



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

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Date of decision: February 09, 2024

+ W.P.(C) 4961/2018

(33) KHALID AKHTAR

..... Petitioner

Through: Mr. Ankur Chhibber, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Prasanta Varma, SCGC with
Mr. Pankaj Kumar, Ms. Jpragya
Verma and Mr. Rakesh Kumar Palo,
Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

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

“In view of the above, it is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

(i) Issue a writ of certiorari for quashing the non speaking order dated 25.8.2017 issued by Special Director General without dealing with any of the points raised by the Petitioner, letter dated 6.2.2018 issued by the Director General whereby the Petitioner was informed there is no provision for 2nd appeal against grading or adverse remarks and the APAR for the period 09.09.2015 to 31.03.2016.

(ii) Issue a writ of mandamus directing the respondents to consider the APAR of the petitioner for period 09.09.2015 to 31.03.2016 as nonest in law and pass appropriate orders with all consequential benefit.



(iii) Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case."

2. The challenge in this petition is primarily to an order dated August 25, 2017 and letter dated February 6, 2018 of the Special Director General and Director General, whereby the Special Director General has rejected the appeal filed by the petitioner against the grading / adverse remarks in the APAR and the Director General informed the petitioner that there is no provision of Second Appeal against the order passed by the Special Director General.

3. The grievance of the petitioner is in respect of grading in APAR for the period September 9, 2015 to March 31, 2016.

4. The only submission made by Mr. Ankur Chhibber, learned counsel for the petitioner is that the APAR grading for the aforesaid period has been initiated by the Initiating Officer ('IO', for short), but the Reviewing Officer ('RO', for short) / Accepting Officer ('AO', for short) have not put their remarks on the APAR on the ground that they have not observed the work of the petitioner for a period of 90 days / 3 months. Hence, he submits that, on this ground only the grading in the APAR for the aforesaid period needs to be treated as invalid. He relied upon the judgment in the case of **Col. Vinod Dahiya v. Union of India & Ors., W.P.(C) 8377/2021** of this Court in support of his case.

5. On the other hand, learned counsel appearing for the respondents tried to justify the impugned letters by stating that the petitioner, whose services were terminated was reinstated in service in the year 2012. Effectively the work of the petitioner was not observed



by the RO / AO during the reporting period and as such the APAR for the aforesaid period was rightly decided on the basis of remarks given by the IO.

6. We are not in agreement with the submission of the counsel for the respondents for the reason that it is a settled position of law / rules that a three-tier hierarchy / structure is adopted for recording the grading in APAR. Though three-tier hierarchy system has been adopted by the respondents at least the APAR must have been recorded / decided by two officers (two tier hierarchy), even if the third officer is not available for any reason.

7. In the present case, the respondents have treated the grading in APAR as valid though it has been written by the IO only as the RO / AO have not seen / supervised the petitioner's work during the relevant period.

8. The submission of Mr. Chhibber is, the APAR should have been sent to the AO who supervised the work of the petitioner for 90 days and was competent to write the APAR.

9. It is the case of the respondents in their counter-affidavit that the then AO who had seen the working of the petitioner, was transferred to Lucknow and as such the APAR was not sent for his views. The stand of the respondents is not appealing, as DOP&T OM dated January 14, 1993 stipulate where the RO retires, the APAR can still be sent to him within one month of his retirement for his views. It follows, even on retirement, the RO can give his views in the APAR.



10. In the present case, the AO has retired in 2022, much after the reporting period. So, in that sense, the APAR cannot be sent to the AO after six years of the reporting period.

11. This Court had the occasion to deal with a similar issue in the case of **Col. Vinod Dahiya v. Union of India & Ors., W.P.(C) 8377/2021**, wherein this Court has in paragraph 6 onwards has held as under:

“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 reads as under:*

“42. 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 doubt that such an ACR cannot be accepted as correctly appraising the performance of an officer. 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. 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.”

(emphasis supplied)

12. In the above judgment, this Court, on a principle of law held that the APAR must be considered by at least two out of three authorities to make the APAR valid. In the present case, the APAR was



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decided by one authority i.e., IO. This shall make the grading/remarks as invalid. We hold accordingly. The writ petition is allowed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 09, 2024/jg

Signature Not Verified

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By: DHARMENDER SINGH
Signing Date: 16.02.2024
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