

GAHC020001282024

2026:GAU-NL:230



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : WP(C)/45/2024

JC-356629 W SUBEDAR (CIPHER) RAJIB KUMAR SARKAR
S/O (L) RAMPADA SARKAR
HQ IGAR (NORTH)
SIGNALS COY INSPECTOR GENERAL ASSAM RIFLES (NORTH)
C/O -99 APO,
PIN- 932554

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT OF INDIA
MINISTRY OF HOME AFFAIRS
NEW DELHI-110001

2:MAHANIDESHALAYA ASSAM RIFLES
(THE DIRECTOR GENERAL OF ASSAM RIFLES)
HQ AGAR
ASSAM RIFLES SHILLONG
MEGHALAYA-793011

3:THE HQ (NORTH) ASSAM RIFLES
C/O 99APO
KOHIMA NAGALAND-932554

4:BRIGADIER V S GULERIA
SM COMMANDER
21 SECTOR ASSAM RIFLES
C/O 99 APO

5:COL AJIT KHATRI
EX COMMANDANT

18 ASSAM RIFLES
AGARTALA
TRIPURA

NOW POSTED AT H. NO. 302A
FOUND FLOOR
ARMY WAR COLLEGE MHOW
INDORE
MADHYA PRADESH-453441

6:MAJ. SHUVADEEP PAUL
EX AJUTANT
18 ASSAM RIFLES
AGARTALA TRIPURA

NOW POSTED AT HQ BTY/336 FD REGT
PIN- 926336
C/O 56 APO

7:CAPTAIN ANIKITA DHIMAN
RMO (DOCTOR)
EX 18 AR
C/O 99 AP

Advocate for the Petitioner : BIJAY DEB, PAKINRICHAPBO

Advocate for the Respondent : CGSC,

Linked Case : I.A.(Civil)/4/2025

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Advocate for : PAKINRICHAPBO
Advocate for : CGSC appearing for THE UNION OF INDIA AND 6 ORS

Date on which judgment is reserved : **20.04.2026**

Date of pronouncement of judgment : **24.04.2026**

Whether the pronouncement is of
the operative part of the judgment : Full judgment.

Whether the full judgment has been
pronounced : Yes.

BEFORE
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates for the petitioner : Mr. Bijay Deb, Adv

Advocate for the respondents : Mr. Z.N Ngullie, CGC

JUDGMENT & ORDER (CAV)

The petitioner in the instant writ petition is serving in the Assam Rifles in the rank of Subedar (Cipher). The petitioner is aggrieved by the adverse entries made in his ACR/APAR for the period of 2019 to 2020 and 2021 to 2022. He had submitted representations dated 06.09.2021, 19.12.2022, 06.01.2023 and 27.10.2023 before the respondent authorities against the adverse grading. However, the representations were not considered and therefore, he had preferred a writ petition being WP(C) No. 294/2023 before this Court praying for a direction to the respondents

to dispose of his representations and to upgrade the gradings of his APAR for the period of 2019-2020 and 2021-2022. WP(C)/294/2023 was disposed of by an order dated 05.12.2023 with a direction to the respondents to examine and take a decision on the petitioner's representations within a period of 3 (three) weeks from the date of receipt of a copy of the order.

2. In compliance of the order of this Court dated 05.12.2023, the respondents No. 2 by a Speaking order No.RK Sarkar/Rec-Legal/1608/2024/576 dated 29.01.2024 rejected the representations of the petitioners holding that *"the request of the petitioner to upgrade his ACR/APAR awarded to him by his Reporting Officers purely on the basis of the performance during the respective assessment years lacks merit, therefore, is hereby rejected."*

3. Aggrieved by the rejection of his representation, the petitioner has come before this Court praying for a direction to quash and set aside the Speaking order dated 29.01.2024; the APAR gradings and adverse remarks of the petitioner for the period 01.09.2019 to 31.08.2020, 01.09.2021 to 30.06.2022 and for a further direction to the respondents to upgrade grading of the APAR of the petitioner for the period 2019-2020 and 2021-2022 and to promote the petitioner to the post of Subedar Major (Cipher) without affecting his seniority.

4. Heard learned counsel for the petitioner, Mr. Bijay Deb. Also heard, Mr. Z.N Ngullie, learned CGC for the respondents.

5. The learned counsel for the petitioner submits that the petitioner does

not have any adverse remarks in his service career of more than 34 years. It is stated that only when the petitioner was posted at 38 Assam Rifles at Teliamura, Tripura, he was deputed at the Official Canteen for about 1 (one) month for the distribution of CSD items under the command of the then Commandant, 38 Assam Rifles. He found that the staffs of the Official Canteen had illegally sold the CSD items and ration to the civilians and consequently he made a complaint to the Chief of Army, Government of India and the Complaint of the Petitioner was registered. Thereafter, a Staff Court of Inquiry was constituted for ascertaining the allegations made by the petitioner against the Commandant of 38 Assam Rifles.

6. Surprisingly, in connection with the said court of inquiry, the petitioner was charged with 2 (two) Tentative Charge Sheets dated 27.11.2019 and 11.12.2019, whereas the irregularities had never been committed by the petitioner, instead he was the complainant. Being aggrieved, the petitioner approached the High Court of Manipur by filing WP(C)/27/2020 praying for quashing the Tentative Charge Sheets framed against the petitioner and the same is still pending disposal before the said High Court.

7. It is also stated that after filing of the WP(C)/27/2020 before the Manipur High Court, the respondent No. 5 who was the Reviewing Officer for the APAR of the petitioner for the period 2019-2020 and 2021-2022 verbally instructed the petitioner on many occasions to withdraw the case. However, the petitioner did not do so. Consequently, the respondent No. 5 began to harass the petitioner without any valid reason and tried his best to expel the petitioner from service on the basis of false allegations.

8. The learned counsel for the petitioner further submits that on

27.04.2020 when the petitioner went to the 18 AR Unit Hospital for regular Annual Medical Examination (AME), the respondent No. 7 who was the then 18 AR Unit Doctor told the petitioner to take admission at the Unit Hospital immediately. He was informed by the respondent No. 7 that the petitioner's heart was blocked as per the medical reports and the ECG test which was conducted on 23.04.2020. It was also informed to the petitioner that his ECG reports, blood sugar level, blood pressure and cholesterol were all found to be abnormal. The petitioner was shocked to hear the same as he was not having any health issues nor any symptoms and so he requested the respondent No. 7 to furnish the result of the said tests to him. The petitioner had apprehension that his life would be at risk if he was admitted to the Unit Hospital as the respondent No. 5 was trying to expel the petitioner from his service. Being suspicious about the aforementioned medical reports, the petitioner requested the respondent No. 7 to allow him to go to any other hospital for further tests for more accuracy and to clear his doubts. However, the respondent No. 7 directed the petitioner to sign a '*discharge from hospital against medical advice certificate*' dated 27.04.2020 stating therein that the petitioner is not willing to take treatment from the Unit Hospital and if any medical complication occurred in the future he will be solely responsible for the consequences. It is the submission of the petitioner that he does not have any health issues and is in the medical category of SHAPE-I till date. However he was issued a show cause notice dated 28.04.2020 to show cause as to why he had refused to be admitted in the Unit Hospital and the reply was to be submitted within within 24 hours of its receipt. Before he could submit his reply, another show cause notice was issued on the

next date i.e., 29.04.2020 for not replying to the show cause notice dated 28.04.2020. On his failure to get himself admitted and failure to reply to the show cause notices, the Captain OIC Commandant, 18th Assam Rifles, on 02.05.2020 issued a written direction directing the petitioner to handover all the classified cipher documents to the next immediate junior and to forward the completion report to the Commandant on the same day, i.e., 02.05.2020. The above mentioned orders and actions of the respondent authorities clearly reflects the harassment towards the petitioner as show cause notice dated 28.04.2020 was asked to be replied within 24 hours and the letter dated 02.05.2020 was also directed to be complied with on the same day, which is beyond realistic and logical expectations.

9. Thereafter, the petitioner was notified vide notice No.18/AR/A2/356629W/RKS/2020 dated 04.06.2020 that a Court of Inquiry has been initiated against him on the ground that he had misbehaved and used threatening language with the unit Doctor/respondent No. 7. It is stated that all the charges leveled against the petitioner were false and fabricated. Further, the respondent 6 issued a warning letter No.18AR/A/A2/2263/301 dated 08.06.2020 directing the petitioner to report to the Presiding Officer at KLP Modi on 09.06.2020. However, at the same time, the respondent 6 also issued a movement order dated 09.06.2020 to go for medical treatment. The issuance of the warning letter and the movement order manifestly reveals the ulterior motive of the respondent 6 as it was not possible for the petitioner to be in two places at the same time.

10. The counsel for petitioner submits that he was later examined by a specialist doctor at the Assam Rifles Multispecialty Hospital, Mantripukhri on 09.06.2020. Also the health condition of the petitioner was reviewed at the same hospital on 15.06.2020 and it was certified that the petitioner does not have any health issues. The medical reports from the Assam Rifles Multispecialty Hospital Mantripukhri have been annexed by the petitioner as Annexure-J series. Hence, petitioner submits that it became clear that the lab reports of the Unit Hospital of the 18th AR were all false and fabricated.

11. Subsequently, the petitioner received his APAR gradings for the year 01.09.2019, 31.08.2020 wherein he was given only 4 marks out of the total 10 marks which is an adverse grading for ACR. He therefore submitted a representation dated 06.09.2021. As no action was taken on the representation, the petitioner submitted another representation on 19.12.2022 which was also not disposed. The petitioner also received a copy of his APAR for the period 01.07.2021 to 30.06.2022 wherein he was graded only 5 and the same is also an adverse grading. The reasons for giving only 5 marks in the APAR by the reporting Officer/ respondent No. 6 was, "***The JCO is inefficient to carry out task assigned to him independently. The JCO needs remarkable improvement in his professional skills and attitude towards work***". And the reason assigned by the Reviewing Officer/Respondent No. 5 is, "***the JCO keeps his personal interest always above the organizational interest. A liability on the org.***"

12. Being aggrieved by such adverse grading the petitioner again

submitted detailed representation dated 06.01.2023 and requested to quash the unwarranted remarks in the pen picture and requested to review the APAR. However due to non disposal of the said representation the petitioner again submitted a reminder dated 27.10.2023 to the respondent No. 2 to dispose of his earlier representations.

13. It is submitted by the learned counsel that due to non-disposal of his representations, the petitioner preferred a WP(C)/294/2023 before this Court praying for a direction to the respondents to dispose of his representations and to upgrade his APAR grading for the period 2019-2020 and 2021-2022.

14. By an order dated 05.12.2023, this Court disposed of WP(C)/294/2023 with a direction to the respondents to examine and take a decision on the petitioners' representations. The representations were then disposed of by the impugned speaking order dated 29.01.2024 rejecting the representation of the petitioner.

15. Learned counsel for the petitioner submits that the respondent No. 2 while issuing the impugned Speaking order did not appreciate any of the facts as stated in his representations dated 06.09.2021, 19.12.2022, 06.01.2023 and 27.10.2023. the respondent No. 2 also did not give any reasons basing on which the representations of the petitioner were rejected.

16. The petitioner contents that at no point of time, the petitioner had performed any official duty under the Reporting Officer/respondent No. 6 and as per policy the Reporting Officer should have observed the duties,

responsibility and task assigned to his subordinate at least for a period of 3 (three) months during the period of assessment. However, in the instant case the reporting officer has not assigned any task or responsibility to the petitioner for three months or more.

17. It is another specific submission of the learned counsel for the petitioner that the adverse grading in the APAR was only given to the petitioner during the period when the respondent Nos. 5 and 6 were the Reporting Officer and Reviewing Officer respectfully whereas, in the entire service career of the petitioner he has maintained "Very Good" grading in his APAR. However, this pertinent aspect was never considered by the respondent No. 2 while issuing the impugned Speaking Order dated 29.01.2024.

18. It is further submitted that the petitioner is the senior most Subedar (Cipher) and is due for promotion to the post of Subedar Major (Cipher) w.e.f 01.03.2024 and therefore in order to consider the case of the petitioner for promotion, the petitioner has to meet the required benchmark of "Very Good" APAR for the preceding five years. However, due to adverse grading in his APAR for the period 2019-2020 and 2021-2022, the petitioner has been denied due promotion.

19. The learned counsel for the petitioner has relied on the following authorities in support of his submissions:-

i) Order dated 12.03.2019 passed by the Delhi High Court in WP(C)/7179/2017.

ii) Order dated 27.10.2009 passed by the Punjab & Haryana High Court

in WP(C)/4203/2004.

iii) Jagdish Prasad Vs. Chief Secretary, Government of Rajasthan reported in 2023 SCC Online RAJ 1288.

iv) S. Ramachandra Raju Vs. State of Orissa reported in AIR 1995 SC 111.

v) Union of India and Others G.R. Meghwal reported in AIR 2022 Supreme Court 4661.

vi) State of UP Vs. Yamuna Shanker Misra reported in AIR 1997 SC 3671.

vii) S.N Mukherjee Vs. Union of India reported in AIR 1990 Supreme Court 1984 and;

viii) Ahmadulla Vs. Union of India reported in AIR Online 2019 ALL 3074.

20. In view of the above submissions and the authorities relied upon, the learned counsel for the petitioner prays that the instant petition may be allowed and the impugned Speaking Order dated 29.01.2024; and the adverse entries in the APAR for the period 01.09.2019-31.08.2020, 01.09.2021-30.06.2022 may be quashed and set aside and further prays that the respondents may be directed to upgrade the APAR grading of the petitioner for the period 2019-2020 and 2021-2022 and promote the petitioner to the post of Subedar Major (Cipher) without affecting his seniority.

21. On the other hand, the learned CGC, Mr. Z.N Ngullie appearing for the respondent authorities 1, 2 and 3 has raised a preliminary objection of maintainability of the writ petition and submits that the instant writ petition is barred by res judicata. He submits that the earlier writ petition No. 294/2023 was also filed on the same grounds and with the same prayer and therefore, the present petition is not maintainable.

22. With regard to the merits of the case the learned CGC submits that the Tentative Charge Sheets had been served to the petitioner in respect of his actions which were prejudicial to good order and discipline. However, the petitioner had approached the High Court of Manipur against the tentative Charge sheets and the matter is still sub judice before the said High Court.

23. The learned CGC submits that the petitioner had misbehaved and used threatening language with Unit Medical Officer/ respondent No. 7. The petitioner also failed to report before the presiding officer of the court of inquiry which was constituted due to the complaint made by the respondent No. 7 against him. It is stated that the Unit Hospital of the 18th AR has a full fledged lab where medical tests for all the employees are conducted by qualified Lab Assistants. However, the petitioner refused to be admitted in the hospital when advised to do so. The petitioner left the 18th AR Hospital against the advise of the respondent No. 7 after signing a written statement. The petitioner also did not reply to the show cause notice dated 28.02.2020. Consequently, considering the petitioner's behavior and attitude the charge of Crypto Centre was handed over to another officer.

24. The respondents further states that the pen picture endorsed by the Reporting Authority and the Reviewing Officer of the petitioner shows that the performance of the petitioner during the assessment years was poor and below benchmark. Therefore, he has been rightly awarded the grading based on his performance. The adverse remarks were further communicated to the petitioner in writing on 09.06.2021.

25. For the assessment year 2021-2022, the Reporting Officer has graded the petitioner with 5 points and not recommended for further promotion based on his performance during the assessment year. The grading awarded by the Reporting Officer was justified in the pen picture of the petitioner. The adverse remarks for this assessment year were also communicated to the petitioner on 28.12.2022.

26. The learned CGC submits that the petitioner has received adverse remark as per his performance in the assessment years of 2019-2020 as well as 2021-2022. The petitioner has a history of bad behavior with his Superior Officer and the instances of bad behavior of the petitioner are not restricted to his tenure in the 18th AR.

27. It is further submitted by the learned CGC, that the respondents have complied with the direction of this Court in WP(C)/294/2023 vide the Speaking Order dated 29.01.2024 and disposed of the representation dated 06.09.2021, 19.12.2022, 06.01.2023 and 27.10.2023. The respondent No. 2 has not interfered with the grading given by the Reporting Officer and the Reviewing Officer as it was found that the grading had been rightly given and there was no reason to upgrade the APAR awarded to the petitioner during the respective assessment years.

The learned CGC submits that the petition has no merit and prays that the same may be dismissed.

28. I have duly considered the submission of the learned counsel for the parties, perused the pleadings and the authorities relied upon.

29. The foundation for challenging APAR grading lies in principles of natural justice, transparency and fairness. Judicial pronouncements have consistently held that adverse ACRs entries must be communicated to the concerned employee within a reasonable period to allow representation. Failure to do so can render them invalid for future promotion. Communication ensures transparency in the promotion process. Further the authorities must meticulously examine representation against APAR gradings, and consideration of representations against APAR grading is not an empty formality. In the case of ***Dev Dutt Vs. Union of India and others*** reported in (***2008***) ***8 SCC 725***, the Hon'ble Supreme Court held that not only adverse entry but, every entry must be communicated to the employee concerned so that he may have an opportunity of making a representation against it if he is aggrieved.

30. In the case of ***Amit Nehra (Supra)***, the Delhi High Court had observed that one of the grounds on which the adverse entry in the APAR was challenged was that the Reporting Officer and Reviewing Officer were biased against the petitioner. The court observed that the Officer writing the confidential report should show objectivity, impartiality and fair assessment without any prejudice whatsoever with the highest sense of responsibility to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. And that it is the duty of the

Reporting Authority and the Reviewing Authority to take care that they are not influenced by any personal interest, bias or malice. In other words, in assessing the overall performance on giving the grading to an officer, the authority should act fairly and without any bias. Also in the case of ***S. Ramachandra Raju (Supra)***, the Hon'ble Supreme Court held that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices and to make an objective assessment. The Supreme Court held that the career prospects of a subordinate officer largely depends upon the work and character assessment by the Reporting Officer. Therefore, the reporting officer should adopt fair, objective, dispassionate and constructive comments in assessing the character, ability, integrity and responsibility displayed by the concerned employee during the relative period. If such honest assessment is not made the prospect and career of the subordinate officer will be put to great jeopardy.

31. The object of writing the confidential report was explained by the Supreme Court in ***State Bank of India vs. Kashinath Kher (1996) 8 SCC 762*** (i) first to give an opportunity to the officer to remove deficiencies and to inculcate discipline. (ii) Second, it seeks to serve improvement of quality and excellence and efficiency of public service.

32. The Supreme Court in the case of ***Yamuna Shanker Misra (supra)***, observed that sometimes, the facts and circumstances may not be on record but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. And the Reporting Officer before forming an adverse opinion, should share and confront the concerned officer with the said information and then make it

part of the record. This gives an opportunity to the erring/corrupt officer to correct the errors of the judgment, conduct, behavior, integrity or conduct/corrupt proclivity. If despite being given such an opportunity, the officer fails to perform his duties or improve himself, the same may be recorded in the confidential report and a copy supplied to the concerned officer, so that he may have an opportunity to know the remarks made against him and also to give him an opportunity to make an appropriate representation to the higher authorities in case he feels aggrieved. Thus, what is significant is that if any unacceptable conduct or behavior which may not necessarily be documented, is observed by the Reporting officer, it should be communicated and opportunity given to the assessed officer to explain before it is made a basis of adverse report. This is also in consonance with the principle of natural justice of being heard before being condemned.

33. In *Sukhdeo vs. Commissioner, Amaravati Division, (1996) 5 SCC 103*, the Supreme Court observed that it would be salutary for the Controlling Officer to give prior sufficient opportunity in writing by informing him of the deficiency noticed before writing adverse remarks against the assessed officer.

34. While addressing the objection of maintainability, this Court has perused the order dated 05.12.2023 passed in WP(C)/294/2023. In the aforementioned writ petition the only issue raised in the petition was that the petitioner had submitted representation against the adverse remarks recorded in the petitioner's APAR for the year 2019-2020 and 2021-2022. And the only prayer of the petitioner was that a direction should be issued

to the respondents to take a decision on the petitioner's representations regarding his prayer to upgrade the adverse gradings given in the petitioner's APAR. And therefore, this Court is of the view that the present writ petition is not barred by res judicata and is maintainable.

35. It is also incumbent upon the authority disposing of the representation against the adverse APAR grading to meticulously examine the representation and address all the issues raised by the employee. In the case of ***S.N Mukherjee (Supra)***, the Hon'ble Supreme Court has observed that the extent of nature of the reasons would depend on the particular facts and circumstances. However, what is necessary is that the reasons should be clear and explicit so as to indicate that the authority has given due consideration to the points in controversy.

36. This Court has examined the impugned order dated 29.01.2024. The petitioner in his representation dated 06.01.2023 had made specific allegations that the Reporting Officer/ respondent No. 6 had never assigned in duties to him independently and he had not performed any official duty under the said officer for the assessed period. It was stated by the petitioner that the officer under assessment should have been observed by the reporting officer continuously for at least 3 (three) months during the period of report. However, the impugned order dated 29.01.2024 has not given any reasons for upholding the remarks entered by the respondent No. 6. The petitioner has also made an averment that the reviewing officer/ respondent No. 5 had entered the adverse remarks without any substance and without any materials. The petitioner had also in his representations made a specific allegation that during his entire

service career before the filing of WP(C)/27/2020 in the Manipur High Court, he had not received any adverse remarks in his APAR and that it was only the respondent Nos. 5 and 6 who have given the adverse remarks for the period 2019-2020 and 2021-2022. The respondent No. 2 while disposing of the representations made by the petitioner has not given any reasons as to why he has agreed with the remarks and marking given by the reporting and reviewing officer and nothing is reflected about the allegations of bias against the respondents 5 and 6 or the averment of the petitioner that he had been graded 'Very Good' throughout his career except for the years assessment years when respondent 5 & 6 were the reporting and reviewing officers. It is settled law that the authority should provide reasons when dismissing a representation, and although detailed reasons are not mandatory, a fair, reasoned decision is necessary to show that the representation was properly considered. And the disposal order should reflect that the authority has considered all the points raised by the employee. Therefore, to ensure compliance with the principles of natural justice, the competent authority should state the reasons for rejecting a representation rather than issuing a summary dismissal order.

37. In the present case, it is apparent from the facts that the adverse APAR remarks against the petitioner have started only after he made a complaint against the Commandant 38 AR regarding sale of CSD items and ration to civilians and also after the incident at the 18th AR Unit Hospital when he refused to get admitted at the Unit Hospital. Specific allegations have been made by the petitioner against the respondent Nos. 5, 6 and 7 in the writ petition which have not been countered at all in the affidavit-in-opposition filed on behalf of respondent Nos. 1, 2 and 3. In

fact in the counter affidavit of the respondents 1, 2 and 3 most of the allegations made by the petitioner have not been rebutted or explained.

38. Notices on the respondent Nos. 4, 5, 6 and 7 were served through the respondent No. 2 on 15.04.2025 and the same was acknowledged by the respondent No. 2. An affidavit bringing on record the service of notice on respondent Nos. 4, 5, 6 and 7 through respondent No. 2 has also been filed by the petitioner. By order dated 01.09.2025, this Court has already held that the service on the private respondents have been completed. However, none appears for the respondents Nos. 4, 5, 6 and 7 when the matter is heard. And therefore, no affidavit has also been filed on their behalf. This Court therefore, holds that the allegations made by the petitioner against the respondent Nos. 5, 6 and 7 remain uncontroverted.

39. Moreover, when the petitioner was having a "very good" APAR for the previous and subsequent periods, which is not denied by the respondent authorities, it is surprising as to what were the circumstances that led to a grading of 4 points and the adverse remarks/pen picture in the impugned APAR of 2019-2020 and 2021 to 2022. Moreover, the complete APAR remarks were not supplied to the petitioner for the period 2019-2020 and only the page containing the grading of '4' was served to him. As already discussed above, the alleged instances of bad behavior neither reflects any dereliction of duty nor any insubordination, prompting to such downgrading of APAR. The extraneous circumstances leading to the adverse entries like the complaint by the petitioner against the Commandant of 38 AR or refusing to get admitted in the Unit hospital is evident.

40. In *Sanjay Doval vs. Union of India*, 2019 SCC OnLine Del

11500, a Division Bench of Delhi High Court observed that the petitioner was found to be having unblemished track record for over 22 years with an adverse entry being limited only to the impugned period of eight months between 01.04.2011 and 27.12.2011. The future promotion was withheld only on account of adverse remarks for the short period of DPC. The adverse remarks were found to be unjustified in the given circumstances and it was held that the adverse remarks were not justified and were expunged and a Review DPC was directed to be constituted. Similarly in the instant case the petitioner had an unblemished record for over 34 years and the adverse entry is limited only to the period between 2019-2020 and 2021-2022.

41. This Court has also observed that the Reporting Officer before entering the adverse remark has not shared and confronted the petitioner with the said information so that the petitioner could be given an opportunity to correct the errors of the judgment, conduct, or behavior if any as held in the case of **Yamuna Shanker Misra (supra)**. This Court is also of the view that the respondent No. 2 while issuing the impugned order dated 29.01.2024 has not taken into account the fact that the petitioner throughout his service career had never received below the benchmark APAR entry except for the period 2019-2020 and 2021-2022. This Court holds that an objective assessment of an officer's performance requires looking at their entire career trajectory rather than a single isolated entry, especially if a sudden downgrade occurs after years of high performance. If an officer was consistently rated "Very Good" and suddenly receives a below benchmark rating, such an abrupt drop requires a more thorough justification by the Reporting Authority. The primary

objective of an APAR is developmental and reformatory and not punitive and is meant to guide the employee towards improvement.

42. In view of the discussions and the reasons given above this Court is of the view that the impugned Speaking order No. RK Sarkar/Rec-Legal/1608/2024/576 dated 29.01.2024 needs to be set aside, as it has been passed without following settled principles of law. This Court has also found that the adverse remarks in the APAR of the petitioner are punitive in nature and based on extraneous considerations. The remarks have not been made objectively or fairly in a constructive manner as the object of writing APAR and making entries in the remarks is to give an opportunity to a public servant to improve excellence. Accordingly, the adverse remarks in the APAR for the period 01.09.2019 to 31.08.2020, 01.09.2021 to 30.06.2022 are also liable to be set aside.

43. As a result, the writ petition is allowed. The adverse grading and remarks in the APAR of the petitioner for the period 01.09.2019 to 31.08.2020, 01.09.2021 to 30.06.2022 is expunged and set aside. The speaking order dated 29.01.2024 is also quashed and set aside. A division bench of this court by judgment and order dated **21.11.2016 in W.P(C) 2877/2013** held that the correction of ACR grading can only be left to the supervisory authorities of the employee and is not within the domain of the Court or the Central Administrative Tribunal. It is only the function of the competent supervisory authority. The respondents 1, 2 and 3 are therefore directed to ensure that the consequential upgradation of petitioner's APAR grading is done by the supervisory authority for the period 01.09.2019 to 31.08.2020, 01.09.2021 to 30.06.2022. Thereafter, a Review DPC be convened to reconsider the case of the petitioner for

promotion to the post of Subedar Major (Cipher) and if recommended, promote the petitioner w.e.f. the date on which his immediate juniors were promoted to the said post with all consequential benefits. The entire exercise shall be completed within an outer period of 6 (six) months from the date of receipt of a copy of this order.

44. With the above directions the petition is disposed of.

JUDGE

Comparing Assistant