Letter dated 28.06.2023 and Letter dated 11.09.2023 as referred to *supra*, the petitioner has approached this Court by way of this writ petition.

Counter affidavit of the opposite parties:

3. This Court *vide* Order dated 11.10.2023 issued notice to the opposite parties and in compliance thereof, counter affidavit has been filed on 05.02.2024 being sworn to by Sri Hemoj Sankar Behura, Under Secretary to Government, General Administration and Public Grievance Department, Loka Seva Bhawan, Odisha, Bhubaneswar on behalf of opposite party Nos.1 and 3.

3.1. In the counter affidavit, asserting that after receipt of representation, the author of the adverse remarks was asked to submit substantiation report or to furnish comment on the representation. The representation of the petitioner has been disposed of within six months

of receipt of such representation taking into consideration facts recorded in the PAR, contents of the representation and explanation in substantiation report. It is asserted that non-consideration of promotion to the higher rank was on account of retention of the adverse remarks on PAR for the period 2021-2022. The statement of said opposite party Nos.1 and 3 runs as follows:

> *"7. That it is further humbly submitted that, keeping in view the provision of the PAR Guideline, the deponent humbly begs to draw the attention of this Hon'ble Court that on review of the confidential report on the performance of the petitioner for the period 2021-22 (01.04.2021 to 31.03.2022) the adverse remarks were noticed which were communicated to the petitioner in the exercise of paragraph 12(i) of the G.A. (SE) Department PAR guideline issued vide Memo No.1199/PRO dated 26.04.2006 (Annexure-1 to the writ petition) wherein the petitioner was requested to submit her representation, if any. The petitioner submitted her representation dated 14.08.2023 (Annexure-3 to the writ petition) for the expunction of adverse remarks recorded in her PAR for the aforesaid period. As per paragraph 15(i) of the PAR Guideline dated 26.04.2006, the representation dated 14.08.2023 of the petitioner was transmitted to the author of adverse remarks, i.e., the Reporting Authority wherein the Reporting Authority was requested to submit his substantiation report for quick disposal of the*

representation of the petitioner. The Reporting Authority submitted her substantiation report dated 29.08.2023. After following due procedure and taking into account the representation of the petitioner and the substantiation report of the Reporting Authority, the Government found no adequate ground to expunge the adverse remarks recorded in the PAR and accordingly, the representation of the petitioner was rejected, and communicated vide D.O. No.1287/SE, dated 11.09.2023. (Annexure-4 to the writ petition).

7(a). That the averments made in Paragraph 1 of the writ petition to the extent that the adverse entries made in the PAR of the petitioner for the period 2021-22 (from 01.04.2021 to 31.03.2022) were issued in gross violation of Government Guidelines and that the rejection of representation for expunction of adverse remark was done with a cryptic and bald order are purely imaginary and baseless, inasmuch as, the representation for expunction of adverse remark was rejected as the author of adverse remark on his substantiation report has agreed to stick to the adverse remarks."

3.2. Another counter affidavit was filed on 19.02.2024 by the opposite party No.2, being sworn to by Pradipta Kumar Mohanty, Under Secretary to Government of Odisha, Finance Department, with the following explanation:

*"8. *** It is further worthwhile to mention here that, the General Administration and Public Grievance Department according to the Establishment file*

viewed that promotion of the petitioner cannot be considered when adverse remarks in the PAR is continuing and within the preceding 60 months. ***As such, it is not permissible to consider her promotion in the DPC without taking into consideration of the adverse remark for the said period since it is conflict with Rule 3 (C) of OCS (Criteria for Promotion) Rules, 1992 as modified by amending Rules of 2003 and 2020.*** *Rule 3 (C) of OCS (Criteria for Promotion) Rules, 1992 as modified by amending Rules of 2003 and 2020, provides that in order to judge the suitability of an officer for promotion, the Selection Board shall scrutinize preceding sixty months available Confidential Character Rolls and other documents if any, having a bearing on the performance and conduct of all eligible officers, unless for reasons to be recorded, it is considered necessary to refer to any earlier records to adjudge an officer's suitability. Provided that the available PARs taken into consideration for promotion as above shall include PARs covering at least a period of thirty-six months in the preceding five years (OCS (Criteria for Promotion) Amendment Rules, 2020).*

In the present case in hand, the petitioner is coming within the zone of consideration for promotion from OFS-I (SB) to OFS (SG) and the adverse remarks in the PAR for the year 2021-22 is continuing and within the preceding 60 months. *Keeping in view the provisions contemplated under OCS Criteria for Promotion Rules, 1992 and considering the advice*

of General Administration and Public Grievance Department, there is difficulty in convening the Selection Board meeting for consideration of promotion of OFS-I (SB) officers to the grade of OFS (SG). As such, it has not been possible to fill up the vacancies in the grade of OFS (SG).”

3.3. Further affidavit has been filed on 03.07.2024 by opposite party No.2 being sworn to by Suneina Singh, Under Secretary to Government in Finance Department wherein the following has been affirmed:

“10. That General Administration and Public Grievance Department viewed that promotion of Smt. Das cannot be considered when adverse remarks in the PAR is continuing and within the preceding 60 months. As such, it is not permissible to consider her promotion in the DPC without taking into consideration of the Adverse remarks for the said period since it is conflict with Rule 3(c) of OCS (Criteria for Promotion) Rules, 1992[1] as modified by amending Rules of 2003 and 2020.

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1 Rule 3(c) of the Odisha Civil Services (Criteria for Promotion) Rules, 1992, as amended by virtue of the Odisha Civil Services (Criteria for Promotion) Amendment Rules, 2005 and the Odisha Civil Services (Criteria for Promotion) Amendment Rules, 2020, stands thus:

“(c) In order to judge the suitability of an officer for promotion, the Orissa Public Service Commission, the Departmental Promotion Committee, the Selection Committee or Selection Board, as the case may be, shall scrutinise preceding five years available Confidential Character Rolls and other documents, if any, having a bearing on the performance and conduct of all eligible officers, unless for reasons to be recorded, it is considered necessary to refer to any earlier record to adjudge an officer’s suitability:

Provided the available Confidential Character Rolls (C.C.Rs) taken into consideration for promotion as above shall include C.C.Rs covering at least a period of thirty-six months in preceding sixty months.”

16. *That the Selection Board perused the Memorandum and scrutinised the PARs as well as the service particulars of ninety-nine (99) officers including the petitioner coming under the zone of consideration. The Selection Board decided to keep their finding in sealed cover in respect of 5 officers who are senior to the petitioners in terms of General Administration Department Office Memorandum No.3928 dated 18.02.1994 read with Office Memorandum No.14640 dated 04.07.1995 and No.1958 dated 15.01.1999. No post was kept reserved for them due to pendency of Departmental Proceedings. Accordingly, the Selection Board recommended 33 officers in the grade of OFS-I (SB), i.e., upto Serial No.38 of the zone of consideration for their promotion to OFS (SG) decided to fill up 33 posts in the grade of OFS (SG).”*

Hearing:

4. It is conceded by learned Additional Standing Counsel that since the opposite party Nos.1, 2 and 3 have filed counter affidavit, there is no necessity for the opposite party No.4 to file separate response.

4.1. As the pleadings are stated to be completed and exchanged amongst the counsel for respective parties, on consent of counsel appearing for the parties, this matter is taken up for final hearing at the stage of admission.

4.2. Heard Sri Jagannath Patnaik, learned Senior Advocate assisted by Ms. Soma Patnaik, learned Advocate for the petitioner and Sri Shantanu Das, learned Additional Standing Counsel for the opposite parties.

4.3. On conclusion of hearing, the matter has been reserved for preparation and pronouncement of judgment.

Rival contentions and submissions:

5. Sri Jagannath Patnaik, learned Senior Counsel being assisted by Ms. Soma Patnaik, learned Advocate appearing for the petitioner drew attention to PAR stated to bear adverse remarks (Annexure-A/3 as enclosed to counter affidavit filed by opposite party Nos.1 and 3), and apprised this Court that the remarks of the Reporting Authority do smack *bias* in view of the fact that the rating given by the Additional Controller of Accounts (Reporting Authority) depicts "average" in respect of each item of description against Serial No.1, but as against Serial No.5, which is meant for specifying "overall grading", the assessment has been made as "Good".

5.1. It is brought to the notice of this Court that during the period from 01.04.2021 to 31.03.2022 two different Controllers of Accounts rated performance of the

petitioner differently. While Shri Subrata Senapati (Controller of Accounts) on 29.10.2022 "rated her 'Very Good' for the period of assessment" with overall grading "Very Good", another Controller of Accounts namely Shri Ashok Kumar Mohanty has rated "Good" with overall grading "Good" on 31.10.2022. He, therefore, vehemently contested by urging that the assessment of performance of the petitioner by two Authorities of the same Cadre in the same year 2021-22 differed significantly.

5.2. It is further argued by referring to paragraph 12 of the "Guidelines for recording of Performance Appraisal Report for Group-A Officers of State Government replacing the current system of Confidential Character Rolls (CCRs)" issued *vide* Memo No.1199/PRO, dated 26.04.2006 (hereinafter referred to as "Guidelines, 2006") that the PAR for 2021-22 could not be treated to be "adverse" inasmuch as the Additional Secretary to Government of Odisha in General Administration and Public Grievance (SE) Department reviewed the PAR with remark "adverse" outside the earmarked box. It is submitted that such a remark cannot have any repercussion. Therefore, essentially he contended that in terms of paragraph 12 of the Guidelines, 2006 remarks recorded in the earmarked box/space provided in the PAR would be treated as "adverse";

nonetheless, remarks recorded outside the box is deemed to be "non-adverse".

5.3. Placing emphasis on the Letter of the General Administration and Public Grievance (SF) Department bearing No.674/SF, dated 16.03.2020, it is urged by Ms. Soma Patnaik, learned counsel that neither the Reporting Authority (Additional Controller of Accounts) nor the so-called Reviewing Authorities (Controllers of Accounts) or the Additional Secretary to Government of Odisha in General Administration Department, has adhered to requirement contained in said Government Instruction before recording adverse remarks in the PAR. Therefore, she submitted that the case of the petitioner deserves favourable consideration.

5.4. She went on to submit that since the performance of the petitioner with respect to earlier years have been appreciated by other higher authorities, sudden downgrading the performance for the period in question smacks arbitrariness and whims on the part of the superior authorities.

6. Sri Shantanu Das, learned Additional Standing Counsel appearing for the State-opposite parties objected to such contention of the learned Senior Counsel appearing for the petitioner and made valiant attempt to contend that in consideration of

representation dated 14.08.2023 of the petitioner, a substantiation report as required under paragraph 15 of the Guidelines, 2006 was submitted by the Additional Controller of Accounts (Ms. Dibarani Dora), which is placed at Annexure-B/3 to the counter affidavit of the opposite party Nos.1 and 3. The detailed substantiation report has been taken aid to retain the adverse remark on PAR for the period 2021-22, which was duly communicated to the petitioner by Letter in D.O. No.898/SE, dated 28.06.2023.

6.1. The subjective satisfaction of the Reviewing Authority has been recorded sustaining the observation of the Reporting Authority as at serial Nos.2 and 3 of the PAR, so far as is relevant for the present purpose extracted hereunder:

> *"2(i) General Assessment (Please give an overall assessment of the Officer including his/her attitude towards ST/SC/Weaker sections and relation with public:*
>
> *She is not punctual in attending office. She bears a sympathetic attitude towards Scheduled Caste/ Scheduled Tribe/Weaker Section. She is disobedient and disrespectful Officer. She has disposed total 1165 numbers of cases out of which 978 numbers of cases are approved and objection issued in 185 numbers of cases. The rest of the 694 cases only diary on the e-office have been updated against previous year disposals. So*

the figure in column 1 of Achievement Section is inflated one.

3. *Inadequacies, deficiencies or shortcomings, if any (Remarks to be treated as adverse)*

She causes insubordination in many occasions. Behaviour is not satisfactory. She has poor control over her branch. She is badly dependent on the subordinates including retired persons engaged as OSD. She lacked self-confidence. In spite of repeated instructions she issued objections six months after receipt of the proposals in most of the cases. She has not maintained the prescribed registers under RTI Act properly. She by-passed the reporting authority in several cases and put up the files directly to the Controller of Accounts. She feels the job of authorization of pension as a "stereotyped work" instead of a "noble work". She writes to the Head of the Office to relinquish her from the Office of her transfer. This shows her attitude towards her job."

6.2. Drawing attention to such factual foundation for the conclusion arrived at by the authorities concerned, Sri Shantanu Das, learned Additional Standing Counsel by referring to Part-I of the PAR sought to clarify that while Shri Subrata Senapati, Controller of Accounts has recorded his appraisal for part of the period from 01.04.2021 to 01.08.2021, Shri Ashok Kumar Mohanty, Controller of Accounts has reviewed the performance of the petitioner as suggested by the

Reporting Authority, namely Ms. Dibarani Dora, Additional Controller of Accounts with respect to rest of the period for the year, *i.e.,* 02.08.2021 to 31.03.2022.

6.3. Since the Reviewing Authorities have rated her performance as "Very Good" and "Good" respectively, there is no scope in exercise of power of judicial review to interfere with such remarks and indulge in the matter to expunge such adverse remarks, which was duly communicated to the petitioner.

6.4. In reply to the stance of the petitioner, Sri Shantanu Das, learned Additional Standing Counsel submitted that during the period 2021-22, though the Additional Controller of Accounts-Reporting Authority while rated the performance as "average" against each item of description at Serial No.1, against general assessment under serial No.2 she was given certain points with respect to "integrity", *etc.* Therefore, the overall performance being rated at "Good", there is no infirmity.

6.5. Sri Shantanu Das, learned Additional Standing Counsel, hence, submitted that the apprehension of the petitioner without comprehension. The performance of the petitioner being watched by the authorities concerned, there is no warrant to show

indulgence in the instant case and accordingly, he insisted for dismissal of the writ petition.

Analysis and discussions:

7. This Court has perused the record and on scrutiny of materials available on record it is evinced that the PAR for the period 2021-22 "was reviewed as adverse" by the Additional Secretary to the Government, General Administration and Public Grievance (SE) Department, which is found outside the earmarked box/space provided. Therefore, much emphasis has been laid by the Senior Counsel that in view of instruction at paragraph 12 of the Guidelines, 2006 such an adverse remark is "deemed to be non-adverse".

7.1. This takes this Court to scrutinise the PAR for the period 2021-22, copy of which is made available by the opposite parties in their counter affidavit (Annexure-A/3). It is true that the Reporting Authority-Additional Controller of Accounts has rated the petitioner as "Good" with integrity "beyond any doubt". However, for the period from 01.04.2021 to 01.08.2021 the Reviewing Authority, namely Shri Subrata Senapati (Controller of Accounts) has rated Overall Grading as "Very Good" on 29.10.2022, and the other Reviewing Authority, namely Shri Ashok Kumar Mohanty (Controller of Accounts) for rest of the period of the

year 2021-22 (02.08.2021 to 31.03.2022) has made his remarks "Good". The relevant portion of the PAR depicts as follows:

Remarks of Reporting Authority
MS. DIBARANI DORA (ADDITIONAL CONTROLLER OF ACCOUNTS, ACCOUNTS, ODISHA) *1.* *** *5.* Overall Grading Good *6.* *For Overall Grading "Below Average"/ "Outstanding" Please provide justification in the space below:* MS. DIBARANI DORA (ADDITIONAL CONTROLLER OF ACCOUNTS, ACCOUNTS, ODISHA) SUBMITTED ON 30-AUG-2022
Remarks of Reviewing Authority
SHRI SUBRATA SENAPATI (CONTROLLER OF ACCOUNTS, ODISHA) *1.* *Please indicate if you agree with the general assessment/adverse remarks/overall grading made by the Reporting Authority and give your assessment.* *I rated her very good for the period of assessment.* *2.* *Overall Grading given by Reviewing Authority:* *Very Good* SHRI SUBRATA SENAPATI (CONTROLLER OF ACCOUNTS, ODISHA) Submitted on 29-OCT-2022
Remarks of Reviewing Authority
SHRI ASHOK KUMAR MOHANTY (CONTROLLER OF ACCOUNTS, ODISHA) *1.* *Please indicate if you agree with the general assessment/adverse remarks/overall grading made by the Reporting Authority and give your assessment.* *Good.* *2.* *Overall Grading given by Reviewing Authority:*

Very Good SHRI ASHOK KUMAR MOHANTY (CONTROLLER OF ACCOUNTS, ODISHA) Submitted on 31-OCT-2022
Remarks of Accepting Authority SHRI ASHOK KUMAR KALURAM MEENA (PRINCIPAL SECRETARY, FINANCE DEPARTMENT, GOVERNMENT OF ODISHA) *Overall Grading given by Accepting Authority:* SHRI ASHOK KUMAR KALURAM MEENA (PRINCIPAL SECRETARY, FINANCE DEPARTMENT, GOVERNMENT OF ODISHA) Submitted on
SHRI VISHAL KUMAR DEV (PRINCIPAL SECRETARY, FINANCE DEPARTMENT, GOVERNMENT OF ODISHA) *Overall Grading given by Accepting Authority:* SHRI VISHAL KUMAR DEV (PRINCIPAL SECRETARY, FINANCE DEPARTMENT, GOVERNMENT OF ODISHA) Submitted on

REVIEWED as adverse
Sd/- 28.06.2023
Additional Secretary to Government
General Administration and
Public Grievance (SE) Department"

7.2. Minute scrutiny of such document reveals that the Controllers of Accounts posing themselves as the Reviewing Authorities have reflected the remarks in the box/space specified. However, the Additional Secretary to Government of Odisha in General Administration Department has made his remarks as if in the capacity of the Reviewing Authority considered the PAR "as adverse", but placed such remarks outside the earmarked box/space provided. It has been strenuously argued by Ms. Soma Patnaik, learned Advocate assisting Sri Jagannath Patnaik, learned

Senior Advocate that the Reviewing Authority (Additional Secretary to the Government of Odisha in General Administration Department) having not made the remarks within the box/space specified it would deemed to be "non-adverse". This apart, heavy reliance being placed on paragraph 12 of the Guidelines, 2006 read with the Clarification dated 18.07.2013, it is argued that the Controllers of Accounts have exceeded their jurisdiction in reviewing the PAR of the petitioner, who is admittedly an Officer belonging to Group A Cadre and such exercise is runs contrary to what has been spelt out in the "Schedule of Instructions on Recording of Confidential Remarks on the Work of Group 'A' and Group 'B' Officers of State Government and All India Service Officers".

7.3. To appreciate the rival contentions, the relevant paragraphs of the Guidelines for recording and maintenance of PARs of Group-A and Group-B Officers of the State Government deserve to be taken note of, which are extracted hereunder:

"7. Monitoring of PAR movement.—

(i) In the transmission record of the PAR, which is the integral part of the PAR format (first two page), details of transmission of PAR form at different levels-Appraisee, Reporting Authority, Reviewing Authority, Accepting Authority (including Co-

Reporting Authority/Co-Reviewing Authority) will be noted.

(ii) *The persons handling the PARs in the Office of the appraisee (or appraisee on her/his own), Reporting Authority, Reviewing Authority will record the transmission details in the Transmission Record page of the PAR (page 1 & 2 of the PAR). Before the PAR in original is sent to the next level, photocopy of the PAR completed till date (including the first two pages) will be sent to the G.A. (SE) Department along with a covering letter (appended as Annexure-B). Such persons will be liable to ensure that the PARs are filled up by the concerned authority within the prescribed time limit.*

(iii) *The Accepting Authority after recording his remarks in the relevant part will send the PAR to G.A. (SE) Department. In case the Accepting Authority does not submit the PAR by 31 March of the following year, the remarks of the lower authority will be accepted as final.* ***If the completed PAR with the remarks of the Accepting Authority is received in the G.A. (SE) Department after remarks of lower authority has been accepted as final, the same will be ignored and destroyed.***

(iv) *The G.A. (SE) Department will make necessary entries in the computer-based PAR System so that the monitoring is possible at all stages of transmission. The photocopies of the completed PARs (till date of transmission) will be preserved so that they can be used to build up PARs in case*

of default in writing and submission of PARs on time by any of the authorities in the PAR chain.

(v) After the original PAR has been received complete in all respect, the photocopies received at different stages, if not used will be destroyed by the G.A. (SE) Department retaining the original.

(vi) The PAR Management System developed by G.A. (SE) Department in consultation with N.I.C. will be used to effectively monitor the PARS.

(vii) A list of chronic defaulters among the appraisees and the authorities may be prepared every year for suitable correctional measures.

8. Points to be kept in view while recording remarks.—

(i) Reporting Authority/Reviewing Authority while recording remarks in the PARs in the relevant parts (Part-III, IV as the case may be) should sum up their assessment on the work of the officer into one of the following grades, "outstanding", "very good", "good", "average", "below average". An Officer should not be graded outstanding unless exceptional qualities and performances have been noticed. Grounds for giving such a grade should be clearly brought out in the PAR.

(ii) The Accepting Authority in his remarks may agree or disagree with the comments of the Reporting Authority/Reviewing Authority. Adverse remarks, if any, shall be recorded in the specific box/space provided. These remarks include justifications of integrity "not certified" or the remarks to justify

"below average" grading if awarded to appraise. The Accepting Authority may however make adverse remarks in the box provided for her/his remarks.

(iii) The PAR is based on the scaling principle wherein the work output, attributes and functional competencies are graded on a scale of 1 to 5 with 1 referring to the lowest and 5 to the highest. The overall grading is also based on the same principle.

(iv) Reporting Authority/Reviewing Authority/ Accepting Authority should abstain from writing the PAR of the appraise who is her/his close relative and in such cases for other remarks PAR should be forwarded to other level of assessments.

Explanation.—

Close relation means own parents, spouse, son, daughter, own brother and sister, spouse's parent, brothers and sisters.

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10. Procedure for writing integrity column.—

(i) The report about integrity of an officer should be invariably made in the PAR at the relevant space. Every Government Servant holding a supervisory post shall take all possible steps to ensure integrity and devotion to duty of all Government servants serving under her/his control and authority. She/he should keep note of instances which create doubts about the integrity of a

subordinate and make plausible inquiries directly or indirectly. Such action may enable her/him to write remarks about the appraisee's integrity. In case Reporting Authority finds integrity doubtful or adverse he should write "Not Certified" in the remarks box in Part-III of PAR and provide justifications in adverse remarks box 3-B of the PAR.

(ii) There may be occasions when a Reporting Authority 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 Authority has not had occasion to watch his/her work closely or when an officer has worked under the Reporting Authority only for a brief period or has been on long leave, etc. In all such cases the Reporting Authority should make an entry in the integrity column to the effect that she/he has not watched the officer's integrity. This would be a factual statement to which there can be no objection. But it is desirable that a superior officer should make all reasonable efforts to form definite judgment about the integrity of those working under him as early as possible.

(iii) Reviewing Authority/Accepting Authority based on their knowledge about integrity of the appraise may append adverse remarks about integrity even if Reporting Authority has certified the integrity of the appraise. However, in such cases they should

write their remarks in the relevant place in Part-IV/V as the case may be with due justification.

11. *Issue of No Remarks Certificate.—*

No Remarks Certificate (NRC) will be recorded by the G.A.(SE) Department under the following circumstances:

a) *Suspension/long leave/long term training/ retirement/demitting office/death/invalidation of the authorities at all the three levels of PAR recording chain when PAR formats are transmitted to these levels by the lower authority in the PAR chain or by the G.A. (SE) Department.*

b) *Where the appraisee works for less than four months under each of the authority in the recording chain (for computing four months, leave/training for less than 30 days will be ignored).*

c) *Where the appraisee is on long leave (four months or more) or under suspension. (In these case NRC will be for the period he is on leave or under suspension).*

d) *Where the Officer reported upon is on deputation to Foreign Service such as international organization or NGOs.*

e) *If no remarks are received within one year from the last date of the financial year to which the PAR relates it will be presumed no remarks are to be recorded and a note "No Remarks Certificate" will be kept in the PAR folder of the respective officers by the G.A. (SE) Department.*

12. Review of PAR.—

(i) The PARs after their receipt in the General Administration (SE) Department shall be subject to scrutiny and all adverse remarks contained in the earmarked box/space in Part-III, IV, V should be communicated directly to the officer concerned by the General Administration (SE) Department within two months of the receipt of the completed PAR. ***It is pointed out that only remarks recorded in the space prescribed in the PAR for such recording of adverse remarks will only be treated as adverse. Remarks recorded outside shall be deemed to be "non-adverse".***

(ii) Remarks of the Reviewing Authority shall prevail over that of the Reporting Authority. Similarly the remarks of the Accepting Authority shall prevail over those of the Reviewing Authority. Adverse remarks recorded by the Reporting Authority are wiped away if these remarks have been counterbalanced by the Reviewing Authority or the Accepting Authority. Adverse remarks will be treated as counter balanced only if the Reviewing Authority or the Accepting Authority specifically indicates that he/she does not agree with the author of the adverse remarks.

(iii) Where there are remarks of Co-Reporting Authority/Co-Reviewing Authority and there is divergent assessment, the remarks of the Reporting or Reviewing Authority, as the case may be who is mentioned later in the Schedule of Instructions shall prevail.



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15. Disposal of Representation.—

(i) Upon receipt of representation only the author of the adverse remarks may be asked to substantiate or to furnish her/his comment on the representation. Those higher authorities who have merely agreed to the adverse remarks written by other authorities need not be called upon to substantiate.

(ii) The Substantiation Report should cover specific facts, figures and instances which are relevant to the adverse remarks.

(iii) Substantiation reports and comments on the representations are invited to facilitate disposal of representations and it is the duty of the author of the adverse remarks to furnish them unless he has adequately supported the adverse remarks in the PAR itself.

(iv) Substantiation report may also be sought from authors of adverse remarks who may have retired recently from Government service if felt necessary.

(v) The representation against adverse remarks should be normally disposed within 6 months of receipt of such representation taking into consideration facts stated in the PAR, representation and substantiation report if any. The order passed on the representation shall be informed suitably to the officer concerned. Copy of such communication disposing the representation

should be placed in the PAR folder of the officer concerned.

16. *Competent Authority.—*

The competent Authority to deal with the representation against the adverse remarks will be Special Secretary, General Administration (S.E.) Department. *In case Special Secretary General Administration (S.E.) Department is the author of the adverse remarks then Chief Secretary will be competent to deal with the representation. In case the adverse remarks are given by Chief Secretary/Very Senior Officer in charge of the Department/Minister the competent authority will be the Chief Minister. The order of the competent authority shall be final."*

7.4. *Vide* Government of Odisha in General Administration (SE) Department Circular Instruction No.1661—IAS-NRC-0005/2013, dated 18.07.2013 further Clarification has been issued in connection with said Guidelines, 2006, which stands thus:

"I am directed to refer to para-12(i) of the Guidelines issued in this Department Memo No.1199/PRO dated 26.04.2006 and No.1200/PRO dated 26.04.2006 regarding recording and maintenance of PARs of Group-A & Group-B Officer of the Govt. which provides that ***"all adverse remarks contained in the earmarked box/space in part-III, IV & V of the PAR should be communicated directly to the officer concerned by General Administration***

(SE) Department within two months of the receipt of the completed PAR".

Further Para 12(ii) of the above Guidelines provided that 'Remarks of the Reviewing Authority shall prevail over that of the Reporting Authority and the remarks of the Accepting Authority shall prevail over that of the Reviewing Authority. *Adverse remarks recorded by the Reporting Authority are wiped away if these remarks have been counter-balanced by the Reviewing Authority or Accepting Authority. Adverse Remarks will be treated as counter balanced only if the Reviewing Authority or the Accepting Authority specifically indicates that he/she does not agree with the author of the adverse remarks.*

In para 15(v) it also provided that the representation against adverse remarks should be normally disposed within 6 (six) months of receipt of such representation taking into consideration facts stated in the PAR, representation and substantiation report if any. The order passed on the representation shall be informed suitably to the officer concerned. Copy of such communication disposing the representation should be placed in the PAR of the officer concerned.

2. *The Central Administrative Tribunal, Hyderabad Bench in its order dated 04.12.2008 in O.A. No.665/2006 filed by Tejdeep Kumar Menon Vrs. UOI and other has observed that after expunction of adverse entries, it is not going to make any difference if the column against overall grading is*

also left blank. The DPC/Empanelment Committees can take a view on the basis of the remaining remarks and the overall grading of previous years. On the other hand, if the column against "Overall grading" is allowed to remain, it is likely to prejudice the DPC/Empanelment Committee against the officer.

The Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training as made necessary amendments pursuant to the above order of the Hon'ble CAT.

3. Now, therefore after careful consideration, it has been decided to lay down the following criteria in regard to up-gradation/down gradation of PARs after expunction of adverse remarks.

(i) Where an entry is adverse it should be communicated to the Officer concerned along with the overall grading.

(ii) If the adverse remarks of the Reporting/ Reviewing/Accepting Authorities are expunged by the Government, the "overall grading" be kept blank for appropriate re-grading by the Departmental Promotion Committee (DPCs).

(iii) In any case where an entry is downgraded or upgraded, the authority downgrading or upgrading the remarks and overall grading should state, as part of the entry, the reason for downgrading or upgrading with adequate justification in accordance with the instructions on the writing of the PARs.

(iv) *Where the authority has upgraded/downgraded the overall grading without giving sufficient reasons, the Government shall treat such an exercise as non-est/invalid. General terms such as "I agree or disagree with the Reporting Authority/Reviewing Authority," used by the Reviewing/Accepting Authority shall not be construed as sufficient reason for upgrading/ downgrading the overall grading given by the Reporting Authority/Reviewing Authority.*

4. *These instructions will be applicable to those cases, which are covered under the Guidelines issued in the Memoranda cited in Para-1 above and still to be decided. Those cases already decided may not be re-opened.*

5. *The above instructions may please be brought to the notice of all concerned."*

7.5. This Court *qua* the adverse remarks takes cognizance of yet another Circular Instruction bearing No.674/SF, dated 16.03.2020 issued by the General Administration and Public Grievance (SF) Department, which contains the following safeguards:

"It has come to notice that some Reporting, Reviewing and Accepting Authorities record some adverse remarks in the PARs of their subordinate officers without justifying such adverse entries and later withdraw such adverse remarks while submitting their substantiation report. This creates embarrassment on the part of the Government at the time of review as to how to treat such entries.

It is therefore impressed upon all concerned that before writing any adverse marks in the PAR the following may be taken care of:

***Warning/Displeasure issued**:*

There may be certain situations where the superior officer may find it necessary to put forward a remark regarding the working of the officer subordinate to him, regarding some act of omission. In such cases it may be felt that while the matter is not serious enough to justify the imposition of formal punishment of censure, it calls for some formal action such as communication of some written warning/displeasure/reprimand. The same should be placed in the personal file of the concerned officer. At end of the period under report, the authorities while writing the PAR of the concerned officer may decide not to make a reference of the warning report, if in the opinion of that authority, the performance of the officer concerned has improved and has been found satisfactory. On the other hand, if the authority is of the opinion that despite such warning there has been no change in conduct of the conduct of the officer concerned, the report has to be entered in the PAR.

Filing of column relating to integrity:

Supervisory officers should maintain a record of those situations which create suspicion about the integrity of the subordinate. Expeditious action should thereafter be taken to verify the veracity of such suspicions by making confidential enquiries. The report should be attached in the PAR while making entries with regard to doubtful integrity in the PAR of the Officer reported upon.

Recording of adverse remarks in the PAR:

No employee should be adversely affected by prejudicial reports recorded without fullest consideration and also no one should be rewarded with extremely faltering reports not based on the fact. All instances of good and bad work coming to the notice of the authorities should be promptly noted. Casual adverse remarks which are withdrawn by the Reporting/Reviewing/Accepting Authority when asked to substantiate will be viewed adversely.

Substantiation of Adverse Remarks

The substantiation report submitted by the author of adverse remarks shall be confined to performance/ conduct during the reporting period. Improvement in the performance/conduct of ORU in subsequent periods will be reflected in the PAR of that period and should not be used for the purpose of substantiation or otherwise of the adverse remarks recorded in respect of the reporting period.

In certain cases, some authors of the adverse remarks record grading as "average" in assessment of work output, attributes and functional competencies of sub-ordinate officers and assess the overall grading as "below average" which does not lend itself to reason. In this case, the overall grading will be treated as "average" and reviewed as non-adverse or vice-versa by the competent authority."

7.6. Cumulative reading of aforesaid Guidelines, Clarification and Instructions of the Government makes it unambiguous that adequate safeguards have

been prescribed in favour of the employee before suffering with adverse remarks by superior authorities.

7.7. This Court wishes to make excursion to find out whether the Additional Controller of Accounts and the Controller of Accounts are the Reporting Authority and the Reviewing Authorities respectively with respect to a Group-A Officer of the Odisha Finance Service.

7.8. A "Schedule of Instructions on Recording of Confidential Remarks on the Work of Group 'A' and Group 'B' Officers of State Government and All India Service Officers (as on 01.01.2015)" has been published by the General Administration (Special Establishment) Department of the Government of Odisha (for convenience referred to as "Schedule of Instructions"), which *inter alia* contains the following:

"Part-I
General Instructions

1. *Performance appraisal by way of confidential reporting has been, recognized as a tool for human resources development. Confidential rolls provide basic inputs for assessing the performance of an official and are indicative of his/her potential for further advancement in the career. The Reporting Authority should realize that the objective is to develop an official so that he/she realizes his/her*

true potential. Confidential reporting should not be mistaken to be a fault finding exercise.

2. *Government have been pleased to introduce online filing of PAR by Group-A and Group-B Officers of the State from the Assessment Year 2014-15.*

3. ***There will be three levels of assessment in the confidential reporting process**, namely:*

(i) Reporting Authorities who are in immediate control and supervision of the officers reported upon;

(ii) Countersigning Authorities who supervise the work of Reporting Authorities and have occasion to watch/inspect the work of the officers in sufficient details; and

(iii) Accepting Authorities who, in most cases supervise the work of the Countersigning Authorities and have access to the work of officers concerned.

4. *All Group-'A' and Group-'B' Officers will submit their PAR forms at hrmsorissa.gov.in by accessing the same as per Unique Identification and password provided by HRMS, Odisha. After filing their self-appraisal online on or before due date they should send the same electronically to their Reporting/Reviewing/Accepting Authority as per time schedule enumerated in the Guidelines 2006 for Recording and Maintenance of PARs of Group 'A' and Group 'B' Officers of the State.*

5. *The Reporting/Reviewing Authority will send the said PAR directly to the next authority, after*

recording his/her remarks as per time schedule through the online software.

6. *The Accepting Authority will record his remark within the time schedule and send it to the General Administration (SE) Department online in respect of Group-'A' and to the concerned Administrative Departments/Heads of the Departments in respect of Group-'B' Officers.*

7. *If as per the Schedule of Instruction, there are more than one Reporting Authority/Reviewing Authority (called Co-Reporting/Co-Reviewing Authorities), then the appraisee will submit the PAR to the first Reporting Authority within the time prescribed who will then transmit the PAR after recording his remarks to second Reporting Authority within 30 days of the receipt. The second Reporting Authority will attach additional copy of only Part-III of PAR format following the first Reporting remarks and then write his remarks in the attached sheet within 30 days of receipt of PAR. Thereafter she/he will send the PAR to Reviewing Authority. The same process shall be followed mutatis mutandis, if there are more than one Reviewing Authority except that normally remarks should be made within 15 days of the receipt of the PAR.*

8. *If the appraisee fails to submit the PAR as per time schedule, the PAR will be automatically force-forwarded to the next/higher authority.*

9. *Failure of submission or initiation of PAR by the Appraisee or Reporting/Reviewing/Accepting*

Authority in due time will be seriously viewed and adverse entry will be made in the PAR of the concerned Officer.

10. *All the instructions enumerated in the "Guidelines for Recording and Maintenance of PARs of Group 'A' and Group 'B' officers of the State Government", except submission of PAR in hard copies, will remain operative even after introduction of e-PAR system.*

11 *The PAR of all State Cadre Officers may be recorded in accordance with these instructions.*

12. *The PAR of All India Service Officers may be recorded in accordance with AIS (PAR) Rules, 2007.*

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Sl. No.	*Officers reported upon*	*Reporting Authorities*	*Countersigning Authorities*	*Accepting Authorities*	*Remarks*
***	***	***	***	***	***
7.	*FINANCE DEPARTMENT* *(h) Office of the Controller of Accounts* *(Educational Employees Pension & Provident Fund)*				
1.	*Additional Controller of Accounts*	*Controller of Accounts*	*Secretary, Finance Department.*	*Chief Secretary or Very Senior Officer in-charge of the Department.*	
1.	*Deputy Controller of Accounts*	*Controller of Accounts*	*Secretary, Finance Department*	*Chief Secretary or Very Senior Officer in-charge of the Department.*	
2.	*Assistant Controller of Accounts (Senior/ Junior)*	*Deputy Controller of Accounts*	*Controller of Accounts*	*Secretary, Finance Department.*	
***	***	***	***	***	***

7.9. As specified under the "Schedule of Instructions on Recording of Confidential Remarks on the Work of Group 'A' and Group 'B' Officers of State Government and All India Service Officers (as on 01.01.2015)", *qua* the Officer in the rank of "Deputy Controller of Accounts", while the Reporting Authority is the "Controller of Accounts" and the Countersigning Authority is the "Secretary, Finance Department", the Accepting Authority is the "Chief Secretary or Very Senior Officer-in-charge of the Department".

7.10. In the case at hand, the designation of the petitioner as it transpires from the PAR for the year 2021-22 is "Deputy Controller of Accounts, Accounts, Odisha", in Group-A of the Odisha Finance Department. Serial No.8 of said PAR reveals designation of the Reporting Authority is "Additional Controller of Accounts, Accounts, Odisha" and that of the Reviewing Authorities are "Controller of Accounts, Accounts, Odisha".

7.11. It is manifest from the above analysis that neither the Reporting Authority (Additional Controller of Accounts) nor the Reviewing Authorities (Controller of Accounts) had the competence to deal with the performance appraisal and render comments/remarks. To amplify, it may be relevant to put forth that the Additional

Controller of Accounts could not be the Reporting Authority; whereas, the Controller of Accounts has not acted as "the Reporting Authority". The Secretary, Finance was supposed to be the Countersigning Authority. None of the Accepting Authorities has rendered remarks in the instant case.

7.12. Furthermore, in terms of paragraph 12 of the Guidelines, 2006, after receipt of PAR in the General Administration (SE) Department, the same is subject to scrutiny and only remarks recorded in the space provided in the PAR for such recording of adverse remarks is treated as "adverse"; but the remarks recorded outside the earmarked box/space so provided is deemed to be "non-adverse". As has already been observed hitherto, the Additional Secretary to Government of Odisha in General Administration and Public Grievance (SE) Department upon review of PAR had made remarks "as adverse" outside the space/box earmarked.

7.13. Close scrutiny of Schedule of Instructions makes it manifest that as per paragraph 3 of the General Instructions thereto, there are three levels of assessment in the confidential reporting process. In terms of paragraph 5 of the General Instructions of the Schedule of Instructions, the Reporting/Reviewing

Authority is required to send the PAR directly to the next authority after recording his/her remarks as per time schedule through the online software and as per paragraph 6, the Accepting Authority will have to record his remark within the time schedule and send it to the General Administration (SE) Department online in respect of Group-'A' Officers.

7.14. For consideration of representation in terms of paragraph 14 of the Guidelines, 2006, of the petitioner objecting to the adverse remarks as communicated by D.O. Letter dated 28.06.2023, by the Additional Secretary to Government, General Administration and Public Grievance (SE) Department, a substantiation report has been submitted by the Additional Controller of Accounts. By a Confidential D.O. Letter dated 11.09.2023, the Under Secretary to Government of Odisha in General Administration and Public Grievance (SE) Department has communicated that the adverse remarks are to be continued on PAR, without setting forth reasons therefor.

7.15. In terms of paragraph 16 of the Guidelines, 2006, the Competent Authority to deal with the representation against the adverse remarks would be the Special Secretary, General Administration (SE) Department. Nothing is placed on record by the opposite parties to

demonstrate that the representation of the petitioner was dealt with by the Special Secretary of aforesaid Department. However, on scrutiny of the PAR of the petitioner upon review, the Additional Secretary to the Government of Odisha in General Administration and Public Grievance (SE) Department has recorded as "adverse" outside the box/space specified.

7.16. Another additional factor deserves to be noted is that it is a requirement of the authority concerned (superior authority) before recording adverse remarks in respect of Officer of Group-A is supposed to communicate in writing warning/displeasure/ reprimand. If the Authority is of the opinion that despite such warning there has been no change in the conduct of the Officer concerned, the remarks could be entered in the PAR. Nothing has been brought on record by the learned Additional Standing Counsel appearing for the opposite parties to show that prior to recording adverse remarks, the Reporting Authority or the Countersigning/Reviewing Authority had at any point of time issued/communicated warning/ displeasure/reprimand in writing to the petitioner.

8. During the course of hearing, Sri Shantanu Das, learned Additional Standing Counsel sought to bring on record the PARs relating to 2016-17, 2017-18,

2018-19, 2019-20, 2020-21, 2021-22 and 2022-23. Minute scrutiny of the PARs reveals as follows:

Periods	*Integrity*	*Overall Grading*	*Remarks of Reviewing Authority*	*Remarks of Accepting Authority*
2016-17	*Beyond Doubt*	*Good*	*Good*	*Good*
2017-18	*Beyond Doubt*	*Very Good*	*Very Good*	*Very Good (accepted)*
2018-19	*Beyond Doubt*	*Very Good*	*Very Good*	*Very Good (accepted)*
2019-20	*Beyond any Doubt*	*Very Good*	*Very Good*	*Very Good (accepted)*
2020-21	*Beyond any Doubt*	*Very Good*	*Outstanding*	*Outstanding (accepted)*
2021-22	*Beyond any Doubt*	*Good*	*Very Good/Good*	*Adverse*
2022-23	*Beyond Doubt*	*Good*	*Good*	*Adverse*

8.1. The aforesaid table is indicative of fact that the performance of the petitioner got improved since 2016-17 and in the year 2020-21, her performance was rated as "Outstanding" with overall grading "Very Good". It is unimaginable the performance of the Officer of Group-A could be downgraded and assessed with adverse remarks within a span of less than one year, *i.e.*, in the year 2021-22. Having been given "Very Good" and "Good" by two different Controllers of Accounts in the same year (2021-22), it is un-understandable, the Additional Secretary to Government, General Administration and Public Grievance (SE) Department without examining record

and without ascribing reasons could form opinion by stating "Reviewed as adverse". No plausible explanation in this regard could be proffered by the learned Additional Standing Counsel.

8.2. Glance at the PAR of 2021-22 reveals that, the column— "Inadequacies, deficiencies or shortcomings", if any, depicts: "NIL"; similarly, for the period 2019-20, said column reflects "NIL"; but in respect of the period 2021-22, many shortcomings, deficiencies have been reflected against serial No.3 of the PAR. It appears that the assessment of the performance of the petitioner for the period of 2021-22 was inappropriately made by the authorities concerned. At the cost of repetition it is pertinent to state that the Additional Controller of Accounts and the Controller of Accounts could not be the Reporting Authority and the Reviewing Authority respectively as they are not the Authorities competent to deal with PAR of Group-A Officers as per Schedule of Instructions.

8.3. On appreciation of the copies of PARs for the periods since 2016-17 till 2022-23 as made available for perusal of this Court, it needs to be observed that the remarks of the Reporting Authority and the Reviewing Authority cannot stand to reason.

Conclusion:

9. Before proceeding to conclude on the merits of the matter, it is felt expedient to impress upon every concerned that adverse remarks in the Performance Appraisal Report should be made with care, caution and responsibility. The Reporting Authority should make every effort to bring to the notice of the Officers and staff working under him/her, their defects and deficiencies, as and when noticed, with a view to remedy them. Ordinarily, it is only when the efforts so made prove of little avail, that adverse remarks should be reflected in the PAR. While doing so, the Reporting Authority should also indicate the efforts made by him/her to remedy the defects and deficiencies noticed and the result. The Authority superior to the Reporting Authority shall consider it his/her duty to form his/ her own opinion of the work and conduct of the Officer reported upon. The Reviewing Authority should carefully consider the PAR written up by the Reporting Authority with a view to satisfying himself/herself that the Report has been written objectively. He/she should also consider the assessment recorded by the Reporting Authority and state whether he/she accepts it in all respects and if not, he/she should indicate the points on which he/she does not agree. He/she shall exercise positive and independent judgment on the

remarks as well as on the general assessment and express clearly his/her agreement or disagreement with these remarks. This is particularly necessary in regard to any adverse remarks. The Reviewing Authority, as far as possible, keep himself/herself well informed and well acquainted with the work and qualities of the Officers and staff working under him/her as well as their character, performance and ability.

9.1. The superior Authority should be reminded of that the subordinate staff at times work under charged atmosphere and are constantly under psychological pressure. Therefore, the role of superior Officer is like a friend, philosopher and guide of the subordinate Officer. The subordinate Officers have to be treated with parental care and affection. The approach of the superior Officer ought to be correctional and not to be intended to harm or ruining the career of the subordinate Officer. It is not to be forgotten that to err is human and no one is infallible. Recording of PAR must be in a language of utmost restraint always keeping in view that the person making the comment is also fallible.

9.2. Be these observations are in the general nature but not exhaustive.

9.3. A note of caution be added to the above. The superior Authority should ordinarily refrain from passing strictures, derogatory remarks and scathing criticism. Passing of such remarks/comments without affording a hearing to the subordinate officer is clearly violative of the principles of natural justice.

10. On the basis of discussions made on factual matrix highlighting the Guidelines, Clarification, and Schedule of Instructions, this Court feels persuaded that the neither the Reporting Authority nor the Reviewing Authorities had the competence to record remarks and, therefore, the submission of Sri Jagannath Patnaik, learned Senior Advocate to expunge the adverse remarks for the period 01.04.2021 to 31.03.2022 deserves favourable consideration.

10.1. It is apposite to have regard to the following observation of the Hon'ble Supreme Court of India in the case of *State of Punjab Vrs. M/s. Shikha Trading Co., (2023) 11 SCR 643 = 2023 INSC 773*:

> *"14. Further, we notice the directions of the High Court not to be in the light of settled principles of law, for the order does not qualify the tests laid down by this Court in State of UP Vrs. Mohammad Naim, AIR 1964 SC 703 (four-Judge Bench), in regards to passing remarks against a person, whose conduct*

is being scrutinised before them i.e., "whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself; whether there is evidence on record bearing on that conduct, justifying the remarks; whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct."

15. *These principles stand reiterated and followed in various judgments such as R.K. Lakshmanan Vrs. A.K. Srinivasan, (1975) 2 SCC 466 (three-Judge bench); S.K. Viswambaran Vrs. E. Koyakunju, (1987) 2 SCC 109 (two-Judge bench); Samya Seet Vrs. Shambhu Sarkar, (2005) 6 SCC 767 (three-Judge Bench); State of Madhya Pradesh Vrs. Narmada Bachao Andolan, (2011) 12 SCC 689 (three-Judge Bench) and K.G. Shanti Vrs. United Indian Insurance Co. Ltd and Ors, (2021) 5 SCC 511 (two-Judge Bench).*

16. *It is apparent from record that, neither was the officer made party to the dispute, nor was he given an opportunity to show cause, and further, nothing on record reflected the officer holding an animus against the respondent, before such adverse directions were passed against him.*

17. *By way of this appeal, we have been asked to exercise powers, inherent in this Court, to expunge remarks reproduced supra against the said officer, from record. It would be appropriate to consider the various principles in respect of passing adverse remarks against an officer— be it judicial,*

civil (as in the present case) or police or army personnel, and expunction thereof.

18. *The three principles laid down in State of UP Vrs. Mohammad Naim, AIR 1964 SC 703 = (1964) SCR 363 deal with what is required of the court, prior to, finding it fit to pass adverse remarks.*

18.1. *It has been reasserted time and again that remarks adverse in nature, should not be passed in ordinary circumstances, or unless absolutely necessary which is further qualified by, being necessary for proper adjudication of the case at hand. [Niranjan Patnaik Vrs. Sashibhusan Kar, (1986) 2 SCC 569, (two-Judge Bench); Abani Kanta Ray Vrs. State of Orissa, (1995) Supp. (4) SCC 169, (two-Judge Bench); A.M. Mathur Vrs. Pramod Kumar Gupta, (1990) 2 SCC 533 (two-Judge Bench)].*

18.2. *Remarks by a court should at all times be governed by the principles of justice, fair play and restraint. [Shivajirao Nilangekar Patil Vrs. Mahesh Madhav Gosavi, (1987) 1 SCC 227 (three-Judge Bench)].*

Words employed should reflect sobriety, moderation and reserve, [K. G. Shanti Vrs. United Indian Insurance Co. Ltd., (2021) 5 SCC 511].

18.3. *It should not be lost sight of and per contra, always be remembered that such remarks, "due to the great power vested in our robes, have the ability to jeopardize and compromise independence of judges", and may "deter officers and various personnel in carrying out their duty".*

It further flows therefrom that "adverse remarks, of serious nature, upon the character and/or professional competence of a person should not be passed lightly". [S.K. Viswambaran Vrs. E. Koyakunju, (1987) 2 SCC 109 = (1987) 2 SCR 501].

19. *Keeping the above principles in mind, the power to expunge remarks may be exercised by the High Court and this Court:*

19.1. *With great caution and circumspection, since it is an undefined power. [Dr. Raghubir Saran Vrs. State of Bihar, AIR 1964 SC 1 (two-Judge Bench)];*

19.2. *Only to remedy a flagrant abuse of power which has been made by passing comments that are likely to cause harm or prejudice. [Dr. Raghubir Saran (supra)];*

19.3. *In respect of High Courts exercising such power, it has been observed:*

19.3.1 *The High Court, as the Supreme Court of revision, must be deemed to have power to see that Courts below do not unjustly and without any lawful excuse take away the character of a party or of a witness or of a counsel before it. [Panchanan Banerji Vrs. Upendra Nath Bhattacharji, AIR 1927 All 193, as referred to in Niranjan Patnaik Vrs. Sashibhusan Kar, (1986) 2 SCC 569 = (1986) 2 SCR 470];*

19.3.2 *Though in the context of Judicial officers, this Court has observed that "The*

role of High Court is also of a friend, philosopher and guide of judiciary subordinate to it. ***The strength of power is not displayed solely in cracking a whip on errors, mistakes or failures; the power should be so wielded as to have propensity to prevent and to ensure exclusion of repetition if committed once innocently or unwittingly. "Pardon the error but not its repetition". This principle would apply equally for all services.*** *The power to control is not to be exercised solely by wielding a teacher's cane. [Manu Sharma Vrs. State (NCT of Delhi), (2010) 6 SCC 1 (two-Judge Bench) and 'K' A Judicial Officer, (2001) 1 SCR 959 = 2001 INSC 82].*

20. The impugned directions issued by the High Court in registration of criminal investigation against an officer, unquestionably against the above-referred settled principles of law, having a demoralizing effect on the well-meaning officers of the State. It is clear that the impugned directions were passed upon an incorrect and erroneous appreciation of the record."

10.2. With the aforesaid backdrop, the record reveals that against D.O. No.898/S.E., dated 28.06.2023, though the petitioner had submitted her explanation elaborately, it seems that the Additional Secretary to Government, General Administration and Public Grievance (SE) Department has not considered the

same in proper perspective. This fact is *ex-facie* apparent from the Letter D.O. No.1287/S.E., dated 11.09.2023, which depicts as follows:

"From
Shri Hemoj Sankar Behura,
Under Secretary to Government *Bhubaneswar*
G.A. & P.G.(SE) Department *Date:11.09.2023*
Bhubaneswar,

D.O. No.1287/S.E.

Subject: Disposal of representation dated 14.08.2023 against adverse remarks— Intimation regarding.

Madam,

Please refer to your representation dated 14.08.2023 on the subject cited above, I am desired to say that after careful consideration, Government have been pleased to continue the adverse remark on your PAR for the year 2021-22 (01.04.2021 to 31.03.2022) which was communicated to you vide this Department D.O. Letter No.898/S.E., dated 28.06.2023.

Yours sincerely
Sd/-
Under Secretary to Govt.

To
Smt. Snehaprava Das, OFS-I,
Deputy Director, MDRAFM
Chandrasekharpur,
Bhubaneswar, PIN-751013."

10.3. It is gathered from the record that the substantiation report has been submitted by the Additional Controller of Accounts (purported to have acted as the Reporting

Authority) whereby it has been attempted to justify recording of fact in the PAR by object to each of the explanations given in the representation. Though the Additional Controller of Accounts has not exercised power in consonance with the Schedule of Instructions, the substantiation report dated 29.08.2023 (Annexure-B/3 of the counter affidavit) which formed the basis for issue of D.O. Letter dated 11.09.2023, does not indicate that the petitioner was ever confronted to such allegations contained therein. It is revealed on cursory glance at the substantiation report that certain personal comments and aspersions on the conduct of the Group-A Officer. However, without going into details of the same, it would suffice to say that the representation has been disposed of without ascribing reasons and bluntly.

10.4. From the above, it seems that the Competent Authority of the Government has not applied his conscientious mind and failed to ascribe reasons while rejecting the representation. At this stage, it may be apt to have regard to necessity of assigning reasons while taking administrative decisions or *quasi* judicial decisions affecting the prospects of employees. The Courts have indicated the significance of right to reason as one of the facets of principle of natural justice.

10.5. In *Sical Logistics Ltd. Vrs. Mahanadi Coalfields Ltd., 2017 (II) ILR-CUT 1035*, this Court has held as follows:

> *"9. It is well settled principle of law laid down by the Apex Court time and again that the authority should pass reasoned order. Reasons being a necessary concomitant to passing an order, the authority can thus discharge its duty in a meaningful manner either by furnishing the same expressly or by necessary reference.*
>
> ***
>
> *11. It is well-settled principle of law laid down by the Apex Court in Mohinder Singh Gill and another Vrs. The Chief Election Commissioner, New Delhi and others, AIR 1978 SC 851 that:*
>
> *'**When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.** Otherwise an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.'*
>
> *In Commissioner of Police, Bombay Vrs. Gordhandas Bhanji, AIR 1952 SC 16, the Apex Court held as follows:*
>
> *'**Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he***

meant, or of what was in his mind, or what he intended to do. *Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.'*

Similar view has also been taken in Bhikhubhai Vithalbhai Patel and others Vrs. State of Gujarat and another, (2008) 4 SCC 144 as well as in M/s. Shree Ganesh Construction Vrs. State of Orissa, 2016 (II) OLR 237 = 2016 (II) ILR-CUT 237.

In the case of State of Punjab Vrs. Bandeep Singh, (2016) 1 SCC 724 the Apex Court held that ***the validity of administrative orders/decisions/ executive instructions/orders/circulars must be judged by reasons stated in decision or order itself****. Subsequent explanations or reasons cannot be accepted to sustain decision or order."*

10.6. In *Broom's Legal Maxims (1939 Edition, Page 97)* there can be found a useful principle, *Cessante Ratione Legis Cessat Ipsa Lex*, that is to say, 'Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself'."

10.7. In *Ram Chander Vrs. Union of India, AIR 1986 SC 1173*, it was held that the word 'consider' occurring in the Rule must mean the Authority shall duly apply its mind and give reasons for its decision. The duty to give

reason is an incident of the judicial process and emphasized that in discharging *quasi*-judicial functions the Authority must act in accordance with natural justice and give reasons for its decision.

10.8. "Consideration" does not mean incidental or collateral examination of a matter by the Authority in the process of assessment/adjudication/determination. **There must be something in the order to show that the Authority applied his mind to the particular subject-matter or the particular source of information with a view to arriving at its conclusion.** See, *Additional Commissioner of Income Tax Vrs. Gurjargravures Pvt. Ltd., AIR 1978 SC 40*.

10.9. The word 'consider' is of great significance. Its dictionary meaning of the same is, 'to think over', 'to regard as', or 'deem to be'. Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term 'consider' postulates consideration of all relevant aspects of a matter. **Thus, formation of opinion by the statutory Authority should reflect intense application of mind with reference to the material on record. The order of the Authority should reveal such application of mind.** The Authority cannot simply adopt the language employed in the document before

it and proceed to affirm the same. [*Vide, Chairman, LIC of India Vrs. A. Masilamani, (2013) 6 SCC 530*; *Nilamani Jal Vrs. Collector, 2016 (II) OLR 190 (Ori)*].

10.10. It is felt apposite to refer to *Kranti Associates (P) Ltd. Vrs. Masood Ahmed Khan, (2010) 9 SCC 496* wherein the Hon'ble Supreme Court of India has summarised the legal position as follows:

> *"47. Summarising the above discussion, this Court holds:*
>
> *(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *(b) A quasi-judicial Authority must record reasons in support of its conclusions.*
>
> *(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
>
> *(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
>
> *(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*



(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial Authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or

'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor, (1987) 100 Harvard Law Review 731-37).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija Vrs. Spain, (1994) 19 EHRR 553 EHRR, at 562 para 29 and Anya Vrs. University of Oxford, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

10.11. In *Abhiram Caretaking & Expert Services Vrs. Bharat Sanchar Nigam Limited, 2017 (II) ILR-CUT 1029* the importance of assigning reason has been emphasized with the following observations:

"10. Franz Schubert said:

'Reason is nothing but analysis of belief.'

In Black's Law Dictionary, reason has been defined as a—

'faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts or from propositions.'

It means the faculty of rational thought rather than some abstract relationship between propositions and by this faculty, it is meant the capacity to make correct inferences from propositions, to size up facts for what they are and what they imply, and to identify the best means to some end, and, in general, to distinguish what we should believe from what we merely do believe.

10.1 *In Union of India Vrs. Mohan Lal Capoor, AIR 1974 SC 87 it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached.* ***The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.***

Similar view has also been taken in Uma Charan Vrs. State of Madhya Pradesh, AIR 1981 SC 1915, Patitapaban Pala Vrs. Orissa Forest Development Corporation Ltd., 2017 (I) OLR 5; and Banambar Parida Vrs. Orissa Forest Development Corporation Limited, 2017 (I) OLR 625.

11. *In S.N. Mukherjee Vrs. Union of India, (1990) 4 SCC 594 the Apex Court held that keeping in view the expanding horizon of principles of natural justice, the requirement to record reasons can be regarded as one of the principles of natural justice which governs exercise of power by administrative authorities. Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority is required to record reasons for its decision.*

12. *In Menaka Gandhi Vrs. Union of India, AIR 1978 SC 597 the Apex Court observed that the reasons, if disclosed, being open to judicial scrutiny for ascertaining their nexus with the order, the refusal to disclose the reasons would equally be open to the scrutiny of the court; or else, the wholesome power of a dispassionate judicial examination of executive orders could, with impunity, be set at naught by an obdurate determination to suppress the reasons."*

10.12. Decision bereft of reason renders the decision making process arbitrary. The Hon'ble Supreme Court of India in the case of *State of Punjab Vrs. Bhag Singh, (2004) 1 SCC 547*, observed as follows:



"6. *Even in respect of administrative orders, Lord Denning, M.R. in Breen Vrs. Amalgamated Engg. Union, (1971) 1 All ER 1148 = (1971) 2 QB 175 = (1971) 2 WLR 742 (CA) observed:*

'The giving of reasons is one of the fundamentals of good administration.'

In Alexander Machinery (Dudley) Ltd. Vrs. Crabtree, 1974 ICR 120 (NIRC) it was observed:

'Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.'

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance."

10.13. It is significant to notice that *vide* Order dated 11.10.2023 this Court issued notice on admission to the opposite parties; though opposite party Nos.1 and 3 filed counter affidavit on 05.02.2024 and the opposite party No.2 filed response on 22.02.2024, the opposite party No.4-Controller of Accounts did not choose to furnish any response before this Court. It seems the opposite party No.4 could realise that the remarks in PAR in respect of a Group-A Officer (petitioner) could not have been made by the Controller of Accounts assuming the position of the Reviewing Authority as he cannot be the "Reviewing Authority" specified in the "Schedule of Instructions on Recording of Confidential Remarks on the Work of Group 'A' and Group 'B' Officers of State Government and All India Service Officers".

10.14. Thus, failure to assign reason would vitiate the Order contained in Letter D.O. No.1287/SE, dated 11.09.2023.

11. To sum up, it may be stated that:

i. The Additional Controller of Accounts and the Controller of Account could not assume jurisdiction with respect to recording remarks in the PAR of the petitioner (Deputy Controller of Account, who is a Group-A Officer) assuming the

positions of the Reporting Authority and the Reviewing Authority respectively in terms of "Schedule of Instructions on Recording of Confidential Remarks on the Work of Group 'A' and Group 'B' Officers of State Government and All India Service Officers".

ii. The Additional Secretary to Government of Odisha, General Administration and Public Grievance (SE) Department— cannot be considered to be the Reviewing Authority in the fact-situation of the present case *vis-à-vis* paragraph 16 of the Guidelines, 2006— treated the PAR "as adverse", which cannot be considered to have effect or impact for assessing performance of the petitioner inasmuch as the same is placed outside the earmarked box/space provided in terms of paragraph 12 of the Guidelines, 2006.

iii. Before entering adverse remarks in the PAR, the authority concerned as required under the Circular Instruction bearing No.674/SF dated 16.03.2020 has the onerous responsibility to opine that despite warning there has been no change in conduct of the officer concerned. In the case at hand, no such exercise has been made

neither by the Reporting Authority nor the Reviewing Authority.

iv. On scrutiny of the PAR for the year 2021-22, as furnished by the opposite parties, it is manifest that while the Additional Controller of Accounts has rated the performance of the petitioner as "Good" with integrity "beyond any doubt", and the Controllers of Accounts for the period from 01.04.2021 to 01.08.2021 rated as "Very Good" and for the period from 02.08.2021 to 31.03.2022 as "Good", it could not be explained by the learned Additional Standing Counsel as to how the Additional Secretary to Government of Odisha in General Administration and Public Grievance (SE) Department acted mechanically by stating "Reviewed as adverse". As per paragraph 12 of the Guidelines, 2006, such adverse remark being placed outside the earmarked box/space provided for in the PAR is "deemed to be non-adverse".

v. The PARs relating to 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21, copies of which as placed before this Court by the learned Additional Standing Counsel for perusal, reveal that the performance of concerned Officer (petitioner) has

been rated as “Good”-“Very Good”-“Outstanding” in these years. But suddenly in the year 2021-22 her performance has been rated as “Good” with adverse remark. However, in the subsequent year with change of position and the Authority, the performance has been rated as “Good” with no adverse remarks. Analysis of such PARs would indicate during particular period while working under certain named Authority the performance has been rated “adverse”. However, this Court feels to leave this here as there is little scope under judicial review to interfere with factual assessment by authorities.

vi. No reason whatsoever is emanating from Letter in D.O. No.1287/SE, dated 11.09.2023 so as to justify that the decision to “continue the adverse remarks” on the PAR has been taken on consideration of the representation with reference to substantiation report after the same being duly confronted to the petitioner (as personal remarks and aspersions have been made by the Additional Controller of Accounts).

12. Since this Court, on appraisal of Guidelines, 2006, Circular Instruction dated 16.03.2020 read with Schedule of Instructions specifying the authorities

competent to be the Reporting Authority, the Coutersigning Authority and the Accepting Authority, finds that the Additional Controller of Accounts could not be the Reporting Authority and the Controllers of Accounts were not competent to be the Reviewing Authority, and the Additional Secretary to the Government of Odisha in General Administration and Public Grievance Department could not have reviewed the PAR of the petitioner (Group-A Officer) "as adverse", the adverse remarks stated to be continued on PAR *vide* Letter D.O. No.1289/SE, dated 11.09.2023 shall have no impact or effect and accordingly the same deserves to be obliterated.

12.1. This apart, it is specified in paragraph 8 of the Guidelines, 2006 that the Accepting Authority in his remarks may agree/disagree with the comments of the Reporting Authority/Reviewing Authority; nonetheless, Adverse remarks, if any, is required to be recorded in the specific box/space provided. In the instant case, no remark is found by the Accepting Authorities. It is made clear in paragraph 12 of the Guidelines, 2006, that remarks recorded outside the earmarked box/space would be treated to be "non-adverse". This Court finds force in the submission of Ms. Soma Patnaik, learned Advocate for the petitioner that the Additional Secretary to the Government of Odisha in

General Administration and Public Grievance Department having reflected his remarks outside the earmarked box/space provided in the PAR, the same is to be taken as "non-adverse".

12.2. In furtherance to the above, it may be noteworthy to say that due to erroneous approach of the Reporting Authority and the Reviewing Authority and unauthorised assumption of position, the petitioner in the present case has been put to embarrassment and the Officer, who is demonstrated by the learned Senior Counsel to have shown improvement in her work through 2016-17 till 2020-21, has been demoralised by downgrading her performance in the year 2021-22. This Court may take note of the fact that during the period subsequent to 2021-22, another Authority in the Office rated her performance as "Good" and had recorded "no" adverse remarks.

12.3. It has seemly been spelt out in the General Instructions forming part of the Schedule of Instructions that Performance Appraisal by way of confidential reporting has been recognized as a tool for human resources development and such Confidential Rolls provide basic inputs for assessing the performance of an official. They are indicative of his/her potential for further advancement in the

career. The Reporting Authority should realize that the objective is to develop an official so that he/she realizes his/her true potential. Confidential reporting should not be mistaken to be a fault finding exercise. Therefore, the General Administration and Public Grievance (SF) Department has impressed upon all the Departments including the Collectorates and the District Magistrates and Collectors *vide* Letter No.674/SF, dated 16.03.2020 that there may be certain situations where the superior officer may find it necessary to put forward a remark regarding the working of the officer subordinate to him, regarding some act of omission. In such cases, while the matter is not serious enough to justify the imposition of formal punishment of censure, it calls for some formal action such as communication of some written warning/displeasure/reprimand. The same should be placed in the personal file of the concerned officer. At the end of the period under report, the authorities while writing the PAR of the concerned officer may decide not to make a reference of the warning report, if in the opinion of that authority, the performance of the officer concerned has improved and has been found satisfactory. On the other hand, if the authority is of the opinion that despite such warning there has been

no change in conduct of the officer concerned, the report has to be entered in the PAR.

12.4. It is, therefore, in the interest of every Government servant that he/she should know how well or otherwise, he/she is performing job. Without this feedback information, it will be difficult for him/her to plan his career development in a systematic manner. In fact, he would be more interested in knowing his/her defects. The defects would affect his career advancements in the long run, unless he comes to know of them in time and overcomes them by taking special efforts.

12.5. In the present set of factual matrix as discussed above, it was not put forth by Sri Shantanu Das, learned Additional Standing Counsel that the Reporting Authority has formed opinion that despite warning, there was no change in the conduct of the petitioner.

12.6. In the present context, the observations made by a Division Bench of this Court in the case of *State of Odisha Vrs. Binod Kumar Das, W.P.(C) No.35666 of 2020, vide Order dated 20.04.2021* may be relevant to be quoted hereunder:

"5. *In considering the material before it and the submissions made by the learned counsel and taking into consideration various ruling of the Hon'ble Supreme Court as in the following decisions: 1996 (8) SCC 762 in the case of State Bank of India Vrs. Kashinath Kher; 1996 (5) SCC 103 Sukdev Vrs. Commissioner Amarabati Division; 1996 (2) SCC 363 in the case of U.P. Jal Nigam Vrs. Prabhat Chandra Jain; 1994 (Suppl.3) SCC 424 in the case of S. Ram Chandra Raju Vrs. State of Odisha; 1991 (Suppl.1) SCC 600 in the case of Delhi Transport Corporation Vrs. DTC Majdoor Congress; AIR 1964 SC 600 in the case of Motiram Deka Vrs. G.M., N.E.F. Railways and 1997 (4) SCC 7 in the case of State of U.P. Vrs. Yamuna Shankar Mishra and another, the Tribunal held that the object of writing the confidential reports PAR and making entry in the Character Rolls is to give an opportunity to a public servant to improve excellence and efficiency of public service. The Tribunal further held that* ***the officer entrusted with the duty to write confidential report has a public responsibility and trust to write the confidential report 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.*** *Where adverse remarks in the ACR are recorded, before forming such an opinion to be adverse, the reporting officer's the writing report confidential should share the information which is not a part of the record with the officer concerned, have the information*

confronted by the officer and then make it part of the record. ***This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behavior, integrity or conduct/corrupt proclivity. If, despite giving such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself necessarily, the same may be recorded in the confidential reports.*** *Needless to say the aforesaid principle incorporates the right of the officer concerned to have a constant appraisal by word of mouth or writing from his superior so that he gets an opportunity to improve his performance.*

6. *The learned Tribunal further noted that the aforesaid principle has not been followed in this case.* ***There is no caution or warning to the petitioner prior to recording of the adverse remarks in CCR that his performance needs improvement.*** *The reporting authority has also not recorded any adverse remarks. In fact he has found the applicant to be a very good and efficient officer under all categories. The reviewing authority on the basis of a single incident while recording that a departmental proceeding has been initiated against him nonetheless noted that he is a below average officer. The accepting authority while initially agreeing that he is very good officer, at later date explained his over sight and chose to agree with the justification of reviewing authority on the basis of which the reviewing authority's substantiation report has been accepted.***"*

12.7. In *State of U.P. Vrs. Yamuna Shanker Misra, (1997) 4 SCC 7* it has been observed as follows:

> *"4. In S. Ramachandra Raju Vrs. State of Orissa, 1994 Supp (3) SCC 424 this Court underlined* ***the need to write confidential reports objectively, fairly and dispassionately in a constructive manner either commenting/downgrading the conduct, character, efficiency or integrity of the officer in that behalf.*** *It is stated in para 11 that from the year 1973-74, the performance of the duty by the appellant therein was consistently as "satisfactory" to "fair" except for the year 1987-88 in which year he dropped down suddenly as an average or below average teacher. In that behalf it was held that "when he was a responsible teacher and he had cordial relations with the student community, and was taking pains to impart lessons to the students, would it be believable that he avoids to take classes and drops down* ***"if not watched"?*** *When anterior to or subsequent to 1987-88 he was a man of ability and integrity, the same whether would become "below average" only for the Academic Year 1987-88 without discernible reasons,* ***it would speak volumes about the objectivity of assessment by the reporting officer i.e. the Principal.*** *This conduct is much to be desired. This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment.* ***It is needless to emphasise that the career prospects of a subordinate***

officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer would be put to great jeopardy. The reporting officer is bound to lose his credibility in the eyes of his subordinates and fail to command respect and work from them. *The constitutional and statutory safeguards given to the Government employees largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible for the superior or controlling officers to extract legitimate work from them. The writing of the confidentials is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officers or to improve the efficiency in service. At the same time, the subordinate employee/officer should dedicate to do hard work and duty; assiduity in the discharge of the duty, honesty with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve*

excellence in service. In that case, on account of the vague remarks made for the year 1987-88, the appellant therein was compulsorily retired from service. This Court, after looking into the entire record, set aside the order. In Moti Ram Deka Vrs. G.M., N.E.F. Rlys., (1964) 5 SCR 683 = AIR 1964 SC 600, a Bench of seven Judges had held that in a modern democratic State, the efficiency and incorruptibility of public administration is of such importance that it is essential to afford to civil servants adequate protection against capricious action from their superior authority. ***If a public servant is guilty of misconduct, he should no doubt be proceeded against promptly under the relevant disciplinary rules, subject of course, to the protection under Article 311(2); but to maintain honesty, straightforwardness and efficiency in permanent civil servants, it was pointed out, from the point of view of the State, that they should enjoy a sense of security which alone can make them independent and truly efficient.*** *In Delhi Transport Corpn. Vrs. D.T.C. Mazdoor Congress, 1991 Supp (1) SCC 600, to which one of us, K. Ramaswamy, J., was a member, the Constitution Bench had held that the Sword of Damocles hanging over the head of a public servant would inevitably create a sense of insecurity. The unbridled wide discretionary powers would conceivably be abused. Thereby this Court laid emphasis that:*

*'*** An assurance of security of service to a public employee is an essential requisite for efficiency*

and incorruptibility of public administration. It is also an assurance to take independent drive and initiative in the discharge of the public duties to actuate the goals of social justice set down in the Constitution.'

In para 275 at pp. 740-41, it is further pointed out that:

*'*** Courts should take note of actualities of life that persons actuated to corrupt practices are capable to manoeuvre with higher echelons in diverse ways and also camouflage their activities by becoming sycophants or cronies to the superior officers. Sincere, honest and devoted subordinate officers are unlikely to lick the boots of the corrupt superior officer. They develop a sense of self-pride for their honesty, integrity and apathy and inertia towards the corrupt and tend to undermine or show signs of disrespect or disregard towards them. Thereby, they not only become inconvenient to the corrupt officer but also stand as an impediment to the ongoing smooth symphony of corruption at a grave risk to their prospects in career or even to their tenure of office. The term 'efficiency' is an elusive and relative one to the adept capable to be applied in diverse circumstances. If a superior officer develops liking towards sycophant, though corrupt, he would tolerate him and find him to be efficient and pay encomiums and corruption in such cases stand no impediment. When he finds a sincere, devoted and honest officer to be inconvenient, it is easy to cast him/her off by writing confidential reports with delightfully vague language imputing to be 'not up*

to the mark', 'wanting public relations' etc. At times they may be termed to be 'security risk' (to their activities). Thus, they spoil the career of the honest, sincere and devoted officers. Instances either way are galore in this regard. Therefore, one would be circumspect, pragmatic and realistic to these actualities of life while angulating constitutional validity of wide, arbitrary, uncanalised and unbridled discretionary power of dismissal vested in an appropriate authority either by a statute or a statutory rule."

5. *In State Bank of India Vrs. Kashinath Kher, (1996) 8 SCC 762, this Court pointed out that:*

*'*** **The object of writing the confidential report is twofold, i.e., to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service.** This Court in Delhi Transport Corpn. Case, 1991 Supp (1) SCC 600 pointed out the pitfalls and insidious effects on service due to lack of objectives by the controlling officer. Confidential and character reports should, therefore, be written by superior officers higher above the cadres. **The officer should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of***

public service. Therefore, they should be written by a superior officer of high rank. *Who are such high rank officers is for the appellants to decide. The appellants have to prescribe the officer competent to write the confidentials. There should be another higher officer in rank above the officer who has written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedure would be fair and reasonable. The reports thus written would form the basis for consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust.'*

In U.P. Jal Nigam Vrs. Prabhat Chandra Jain, (1996) 2 SCC 363, this Court had held that while writing the confidential reports, if the officials were to be downgraded from the previous reports,

*"*** **As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice.** If the variation warranted be not permissible, then the very purpose of writing*

annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court.'

6. *In Sukhdeo Vrs. Commr. Amravati Division, (1996) 5 SCC 103 this Court has pointed out that:*

'It is settled law that when the Government resorts to compulsorily retire a Government servant, the entire record of service, particularly, in the last period of service is required to be closely scrutinised and the power would be reasonably exercised. In State Bank of India Vrs. Kashinath Kher, (1996) 8 SCC 762, this Court had held that the controlling officer while writing confidential and character roll report, should be a superior officer higher above the cadres of the officer whose

confidential reports are written. ***Such officer should show objectivity, impartiality and fair assessment without any prejudice whatsoever with highest sense of responsibility to inculcate in the officers devotion to duty, honesty and integrity so as to improve excellence of the individual officer, lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service.*** *In that case it was pointed out that confidential reports written and submitted by the officer of the same cadre and adopted without any independent scrutiny and assessment by the committee was held to be illegal. In this case, the power exercised is illegal and it is not expected of from that high responsible officer who made the remarks.* ***When an officer makes the remarks he must eschew making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospect and service were in jeopardy.*** *In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement.* ***In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of***

the adverse remarks. It should also be mentioned that he had given prior opportunity in writing for improvement and yet was not availed of so that it would form part of the record.'

7. ***It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51-A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group.*** *Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. 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. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge.* ***Before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record.***

This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion."

12.8. In the present case records does not reveal that opportunity was afforded to the petitioner to rectify errors and there is no indication that the material forming the substantiation report submitted by the Additional Controller of Accounts was confronted before adverse entries were recorded in the PAR. It cannot be gainsaid that prior to 2021-22, the PARs for the periods 2016-17, 2017-18, 2018-19, 2020-21 and subsequent thereto, *i.e.,* 2022-23 contained no adverse

remarks. In these years the PAR contained rating of the performance of the petitioner was remarked as "Good" or "Very Good". In 2020-21 the performance of the petitioner has been rated as "Outstanding". Furthermore, one of the Controllers of Accounts during the period 2021-22 (from 01.04.2021 to 01.08.2021) rated the performance of the petitioner "Very Good".

12.9. *Ergo,* in this case, the adverse remarks as recorded in the PAR for the period from 01.04.2021 to 31.03.2022 by the Reporting Authority as acceded to by the Reviewing Authority are totally unjustified, unwarranted and unnecessary.

12.10. Under the aforesaid premises, this Court is of the considered view that the adverse remarks as stated to be continued on the PAR by rejecting the representation dated 14.08.2023, *vide* Letter D.O. No.1287, dated 11.09.2023 (Annexure-4), cannot withstand scrutiny in law.

13. On the facts discussed above, for the reasons ascribed hitherto and tested with legal position with ratio of the decisions referred to above *vis-à-vis* Guidelines, 2006; Circular Instruction dated 16.03.2020; and Schedule of Instructions referred to *supra* this Court is led to persuade that Letter in D.O. No.898— GAD-SEA-

OFSREV-0008/ 2023/SE, dated 28.06.2023 (Annexure-2) and Letter in D.O. No.1287, dated 11.09.2023 (Annexure-4) deserve to be quashed and accordingly, this Court does so.

14. This Court on 09.11.2023 passed following Order in the present case:

"***

2. Heard learned counsel for the Petitioner as well as the learned Additional Government Advocate for the State. Perused the Writ Petition as well as the documents annexed thereto.

3. This I.A. has been filed by the petitioner for a direction to the Opposite Parties to place the record of the petitioner before the DPC which is likely to be convened in the near future. He further prayed that a direction be issued to the authorities to not to consider the disputed remarks in the PAR of the petitioner.

4. Learned Addl. Government Advocate on the other hand contended that some adverse remarks were made in the service book, against which the petitioner preferred an appeal and the same has been concurred by the Government as against which the petitioner has approached this Court by filing the present writ application. In such view of the matter, learned Addl. Government Advocate submitted that the matter is sub-judiced before this Court. Therefore, it was not desirable on the part of DPC to take up the case of the petitioner.

5. *Having heard to learned counsels appearing for the both sides, and on a careful consideration of the submissions as well as the factual background of the present case this Court is of the considered view that since the issue is sub-judiced before this Court, it is directed that* ***the petitioner's case be considered by the DPC on merits without taking into consideration the adverse remarks, however the final decision taken by the DPC shall be subject to any further order to be passed by this Court in the present writ application.***

7. *With the aforesaid observations/ directions, the writ application stands disposed of."*

14.1. Further Order has been passed on 08.05.2024, which is to the following effect:

"***

2. *This interlocutory application has been field by the Petitioner with a prayer to direct the Opposite Parties to produce the minutes of the D.P.C. proceeding held on 09.04.2024 under the Chairmanship of the Principal Secretary, Finance Department.*

3. *Learned Additional Government Advocate appearing for the State-Opposite Parties submitted that he is ready with the entire records containing the minutes of the D.P.C. proceeding held on 09.04.2024.*

4. *Mr. Jagannath Pattanaik, learned Senior Counsel along with Ms. S. Pattanaik, learned counsel,*

appearing for the Petitioner, submitted that the Opposite Parties have not carried out the interim order dated 09.11.2023. While elaborating his argument, learned Senior Counsel appearing for the Petitioner submitted that vide interim order dated 09.11.2023, this Court had directed the Opposite Parties to consider the case of the Petitioner in the D.P.C. along with other eligible candidates without taking into consideration the adverse remarks. However, the final decision of the D.P.C. in respect of the Petitioner shall be subject to the outcome of the present writ petition. He further contended that the case of the Petitioner was not considered by the D.P.C. despite a clear direction of this Court vide interim order dated 09.11.2023. Therefore, it was alleged that the interim order passed by this Court on 09.11.2023 has been deliberately and wilfully violated by the Opposite Parties.

5. *Learned Additional Government Advocate appearing for the State-Opposite Parties, on the other hand, submitted that the interim order passed by this Court has been followed scrupulously and the case of the Petitioner was considered by the D.P.C. pursuant to the interim order passed by this Court on 09.11.2023. He further contended that the D.P.C. recommended to fill up 33 vacancies on the basis of the seniority. He further contended that the persons, who have been recommended for promotion, are all senior to the present Petitioner.*

6. *In reply to the aforesaid submission made by the learned Additional Government Advocate, learned*

Senior Counsel appearing for the Petitioner disputed such fact and it was emphatically argued that the case of the Petitioner has not been considered by the D.P.C despite interim order dated 09.11.2023. He also contended that the interim order dated 09.11.2023 was sought to be assailed before the Division Bench of this Court by filing a writ appeal and such writ appeal was withdrawn by the State-Opposite Parties. However, such fact has not been brought to this Court.

7. *In view of the factual position, the Opposite Parties are directed to file an affidavit indicating therein as to whether the case of the Petitioner was considered by the D.P.C. pursuant to the interim order dated 09.11.2023.*

8. *Let a counter affidavit be filed within a week hence after serving a copy thereof in advance on the learned Senior Counsel appearing for the Petitioner.*

9. *List this case in the reopening week after ensuing summer vacation.*

10. *Records of the D.P.C. proceeding which has been called for shall be kept with the learned Additional Government Advocate appearing for the State-Opposite Patties for perusal of this Court on the next date."*

14.2. In pursuance thereof, the opposite party No.2 has filed affidavit on 03.07.2024, *inter alia* affirming that, "it is not permissible to consider her promotion in the DPC

without taking into consideration of the adverse remarks for the said period since it is conflict with Rule 3(c) of the Odisha Civil Services (Criteria for Promotion) Rules, 1992 as modified by amending Rules of 2003 and 2020".

14.3. In view of quashment of Letters in D.O. No. No.898—GAD-SEA-OFSREV-0008/ 2023/SE, dated 28.06.2023 (Annexure-2) and D.O. No.1287, dated 11.09.2023 (Annexure-4), and as a consequence thereof the adverse remarks against the petitioner being directed to be expunged, the opposite parties are required to give effect to the same keeping in view Rule 4 of the Odisha Civil Services (Criteria for Promotion) Rules, 1992, which stands thus:

"4. Consideration of adverse remarks.—

In order that vacancies are filled up by the most suitable persons with the utmost expedition consistent with an officer's right to seek expunction of an adverse remark, the following procedure shall be followed in cases where the records of an officer under consideration contain an adverse remarks:

(a) If the officer has represented against an adverse remark and the representation has not been disposed of, the adverse remark shall be taken into consideration at the time of selection.

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(b) If the remark has been expunged after consideration of his case by the Departmental Promotion Committee or the Selection Committee or the Selection Board as the case may be the fact shall forthwith be reported to the Public Service Commission and if the officer was refused promotion on ad hoc basis because of the said remark, his entitlement to such promotion shall be considered once again notwithstanding that it may involve the reversion of another officer.

(c) If expunction of the adverse entry is ordered after selection has been made on the recommendation of the Orissa Public Service Commission, his case will be referred once again to the Commission and if the Commission recommends his promotion and Government accept the said recommendation, the officer will be promoted from the date of his junior, not being a person of exceptional merit and suitability, was promoted and shall be entitled to all service benefits which he would have received but for the supersession on account of the adverse remarks.

(d) If, as a result of such retrospective promotion any junior officer has to be reverted, such reversion shall not entitle the said junior officer to claim continuance in the post on the strength of an earlier recommendation of the Orissa Public Service Commission.

5. The provisions of these Rules shall have overriding effect notwithstanding anything to the contrary contained in any other Recruitment Rules or any

other order or instructions for the time being in force."

14.4. The opposite parties are, therefore, directed to take follow up action and consider the case of the petitioner as she would be entitled to the consequential benefit within a period of three months hence.

15. With the aforesaid observation and direction, the writ petition stands disposed of, but in the circumstances there shall be no order as to costs.

Signature Not Verified
Digitally Signed
Signed by: ASWINI KUMAR SETHY
Designation: Personal Assistant (Secretary-in-charge)
Reason: Authentication
Location: ORISSA HIGH COURT, CUTTACK
Date: 20-Dec-2024 18:38:16

(MURAHARI SRI RAMAN)
JUDGE