



2024:DHC:8450-DB



\$~70

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

+ **LPA 30/2022 & CM APPL. 1837/2022**

SUBRAT KUMAR PANIGRAHIAppellant
Through: Mr. Sandeep Kumar Mahapatra
and Mr. Tribhuvan, Advts.

versus

**HINDUSTAN PETROLEUM CORPORATION
LIMITED AND ORS**Respondents
Through: Mr. Pavan Narang, Ms.
Priyanka Das, Ms. Nishat Nafisa Ahmed,
Ms. Aishwarya Chhabra, Mr. Himanshu
Sethi and Ms. Abhimohini, Advts.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% **23.10.2024**

C. HARI SHANKAR, J

1. This appeal, under Clause 10 of the Letters Patent applicable to this Court, orders dated 28 July 2021 and 6 August 2021, passed by the learned Single Judge in WP (C) 4005/2020¹. During the course of arguments, the challenge narrowed down to the order dated 6 August 2021, as would be explained hereinafter.

¹ Subrat Kumar Panigrahi v HPCL & ors



2024:DHC:8450-DB



Facts, and the challenge

2. The appellant joined the services of the Hindustan Petroleum Corporation Ltd², which stands arrayed as Respondents 1 to 3 in the present appeal. As the appellant had not been communicated his Annual Confidential Reports³ for the years 1995 to 2015, he approached this Court by way of WP (C) 2941/2019. In the counter-affidavit filed by way of response to the writ petition, the respondent disclosed the appellant's ACRs to him. The appellant was aggrieved by the gradings of "4" granted to him for the year 1996-1997 and the grading of "3" is granted to him for the year 2018-2019. In accordance with the liberty granted to the appellant by this Court while disposing of WP (C) 2941/2019 on 17 January 2020, the appellant represented against the aforesaid gradings of "4" for the year 1996-1997 and "3" for the year 2018-2090. The representations were rejected by the respondent *vide* orders dated 11 January 2020 and 27 January 2020. The appellant, therefore, re-approached this Court by way of WP (C) 4005/2020, in which the impugned orders have come to be passed.

3. The applicable Guidelines issued by the respondent, governing grant of gradings in ACRs, stipulated thus:

Grading	Description	Guidelines
1	Exceptional Performance; Rarely equalled	Far exceeds all individual goals/targets as set out in the performance plan Performs all job responsibilities far

² "the respondent", hereinafter

³ "ACRs" hereinafter



		above the requirement as specified in the job description
2	Performance better than normally expected	Meets all and exceeds most individual goals/targets as set in the performance plan Performs all job responsibilities in excess of the key requirements for the job as specified in the job description
3	Normally expected performance, producing required results	Meets all individual goals/targets set in the performance plan Meets the overall standard and/or expectations established for the job as specified in the job description
4	Performance less than normally expected of the position; not producing required results consistently	Generally meets individual goals/targets as set in the performance plan Does not meet the overall standard for the job as specified in the job description
5	Invariably poor performance	Does not meet most individual goals/targets as set in the performance plan Does not meet job requirements Performance demonstrates significant weakness in most areas Counselling and extensive training is required; Individual performance needs to be re-evaluated within 6 months

Impugned Order dated 28 July 2021

4. The petitioner, in his writ petition,

(i) challenged the ACR grading of “3” granted to him for the year 2018-2019, as well as the orders whereby his



representation against the said grading was rejected, and, consequently, sought upgradation of his grading, for 2018-2019, to “1”,

(ii) challenged the ACR grading of “4” granted to him for the year 1990 6 April 1997, as well as the orders whereby he’s representation against the grading was rejected, and, consequently, sought upgradation of his grading, for 1996-1997, to “1”,

(iii) sought constitution of review Departmental Promotion Committees⁴ to consider him for promotion to the next Salary Grade C w.e.f. 1998 and 2004 respectively, and

(iv) sought modification of the Promotion List dated 19 June 2020 issued by the respondent and inclusion, therein, of his name.

5. We may note, straightaway, that the appellant did not implead any person who had been promoted by the DPCs w.e.f. 1998 and 2004 or any person who figure in the Promotion List dated 19 June 2020. Without impleading such affected persons, prayers (iii) and (iv) could, in any case, not have been granted. The petitioner, however, restricted his relief, before the learned Single Judge as well as before us in appeal, to the correctness of the gradings awarded to him. As such, this issue does not survive further for consideration.

6. Before the learned Single Judge, learned Counsel for the appellant submitted that he was restricting its challenge to the grading

⁴ DPCs



of “3” awarded to him for the year 2018-2019, and was not pressing the challenge against the grading of “4” awarded to him for the year 1996-1997. This is thus recorded, in para 2 of the judgment dated 28 July 2021:

“2. At the outset, learned counsel for the petitioner would submit that he shall confine the petitioner to challenge the Adverse Performance Rating of ‘3’ for the year 2018-19. In other words, he shall not press the prayer made with regard to his performance rating for the year 1996-1997 and grant of promotion thereafter including his prayer for retrospective promotion to Grade ‘C’ w.e.f. 2004.”

7. Accordingly, the learned Single Judge, *vide* the first order under appeal, dated 28 July 2021, adjudicated on the said challenge.

8. Apart from referring to the judicial authorities on which the appellant placed reliance, the judgment dated 28 July 2021 record the rival contentions, and proceeds to reason thus:

“5. According to the learned counsel for the petitioner, it is the case of the respondents that the petitioner has either met all the targets or exceeded the targets. Hence, there is no reason for the petitioner to be rated as ‘3’. He qualifies his submission to contend, the said observation of the Reporting/Reviewing Officer cannot be treated as only 'Good'. That apart, he also stated that the rating of ‘3’ is actuated by *mala fide* on the part of the Management and in fact, as the petitioner has filed this petition, he has been transferred to a distant place like Mysore. He states, even the rejection of the appeal of the petitioner is not in conformity with the observations made by the Authorities in the ACR, as referred to above. Rather, there is no reason for the Authorities to reject the appeal. He relies upon the following judgments in support of his case that his gradings should be upgraded.

6. On the other hand, Mr. Sachin Datta, learned Sr. Counsel appearing for the respondents would contend that the learned counsel for the petitioner has not drawn the attention of this Court to page 65 of the paper book wherein under the heading "Key



Areas where performance was not in line with targets", the following has been stated:-

“The officer could not complete the project (Revamping of ETP) assigned to him during the year due to his lack of involvement and initiatives. Delayed planning for execution had made it to carry over for next year”

7. Mr. Datta states that in fact, the petitioner had not contested any of the parameters of the ACRs, a reference of which has been made above. Mr. Datta has also drawn my attention to page 80, which is an order rejecting the appeal of the petitioner against his performance rating, wherein the Authority, after due application of mind, has rejected the appeal. He has read to me the decision of the Authority on the grievance of the petitioner and decided to retain the performance rating as '3 '. In this regard, I may reproduce the relevant decision of the Authority in the following manner:-

“This is in reference to the MERC grievance logged by you and subsequent MERC meeting conducted to address the grievance. In this regard, we wish to inform you that the counter-signing authority has critically reviewed the MERC recommendation, which is based on the inputs received through personal interaction during MERC meeting and review of HRD documents including comments by Reporting Officer, Reviewing Officers and Moderation Committee. Based on the same, it is observed and commented as under:

Significant achievements namely; installation of access control and CCTV, HSE reports in portal, etc., are recorded in HRD documents and appropriate comments are recorded by RO/RVO. 2. Assessment of KPIs was reviewed objectively and on overall basis found in order. 3. It is noted that majority of the KPIs were assessed as "Meeting Target". 4. It is noted from HRD document that there are certain key performance areas, where targets were not achieved. For eg. Project on Revamping of ETP. 5. Assessment and feedback by RO was duly acknowledged and accepted by you as per HRD documents. 6. Assigned Rating is commensurate with achievements and within the "system-suggested Rating band", which is based on the assessment of KPIs. 7. Assigned Rating is reviewed considering inter-se performance within the workgroup. In view of the above, detailed review and deliberations on the



merit of the case, it is advised that assigned Rating is in order and is "retained".

8. In effect, it is the submission of Mr. Datta that the observations made in the ACR, as sought to be highlighted by learned counsel for the petitioner is totally misleading. It is a case where the petitioner could not able to meet targets of the work assigned to him. It is keeping in view this aspect also, the petitioner has been rated as 'Good'. He also highlight page 30 of the counter affidavit to state as to what process is evolved by the respondents to carry out a performing rating of a particular officer. The relevant paragraph is reproduced as under:-

"6. That, with regards to contents of Para 3(xi) and (xii), it is submitted that the respective Supervisor(s)/Reporting Officer(s) of the Petitioner had highlighted the nonperformance of the Petitioner and the areas of development/improvement plan of the performance of the Petitioner but the Petitioner did not relent upon the said advice which was reflected in the overall performance output /rating of the Petitioner. Further, as far as the transfer of the Petitioner is concerned, it is pertinent to highlight here that as per the terms of employment of the Petitioner and business exigencies of the Respondent Corporation, the said transfer was affected, and the Petitioner, by adopting deceitful tactics, is trying to mislead the Hon'ble Court by hinting malice in the said transfer."

9. Having heard the learned counsel for the parties, the only issue, which arises for consideration is whether the performance rating of the petitioner as '3' is justified or not. The submission of the learned counsel for the petitioner is that in the ACR, it is the observation of the Authorities that the petitioner has met all the time lines of the work assigned to him and in fact for certain work, he has exceeded the target. In other words, there is no reason for the Authorities to give a performance rating of '3'. Such a submission, apparently, may not be correct for the reason that at page 65, which is also part of the ACR, which I have reproduced above, it is noted that the petitioner could not complete the project of revamping of ETP because of which the project had to be carried forward to the next year.

10. That apart, I find that the respondent has also considered in detail, the representation made by the petitioner with proper application of mind, as is clear from the order itself. That apart, I



find that there is a very foolproof system for assessing performance of an Officer at different levels.

11. That apart, the plea of the learned counsel for the petitioner of *mala fide* may not be sustainable as the petitioner neither has made the Reporting Officer/ Reviewing Officer or a higher officer than them who accepts the performance rating as a party in this petition. It is the case of the petitioner that the Reporting Officer and Reviewing Officer have graded him as '3', which rating the petitioner accepts. Hence, there cannot be any *mala fide* on the part of the Reporting Officer/Reviewing Officer. Even the higher authorities have not been made a party, hence the allegations cannot be gone into.

12. On a specific query to the learned counsel for the petitioner that did the petitioner made an averment in the petition that he has completed ETP project on time, no justifiable answer is forthcoming. In any case, it is the satisfaction of the authority concerned, who actually supervise the work of the Officer, which is relevant. It is the case of the respondents, that assigned rating is reviewed considering inter se performance with the working group and the rating has been retained after deliberations. The scope of interference in the cases of ACR is very limited. In this regard, I deem it appropriate to refer to the judgment of a Division Bench of this Court in the case of *Navin Kumar Garg v Union of India*⁵, wherein in paragraph 9 it was held as under:

“9. Being aggrieved by that speaking order, the petitioner had, as stated above, filed the second Original Application, which has also been considered by the Tribunal. The Tribunal is entirely correct in its observation in noting that in a matter, such as recording of ACRs of an employee where a representation has been made thereagainst and the orders have been passed thereon, there is very little scope for interference by the Tribunal. The same applies to us. We cannot substitute our views for those of the reporting or of the reviewing authorities. In fact, there is no occasion whatsoever, for arriving at any view with regard to an officer inasmuch as we have no knowledge about his working. The persons, who have knowledge of his work, are the reporting and the reviewing officers and they have to grade the officer concerned. In the present case, the gradings were given in the first round without communicating the downgrading to the officer. But that lacuna had been set at rest by the Tribunal by virtue of

⁵ 2012 SCC OnLine Del 1593



2024:DHC:8450-DB



its order dated 01.04.2011 by directing that the representation of the petitioner in this regard be considered by the competent authority. That has been done. The representation has been considered and a speaking order has been passed. The competent authority has decided to maintain the original gradings given to the petitioner. There is no material before us and there can be no material before us which would enable us to take a different view insofar as the gradings are concerned. As regards the procedure to be adopted after the passing of the order of the Tribunal dated 01.04.2011, we are clear that the competent authority, having considered the representation in detail and having passed a speaking order, has complied with the same. "

17. In view of my discussion above, I do not see any merit in the writ petition. The same is dismissed."

9. The circumstances in which the subsequent order dated 6 August 2021, though illustrative of the magnanimity for which the learned Single Judge who has passed the impugned orders is well known, came to be passed, are somewhat disturbing. Despite the specific statement of learned Counsel who had appeared on behalf of the appellant before the learned Single Judge on 28 July 2021, that he was restricting its case to the challenge to the grading of "3" awarded for the year 2018-2019, and was not pressing the challenge to the grading of "4" awarded for 1996-1997, the appellant proceeded to file CM 24705/2021, alleging that no such submission had been made by his Counsel on 28 July 2021 and, therefore, seeking to place the challenge to the grading of "4" awarded to the appellant for the year 1996-1997. The application was not signed by the learned Counsel who had argued the matter on 28 July 2021, and was accompanied only by an affidavit of the appellant. The learned Single Judge,



2024:DHC:8450-DB



therefore, called upon learned Senior Counsel for the respondent, who had appeared before him on 28 July 2021 – and who is now a learned Sitting Judge of this Court – to vouchsafe regarding the proceedings which had transpired on 28 July 2021. The learned Senior Counsel confirmed that the learned Counsel for the appellant had in fact confined his challenge to the grading of “3” awarded to the appellant for the year 2018-2019.

10. Despite this, the learned Single Judge, displaying characteristic fairness and magnanimity, condescended to hear the appellant even on the challenge to the grading of “4” awarded for the year 1996-1997. We, frankly speaking, might not have been inclined to be so generous. Apropos the conduct of the appellant, we say no more.

11. The learned Single Judge proceeded to hold, unexceptionably, that the challenge, by the appellant, to the grading of “4” awarded for the year 1996-1997, as well as the prayers for convening of review DPCs, were hit by delay and laches. Before us, Mr. Mahapatra did not seriously press for setting aside the judgment dated 6 August 2021, which rejected the challenge to the grading of “4” awarded for the year 1996-1997 and the prayers for convening review DPCs and consequential reliefs as barred by delay and laches, and once again restricted his challenge to the grading of “3” awarded to the appellant for the year 2018-2019.



2024:DHC:8450-DB



12. We, therefore, are only required to consider the challenge, by the appellant, to the grading of “3” awarded to the appellant for the year 2018-2019.

Discussion and Findings

13. Having heard learned Counsel for both sides, and perused the record, we are of the opinion that there is substance in the appellants challenge to the grading of “3” awarded to the appellant for the year 2018-2019. A reading of para 6 of the impugned judgment dated 28 July 2021 reveals that the respondent relied, to support the said grading, on the following note made by the Reviewing Officer in the appellant’s ACRs for the year 2018-2019, against the head “Key Areas where performance was not in line with targets”:

“The officer could not complete the project (Revamping of ETP) assigned to him during the year due to his lack of involvement and initiatives. Delayed planning for execution had made it to carry over for next year.”

14. Mr. Mahapatra took us through the comments made by the Reporting Officer with respect to various objectives to be achieved by the appellant during the year 2018-2019, as entered in the appellant’s ACRs, and we deem it appropriate to reproduce them, *in extenso*:



304 B-304 B

Appraiser	SUDHAK KUMAR RAMAKRISHN-M067500	Print Date	26-05-2015
Reporting Officer	DAS ABHIRAMANTY-M068570	Reviewing Officer	SUSHIL KUMAR BAL-M141070
Designation	Off-Cell Phone Manager	Designation	Off-Cell Phone Manager - Installation
Comment	1. To ensure all incidents related in the plant 2. To ensure the HSE action is per the A.O.P target of 95%. 3. To ensure discipline of maintenance in the plant (this could bring 5-8% of OEE as losses). 4. To ensure 100% largely of all pending open incidents within three two years (this is in HSE/SA/Security Audit/CISS).	Comment	Keep the plant ready for OSD inspection points review. Complete pending maintenance work of last OED, by Sep. 15/16

Strategic Objectives	Key Performance Indicators	Unit of Measurement	Targets for the Year	H1 Milestone (April-September)	H2 Milestone (October-March)	Weightage
Safety	Near Miss reporting with RCA - Min 2 every month	Numbers	24.0	12	12	9
H1 (April to September)						
Exceeded the target by reporting 15 near misses over a target of 12.Near misses are uploaded in the portal including root cause analysis and suggestions with implementation of measures to prevent recurrence. Near misses included possible toppling of the packed truck in parking area due to water logging in proper cable termination which may turn to potential hazard. Near clearing of blocked ramp of truck to clear road area to avoid loading and firing. These findings were also discussed during Safety Committee meeting to enhance awareness and prevent incidents by the workers in the work area.				Exceeding Target		
H2 (October to March)						
Exceeded the target by reporting 14 near misses over a target of 12 including root cause analysis and corrective action initiated to avoid re-occurrence of the same. Two near misses also uploaded in our portal. During the year total 28 near misses reported over target of 24.Near misses raised on unbalanced electrical load to main feeder of building, broken chain of swing platform at TWRD gantry, drain clog of LRT compound in open condition, broken rear view mirror, unbalanced DC-7 lift extinguisher in motion, wire reported which create potential hazards.The findings were discussed in the monthly Safety Committee Meetings, in pop talk with workers (discussed) to ensure compliance by maintaining safety measures among all workers.				Exceeding Target		
Safety	IEE Index	Percentage	94.8	93	95	9

Exceeded the target by achieving 50% HSE score over target of 51% which is the improvement over target and 2% improvement over the actual. The target was set for the current year and it is a good sign of improvement of the HSE performance.						
H2 (October to March)						
Exceeded the target by achieving 50.13% HSE index over target of 50% and the 100% improvement over actual 49.63% H2 period of the current year. This is a very good sign of improvement of the HSE performance. The target was set for the current year and it is a good sign of improvement of the HSE performance. The target was set for the current year and it is a good sign of improvement of the HSE performance.					Meeting Target	
Score	Comparison with the Target	Number	49.63	50.13	50	5
H1 (April to September)						
Exceeded the target by achieving 14.1% HSE score over target of 14.1%. Out of 14 H2 drills were conducted in H2 period by achieving 14.1% HSE score over target of 14.1%. This is a very good sign of improvement of the HSE performance.					Meeting Target	
H2 (October to March)						
Exceeded the target by achieving 14.1% HSE score over target of 14.1% period. Out of 14 H2 drills were conducted in H2 period of the current year. This is a very good sign of improvement of the HSE performance. The target was set for the current year and it is a good sign of improvement of the HSE performance.					Meeting Target	
Score	Comparison with the Target	Number	14.1	14.1	14	4
H1 (April to September)						
Met the target by achieving 14.1% HSE score over target of 14.1% period. Out of 14 H2 drills were conducted in H2 period of the current year. This is a very good sign of improvement of the HSE performance. The target was set for the current year and it is a good sign of improvement of the HSE performance.					Meeting Target	



2024:DHC:8450-DB



Company Performance	Training: Live Fire Training to cover 100% employees (total personnel)	Numbers	60	4	2	0
H1 (April to September)						
Exceeded the target as 5 persons nominated for LFT programme at IFSDMS, Borealis over target of 4. The training was conducted on 24-25 August 2018 at IFSDMS, Borealis.					Meeting Target	
H2 (October to March)						
Exceeded the target as 4 persons attended Live fire training programme in H2 (4-5th Feb 2019) over target of 3 persons. Cumulatively 8 people undergone training during the current year over yearly target of 6. With this training, all employees, 6 contract employees engaged in safety and maintenance job, 50% strength of security guard (1:1 in most) have attended Live fire training within last 3 years which is the validity period of live fire training certificate.					Exceeding Target	
Reliability of Operations & Services	Availability & uptime of Safety equipments through proper Maintenance which incorporates: fire alarm system, stand by original, CME, Fire extinguishers etc. including calibration & testing	Percentage	100%	100%	100%	0
H1 (April to September)						
Exceeded the target as system is modernized by addition of ESD and MCP to the prevailing SCV units to enhance emergency alarm system of live fighting system. Effectiveness of ESM is live checked for successfully well performance during real time rescue operations of one suite 190 meters in 3 occasions during the period under review. Effectiveness of live fighting equipment, Gas monitoring system and other safety equipment were found ready to face any emergency situation during various shift operations. All safety equipment like SCV, HCV, Pressure gauges, Vacuum Gauges were calibrated on schedule.					Meeting Target	
H2 (October to March)						
Maintenance of ESM Band according to handling on-site bulk LPG tanker rescue operations on 27.11.18 and during ESM unit by HSE-H2 in H2, communication of real time data log system helped monitoring of safety equipment like fire engine, jockey pump, water FF system and pump around the clock as all data is logged and can be verified on any point of time. LPG meters at by drum problem replaced. All existing hydrant lines and FF equipment were painted which were submerged in monsoon as plant was waterlogged. All safety fittings like SCV, HCV, Gauges, were verified and calibrated in due time. All services of SMS were verified, replaced on need basis & calibrated to ensure giving accurate read again during any fault in the system.					Exceeding target	
Safety & security performance	Night Inspection: Twice a month	Numbers	24.0	12	12	0

H1 (April to September)	
Exceeded the target by conducting 13 inspections over a target of 12 resulting in NIL security breach or theft.	Meeting Target
H2 (October to March)	
During H2, 14 inspections during night or in odd hours were carried out over target of 12. Hence cumulatively 27 inspections carried out over a target of 12. The inspections has strengthened the security system of the plant resulting in NIL occurrence of any security breach or irregularities during the year under review.	Meeting Target

Customer						
Strategic Objectives	Key Performance Indicators	Unit of Measurement	Targets for the Year	H1 Milestone (April-September)	H2 Milestone (October-March)	Weightage
Cost Leadership	Recognition of Exceptional Performance in Safety & Security by Senior officers/ Site of Officers & workers recognized	Numbers	To recognize 12 persons among officers / employees / contract workers/ truck crew and security team during Republic day / Safety meetings.	To recognize 6 persons among officers / employees / contract workers/ truck crew and security team during Safety meetings.	To recognize 6 persons among officers / employees / contract workers/ truck crew and security team during Republic Day / Safety meetings.	5
H1 (April to September)						
Exceeded the target by recognizing and rewarding 16 persons over target of 6 for exceptional performance in being awarded SAFETY, HSE and in being in the place selected among officers, employees and contract workers. All were awarded during 72nd Independence day 2018. Further 4 persons awarded with Safety Safety award for services rendered among contract laborers and Truck crew. 2 best participants were also awarded during Borealis Global Awards in July 2018 which are during various recognition by Borealis & Site.					Meeting Target	
H2 (October to March)						
Exceeded the target by recognizing and rewarding 14 persons over a target of 6 during H2. Cumulatively 30 persons including 2 officers, 4 employees, 12 truck crew and 13 contract workers were awarded in this year during various occasions. During H2, Safety award was given to 2 employees and 2 contract workers. 2 best driver award was given on completion of shift. 4 awards were awarded to contract workers and security staff by arranging good and dignified competition during 48th National Safety week 16-18 March 2019. 2 contract workers were awarded on spot at different time of day time during verbal quiz on SDP. 2 employees were awarded on 03.11.2018 for quiz competition during vigilance awareness week 2018.					Meeting Target	



Core Leadership	Contract Safety Committee Meetings - Quarterly & Compliance	Percentage	To conduct 4 safety committee meetings and to ensure 100% compliance to previous Safety Committee Meeting recommendations	To conduct 2 safety committee meetings and to ensure 100% compliance to previous Safety Committee Meeting recommendations	To conduct 2 safety committee meetings and to ensure 100% compliance to previous Safety Committee Meeting recommendations	3
H1 (April to September)						
Exceeded the target by conducting 2 Safety Committee meetings (2024, 11 & 2024, 11) & 1 safety steering committee meeting along with observation of World Day-Red Day on 10.10.2024. Pending points of previous Safety committee meeting was discussed and compliance status is recorded. The details of proceeding and attendance are uploaded HSE portal.					Meeting Target	
H2 (October to March)						
Exceeded the target by conducting 2 SCM on 26.11, 05.12, 19.02, 19 and 1 SACHET safety review meet on 19.03.19 in the meetings the presentation of two forms and submission of behavioral safety improvement work completed and is recorded. All 4 completed of previous SCM are discussed in the next meeting and are closed after 100% compliance in field to the satisfaction of members. The formation of safety committee & the health and safety policy of the location was appreciated by Factory Inspector during their visit to plant on 4.12.19. Case study of employees and hazards, near misses are also discussed in each SCM for improving safety awareness of all members. The details are also displayed in notice board for wider circulation.					Exceeding Target	
Enforcing Culture	Periodic Health Check- Employee TT & packed Crew/ Contractor workers	Percentage	To cover 100% employees and send 100 HSE contract workers period check new by arranging 2 and to check up camp 1 for health check up	To arrange 1 test check up camp covering 50 contract workers period check camp	To cover 100% employees and to arrange 1 health check up camp covering 50 contract workers period check camp	4
H1 (April to September)						
Exceeded the target by conducting 2 camps for temporary check up facility in association with Kottamanchi Rajeswari Hospital, Rajahmundry in April 2018 in which 101 persons working as contract employees of TT & packed truck crew undergone first check up. Hence the achievement exceeded the target of 2 camps with 50 persons.					Meeting Target	
H2 (October to March)						
Exceeded the target by arranging 2 health check up camps over target of 1 in H2 in which 208 persons checked over a target of 50. This was done by arranging 2 camps on 10.11.2018 and 10.12.2018. Camps were done in 122 persons and 106 persons (contract) workers. Health check up camp was arranged during 10.11.2018 in association with Kottamanchi Rajeswari Hospital, Rajahmundry. First including blood check up, ECG, BP, body weight, BMI index, eye pressure, eye ball color, vision test along with distributing the reports to individual. Total 80 people benefited. Blood donation camp was also arranged in association with Indian Red cross Society on 18.11.18. Total 40 blood samples collected from plant. Thus all targets exceeded.					Exceeding Target	



Learning and Growth					
Strategic Objective	Key Performance Indicators	Unit of Measurement	Targets for the Year	H1 Milestone (April-September)	H2 Milestone (October-March)
Competency Development	HRD Implementation - a formal HRD environment is established, HRD, Safety & induction is as per requirement - compliance to the HRD is 100%	Percentage	90%	90%	90%
H1 (April to September)					
Exceeded the targets by achieving 90% HRD index over target of 80%. We held monthly meetings at Barter exchange and also have conducted a check on the day prepared then held our second observation on required behavior at workplace. As a result of this we are 100% compliant to the HRD.					Meeting Targets
H2 (October to March)					
We have achieved 90% Behavioral based safety index during H2. Collectively we have achieved 90% index of 80% for the year over target of 90% and almost at 90%. We regularly held S&D (S&D) meeting & observation meeting and focus to improve behavior based safety for all stakeholders. We have deployed S&D (S&D) and safety program for all workers of all level and received very good results.					Exceeding Targets
Competency Enhancement	Training covering Workforce Deficiency Correction program. Safety induction per USD 124 million a year.	Percentage	To cover training for 42 employees, 150 courses, 1800 person weeks and 180 person weeks as per USD 124 million a year.	Continuing program covering 300 person weeks	Continuing program covering 150 person weeks
H1 (April to September)					



15. It is apparent, from a bare glance at the above remarks of the Reporting Officer of the appellant, for the year 2018-2019, that the appellant either met, or exceeded, every target set for him during the said year, under every head. The final remark reads: “Exceeded all set targets”. The “Overall Feedback *of the Reviewing Officer*”, in conclusion, reads:



2024:DHC:8450-DB



“Officer is very sincere and responsible and hard working. Maintains good interpersonal relationship. Keeps cool in tense situation. Already got good exposure in the field of safety. *Should be given higher responsibility in other field in LPG or any other SBU.*”

16. Though it is true that it may be beyond our remit to afford any qualitative evaluation of the appellant, it would be myopic on our part not to observe that the appellant appears, from a reading of the above entries, to have been an officer of considerable calibre. In that view of the matter, “Part B” of the “Performance & Development Review” of the appellant for the year 2018-2019 makes for surprising reading, and may be reproduced:

PERFORMANCE AND DEVELOPMENT REVIEW – PART B 2018-2019	
Name: SUBRAT KUMAR PANIGRAHI	Employee No. 30067320
Designation: Sr. Manager-Operations Locn: Bahadurgarh LPG Plant (12121400) Stream: 60	Curr Designation: Sr. Manager-Operations Curr. Locn: Bahadurgarh LPG Plant (12121400) Stream: 60
F. ANNUAL PERFORMANCE REVIEW	
Significant Contributions made during the year:	
1. The officer has contributed his efforts significantly to complete the installation of access control and CCTV to ensure the improvement in security safety of plant.	
2. The officer has carried out various updates of HSE reports in portal timely.	
Key Areas where performance was not in line with targets:	
1. <i>The officers could not complete the project (Revamping of ETP) assigned to him during the year due to his lack of involvement and initiatives. Delayed planning for execution had made it to carry over for next year.</i>	
General Behavioural Feedback	
1. The officer is disciplined. He has taken care of plant operations in absence of Plant Manager in addition to his own assigned jobs. The officer needs to involve in team and field jobs for better performance of the plant. He needs to share his knowledge and experience among other officers in team to improve his learning and growth.	
Appraiser Comments:	My sincere regards for recommending



2024:DHC:8450-DB



	me for higher responsibilities as mentioned in the overall feedback. I confirm you Sir, I will take up higher assignments with continued zeal and dedication. I am thankful to my supervisors for assigning me to LONI LPG Plant before OISD visit and I feel satisfied for meeting the expectation of mgmt. by bringing the location presentable on HSE parameters while working in harmony with LONI LPG plant team. Further I also excelled in all my set KPI targets during the year.
Appraisee:	30067320 – SUBRAT KUMAR PANIGRAHI
Appraiser:	31909370

17. We are conscious of our limitations in matters where ACR gradings and remarks are under challenge. Judgments of the Supreme Court advocate circumspection and restraint by the Court when dealing with such challenges. This is chiefly because the performance of the officer is best known to his colleagues and superiors, and not to the Court, which has had no occasion to peruse the official's performance, or assess his work.

18. There can, therefore, be no question of the Court sitting in appeal over the decision of the Reporting or Reviewing Officers apropos the remarks that they have chosen to enter in the ACRs of officers under their supervision, or the grading that they have finally chosen to award. We are concerned, as are all courts exercising *certiorari* jurisdiction, with the *manner in which* the respondents have acted, rather than the *ultimate outcome* of their action.



2024:DHC:8450-DB



19. Viewed thus, a damaging entry in the ACR, which is contrary not only to the entire record but to the earlier comments entered by the very same officer, and is unsupported by *any material whatsoever*, cannot be allowed to stand, as it would be manifestly arbitrary. A reading of para 6 of the judgment dated 28 July 2021 of the learned Single Judge reveals that this observation of the Reviewing Officer was, in fact, the main defence of the respondent, to the challenge laid by the appellant to the “3” grading.

20. Not only is the aforesaid remark in Part B of the appellant’s ACR contrary to all the entries made by the Reporting Officer prior thereto, *which clearly note that the appellant had not only met, but in fact often exceeded, the ETP targets; they are even contrary to the Reviewing Officer’s own “Overall Feedback”*. It is one thing to say that the Reviewing Officer is entitled to exercise his own subjective assessment of the officer being assessed; it is altogether another to say that the Reviewing Officer can enter starkly contradictory remarks in the ACRs, with the adverse remark being opposed to all earlier entries in the ACRs. In a given case, such an action may smack of *mala fides*; in this case, no such substantial case of *mala fides* has been made out by the appellant and we, therefore, are spared the necessity of travelling down that path. At the very least, however, the remarks by the Reviewing Officer in Part B of the appellant’s ACRs, under the head “Key Areas where performance was not in line with targets” is *ex facie* arbitrary and, therefore, infracts Articles 14 and 16 of the Constitution of India.



21. Despite grant of opportunity, Mr. Pawan Narang, learned Counsel for the respondents, is unable to provide any basis for the afore-noted entry made by the Reviewing Authority in the performance and development review of the appellant for the year 2018-2019. He ventured to suggest that, if the entire records of the appellant were perused, some basis for the comment might be forthcoming. We are not inclined to embark on any such roving inquiry. Our remit is not to seek to justify, one way or the other, the damaging remark entered by the Reviewing Officer. In view of the preceding entries in the appellant's ACRs, and the concluding remark by the Reviewing Officer himself, the very least that was required was some mention of the basis for such a discordant entry having been entered by him in Part B of the ACRs. The Reviewing Officer has not chosen to do so. Extrapolating, to the entries in the ACRs, the time-honoured principle, enunciated by Krishna Iyer J. in *Mohinder Singh Gill v Chief Election Commissioner*⁶, that an order has to speak for itself, the entries by the Reviewing Officers in the appellant's ACRs had to speak for themselves. Of course, the Reviewing Officer was not required to adduce detailed reasons for his comments; however, for a comment as discordant with the rest of the ACRs as that entered under the head "Key Areas where performance was not in line with targets", some justification for the comment had to be forthcoming.

22. Mr. Narang has, however, sought to submit, firstly, that the overall grading of "3" awarded to the appellant for the year 2018-

⁶ (1978) 1 SCC 405



2024:DHC:8450-DB



2019 was in sync with the remarks entered in his ACRs even if the damaging entry of the Reviewing Officer under the head “Key Areas where performance was not in line with targets” were to be ignored, and, secondly, that the appellant had, in his “Appraisee Comments” towards the end of Part B of the ACRs, not protested or objected to the said remark, thereby indicating that he accepted its correctness.

23. We are not impressed by either contention.

24. Once the injurious entry by the Reviewing Officer in the appellant’s ACRs is found to be unsustainable and arbitrary, the sequitur has necessarily to be a re-assessment by the Reviewing Officer. As is apparent from the preceding entries made in the appellant’s ACR for the year 2018-2019, the appellant has been uniformly graded as an “Excellent officer”, with the final recommendations of the Reviewing Officer being that he should be given higher responsibility. ETP targets had been noted not just to have been met, but also, often, exceeded by him. The entry by the Reviewing Officer in Part B of the appellant’s ACRs under the head “Key Areas where performance was not in line with targets” is, therefore, obviously seriously damaging to the appellant, and it remains in the realm of conjecture as to the grading which would ultimately have been accorded to him, were the said entry not to have been present. We cannot, therefore, presume that the appellant would still have been graded “3”, especially as the final comment of the Reporting Officer was that he had “exceeded all set targets”, which was echoed by the Reviewing Officer (in Part A of the ACR), who in



fact recommended that he deserved to be shouldered with higher responsibilities.

25. Insofar as the “Appraisee Comments” in Part B of the ACRs are concerned, they, quite obviously, cannot operate as estoppel against the appellant challenging the injurious entry in Part B which preceded it. There is neither an express, nor any implied, acceptance, by the appellant of the said entry. In any event, it would be unthinkable to hold that the appellant can be foreclosed from challenging the entry, whatsoever the outcome of the challenge might be.

26. Reliance has also been placed, by the learned Single Judge, on the decision of the appellate authority, to whom the appellant had appealed against the grading of “3” awarded to him. There is no notice, however, by the appellate authority, of the apparent discordance between the entry in Part B of the appellant’s ACR and the preceding entries in Part A, *including the entry by the Reviewing Authority himself, recommending that the appellant be given higher responsibilities in view of his capability.* The order of the appellate authority cannot, therefore, in our considered opinion, eradicate the effect of the injurious entry by the Reviewing Officer in Part B of the appellant’s ACRs. Even otherwise, in our opinion, so fatal, to the integrity of the appellant’s ACR, is the discordant entry by the Review Officer in Part B thereof, that an apparently reasoned appellate order cannot infuse it with life.



2024:DHC:8450-DB



Conclusion

27. Resultantly, inasmuch as the comment by the Reviewing Officer in Part B of the appellant's ACR for 2018-2019 under the head "Key Areas where performance was not in line with targets" cannot sustain the scrutiny of law, the said entry, as well as the grading of "3" granted to the appellant for the year 2018-2019, awarded consequent thereto, are also quashed and set aside.

28. Part B of the appellant's ACRs for the year 2018-2019 is, therefore, directed to be rewritten, and a fresh grading granted to the appellant, within a period of four weeks from today.

29. Though we express our dissatisfaction about the manner in which the Reviewing Officer has conducted himself in the present matter and had made the aforesaid entry in the appellant's performance and development review, we refrain from making any further comments in the order as the said officer has not been impleaded personally as a party in the present case.

30. Observations contained in this judgment are only intended to address the challenge, by the appellant, to the grading of "3" awarded to him in his ACRs for the year 2018-2019. They are not intended to represent any opinion, by us, on the appellant's performance, or the grading to which he may ultimately be entitled. The respondent would



2024:DHC:8450-DB



objectively re-assess the appellant, but in accordance with law, and keeping in mind his overall performance, and the entries in Part A of his ACRs.

31. The impugned order dated 28 July 2021 is, therefore, quashed and set aside.

32. Inasmuch as Mr. Mahapatra restricted his case to the grading of “3” awarded to the appellant for the year 2018-2019, the order dated 6 August 2021, insofar as it rejects the appellant’s challenge to the grading of “4” awarded for the year 1996-1997, remains undisturbed.

33. WP (C) 4005/2020 filed before the learned Single Judge, as well as the present appeal, stand allowed to the aforesaid extent.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 23, 2024/dsn

Click here to check corrigendum, if any