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

+ **W.P.(C) 15035/2022**

BIJOY KURIAN PHILIP

.....Petitioner

Through: Mr. Tushar Ranjan Mohanty,
Advocate

versus

**FOOD CORPORATION OF INDIA, THROUGH ITS CHAIRMAN-
CUM-MANAGING DIRECTOR
& ORS.**

.....Respondents

Through: Mr. Purushottam Sharma Tripathi,
Advocate

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

06.09.2024

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1. This writ petition has been preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India assailing an order of rejection of representation dated 23.02.2022.
2. Mr. Tushar Ranjan Mohanty, learned counsel appearing on behalf of the Petitioner submits that at this stage it would suffice if a direction is passed to the Respondents to reconsider his three representations and pass a reasoned and speaking order. The argument is that Petitioner made detailed representations i.e. two representations dated 11.01.2021 and one representation dated 12.01.2021, seeking expungement of the adverse remarks in his Annual Performance Appraisal Reports (APARs) for the period 2019, 01.01.2020 to 28.04.2020 and 30.04.2020 to 30.11.2020 bringing forth multiple reasons for expunging the remarks and upgrading the overall gradings. However, the Competent Authority has by a sketchy order



dated 23.02.2022 rejected the representation without indicating a single reason for rejection. Mr. Mohanty argues that the Supreme Court in ***Dev Dutt v. Union of India and Others, (2008) 8 SCC 725***, has clearly laid down the objective and purpose of communicating the ACRs, not just the ACRs which are fair or Average but also those which are Good or Very Good as the very objective of writing the ACRs is to let an employee know of his performance. Non-communication of ACRs has been held by the Supreme Court to be violative of Article 14 of the Constitution of India and opposed to principles of fairness, transparency and equal opportunity in matters of promotion. With a wealth of judicial precedent on this aspect, if a representation made against adverse or below benchmark gradings is examined casually by an employer and a sketchy order is passed which does not reflect why the representation has no merit, the whole purpose of making a representation is lost.

3. This Court finds merit in the contention of Mr. Mohanty. Perusal of the impugned order dated 23.02.2022 shows that the Competent Authority has first referred to the existing system of initiation, review and acceptance of APARs and thereafter to the DoPT O.M. dated 23.07.2009 and in a casual manner simply noted that there is no merit in the representation after considering the comments of the Reviewing Officer. This, as rightly pointed out by learned counsel for the Petitioner, frustrates and defeats the whole purpose of communication of adverse/below benchmark ACRs/APARs enabling an employee to make a representation as there can be no doubt that adverse/below benchmark ACRs/APARs adversely impact the promotion.

4. Accordingly, this writ petition is disposed of directing the Competent Authority of the Respondents to reconsider the representations of the



Petitioner dated 11.01.2021 and representation dated 12.01.2021 and pass a reasoned and speaking order thereon, within a period of eight weeks from the date of receipt of this order. The order passed shall be communicated to the Petitioner within one week from the date of the decision and Petitioner will be at liberty to take recourse to legal remedies, in case of any surviving grievance.

JYOTI SINGH, J

SEPTEMBER 06, 2024/kks/shivam