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

% *Date of decision: January 15, 2024*

\+ W.P.(C) 8377/2021 & CM APPL. 21477/2022

(12) COL VINOD DAHIYA

..... Petitioner

Through: Mr. Ankur Chhibber, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Alexander Mathai Paikaday and Mr. Krishnan V., Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner with the following prayers:

"Therefore, in view of the aforesaid, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a) Issue an appropriate writ, order or direction in the nature of a writ quashing and setting aside the eAPAR for the 26 period of 01.10.2018 to 31.03.2019 as being void, illegal and not binding on the Petitioner.

b) Pass any other order as it may deem fit and proper in the facts and circumstances of the case, and in the interest of justice.

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2. The submission of Mr. Ankur Chhibber, learned counsel appearing for the petitioner is that the action which has been assailed primarily relates to the validity of the e-APAR in respect of the petitioner pertaining to the period from October 1, 2018 to March 13, 2019. According to him, the same has been recorded / passed in an arbitrary manner in contravention to the instructions of the Department of Personnel and Training ('DOP&T', for short), Govt. of India and against the procedures laid down in the All India Service Performance Appraisal Report (Rules), 2007.

3. In substance, he submits that the petitioner has filled the ACR form for the aforesaid period well in time. As the Initiating Officer ('IO', for short) was not in place, the next High Level Officer, i.e., the Reviewing Officer ('RO', for short) has initiated the ACR as IO, as per the guidelines of the DOP&T. Having initiated the ACR, as IO, the RO could not have reviewed the same. The review in this situation is required to be carried out by an officer who is above the RO, that is the Accepting Officer (AO).

4. He submits the RO, has in fact himself reviewed the ACR which he has initiated. In the said ACR, more specifically in Paragraph 9 at Page 36, he has observed that *"the conduct of the petitioner at times is casual"*. This conclusion of the IO/RO is the grievance of the petitioner, which has *"adverse"* connotation effecting his consideration for promotion in future.

5. Mr. Chhibber also submits that, insofar as the AO is concerned, the respondents in Paragraph 7 of their written submissions has stated the following:

> *"Accordingly, Addl DGQA (V) i.e. Respondent No. 3 being the Reviewing Officer, initiated the report as the Reporting Officer and after reviewing forwarded the same to the Accepting Authority i.e. DG, DGQA on 28.08.2019. However, the Accepting Authority*

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> *could not endorse the said APAR which was automatically closed by the System on 14.04.2020. It is relevant to mention here that as per existing instructions on APAR as laid down by DoP&T, the officers writing the APARs are required to have at least three months of experience of supervising the work and conduct of the Government servant reported upon, before they can record their assessment on the performance of the Government servant. The Accepting Authority i.e. DG, DGQA has subsequently submitted in his response to the representation of the petitioner that he has not seen the performance of the petitioner during the period of the report as he assumed the appointment of DG on 01.12.2018 and has nothing to comment on the representation made by the petitioner and comments of the Reporting Officer.*
>
> *(emphasis supplied)*

6. The submission of Mr. Chhibber is that in the peculiar facts of this case, where the RO was the IO, he could not have endorsed his own observation in ACR as RO. He should have placed the ACR before the next higher authority which is the AO. But in the present case the ACR having been placed before the AO, the AO has decided not to act on the ACR as he has not seen the performance of the petitioner.

7. Mr. Chhibber has heavily relied upon the stand taken by the respondents that the APAR has been automatically closed by the system on April 4, 2020 to contend that, in the facts, the ACR cannot be said to be valid. He has placed reliance upon the judgment of the Coordinate Bench of this Court in ***Mrs. B. Jumrani v. National Buildings Construction Corp. Ltd. & Ors., W.P.(C) 4481/1994*** decided on July 26, 1999, to contend that, based on same IO/RO, ACR cannot be accepted. It necessarily has to be dealt with by two officers at different levels for it to be considered as valid. Admittedly, when there is no second acceptance, in the case in hand, the same cannot be said to be valid. The paragraph No. 42 of the said judgment

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reads as under:

> *"42. <u>There is no doubt that an ACR has to be written objectively and dispassionately. It is intended to give an opportunity to an officer to remove any deficiencies and to improve the efficiency of public service. It is for this reason that a three tier hierarchical structure is adopted for the recording of an ACR. Quite clearly, the object of recording on ACR cannot be achieved if the RO1, RO2 and CO are one and the same. One officer, however superior or competent, cannot replace a three tier structure in matters of objective assessment, impartiality and improvement of public service. We have no dobut that such an ACR cannot be accepted as correctly appraising the performance of an officer.</u> For this reason, we are also not impressed by the submission that because the DPC held in 1993 and September 1994 found nothing wrong with the ACR of 1992-93, it should be accepted as correct."*
>
> *(emphasis supplied)*

8. It is the submission of Mr. Chhiber that all ACRs subsequent to the aforesaid period of October 1, 2018 to March 13, 2019 are *"outstanding"* by the same RO by following the procedure laid down under the instructions.

9. Mr. Harish Vaidyanathan Shankar, learned CGSC appearing for the respondents on the other hand has narrated the stand taken by the respondents in the counter affidavit.

10. Noting the submissions made by the learned counsel for the parties, it is clear that there was no second authority who was competent to accept the ACR as initiated by the RO as IO.

11. We are of the view that the RO being the IO could not have endorsed the same ACR which he has initiated as IO. The same is contrary to the instructions of the DOP&T. Moreover, the AO has not endorsed the ACR.

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We agree with Mr. Chhibber, when he has placed reliance on the judgment of this Court to contend that, when the instructions provide three tier hierarchical structure, the ACR should be considered by at least two authorities to make the ACR valid.

12. In the facts of this case, we are of the view that the ACR for the period October 1, 2018 to March 13, 2019 has to be treated as invalid. It is ordered accordingly. The writ petition is disposed of as allowed. No costs.

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Dismissed as infructuous.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

JANUARY 15, 2024/*jg*

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