



2025:DHC:1314-DB



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

*Reserved on: 25 November 2024  
Pronounced on: 28 February 2025*

+ W.P.(C) 1164/2020

AABI BINJU

.....Petitioner

Through: Mr. K.L. Manhas, Advocate

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Shoumendu Mukherji, Sr.  
Panel Counsel with Ms. Megha Sharma, Mr.  
Arya Jha and Mr. Aniruddha Ghosh, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**JUDGMENT**

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**28.02.2025**

**C. HARI SHANKAR, J.**

1. This writ petition assails judgment dated 12 September 2019, passed by the Central Administrative Tribunal<sup>1</sup> in seven Original Applications<sup>2</sup>, instituted by the petitioner. The Tribunal, by judgment dated 12 September 2019, has dismissed all the OAs. Aggrieved thereby, the applicant in the OAs, Aabi Binju, has approached this Court under Article 226 of the Constitution of India.

2. The petitioner was an employee of the Central Soil & Mineral

<sup>1</sup> "the Tribunal" hereinafter

<sup>2</sup> OAs 4061/2014, 4518/2014, 4519/2014, 4532/2014, 4533/2014, 4623/2014 and 4625/2014



Research Station<sup>3</sup>, an office under the Ministry of Water Resources, River Development and Ganga Rejuvenation<sup>4</sup>. The case relates to the Annual Confidential Reports<sup>5</sup> of the petitioner for the years, 2001-02, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09. The copies of the aforesaid ACRs were provided to the petitioner on 27 May 2009. The petitioner represented against the said ACRs on 9 June 2009, 20 July 2009 and 8 August 2011. The representations were rejected on 5 August 2011 and 29 December 2011.

3. The petitioner instituted the aforementioned seven OAs challenging his ACRs for the years mentioned, as well as the rejection of his representations thereagainst by communications dated 5 August 2011, 29 December 2011 as well as two subsequent communications dated 28 December 2012 and 25 February 2014. He sought, in the OAs, quashing of the adverse remarks entered in his aforementioned ACRs.

4. The OAs were first dismissed by the Tribunal by judgment dated 28 March 2019. The petitioner challenged the said decision before Court by way of WP (C) 4896/2019. By judgment dated 8 May 2019, this Court set aside the order dated 28 March 2019 of the Tribunal and remanded the OAs to the Tribunal for consideration afresh. The impugned judgment dated 12 September 2019 is the outcome of the said *de novo* consideration. The Tribunal has once again dismissed all the OAs.

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<sup>3</sup> "CSMRS" hereinafter

<sup>4</sup> "MOWR" hereinafter

<sup>5</sup> "ACRs" hereinafter



5. Aabi Binju is, therefore, once again before us.

The ACRs, tabulated

6. We deem it appropriate to reproduce the content of ACRs for the years 2001-02, 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 in their entirety<sup>6</sup>, tabulated, as Annexure A to this judgment. The petitioner addressed representations, against the aforesaid OAs, on 9 June 2009, 20 July 2009, 8 August 2011, 3 December 2012 and 16 October 2013.

The present *lis*

7. The orders on the petitioner's representations, which form subject matter of challenge in the OAs filed by him, were passed on 5 August 2011, 29 December 2011, 28 December 2012 and 25 February 2014.

8. *Vide* his representation dated 9 June 2009, the petitioner assailed the remarks contained in his ACRs for the year 1 April 2001 to 31 March 2002.

9. For the said year, as is apparent from the table annexed as Annexure A to this judgment, the reporting officer had graded the petitioner "Very Good", but the grading had been downgraded to "Good", by the reviewing officer. The petitioner pointed out that the petitioner had never been communicated any corrective measures, to be taken by him, to improve his performance. It was also pointed out



that the reviewing officer had not adduced any reason for downgrading the petitioner, *vis-à-vis* the grading granted by the reporting officer. The grading of “Good”, it was pointed out, was below the prescribed benchmark of “Very Good”, for further promotion. The petitioner submitted that the reviewing officer belonged to the Specialization of Civil Engineering, whereas the petitioner was an Electronics Engineer. Even for this reason, he submitted that the downgrading, by the reviewing officer, of his “Very Good” grading granted by the reporting officer, was not legally sustainable. He pointed out that he had never received any warning, memo or any other communication complaining about the manner of discharge, by him, of his duties.

**10.** The representation dated 20 July 2009, also addressed by the petitioner to the respondent, was on similar lines.

**11.** The representations dated 9 June 2009 and 20 July 2009 were rejected by the Additional Secretary (Water Resources) by order dated 5 August 2011, which read thus:

“ORDER

WHEREAS, Shri Aabi Binju, Scientist C (erstwhile Senior Research Officer) had submitted six representations dated 9.6.2009 and one representation dated 20.7.2009 addressed to the Secretary (WR) for expunction of adverse remarks of Reporting/reviewing officers and review of his overall ACR/APAR grading for the period from 1.4.2001-31.3.2002(one ACR) and 1.4.2003-31.3.2004; 1.4.2004-31.3.2005; 1.4.2005-31.3.2006; 1.4.2006-31.3.2007; 1.4.2007-31.3.2008; 1.4.2008-31.3.2009 (six ACRs).

2. WHEREAS the following officers were Reporting and

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<sup>6</sup> Skipping a few inconsequential entries



Reviewing Authorities relating to the ACRs/APARs of the under mentioned period:-

Period	Name of reporting officer	Name of reviewing officer
1.4.2001-31.3.2002	Dr. R.B. Gangadhar, erstwhile Joint Director, CSMRS	Dr. K. Venkatachalam, erstwhile Director, CSMRS
1.4.2003-31.3.2004	Shri Murari Ratnam, erstwhile Joint Director, CSMRS	Dr. A.K. Dhawan, erstwhile Director, CSMRS
1.4.2004-31.3.2005	Shri Murari Ratnam, erstwhile Joint Director, CSMRS	Dr. A.K. Dhawan, erstwhile Director, CSMRS
1.4.2005-31.3.2006	Shri Murari Ratnam, erstwhile Joint Director, CSMRS	Dr. A.K. Dhawan, erstwhile Director, CSMRS
1.4.2006-31.3.2007	Shri Murari Ratnam, erstwhile Joint Director, CSMRS	Dr. A.K. Dhawan, erstwhile Director, CSMRS
1.4.2007-31.3.2008	Shri N. Chandrasekaran, erstwhile Joint Director, CSMRS	Shri Murari Ratnam, Director, CSMRS
1.4.2008-31.3.2009	Shri N. Chandrasekaran, erstwhile Joint Director, CSMRS	Shri Murari Ratnam, Director, CSMRS

In order to examine the representations of the officer, in terms of existing guidelines of DOPT the comments of in-service Reporting and reviewing officers were called for on the points raised in the representations vis-à-vis the remarks/gradings given by them in the ACR/APAR. The reporting officers relating to the period 2001-2002, 2007-2008 and 2008-2009 have since retired on superannuation. Further, reviewing officers relating to the period 2001-2002, 2003-2004, 2004-2005, 2005-2006 and 2006-2007 have also retired on superannuation. The comments of Shri Murari Ratnam in his capacity as reporting officer/ reviewing officer have been obtained and considered.

3. WHEREAS on going through all the representations of the officer reported upon i.e. Shri Aabi Binju it is observed that he has raised the following contentions uniformly:-

(i) that he had not received any warning/memo before his ACR was down-graded; and



(ii) that the reviewing officer was from a different area/field of specialization.

4. WHEREAS his contention that Shri Aabi Binju, Scientist C, CSMRS had not received any warning/memo before his ACR was downgraded has no substance as no such instructions were prevalent during that period. His contention that 'the reviewing officer was from a different area/field of specialization' is also not tenable since the reviewing officer was fully competent to comment upon the type of work that he was doing and it did not necessarily require someone belonging to the same discipline. Above all, Shri Aabi Binju, Scientist C has not given any concrete evidence to substantiate his claim for upgradation of his ACR. For example, in matters relating to the number of software problems solved or AMCs handled, he has not maintained any record.

5. WHEREAS after careful consideration of the matter, I do not find any merit in the representations and none of the seven representations has provided any relevant material to substantiate his plea for upgradation, all the seven representations of Shri Aabi Binju, Scientist C, CSMRS in respect of ACRs/APARs for the period from 1.4.2001-31.3.2002 (one ACR) and 1.4.2003-31.3.2004; 1.4.2004-31.3.2005; 1.4.2005-31.3.2006; 1.4.2006-31.3.2007, 1.4.2007-31.3.2008; 1.4.2008-31.3.2009 (six ACRs) are hereby rejected.

(G. Mohan Kumar)  
Additional Secretary (Water Resources)  
Tel. No.23710619"

**12.** This decision was reiterated on 29 December 2011.

**13.** The petitioner again represented to the respondent on 3 December 2012. The representation was rejected by the CSMRS and MOWR on 28 December 2012, stating that, as the petitioner's request for review of his ACRs already stood rejected, the queries addressed in the letter was no longer relevant.

**14.** Essentially challenging the communications dated 5 August



2011, 19 August 2011, 29 December 2011, 28 December 2012 and 25 February 2014, as well as his ACRs for the years 2001-02 to 2008-09, except for 2002-03, to the extent they were adverse to him, the petitioner instituted the aforementioned seven OAs before the Tribunal. The prayer clauses, in these OAs, may be reproduced thus:

“Prayer Clause in OA 4518/2014

8. RELIEF SOUGHT:

In view of the above Facts given in para 4 and the Grounds given in para 5 above, the Hon'ble Tribunal may graciously be pleased to:

- (i) quash the adverse entries and the overall grading 'good' given in the impugned ACR (A1) of the applicant for the period from 1.4.2003 to 31.3.2004 as well as the impugned order dated 5.8.2011 (A2) together with the communications dated 19.8.2011, 29.12.2011, 28.12.2012 and 25.02.2014 (A3 colly).
- (ii) direct the respondents to upgrade the abovesaid ACR, conforming with the performance of the applicant during the report period (2003-04).
- (iii) direct the respondents to grant all consequential benefits to the applicant as deemed fit upon quashing and setting aside the adverse remarks and low grading given by the reporting/reviewing officers in the impugned ACR;
- (iv) may also pass any further order(s)/direction(s) as be deemed just and proper to meet the ends of justice:

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Prayer Clause in OA 4519/2014

8. RELIEF SOUGHT:

In view of the above Facts given in para 4 and the Grounds given in para 5 above, the Hon'ble Tribunal may graciously be pleased to:

- (i) quash the adverse entries and the overall grading 'good' given in the impugned ACR (A1) of the applicant for the period from 1.4.2004 to 31.3.2005 as



well as the impugned order dated 5.8.2011 (A2) together with the communications dated 19.8.2011, 29.12.2011, 28.12.2012 and 25.02.2014 (A3 colly).

(ii) direct the respondents to upgrade the abovesaid ACR, conforming with the performance of the applicant during the report period (2004-05).

(iii) direct the respondents to grant all consequential benefits to the applicant as deemed fit upon quashing and setting aside the adverse remarks and low grading given by the reporting/reviewing officers in the impugned ACR;

(iv) may also pass any further order(s)/direction(s) as be deemed just and proper to meet the ends of justice:

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#### Prayer Clause in OA 4532/2014

#### 8. RELIEF SOUGHT:

In view of the above Facts given in para 4 and the Grounds given in para 5 above, the Hon'ble Tribunal may graciously be pleased to:

(i) quash the adverse entries and the overall grading 'good given in the impugned ACR (A1) of the applicant for the period from 1.4.2005 to 31.3.2006 as well as the impugned order dated 5.8.2011 (A2) together with the communications dated 19.8.2011, 29.12.2011, 28.12.2012 and 25.02.2014 (A3 colly).

(ii) direct the respondents to upgrade the abovesaid ACR, conforming with the performance of the applicant during the report period (2005-06).

(iii) direct the respondents to grant all consequential benefits to the applicant as deemed fit upon quashing and setting aside the adverse remarks and low grading given by the reporting/reviewing officers in the impugned ACR.

(iv) may also pass any further order(s)/direction(s) as be deemed just and proper to meet the ends of justice:

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#### Prayer Clause in OA 4533/2014



8. RELIEF SOUGHT:

In view of the above Facts given in para 4 and the Grounds given in para 5 above, the Hon'ble Tribunal may graciously be pleased to:

- (i) quash the adverse entries and the overall grading 'good given in the impugned ACR (A1) of the applicant for the period from 1.4.2006 to 31.3.2007 as well as the impugned order dated 5.8.2011 (A2) together with the communications dated 19.8.2011, 29.12.2011, 28.12.2012 and 25.02.2014 (A3 colly).
- (ii) direct the respondents to upgrade the abovesaid ACR, conforming with the performance of the applicant during the report period (2006-07).
- (iii) direct the respondents to grant all consequential benefits to the applicant as deemed fit upon quashing and setting aside the adverse remarks and low grading given by the reporting/reviewing officers in the impugned ACR.
- (iv) may also pass any further order(s)/direction(s) as be deemed just and proper to meet the ends of justice:

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Prayer Clause in OA 4623/2014

8. RELIEF SOUGHT:

In view of the above Facts given in para 4 and the Grounds given in para 5 above, the Hon'ble Tribunal may graciously be pleased to:

- (i) quash the adverse entries and the overall grading 'good given in the impugned ACR (A1) of the applicant for the period from 1.4.2007 to 31.3.2008 as well as the impugned order dated 5.8.2011 (A2) together with the communications dated 19.8.2011, 29.12.2011, 28.12.2012 and 25.02.2014 (A3 colly).
- (ii) direct the respondents to upgrade the abovesaid ACR, conforming with the performance of the applicant during the report period (2007-08).
- (iii) direct the respondents to grant all consequential benefits to the applicant as deemed fit upon quashing and setting aside the adverse remarks and low grading given by the reporting/reviewing officers in the impugned ACR.



(iv) may also pass any further order(s)/direction(s) as be deemed just and proper to meet the ends of justice:

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Prayer Clause in OA 4625/2014

8. RELIEF SOUGHT:

In view of the above Facts given in para 4 and the Grounds given in para 5 above, the Hon'ble Tribunal may graciously be pleased to:

(i) quash the adverse entries and the overall grading 'good given in the impugned ACR (A1) of the applicant for the period from 1.4.2008 to 31.3.2009 as well as the impugned order dated 5.8.2011 (A2) together with the communications dated 19.8.2011, 29.12.2011, 28.12.2012 and 25.02.2014 (A3 colly).

(ii) direct the respondents to upgrade the abovesaid ACR, conforming with the performance of the applicant during the report period (2008-09).

(iii) direct the respondents to grant all consequential benefits to the applicant as deemed fit upon quashing and setting aside the adverse remarks and low grading given by the reporting/reviewing officers in the impugned ACR.

(iv) may also pass any further order(s)/direction(s) as be deemed just and proper to meet the ends of justice:

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Prayer Clause in OA 4061/2014

8. RELIEF SOUGHT:

In view of the facts and submissions as made herein above, it is most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to:

(i) quash and set aside the remarks of the reviewing officer dated 31.05.2002 in the ACR of the applicant for the period 01.04.2001 to 31.03.2002 (**Annexure A-1**), quash and set aside the order dated 05/08.08.2011 (**Annexure A-1-a**), order dated 29.12.2011 (**Annexure A-1-b**), order dated 28.12.2012 (**Annexure A-**



**1-c)** and order dated 25.02.2014 (**Annexure A-1-d**).

(ii) To pass order/order(s) as deemed fit to the respondents to grant all consequential benefits to the applicant upon quashing and setting aside the remarks of the reviewing officer;

(iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the end of the justice.”

Thus, it would be seen that, in each OA, the petitioner challenged the ACRs for one particular year, and the same orders issued by the respondents by way of response to the petitioner’s representations.

#### Earlier proceedings

**15.** The petitioner earlier filed OAs 4533/2014, 4518/2014, 4532/2014 and 4623/2014, which were decided by the Tribunal by a common judgment dated 28 March 2019. (In the judgment dated 12 September 2019, under challenge before us, it appears to have been erroneously recorded, in para 8 that all the seven OAs, which were decided by the impugned judgment, had earlier been decided by the judgment dated 28 march 2019.)

**16.** The said judgment records the petitioner as having advanced, before the Tribunal, only one contention, which was that, without issuing any warning or censure to him, the petitioner could not have been graded “Average” by the reporting officer or reviewing officer. The judgment records the petitioner as having placed reliance on the



decision in *State of UP v Yamuna Shankar Mishra*<sup>7</sup> as well as on an earlier order passed by the Tribunal itself.

17. The findings of the Tribunal, in its judgement dated 28 March 2019, were as under:

“7. One of the important contentions advanced by the applicant was that he could not be rated as average, in the absence of any warning or other similar admonitions, referable to the relevant point of time, issued by the competent authority.

8. We have perused the extract of the OM dated 05.06.1981. The gist thereof is that whenever an officer being reported has been issued written warning, admonition or reprimand, it shall be open to the reporting officer either to refer the same in his evaluation for the relevant period or to omit the same, depending upon the circumstances. There is nothing to suggest that in the absence of any warning, admonition or reprimand, grading of ACRs as 'Average' cannot be made. Similarly, in the judgment of Hon'ble Supreme Court in the *State of UP v Yamuna Shanker Misra and Another* (supra), we do not find any observation, much less a direction to the effect that the rating of average can be only on the strength of any warning or admonition. The same is the case in the OA No. 1189/2012.

9. Though an observation was made in the judgment in OA No. 1189/2012 to the effect that the ACR was graded as average in the absence of any warning, we do not find any enunciation of principles of law, or reference to any provisions of law. We do not find any basis to interfere with the impugned order and the OA is, accordingly, dismissed.”

18. OA 4061/2014 came up for hearing before the Tribunal on 24 April 2019. The Tribunal held that the said OA was covered, on all force, by its earlier order dated 28 March 2019 and, therefore, dismissed OA 4061/2019 as well.

19. Aggrieved by the aforesaid judgment, the petitioner approached

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<sup>7</sup> (1997) 4 SCC 7



this Court by means of WP (C) 4896/2019. This Court observed that the Tribunal had considered only one issue, which was whether the petitioner was required to be issued any warning or censure before having been graded “Average” in his ACRs. The petitioner sought to contend, before this Court, that the facts relating to each year in question were different and that he had, therefore, raised separate grounds in his OAs. The “Average” grading, it was submitted, related only to the years 2005-06 and 2006-07. A grievance was ventilated that the Tribunal had not examined the individual facts of each assessment year independently or considered any submission of the petitioner other than the contention that a grading of “Average” had to be preceded by a prior censure or warning.

**20.** Criticising the Tribunal for having restricted its examination to one single issue, this Court, *vide* judgment dated 8 May 2019, deemed it appropriate to remand the aforementioned OAs, namely OAs 4533/2014, 4518/2014, 4532/2014 and 4623/2014 to the Tribunal for reconsideration on merits. This Court, however, made it clear that, on the issue of whether a grading of “Average” could be entered in the ACRs without any prior censure or warning to the officer concerned, the views of the Tribunal, as expressed in the judgment dated 28 March 2019, had attained finality.

**21.** Consequent to the aforesaid remand by the High Court, the four OAs which had been decided by the Tribunal by judgment dated 28 March 2019, along with OA 4061/2014, 4519/2014 and 4625/2014, were taken up and decided by the Tribunal by the impugned judgment dated 12 September 2019.



## The impugned judgment

**22.** We may observe that the impugned judgment of the Tribunal makes for somewhat disturbing reading. The Tribunal appears to have taken offence at the views expressed by the Division Bench of this Court in its order dated 8 May 2019. While paras 9 to 11 of the impugned judgment clearly voice the unhappiness of the Tribunal, the following words, from para 11, are particularly emphatic:

“11. The Hon’ble High Court wants this Tribunal to undertake course correction with regard to the manner in which it has sometimes been dealing with the OAs to ensure that the cases are properly dealt with. We only leave it to their Lordships to ponder as to how far these comments uphold the dignity of the judiciary in general. Firstly, the Tribunal is not subordinate to the High Court and secondly, an observation of that nature would not accord with the law laid down by the Hon’ble Supreme Court. We leave the matter at that.”

The Tribunal was – and is – headed by a retired Chief Justice of a High Court. That being so, we prefer not to say anything further regarding the above comments of the Tribunal, or the displeasure voiced by it, with the order dated 8 May 2019 of this Court.

**23.** The Tribunal has, to be fair, proceeded to address certain other issues which were argued before it. Interestingly, the Tribunal has, in para 25 of the impugned order, observed thus:

“25. We verified from the learned counsel for the applicant whether he has any other point to argue and we proceeded to dictate the order only when he said that he has no other point to argue.”



24. It appears that the Tribunal was insulating itself against any further critical comments by this Court. Nonetheless, as learned Counsel for the petitioner specifically stated that he was arguing only the points noted in the impugned judgment, we need also address ourselves only to the said points.

25. The grounds urged by the petitioner, before the Tribunal, and the findings of the Tribunal thereon, are to be found in paras 16 to 25 of the impugned judgment which may be reproduced thus:

“16. Coming to the merits of the case, the representations made by the applicant were general in nature, covering ACRs of as many as seven years. The principal contention of the applicant is that he has not been issued any warning or memo and that the reviewing officer was from a different area. The competent authority observed that the applicant has not placed sufficient evidence to substantiate his claim for upgradation of ACRs. Specific reference was made to the fact that he had not maintained any record of the number of software problems solved or AMCs handled. The order dated 5.08.2011 reads as under:

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From a perusal of the same it becomes clear that the Competent Authority examined his representation in accordance with the prescribed procedure and expressed his views. The Tribunal does not function as an appellate authority in matters of this nature.

17. In *M.V. Thimmaiah v UPSC*<sup>8</sup>, the Hon’ble Supreme Court held as under:

"..... courts normally do not sit in the court of appeal, to assess the ARCs and much less the Tribunal can be given this power to constitute an independent Selection Committee over the statutory Selection Committee. The guidelines have already been given by the Commission as to how the ACRs to be assessed and how the marking has to be made. These guidelines take care of the proper scrutiny and not only by the Selection Committee but also

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<sup>8</sup> (2008) 2 SCC 119



the views of the State Government are obtained and ultimately the Commission after scrutiny prepares the final list which is sent to the Central Government for appointment. There also it is not binding on the Central Government to appoint all the persons as recommended and the Central Government can withhold the appointment of some persons so mentioned in the select list for reasons recorded. Therefore, if the assessment of ACRs in respect of Shri S. Daya Shankar and Shri R. Ramapriya should have been made as "outstanding" or "very good" it is within the domain of the Selection Committee and we cannot sit as a court of appeal to assess whether Shri R. Ramapriya has been rightly assessed or Shri Daya Shankar has been wrongly assessed. The overall assessment of ACRs of both the officers were taken; one was found to be "outstanding" and the second one was found to be "very good". **This assessment cannot be made subject of court's or Tribunal's scrutiny unless actuated by mala fide."**

(Emphasis Supplied)

This was followed by the Hon'ble Delhi High Court in its judgment dated 6.01.2015 in W.P. (C) 43/2014.

18. If that is the prerogative conceded to the Selection Committee, the liberty of the Reporting and Reviewing Authorities to assess the performance of the concerned officer can easily be imagined. The system provides for inbuilt checks and balances. The applicant did not even plead malafides against any of the officers. The very purpose of maintaining ACRs, that too by providing for three tier authorities i.e. Reporting, Reviewing and Accepting Authorities is to ensure that an objective and transparent assessment of the performance of an employee is made.

19. It may be true that the evaluation of the ACRs of the applicant was "Very Good" upto the year 2001-02. The occasion to interfere with the gradation in the ACR would arise if only any malafides are attributed against the Reporting and Reviewing Authorities or if it is demonstrated that the finding recorded in the ACR, with reference to any factual aspect is incorrect. None of these aspects are either pleaded or proved in this OA.

20. We also reject the plea that the assessment as "average" could not have been made unless any admonition or warning was given. A perusal of the relevant memos discloses that when even any warning or admonition is administered, it must be reflected in the ACRs. It is different from saying that assessment as 'average' cannot be made, in the absence of warning or admonition. If an



officer is rated as 'outstanding' in a year, it is not necessary that same rating must be continued throughout. That would negate the very concept of annual evaluation.

21. Another contention advanced by the applicant is that the adverse entries were not communicated. Reliance is placed upon OM dated 8.02.2002. It reads as under:

“2.2 In the case of promotions from lower Groups to Group A, while the mode of promotion happens to be %election by merit, the bench-mark prescribed is 'good' and only those officers who obtain the said bench-mark are promoted in the order of merit as per grading obtained. Thus, officers getting a superior grading supersede those getting lower grading. In other words, an officer graded as 'outstanding' supersedes those graded as 'very good' and an officer graded as 'very good' supersedes officers graded as 'good'. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. Those who get a grading lower than the prescribed bench-mark ('good') are not empanelled for promotion.

2.3 In promotions to the level in the pay-scale of Rs.12,000-16,500/- and above, while the mode of promotion is 'selection by merit', the bench-mark prescribed is 'very good' and only those officers who obtain the said benchmark are promoted in the order of merit as per the grading obtained, officers getting superior grading supersede those getting lower grading as explained in paragraph 2.2 above. Officers obtaining the same grading are arranged in the select panel in the order of their seniority in the lower grade. Those who get a grading lower than the prescribed bench-mark ('very good') are not empanelled for promotion.”

From this, it becomes evident that the necessity to communicate the entries in ACRs would arise if only they are adverse to an employee. Nothing adverse was observed in the relevant ACRs. At the most it is below benchmark in the context of promotion. Necessity to communicate such remarks arose in the light of the judgment of the Hon'ble Supreme Court in *Dev Dutt v Union of India*<sup>9</sup>.

22. At any rate, the subject matter of the OAs is not denial of promotion on the ground that the ACR is below benchmark. The prayer is to upgrade the ACRs. The application was filed in the

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<sup>9</sup> (2008) 8 SCC 725



year 2009. At that length of time, he cannot pray for expunction of adverse remarks.

23. Further plea raised by the applicant is that though the competent authority is under obligation as per CM dated 14.05.2009 to dispose of the representation made for upgradation of the ACRs within a period of three months, his representation was kept pending for quite a long time. This plea would have held water in case the complaint of the applicant was that his representation was not being attended to. He approached the Tribunal nearly three years after the representation was disposed of. The plea which can be raised before the disposal of the representation, does not hold any weight when it is raised three years after the disposal thereof.

24. It is true that in OM dated 20.05.1972, the competent authority is placed under obligation to pass a reasoned order and to deal with various contentions urged by an employee in the context of upgradation of the ACRs. It is also true that the order passed by the competent authority in the instant case is brief in its purport. The fact, however, remains that the applicant raised the issue long after the ACRs were made. The competent authority suffers from two impediments. The first is about the non-availability of the officers for their comments on account of their retirement and the second is the failure on the part of the applicant to place any material with reference to the relevant issues.

25. We verified from the learned counsel for the applicant whether he has any other point to argue and we proceeded to dictate the order only when he said that he has no other point to argue.”

**26.** Thus, the findings of the Tribunal, and the contentions advanced before it by the petitioner, were as under:

(i) The order dated 5 August 2011, whereby the petitioner’s representations dated 9 June 2009 and 20 July 2009 were rejected, specifically noted that the petitioner had not placed sufficient evidence on record to substantiate his claim for upgradation of his ACRs. Specifically, the order noted that the petitioner had not maintained any record of the number of



software problems solved or AMCs handled.

(ii) The Supreme Court had, in *M.V. Thimmaiah*, observed that Courts and Tribunals could not sit an appeal over gradings in ACRs, unless they were actuated by *mala fides*. Provision for in-built checks and balances were contained in the system itself. The petitioner had not pleaded *mala fides* against any officer. The very provision for a three-tier assessment, by the Reporting, Reviewing and Accepting Officers, of an employee's ACRs, was to ensure objectivity and transparency.

(iii) The petitioner had also failed to demonstrate that there was any incorrect factual aspect relating to the findings recorded in his ACRs. In the absence of any allegation of *mala fides*, the mere fact that the petitioner may have been graded "Very Good" till 2001-02, could not constitute a basis to interfere with the impugned ACR gradings.

(iv) The petitioner further sought to contend that the adverse entries recorded in his ACRs had not been communicated to him. For this purpose, the petitioner had placed reliance on DOPT OM dated 8 February 2002. However, a reading of the said OM disclosed that communication was required to be made only of entries which were adverse. There were no adverse entries in the petitioner's ACRs. At the highest, the ACRs were below the prescribed benchmark for promotion. It was only after *Dev Dutt*, that the law required communication of ACRs which were not adverse.



**27.** No other substantial ground was urged before the Tribunal or decided by it.

**28.** Aggrieved by the aforesaid judgment, the petitioner has approached this Court by means of the present writ petition.

### Issues that arise

**29.** In view of the statement made by learned Counsel for the petitioner as recorded in para 25 of the impugned judgment, we restrict our consideration to the issues which were argued before the Tribunal. As has already been noted, by this Court, in its judgment dated 8 May 2019, the contention that no “Average” grading could be entered in the petitioner’s ACRs in the absence of any prior warning or censure, already stood rejected by the Tribunal in its order dated 28 March 2019, and that decision has attained finality. We, therefore, do not propose to examine that aspect of the matter.

**30.** Substantially, therefore, two issues arise for consideration before us. The first is with respect to the petitioner’s ACRs themselves, and whether the gradings and the observations contained in the ACRs, as entered by the Reporting and reviewing officers, were sustainable in law. The second is whether communication of the ACRs was necessary, before they were taken into consideration by any Committee while assessing the petitioner’s case for promotion.

### ACRs and the scope of judicial review



***Vijay Kumar v State of Maharashtra***<sup>10</sup>

31. In *Vijay Kumar*, the ACRs of the appellant before the Supreme Court contained the following entry:

“He is serious, intelligent and a quiet type of officer and that he took interest in group discussions.”

32. The report, however, also stated that the officer would not freely mix with his fellow probationers and had a marked inferiority complex which, on occasion, had laid to problems. The Supreme Court observed that the reports contained nothing adverse against the officer. Para 5 of the judgment of the Supreme Court reads thus:

“5. Even on the merits, the appellant appears to have a good case. The report said to have been communicated under the first letter obviously does not indicate anything against the appellant. It reads as follows:

“He is serious, intelligent and a quiet type of officer and that he took interest in group discussions.”

It however states that the appellant would not freely mix with his fellow probationers and he had a marked inferiority complex which had on occasion led to some problems. We do not find anything adverse in these remarks. He has been assessed as a serious, intelligent and quiet type of officer. He took interest in group discussions. These are indeed the best qualities of any officer. The inferiority complex attributed to the appellant in that report cannot outweigh those good qualities. It is more often the superiority complex that causes harm to the public and not the inferiority complex.”

***S Ramachandra Raju v State of Orissa***<sup>11</sup>

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<sup>10</sup> 1988 Supp. SCC 674

<sup>11</sup> 1994 Supp. (3) SCC 424



**33.** In *S Ramachandra Raju*, the Supreme Court noted the manner in which the ACRs of the appellant before it had been recorded, thus:

“3. It was contended and stated in the grounds of appeal that despite his request, the Tribunal did not call for his service record nor considered the totality of his service. It relied upon the only report of the Review Committee which in turn was founded upon the adverse remarks based on the report of the Principal. We directed the State to produce the entire record of the appellant and his confidential reports in his service record of his character roll. Accordingly they have been placed before us. We have perused the entire record. The record disclosed that from the year 1973-74 onwards, the year in which the College was taken over, his work was commended as good, sincere and satisfactory. He is a sincere teacher, helpful in maintaining discipline, a strong-minded person and willing worker. In the year 1980, the Government communicated that his work was unsatisfactory for the years 1976-77, while the Principal recorded for the same year that his integrity was good, his zeal was fair, his work was fair but relationship with the students was average. Same was the report for the year 1979-80. For the year 1980-81, the Principal also reported that his integrity was good. He was a good teacher, his conduct was good and work was satisfactory. Same was the report for the year 1981-82. The Government communicated to the appellant that he had not conducted any research work. The report for the year 1982-83 equally was satisfactory and he was advised to publish papers. For the year 1983-84, the report was that his conduct was good, his integrity was good, he was a good teacher, his work was fair and his relationship with the students was good. The Government reiterated that he did not conduct any research work. For the year 1984-85 his knowledge on the subject was good, his work as a teacher was very good. He takes pains in imparting lectures. He is a sincere worker, his zeal is good, integrity is good, official conduct is good, work as a proctor is good, his relationship with the students is good. For the year 1985-86, the remarks of the Principal was that his work as a teacher and knowledge on the subject is satisfactory, his work as a proctor is satisfactory, his integrity up to the mark, his relationship with the students is satisfactory. We do not have the report for the year 1986-87. For the year 1987-88 the report of the Principal is that his knowledge on the subject is average, work as a teacher is below average. He is inclined to drop classes when not watched. His relationship with the students average, work as a proctor average, official conduct average, zeal below average, integrity below average, in general



remarks, it was stated that he is a disintegrated officer, constantly grumbling over his lost opportunity and neglects his duties, he prefers to stay away from the college as long as possible. It was communicated by the Government on 5-12-1988, the record also shows that his representation was considered to expunge the remarks for 1987-88 and was rejected. For the year 1988-89 another Principal in his report dated 13-5-1989 stated that appellant's knowledge on the subject is good, his work as a teacher is good, other works in the department is good, in his extracurricular activities as Vice-President of humanitarian society his work is commendable, his power of taking responsibility is good, his relationship with the students is good, his work as a proctor is fair, official conduct good, zeal good, integrity fair and in general remarks "a very responsible and disciplined teacher". In the year 1989-90 it was reported that his knowledge on the subject is good, his work as a teacher is good, his work in the department is good as a Vice-President of the humanitarian society and as a Judge of several debate competitions he exhibited good work, his relationship with the students is good, his work as a proctor fair, official conduct good, zeal fair, integrity is good and in the general remarks "he is a polite and reliable officer" which received on 20-6-1990 and the same were the remarks for the year 1990-91."

On the sole basis of the adverse remarks contained in the appellant's ACRs for the year 1987-88, the appellant was compulsorily retired under FR 56(j)<sup>12</sup>. The Supreme Court held that, on an overall conspectus of the facts and given the position that the gradings of the appellant before and after 1987-88 were universally commendable, the adverse entries contained in the sole ACR of the appellant for the year 1987-88 could not constitute a legitimate ground to compulsorily retire him.

**34.** That aspect of the matter is not of particular significance for us.

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<sup>12</sup> (j) Notwithstanding anything contained in this rule, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of less than three months in writing or three months' pay and allowances in lieu of such notice:

(i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years;



35. However, paras 10 and 11 of the report merit reproduction, thus:

“10. Keeping these principles in mind and on considering the facts extracted hereinbefore we find that the exercise of power by the Government falls in the category of arbitrary exercise of power or failure to take the total record of service into consideration objectively. It has taken only the solitary adverse report for the year 1987-88 as a foundation to compulsorily retire the appellant from service. The Review Committee as well considered only that report, neither earlier reports nor subsequent reports were considered. It is seen that admittedly the appellant was promoted as a Reader after the adverse report and the adverse comments were communicated to him and in a mechanical way they rejected the report (*sic* representation) to expunge the adverse remarks, even without going into the contention of the appellant that the then Principal was actuated with mala fides by submitting wrongly or falsely in confidential reports which appear to have some foundation or suspicion for such a contention. *Consistent record earlier and later periods would establish that the appellant has meritorious record of service as a teacher and that his devotion to the service is good and fair and that he maintains discipline, good relations with the students and imparts teaching to the students fairly with good knowledge as a teacher. Therefore, in that background the exercise of the power is illegal.*

11. The facts are eloquent. *From 1973-74 the appellant started with a commendation of his performance to be ‘satisfactory’ to ‘fair’ in the year 1990-91. Would it be comprehensible that in the year 1987-88 whether he would suddenly drop down and become an average or below average teacher? When he was a responsible teacher and he had cordial relations with the student community, and was taking pains to impart lessons to the students, would it be believable that he avoids to take classes and drops down “if not watched”? When anterior to or subsequent to 1987-88 he was a man of ability and of integrity, the same would become below average only for the academic year 1987-88 without discernible reasons. It would speak volumes on the objectivity of assessment by the reporting officer i.e. the Principal. This conduct is much to be desired. This case would establish as a stark reality that writing confidential reports bears onerous responsibility on the reporting officer to eschew his subjectivity and personal prejudices or proclivity or predilections and to make objective assessment. It is needless to emphasise that the career prospects of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair,*



*objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer being put to great jeopardy. The reporting officer is bound to lose his credibility in the eyes of his subordinates and fail to command respect and work from them. The constitutional and statutory safeguards given to the government employees largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible to the superior or controlling officers to extract legitimate work from them. The writing of the confidentials is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service. At the same time, the subordinate-employee/officer should dedicate to do hard work and duty; assiduity in the discharge of the duty, honesty with integrity in performance thereof which alone would earn his usefulness in retention of his service. Both would contribute to improve excellence in service.”*

(Emphasis supplied)

***M.A. Rajasekhar v State of Karnataka***<sup>13</sup>

**36.** This case dealt with remarks entered in the ACRs of a Tehsildar in the State of Karnataka. The judgment of the Supreme Court is short and paras 3 to 6 thereof may be reproduced thus:

“3. This appeal by special leave arises from the order of the Karnataka Administrative Tribunal, Bangalore dated 11-2-1992 made in Application No. 1961 of 1990. Admittedly when the appellant was working as a Tehsildar an adverse remark had been made for the year 1988-89 as under:

“Competent, good at getting work done, but does not act dispassionately when faced with dilemma.”

4. Calling that in question, the appellant filed an OA. It is now

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<sup>13</sup> (1996) 10 SCC 369



settled law that the object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in various categories as outstanding, very good, good, satisfactory and average, etc. The competent authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent. It is seen that in the review order, various grounds on which the various criteria are to be complied with were specifically noted thus:

“3. A perusal of Annexure A-1 goes to show that in most of the aspects the work of the applicant is satisfactory. According to the form in which the confidential remarks of the officers are to be written, the reporting officer is required to indicate his assessment of the officer on the following aspects of his work:

1. Knowledge of work;
2. Power of expression;
3. Power of acquiring general information;
4. Attention to detail;
5. Industry;
6. Judgment;
7. Speed of disposal;
8. Willingness to accept responsibility and to take decision;
9. Relationship with subordinates and colleagues;
10. Public relations;
11. Integrity.

The report about all the above aspects is satisfactory. There is no adverse report about integrity. However, the underlined remarks in Annexure A-1 are made. The last sentence in those remarks indicates that the intention of the officer who wrote those remarks was to treat the remarks as advisory. He has stated that the officer should evince more interest. *When all the ten aspects of the work which are required to be assessed by the rules are satisfactory the alleged adverse remarks get considerably diluted and we are of the considered opinion that the ends of justice would be served if the remarks are treated as advisory with a direction that they should not be made use of against the applicant for any purpose.”*

5. *It was found that his integrity was not doubted and his work also in all those respects was found to be satisfactory. Under those circumstances, the remark that he*



*“does not act dispassionately when faced with dilemma” must be pointed out with reference to specific instances in which he did not perform that duty satisfactorily so that he would have an opportunity to correct himself of the mistake. He should be given an opportunity in the cases where he did not work objectively or satisfactorily. Admittedly, no such opportunity was given. Even when he acted in a dilemma and lacked objectivity, in such circumstances, he must be guided by the authority as to the manner in which he acted upon. Since this exercise has not been done by the respondents, it would be obvious that the above adverse remark was not consistent with law.*

6. Accordingly the appeal is allowed. The adverse remark stands expunged. No costs.”

### ***State Bank of India v Kashinath Kher***<sup>14</sup>

37. On the aspect of confidential reports, and their writing, the Supreme Court held thus, in this case:

“15. ... The object of writing the confidential report is twofold, i.e. to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in *Delhi Transport Corpn. v D.T.C. Mazdoor Congress*<sup>15</sup>, pointed out the pitfalls and insidious effects on service due to lack of objectives by the controlling officer. Confidential and character reports should, therefore, be written by superior officers higher above the cadres. The officer should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service.”

### ***Sukhdeo v Commissioner Amaravati Division***<sup>16</sup>

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<sup>14</sup> (1996) 8 SCC 762

<sup>15</sup> 1991 Supp (1) SCC 600

<sup>16</sup> (1996) 5 SCC 103



38. In *Sukhdeo*, the Supreme Court was concerned with the entries in the ACRs of the appellant before it for the years 1987-88 and 1988-89. On the basis of some remarks contained in the ACRs, the appellant Sukhdev was compulsorily retired. Paras 4 to 6 of the said report merit reproduction thus:

“4. It is seen that when the compulsory retirement was sought to be made under Rule 65(1)(b) as indicated earlier, the Government exercises the power only for public purpose, namely, to augment efficiency in public service. We have called for the record and the same has been placed before us. *The entries for the years 1987-88 and same remarks verbatim repeated for 1988-89 by the same officer would indicate that the appellant is an ‘industrious’ man, “his capacity to get work done by subordinates is good”; his “relationship with the colleagues and the public is good”; general intelligence is ‘satisfactory’. However, in the column on technical ability (where relevant), he is reported as “not satisfactory”, “special attitude (sic aptitude) is good”, “administrative ability including judgment, initiative and drive not satisfactory”, “integrity and character are good”, fit to continue in service, “fit for promotion, if due” and general assessment “irregular, rarely found at Headquarter, poor performance in a recovery work, bad in public image”. On the basis of this last remark of general assessment, notice was given to him and he was compulsorily retired from service on that basis. The question is whether the said exercise of power, as has been stated earlier, is in the public interest and whether the appellant is not found to augment the efficiency in the service.*

5. *In view of the above remarks made by the officer, the conclusion reached is obviously incorrect and it is not in public interest. A man does not become poor in public image when his relationship with the public and subordinates is good and he is a man of integrity and honesty and he has got the satisfactory intelligence for discharging his duties and is fit for promotion. How can in such circumstances his performance would be held unsatisfactory when he is capable of coordinating with subordinates and get the work done. How his technical ability is not satisfactory. The remarks are mutually inconsistent and reasons are self-evident of lack of bona fides in making these remarks. Under these circumstances, it could be characterised that the remarks were not bona fide made in public interest but was a self-serving statement to weed him out from service.*



6. It is settled law that when the Government resorts to compulsorily retire a government servant, the entire record of service, particularly, in the last period of service is required to be closely scrutinised and the power would be reasonably exercised. In *State Bank of India v Kashinath Kher*, this Court has held that the controlling officer while writing confidential and character roll report, should be a superior officer higher above the cadres of the officer whose confidential reports are written. Such officer should show objectivity, impartiality and fair assessment without any prejudice whatsoever with highest sense of responsibility to inculcate in the officer's devotion to duty, honesty and integrity so as to improve excellence of the individual officer, lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. In that case it was pointed out that confidential reports written and submitted by the officer of the same cadre and adopted without any independent scrutiny and assessment by the committee was held to be illegal. In this case, the power exercised is illegal and it is not expected of from that high responsible officer who made the remarks. *When an officer makes the remarks he must eschew making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in writing for improvement and yet was not availed of so that it would form part of the record. The power exercised by the controlling officer is per se illegal.* The Tribunal has not considered this aspect of the matter in dismissing the petition. The appellant is entitled to reinstatement with all consequential benefits. The appeal is accordingly allowed with exemplary costs quantified at ₹ 10,000 recoverable by the State from the officer who made the remarks.”

(Emphasis supplied)

### *State of U.P. v Yamuna Shanker Misra*<sup>17</sup>

39. Paras 7 and 8 of this decision encapsulate the legal position,



after considering *S. Ramachandra Raju, Kashinath Kher, U.P. Jal Nigam* and *Sukhdeo*, thus:

“7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51-A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. *The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances.* Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. *Before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him.* If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion.

8. *It is seen from the record that the respondent constantly maintained a good record earlier to the adverse remarks made for the aforesaid period. It would appear that subsequently also he had good confidential reports on the basis of which the clouds over his conduct were cleared and he was given further promotion. Mr*



Rakesh Dwivedi, learned Additional Advocate General, in fairness, therefore, has stated that since the respondent has been regularised after the subsequent good reports, the dispute does not survive for adjudication on merits. *But the counter-comments made against him by the Secretary were warranted in view of the material on record. He brought to our notice that as on the date when the entries were made, the vigilance enquiry was pending against the respondent and, therefore, the adverse remarks came to be made.* The findings recorded by the Tribunal of malice and arbitrariness on the part of the Secretary as affirmed by the High Court are not warranted for two reasons. Firstly, since the Secretary was not eo nomine to the proceedings and had no opportunity to explain the position, it would be violative of the principle of natural justice. Secondly, since the vigilance enquiry was pending, unless the officer was exonerated and cleared from the cloud, necessarily, the Secretary could not clear the conduct and integrity of the officer. Therefore, the adverse remarks cannot be said to be to smack of arbitrariness.”

(Emphasis supplied)

### ***U P Jal Nigam v Prabhat Chandra Jain***<sup>18</sup>

**40.** This is a short judgment and may be reproduced in entirety thus:

“1. What we say in this order shall not only cover the case of the first respondent but shall also regulate the system of recording annual confidential reports prevalent in the U.P. Jal Nigam — the first petitioner herein.

2. The first respondent was downgraded at a certain point of time to which the Service Tribunal gave a correction. Before the High Court, the petitioners' plea was that downgrading entries in confidential reports cannot be termed as adverse entries so as to obligate the Nigam to communicate the same to the employee and attract a representation. This argument was turned down by the High Court, as in its view confidential reports were assets of the employee since they weigh to his advantage at the promotional and extensional stages of service. The High Court to justify its view has given an illustration that if an employee legitimately had earned an ‘outstanding’ report in a particular year which, in a succeeding one and without his knowledge, is reduced to the level of ‘satisfactory’

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<sup>18</sup> (1996) 2 SCC 363



without any communication to him, it would certainly be adverse and affect him at one or the other stage of his career.

3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court.

4. The special leave petition is, therefore, dismissed.”

### *Swatantar Singh v State of Haryana*<sup>19</sup>

41. In *Swatantar Singh*, the following entries were made in the ACR of the appellant Swatantar Singh, when he was working as Sub-Inspector of Police, by the Superintendent of Police:

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<sup>19</sup> (1997) 4 SCC 14



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- “1. Honesty : Report of corruption
2. Reliability : Unreliable
3. Defects : For improving, called several times and advised.
4. General Remarks : Can become a good police officer if he can control corruption and temptation.”

The appellant Swatantar Singh represented against the aforesaid remarks. His representation was rejected both by the Deputy Inspector General of Police and later by the Director General of Police. He approached the High Court. The High Court dismissed his writ petition. He, thereafter, appeal to the Supreme Court.

**42.** Before the Supreme Court, the appellant Swatantar Singh sought to contend that the High Court had erred in dismissing his writ petition as, where adverse remarks impinged upon the career prospect of an officer, the representation against the remarks required consideration and rejection of the representation had also to be supported by reasons. It was sought to be contended that the remarks were themselves vague and without any particulars and, therefore, that the petitioner’s representation could not have been rejected without reasons.

**43.** The Supreme Court did not find force in Swatantar Singh’s contention. Paras 5 and 6 from the judgment of the Supreme Court read thus:

“5. We find no force in the contention. It is true that in view of



the settled legal position, the object of writing the confidential reports or character roll of a government servant and communication of the adverse remarks is to afford an opportunity to the officer concerned to make amends to his remissness; to reform himself; to mend his conduct and to be disciplined, to do hard work, to bring home the lapse in his integrity and character so that he corrects himself and improves the efficiency in public service. The entries, therefore, require an objective assessment of the work and conduct of a government servant reflecting as accurately as possible his sagging inefficiency and incompetency. The defects and deficiencies brought home to the officer, are means to the end of correcting himself and to show improvement towards excellence. The confidential report, therefore, would contain the assessment of the work, devotion to duty and integrity of the officer concerned. *The aforestated entries indicate and reflect that the Superintendent of Police had assessed the reputation of the officer, his honesty, reliability and general reputation gathered around the officer's performance of the duty and shortfalls in that behalf.*

6. It is sad but a bitter reality that corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke. Sometimes, there may not be concrete or material evidence to make it part of the record. It would, therefore, be impracticable for the reporting officer or the competent controlling officer writing the confidential report to give specific instances of shortfalls, supported by evidence, like the remarks made by the Superintendent of Police. *More often, the corrupt officer manipulates in such a way and leaves no traceable evidence to be made part of the record for being cited as specific instance. It would, thus, appear that the order does not contain or the officer writing the report could not give particulars of the corrupt activities of the petitioner. He honestly assessed that the petitioner would prove himself to be an efficient officer, provided he controls his temptation for corruption. That would clearly indicate the fallibility of the petitioner, vis-à-vis the alleged acts of corruption. Under these circumstances, it cannot be said that the remarks made in the confidential report are vague without any particulars and, therefore, cannot be sustained. It is seen that the officers made the remarks on the basis of the reputation of the petitioner. It was, therefore, for him to improve his conduct, prove honesty and*



*integrity in future in which event, obviously, the authority would appreciate and make necessary remarks for the subsequent period. The appellate authority duly considered and rejected the contention of the petitioner. Repeated representation could render little service. Rejection, therefore, is neither arbitrary nor illegal.”*  
(Emphasis supplied)

***State of UP v Narendra Nath Sinha***<sup>20</sup>

**44.** In *Narendra Nath Sinha*, the reviewing officer had downgraded the grading given by the reporting officer to the respondent Narendra Nath Sinha<sup>21</sup>. The gradings of “Very Good”, “Excellent” and “Outstanding”, granted by the reporting officer, were downgraded by the reviewing officer to “Satisfactory” or “Good”. No reasons for downgrading were provided. The High Court, which was approached by Sinha, held that the reviewing officer could not have downgraded the grading given by the reporting officer without calling for an explanation from Sinha or complying with the principles of natural justice.

**45.** Before the Supreme Court, the State sought to contend that the reporting officer had granted superlative gradings of “Excellent” and “Outstanding” without affording any reasons and, therefore, that the reviewing officer was justified in reducing the said gradings.

**46.** The Supreme Court found substance in the contentions of the State that the reporting officer could not have granted gradings of “Outstanding” or “Excellent” without any reasons. Having so observed, the Supreme Court decided that the entire matter was

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<sup>20</sup> (2001) 9 SCC 118



required to be reconsidered by the Principal Secretary of the Public Works Department of the Govt. of Uttar Pradesh, applying his mind to the grievances raised by Sinha and the representations made by him.

47. It would be seen, therefore, that the Supreme Court did not, in this case, returned any finding on the contention that the reviewing officer could not have downgraded the grading given by the reporting officer without calling for an explanation from Sinha.

*S T Ramesh v State of Karnataka*<sup>22</sup>

48. The appellant S T Ramesh<sup>23</sup> was communicated the following adverse remarks entered in his ACRs for the period 16 October 1996 to 15 March 1997:

“5. Before we proceed further, we shall reproduce the communication of adverse remarks under various heads as incorporated in the letter dated 9-12-1997 from the Chief Secretary which reads as follows:

“Chief Secretary

Vidhan Soudha  
Bangalore- 560001

D.O.No. CS 26 IPS CR 9  
Dated: 9-12-1997

Dear Shri Ramesh

In your annual confidential report for the period from 16-10-1996 to 15-3-1997 your overall performance has been graded as ‘average’ and the following adverse remarks have also been recorded:

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<sup>21</sup> “Sinha” hereinafter

<sup>22</sup> (2007) 9 SCC 436

<sup>23</sup> “Ramesh” hereinafter



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#### Quality of output:

He did not use his optimum capacity and gave an impression as though his stint in COD was a sojourn. This perhaps, became a constraint for the COD. There was no willingness 'to add on' more responsibility and it was an attitude of thus far and no further.

#### Knowledge and sphere of work:

He is knowledgeable in the profession and its related application but, however, his 'paradigm' prevented him from performing better.

#### Leadership qualities:

He could not appreciate the environment and the work culture as defined by the competent authority in the COD and this blocked flow of new ideas or new methods of work. The 'Leader' in him went into hibernation.

#### Management qualities:

This column needs to be read with the immediately preceding column. All the management qualities, which very much exist in him, became dormant to the dangerous extent of his not visiting a scene of occurrence in an important case of rape and murder of a young girl student in Chitradurga.

#### Initiative and planning abilities:

On the only occasion when a group of agitators, after due intimation through handbills, came and squatted outside the COD premises, he, for reasons best known to himself, went out of the office around that time and in the process, his senior had to defuse the situation.

#### Decision-making ability:

His decision-making was governed by his 'paradigm'.

#### Communication skills:

He has command over English and in his few files wherein he has preferred to be elaborate, he has expressed himself clearly. However, his expression in Kannada needs improvement. His presentation of arguments is also good



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but on a certain occasion he created an unpleasant scene with the DGP which was totally avoidable.

Appraising ability:

His evaluation of some of his subordinates was clouded by some of 'his past experiences' with them elsewhere.

Interpersonal relations and teamwork:

His professional relationship with one of his Senior Officers was marked by cold hostility. It was lukewarm with others.

General bearing personality:

Anything but smiling.

Sociability:

Prefers to be aloof.

Dedication to duty:

Depends on his convenience.

Attention to details:

Yes; but takes his own time; response time is not fast.

Ability to take a principled stand:

It is clouded by his "paradigm".

General assessment:

He has the capacity to deliver goods but cannot adjust to the organisation as a whole if he can't vibe with his seniors.

An arrogant officer. His knowledge of work is good, but he cannot be objective and impartial in discharging his duties.

Please acknowledge the receipt of this letter.

Yours Sincerely  
Sd./-  
illegible  
(B.K. Bhattacharya)"



49. Ramesh represented against the aforesaid remarks. The reporting and reviewing authorities were called to justify the remarks entered in Ramesh's ACRs. After considering the representation, no occasion was found to expunge any of the remarks. Ramesh approached the Central Administrative Tribunal, Bangalore, seeking expunctions of the adverse remarks entered in his ACRs. The Tribunal dismissed his OA. Ramesh thereafter approached the High Court which also dismissed his writ petition. Aggrieved thereby, he approached the Supreme Court.

50. The Supreme Court called for the entire service records of Ramesh for the years 1978-1979 to 2005-2006 and, after going through the record, proceeded to observe and hold as under:

“18. As directed by us, the Government of Karnataka placed before us the entire service records of the appellant from 1978-1979 to 2005-2006. *Except the impugned adverse remarks, all other entries are “excellent”, “very good” and “outstanding”. Many officers have rated the appellant as a smart and well-balanced officer and has excellent perception of IB's role in national security and has excellent power of communication both verbal and written and his conduct and character is “very good” and has contributed very significantly to the overall intelligence output of the SIB as also to enhancing its image among young employees.*

19. On 25-7-1990, the accepting authority, Mr K. Saranyan, Additional Director, IB Headquarters, New Delhi, fully endorsed the reviewing officer's assessment that the officer is “*outstanding*”.

20. For the period 1-4-1990 to 31-3-1991, the appellant was graded as a *very good officer*.

21. For the period 1-4-1991 to 1-10-1991, the accepting authority made the remarks that “he has been ably assisting the



DGP and shows keen interest to receive instructions and do good work”.

22. For the period 1-11-1991 to 31-3-1992, Mr Dharam Singh made the remarks, found him quite a knowledgeable officer, hard working and when asked, can tender unbiased opinions.

23. For the period ending 31-3-1993, he has been graded as “*very good*”.

24. For the period ending 31-1-1994, he has been graded as “*outstanding*”. Mr J.C. Lynn, Chief Secretary, Government of Karnataka, graded him as “*outstanding*”.

25. From 16-10-1996 to 15-3-1997, the impugned adverse remarks were “*an arrogant officer, his knowledge of work is good but he cannot be objective and impartial in discharging his duties*”.

26. From 1-4-1997 to 18-4-1997, he has been graded as “*very good*” by Mr S.K. Bhattacharya, Chief Secretary, Government of Karnataka. However, for all these years, Mr V.V. Bhaskar, the Director General of Police has graded him as an officer of *outstanding merit*.

27. From 1-4-1998 to 31-3-1999, he has been graded as “*very good*”.

28. From 1-4-1999 to 31-3-2000, he has been graded as “*excellent*” and under his guidance and supervision his staff was able to detect large number of smuggling forest produce and trade in wildlife.

29. Mr V.V. Bhaskar, the Director General of Police graded him as “*outstanding*”.

30. From 14-7-2000 to 28-2-2001 — Mr C. Dinakar, IPS (Retd.), (second respondent), Director General & Inspector General of Police, Karnataka State, Bangalore, in para 20 made general assessment as follows:

“An arrogant and undisciplined officer against whom the Central Administrative Tribunal passed strictures and ordered him to pay cost of Rs 3000 (which he paid) for using intemperate and unrestrained language.”



31. The above remarks were not accepted by the Additional Chief Secretary & Principal Secretary to the Government, Home & Transport Department and his assessment is as follows:

“His integrity is beyond doubt. The remarks at Sl. No. 20 relate to period from 16-10-1996 to 15-3-1997. My assessment of the officer is that he did very good work and has taken keen interest in computerisation programme of the Department and reviewed other works assigned to him like crime review and Forensic Science Laboratory.”

32. From 1-4-2001 to 31-7-2001 — Dr. K. Sreenivasan, Director General & Inspector General of Police, Karnataka State, Bangalore found him as “*outstanding*” and Mr M.B. Prakash, the Additional Chief Secretary & Principal Secretary to the Government, Home & Transport Department was also agreed to the said grading.

33. For the period ending 31-3-2002, he has been graded as “*outstanding*” by Mr M.D. Singh, the Additional Director General of Police, Crime and Technical Services, Bangalore.

34. For the period 1-4-2002 to 30-9-2002, again Mr M.D. Singh graded him as “*outstanding*”. Mr V.V. Bhaskar, Director General & Inspector General of Police, Karnataka State, graded him as “*outstanding*” and Mr Adhip Chaudhury, Additional Chief Secretary & Principal Secretary to the Government graded him as an *excellent officer*. For the same year, Dr. A. Ravindra, Chief Secretary, Government of Karnataka graded him as an *outstanding officer*.

35. For the period ending 31-3-2003, due to special efforts put in by him, the 46th All India Police Duty Meet, 2002 held at Bangalore was conducted in an excellent manner. He played a major part in the publication of crime related data with caption “Crime in Karnataka” for the years 2000 and 2001. Mr T. Mudiyal, Director General and Inspector General of Police, Karnataka State, Bangalore graded him “*outstanding*”.

36. For the period ending 31-3-2004, Mr T. Mudiyal recorded him as follows:

“A very knowledgeable and disciplined officer. He applied his mind to all the details and executes the work to near perfection. He is a willing worker and his skills of communication are excellent. In the field of computerisation in the Department he has done extremely



good work. He can anticipate and prepare himself to various situations very well.

Grading: *Outstanding.*”

37. For the period ending 31-3-2005, Mr K.K. Misra, Chief Secretary, Government of Karnataka, Vidhan Soudha, Bangalore made the remarks as follows:

“*General assessment:* An officer with a most pleasing personality. Endowed with a sharp and inquiring mind, he has tremendous conceptual ability as has been proved by the quantum leap achieved in Karnataka Police computerisation during his stewardship. He has absolute clarity in both oral and written communication. His proven analytical and planning abilities are evident in the excellence seen in his work. His leadership qualities and initiative have always come to the fore particularly in the way he has harnessed the limited resources at the SCRB and initiated several e-governance projects taking police computerisation to great heights. Attention to details is one of his virtues. With his trademark hard work and industry he has earned an unimpeachable reputation as a conscientious officer with a sound judgment and a flair for taking correct and lightening quick decisions. His speed of disposal is remarkable. He is ever willing to accept responsibility readily with a smile. His relations with subordinates, colleagues and general public are very cordial. He has evinced an extraordinary interest in the development of subordinates and used training as a tool for the purpose, having implemented computer based training at the PS level. His (*sic*) tribes and weaker sections of society is not only unquestionable but is tinged with compassion. *A brilliant officer with innovative ideas. Truly an asset to the IPS.*”

In column 5, the remarks made are as under:

“He has very rich experience in use of computer in Police Department.”

In column 6, “For the reasons brought out above, the officer richly deserves *outstanding grading.*”

38. For the period ending 31-3-2006, Mr B.S. Sial, Director General & Inspector General of Police, Karnataka State, Bangalore assessed him as follows:



“He is well versed in his area of responsibility and has been acquitting himself excellently in those fields. He is industrious, intelligent and has clarity of mind with very good communication skills. He is an officer with initiative, judgment and promptitude and takes decisions. He is always willing to accept challenging responsibilities. He has cordial relations with subordinates and superiors and good public relations. His attitude towards scheduled castes, scheduled tribes and weaker sections is cordial, understanding, compassionate and empathetic.

3. Integrity: *beyond doubt*

4. Grading: *outstanding.*”

39. *From the above remarks made by the different authorities at different points of time, it will be evident that the appellant is an officer of outstanding qualities and merit. Except for the impugned remarks made by the reporting officer and by the second respondent as the reviewing authority, he has been consistently graded as “outstanding”, “very good” and “excellent” and has also been entrusted with various responsibilities. It is true that in his representation he has used intemperate language, mainly against Respondent 2, on an erroneous assumption that the adverse remarks had been made by the said respondent, but use of such intemperate language has to be looked at objectively after careful consideration of all the annual confidential reports for all the years which are also before us. It will have to be considered whether the remarks made by the reporting officer and the reviewing officer were sufficient in themselves to merit the overall assessment of “average” as against the consistently excellent remarks in the confidential reports both before and after the period in question. In fact, the remarks of the Additional Chief Secretary and Principal Secretary to the Government, Home and Transport Department, while disagreeing with the general assessment made by the second respondent of the appellant’s performance from 14-7-2000 to 28-2-2001, also merit consideration.*

40. *The confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career. This Court has held that the performance appraisal through CRs should be used as a tool for human resource development and are not to be used as a fault-finding process but a developmental one. Except for the impugned adverse remarks for a short period of about 150 days, the performance of the appellant has been consistently of high*



*quality with various achievements and prestigious postings and meritorious awards from the President of India. We have already seen that the appellant has been graded as “very good”, “excellent” and “outstanding” throughout his career. It is difficult to appreciate as to how it could become adverse during the period of 150 days for which the adverse remarks were made. Furthermore, despite such adverse remarks, the Government of Karnataka, considering his merit and ability and outstanding qualities, has already promoted the appellant as the Inspector General of Police.*

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43. In order to satisfy ourselves we had called for the entire service record of the appellant and upon perusal of the same, we find that the remarks of the reporting officer for the period in question were contrary to his consistent performance. The observation of Respondent 2 that the appellant was an arrogant officer is followed by his remark that his knowledge and work is good. Such an observation, in our judgment, cannot be the basis of an overall rating of average.

44. The Tribunal also appears to have been prejudiced by the intemperate language used by the appellant against the second respondent. The Tribunal while holding that such language was totally unacceptable also imposed cost of ₹ 3000 on the appellant to be paid to the second respondent. It is not in dispute that the said cost has been paid by the appellant to the second respondent. However, for the same reasons as those indicated above, we are of the view that *the Tribunal also committed an error in overlooking the otherwise consistently good track record of the appellant.*

45. For the reasons aforesaid, we allow the civil appeal and set aside the order passed by the Tribunal and the High Court in Writ Petition No. 3310 of 2005. *The authorities are directed not to treat the appellant's performance during the period in question as average. The appellant should also desist from using intemperate and abusive language in future while discharging his official functions.”*

(Emphasis supplied)

**51.** This, therefore, is a case in which the previous and later record of the officer concerned was taken into consideration by the Supreme Court to hold that the adverse remarks entered in his ACRs for an



intervening period of four months were not reliable. That said, however, it is apparent that the discordance between the remarks entered in the officer's remarks before and after the period under challenge were starkly discordant with the remarks under challenge.

***UOI v Major Bahadur Singh*<sup>24</sup>**

**52.** This judgment is not of particular significance, except for the fact that, in para 8, it held that the judgment in *U.P. Jal Nigam* was applicable only to employees of UP Jal Nigam and not to anyone else. This position, as we would notice, was later reversed in *Sukhdev Singh v. UOI*.

***U.O.I. v S. K. Goel*<sup>25</sup>**

**53.** Here again, one of the contentions advanced by the respondent S K Goel before the Supreme Court was that the reviewing officer had downgraded the grading of “outstanding” granted to him by reporting officer to “very good, without any reasons and without apprising him. It was contended that ACRs was thereby rendered ineffective and could not have been taken into consideration by the DPC. Though the contention has been noted in para 20 of the report, it has not been decided.

***Sukhdev Singh v. UOI*<sup>26</sup>**

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<sup>24</sup> (2006) 1 SCC 368

<sup>25</sup> (2007) 14 SCC 641

<sup>26</sup> (2013) 9 SCC 566



54. This matter came to be heard by a Bench of three Hon'ble Judges of the Supreme Court as it was felt that there was inconsistency between the decisions in *U.P. Jal Nigam* and *Major Bahadur Singh*. The referral Bench did not find it possible to agree with the view, expressed in *Major Bahadur Singh*, that the *ratio decidendi* of *U.P. Jal Nigam* applied only to employees of the U.P. Jal Nigam, and to no one else.

55. The dispute, in *Sukhdev Singh*, was essentially on the aspect of communication of adverse entries in ACRs, with which we are not concerning ourselves in the present case, as no submissions on that aspect were addressed by the petitioner before the Tribunal. The decision is only relevant to the extent that, though it does not expressly overrule *Major Bahadur Singh* to the extent it holds *U.P. Jal Nigam* to be limited to employees of the U.P. Jal Nigam, it notes the fact that a later decision, albeit by a Bench of two Hon'ble Judges, in *Dev Dutt v. UOI*<sup>27</sup>, relied on *U.P. Jal Nigam*, and holds, in para 6, that it was in entire agreement with *Dev Dutt*. By implication, therefore, *U.P. Jal Nigam* cannot be held, any more, to be limited to the employees of the U.P. Jal Nigam, and to no one else.

*M Paramasivam v UOI*<sup>28</sup>

56. This was a case in which the Division Bench of the High Court of Madras held that the reviewing officer could not have downgraded

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<sup>27</sup> (2008) 8 SCC 725

<sup>28</sup> 2008 (6) CTC 825 (Mad)



the “very good” grading given by the reporting officer to “good” without according any reasons. However, in this case, there was specific instructions issued by the Railway Board, applicable to the case, which read thus:

“(i) Brochures and Confidential Report issued by Ministry of Railway, Railway Board set out in Para 2.11:

“2.11 After the report is written by reporting officer, it would be reviewed by Reviewing Authority *i.e.*, authority superior to Reporting Authority or such other authority as may be prescribed in this regard. The Reviewing Authority should exercise a positive and independent judgment on the remarks given by the Reporting Authority in the ACR and records his/her agreement or disagreement with the remarks/assessment of the Reporting authority, particularly if they are adverse.

Where the Reviewing Authority disagrees with the assessment given by the Reporting officer, he should clearly mention the reasons therefore particularly in cases where it downgrades the assessment/rating given by the reporting officer.”

No such instructions, issued by any other Department of the Government, including the DOPT, providing that, where the Reviewing Authority disagrees with the Reporting Authority, it has to provide reasons, has been brought to our notice. That view has, however, been taken by a coordinate Division Bench of this Court in *Tarsem Kumar v UOI*<sup>29</sup>, and we find ourselves entirely in agreement therewith. Besides, it does not stand to logic that, for the Railways alone, a different paradigm would apply, in the matter of recording of Confidential Reports, than that applicable to all other Government employees.

**57.** The High Court, therefore, held that in downgrading the “very

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<sup>29</sup> (2014) 146 DRJ 23



good” grading given by the reporting officer to “good” without any reasons, the reviewing officer acted in breach of the instructions. The downgraded entry could not, therefore, be taken into consideration.

### ***Tarsem Kumar v UOI***

**58.** In this case, a Division Bench of this Court held thus:

“19. The writing of confidential report, as we can find from the instructions attached with the Annual Appraisal Report is serious business, any casual or cavalier approach on the part of the designated officers can jeopardise the service career of the ‘assessed officer’. Promotion has been held to be an essential element of service and it is expected of every management to provide realistic opportunities to every officer for boosting their morale and rewarding them promotionally for their hard work. The substantive growth in capacities to discharge work of greater responsibility has to be determined on the basis of past performance, else there will be no motivation to do better or even to maintain standards. It leads to despondency and drudgery at work. The instructions as laid down in the Annual Appraisal Report Criterion, clearly spell out that the reporting officer and the reviewing officer should undertake the duty of filling out the Annual Appraisal Report with clarity, high sense of responsibility and objectivity. It further states that the reporting officer should bear in mind that the objective of the assessment exercise is to develop an officer so that he/she can realise his/her true potential. It is not meant to be a battle but a developmental process, a cumulative effort that ensures optimal outcomes. It further lays down that it should be the endeavour of each appraisal to present the truest picture of the appraisee apropos his/her performance, conduct, behaviour and potential.

20. In the teeth of these instructions, and various guidelines laid down by the DoPT from time to time, it becomes abundantly clear that neither the reporting officer nor the reviewing officer, indeed not even the Accepting Officer, can adopt an erratic and a casual approach in evaluating the overall performance of an officer on the various parameters, on which he is required to be assessed. The reviewing officer too cannot abdicate his responsibility by just putting a stamp of approval on the remarks given by the reporting officer. *Simultaneously, he cannot record his disagreement with the report of the reporting officer without spelling out the reasons*



*for his disagreement. The position of the Accepting Officer is no different.”*

(Emphasis supplied)

### Applicable principles

**59.** Though, to a large degree, the Court has to defer to the views of the officers who write the confidential reports, there are some broad guidelines and parameters which have to be borne in mind, which may be enumerated thus:

(i) An adverse entry must be *adverse*. Ergo, a remark that the officer had an inferiority complex would not qualify as adverse, where the confidential report otherwise lauded him as a serious, intelligent and quiet officer who took part in group discussions.<sup>30</sup> Where the report, on all other aspects of his work, as entered in the officer’s ACRs by the reporting officer were satisfactory, the remark that he “does not act dispassionately when faced with dilemma” was liable to be regarded as a mere advisory, and not as adverse.<sup>31</sup>

(ii) If an officer has shown a consistently high standard of work before and after a particular period, and markedly adverse remarks are entered in his ACRs for that period alone, which are totally discordant with his performance after that as well as prior thereto, the Court would be justified in directing that the aberrant adverse remarks for the intervening period be ignored.

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<sup>30</sup> Refer **Vijay Kumar**

<sup>31</sup> Refer **M.A. Rajasekhar**



This would, however, have to be in an extreme case, where it the adverse remarks are so completely discordant with the performance of the officer as reflected earlier, and later, that they strain the limits of credulity, as in *S. Ramachandra Raju*.

<sup>32</sup> Else, the Court has to be conscious of the fact that the performance of an officer need not be consistent, and that occasional decline, or even aberration, in performance, is not necessarily unbelievable.<sup>33</sup>

(iii) Similarly, where, in one ACR, there are starkly inconsistent and mutually irreconcilable remarks, the Court would hold that the adverse remarks were deliberately entered in order to prejudice the officer.<sup>34</sup>

(iv) Absolute objectivity, and complete absence of bias or prejudice, are indispensable in the reporting officer as well as reviewing officer.<sup>35</sup>

(v) Before forming an adverse opinion on the basis of information which is not part of the record, the reporting officer should share the information, with the officer, confront him with it, so that he is given an opportunity to improve.<sup>36</sup>

(vi) A positive entry in an ACR could also, in a given circumstance, be perilously adverse. An adverse entry was not required, in every case, to be qualitatively damaging.

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<sup>32</sup> Also refer **S.T. Ramesh**

<sup>33</sup> Refer **Yamuna Shanker Misra**

<sup>34</sup> Refer **Sukhdeo**

<sup>35</sup> Refer **Yamuna Shanker Misra**

<sup>36</sup> Refer **Yamuna Shanker Misra**



(vii) Where an officer is downgraded vis-à-vis the overall grading given to him in the previous assessment year, reasons have to be adduced for doing so.

(viii) Equally, the reviewing officer cannot downgrade the overall grading granted by the reporting officer, without reasons.<sup>37</sup>

(ix) In the case of adverse entries regarding the integrity of the officer, the Court would not interfere, if it is satisfied that the assessment by the reporting officer is honest. It may not be possible to cite specific instances, or refer to evidence while making the entries. The remarks could not, in such circumstances, be characterized as vague, or be vulnerable to challenge on that score.<sup>38</sup>

### Applying these principles to the facts on hand

**60.** When one examines the matter from the point of view of law, as noted hereinabove, the following position emerges:

(i) For the year 2001-2002

(a) For the year 2001-2002, the reviewing officer has reduced the overall grading of “very good”, granted by the reporting officer, to “good” without any reason.

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<sup>37</sup> Refer **Tarsem Kumar**



(b) In fact, the comments of the reviewing officer are contradictory in nature as, on the one hand, he agrees completely with the remarks entered by the reporting officer in the respondent's ACRs and, nonetheless, reduces the overall grading to "good".

(c) Such a reduction, without a single adverse observation, is unsustainable in law.

(d) At the very least, the petitioner ought to have been afforded an opportunity by the reviewing officer, before he downgraded the grading of "very good" given by the reporting officer to "good", and ought to have been told why the reviewing officer felt the grading of "very good" not to be appropriate.

(e) Besides, on a bare glance at the various attributes of the petitioner as entered by the reporting officer during the said year against various entries, it is clear that the officer merited a "very good" grading.

(f) Accordingly, we are of the view that, for the year 2001-2002, the grading of "good" granted by the reviewing officer cannot sustain and the petitioner would be entitled to be treated as having an overall grading of "very good".

(ii) For the year 2003-2004



(a) For the year 2003-2004, it is not possible to hold that the grading “good” given by the reporting officer and affirmed by the reviewing officer, was in any way discordant with the remarks entered against the various entries in the ACRs. It is clear that the remarks entered against the various entries in the ACRs of the petitioner for the year 2003-2004 do not reflect performance at the level of that which was reflected in the years 2001-2002 and 2002-2003. Moreover, we find that the reporting officer of the petitioner for the year 2003-2004 was the same as the reporting officer for the year 2002-2003. It cannot, therefore be said that the reporting officer was biased.

(b) The overall grading of “good” granted by the reporting officer is, therefore, in sync with the remarks entered by him against various entries in the petitioner’s ACRs for the year 2003-2004.

(c) Thus, we find that the grading given to the petitioner for the year 2003-2004 does not suffer from any inherent legal infirmity.

(iii) For the year 2004-2005

(a) Here again, as in the case of Year 2001-2002, the reviewing officer has expressed agreement with the remarks entered by the reporting officer on all entries in



the ACR but has opined that the petitioner was entitled only to a grading of “average”. “Average” by any means, is an expressly adverse grading.

(b) The reviewing officer has provided no reasons for grading the petitioner as “average”. Once he had agreed with all other entries made by the reporting officer, the reviewing officer was required, at the very least, to provide reasons for his view that the petitioner was entitled only to be graded as “average”, instead of “good”.

(c) Besides, following the law laid down by this Court in *Tarsem Kumar*, with which we are entirely in agreement, if the reviewing officer wanted to reduce the grading granted to the petitioner by the reporting officer, he ought to have put the petitioner on notice prior thereto, so that the petitioner could at least explain why he ought not to be downgraded.

(d) The downgrading of the petitioner to average is also in the teeth of the law laid down by the Supreme Court in *U.P. Jal Nigam*, as it is unsupported by any reasons. Unlike a downgrading from “very good” to “good”, where the overall grading of the petitioner had been reduced to “average” in 2004-2005, vis-à-vis the grading of “good” in 2003-2004, the case stands fully covered by the decision in *U.P. Jal Nigam*. The



petitioner could not, therefore, have been given an overall grading of “average” in the 2004-2005, vis-à-vis the grading of “good” in 2003-2004, without a prior opportunity to him to submit a representation against the proposed grading.

(e) For the year 2004-2005, therefore, the petitioner would be entitled to be graded as “good”, as awarded by the reporting officer.

(iv) For the years 2005-2006 and 2006-2007

For the years 2005-2006 and 2006-2007, we are of the opinion that no case for interference exists. The entries in the petitioner’s ACRs for these two years reflect a markedly lower standard of performance vis-à-vis the earlier years. The italicized entries for the relevant year, in the table annexed as Annexure-1 to this judgment clearly support the overall grading of “average” granted by the reporting officer. The reviewing officer has concurred with the said grading. The grading is in no way less than the grading granted to the petitioner in the previous year. As such, the grading *per se* does not call for interference.

(v) For the year 2007-2008

(a) While it is true that the reviewing officer has



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downgraded the grading of “very good” granted to the petitioner by the reporting officer, to “good”, he has adduced reasons for doing so. He has stated that, as an IT professional, the petitioner should have developed some software for day to day use of office by then. Once there is a reason given by the reviewing officer for the grading given by him, the Court cannot interfere with the grading unless the reason is completely foreign to the duties to be performed by the officer or is markedly arbitrary. The reasons adduced by the reviewing officer for the year 2007-2008, for grading the petitioner as “good”, instead of “very good” cannot be said to suffer from any patent infirmity.

(b) Inasmuch as the reduction of the overall grading as given by the reviewing officer, vis-à-vis the reporting officer, was only going down from “very good” to “good”, there was no requirement, in law, for the petitioner to be granted a prior opportunity or to put on notice before the grading was given.

(c) Equally, as, vis-a-vis the overall grading obtained by him in previous year, i.e., the 2006-2007, the petitioner’s grading had increased from “average” to “good” it was a step up, thereby obviating any necessity of placing the petitioner on notice before entering the “good” remark.



(vi) For the year 2008-2009

The reporting officer and the reviewing officer have both graded the petitioner as “good” for the year 2008-2009. The grading is in sync with the remarks contained against the various entries in the ACRs. There is no downgrading vis-à-vis the average grading obtained by the petitioner in the previous year. No cause, therefore, exists to interfere.

**61.** Resultantly, the position that emerges is that, while the petitioner would be entitled to be graded “very good” for the year 2001-2002 and “good” for the year 2004-2005, the gradings for the remaining years do not call for interference.

#### Manner of rejection of representations

**62.** Mr. K.L. Manhas, learned Counsel for the petitioner, also sought to place reliance on DPAR OM dated 20 May 1972, which deals with the manner in which the representation against adverse remarks has to be disposed of, and reads thus:

“24. Manner of disposal of representation. The following procedure should be adopted in dealing with representations from the employees against the adverse remarks communicated to them:-

(1) Representations against adverse remarks should be examined by the competent authority in consultation, if necessary, with the reporting officer and countersigning authority, if any.

(2) If it is found that the remarks were justified and that the representation is frivolous, a note may be made in the



confidential report of the petitioner that he did not take the correction in good spirit.

(3) If the competent authority feels that there is no sufficient ground for interference, the representation should be rejected and the petitioner informed accordingly.

(4) If, however, it feels that the remarks should be toned down, it should make necessary entry separately with proper attestation at the appropriate place of the report; the correction should not be made in the earlier entries themselves.

(5) In the rare event of the competent authority coming to the conclusion that the adverse remark was inspired by malice or was entirely incorrect or unfounded, and therefore deserves expunction, it should score through the remark, paste it over, or otherwise obliterate it, and also make a dated entry, under his signature, stating that he has done so, under intimation to the concerned Head of the Department or Office, if he himself does not occupy that position.

When a representation against adverse remarks is wholly or partially upheld, the particulars of the orders based thereon should be recorded in the report itself. If the remarks are ordered to be expunged, they should be effectively obliterated both in the confidential report as well as in the copy of the letter communicating those remarks. A on such a representation should not be kept in the CR copy of the order based the CR File. Where a penalty is set aside on an appeal or review, the copy of the punishment order should be removed from n the CR File as well as the adverse remarks recorded on the basis of the penalty expunged. In a case where the penalty is modified by the appellate or revising authority, the entry in the confidential report originally made on the basis of the penalty awarded should also be immediately modified accordingly. Representations (including explanation) sub-mitted in respect of adverse entries should not be appended to the respective confidential reports. If the representation was well founded, it would have resulted in the competent authority toning down or expunging the adverse remarks, come on the other hand, the representation was without substance, it would have been rejected. In either case, no useful purpose would be served by attaching the representation to the confidential report.”

**63.** It is sought to be pointed out that the orders dated 5 August 2011, 8 August 2011, 29 December 2011, 28 December 20112 and 25



February 2014, whereby the petitioner's representation against his ACRs were rejected were not passed as per the procedure envisaged in the aforesaid OM of the DPAR.

**64.** We cannot agree. We have referred to the contents of the representations made by petitioner against his ACRs. We find no error in the observation of the authority dealing with the representations that no substantial material had been placed on record, by the petitioner, as would justify interference with the remarks entered in his ACRs on the overall gradings granted to him. We, therefore, reject the contention that there was any breach, while dealing with the representations, with the mandate of DPAR OM dated 20 May 1972.

**65.** That said, we have ourselves examined the ACRs, applied the applicable legal principles in that regard, and arrived at our conclusion as at para 61 *supra*.

### **Conclusion**

**66.** Resultantly, while holding that the petitioner would be entitled to be graded "very good" in 2001-2002 and "good" in 2004-2005, the gradings awarded in his ACRs for the remaining periods in dispute are upheld.

**67.** As no other argument was advanced by the petitioner before the Tribunal, we forbear from entering into any other aspect, including the issue of consideration of the ACRs for further promotions, if any, of



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the petitioner. The right of the petitioner to agitate any such surviving issues would remain reserved, albeit strictly in accordance with law.

**68.** The writ petition thus stands partly allowed, with no orders as to costs.

**C. HARI SHANKAR, J.**

**ANOOP KUMAR MENDIRATTA, J.**

**February 28, 2025/aky**

*Click here to check corrigendum, if any*



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**ANNEXURE A**

Sr. No.	Grading Criteria	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
<b>Reporting Officer</b>		<b>R.B. Gangadhar, Joint Director</b>	<b>Murari Ratnam, Joint Director</b>	<b>Murari Ratnam, Joint Director</b>	<b>Murari Ratnam, Joint Director</b>	<b>Murari Ratnam, Joint Director</b>	<b>Murari Ratnam, Joint Director</b>	<b>N. Chandraasekara, Joint Director</b>	<b>N. Chandrasekhran, Joint Director</b>
1	Do you agree with the resume of work as indicated by the officer in part II of the report and in particular regarding, the special achievement if any mentioned by the officer? If not, indicate briefly the reasons for disagreeing with- it and the extent of your disagreement.	Yes, I agree	Yes, I agree	Yes, I agree	Yes, with respect to the amount of work done.	Yes, to a certain extent. His core competence should be specific IT related work eg. Development of software, whereas he has been doing the job of providing services. As far as entry at Sl No.6 is concerned, it is certainly not a noteworthy achievement	I do not agree with the resume of work fully Shri Binju was given two targets 1. Procurement of 12 computers before 31 <sup>st</sup> March, 2007. Status: Not fulfilled. 2. Up-gradation of existing P-3 computers (Zenith). Status: Case not initiated so far	Yes, I agree	Yes, I agree
2	Type of work handled by the officer, with mentioned of any item of work of	He is attending to works related to Information Technology; Procurement	AMC of computers Colour printing Testing of electronic eqpts.	Computer activity	AMC of computers. Routing work	Providing IT related services of a ordinary nature	Maintenance of computer	He is in-charge of Computer Division. Purchase of new computers, UPS,	He is in-charge for purchase and maintenance computer related services,



	particular importance and/or difficulty including those meriting commendation	maintenance and minor-repairs to computer hardware						up-gradation of computers, printers, AMCs for Computers etc.	development of methodology for computer maintenance, for electronic division etc.
3	(a) In addition to his normal/routine duties, has he shown any special aptitude for original scientific work or investigation?  (b) The extent of efforts put in by him in keeping himself abreast of latest developments in the field of his activities.	He is studying literature related to Information Technology and computer, hardware.  He is studying literature related to his work.	No  Makes every effort to keep himself abreast of latest developments in the field of his activity	No  Very good	No  Satisfactory	No  Hardly worth mentioning	No  None	Yes  Very Good	Yes  Good
4	Temperament  (a) Is he calm and does he maintain balance at the time of pressure of work?	He maintains balance at the time of pressure of work.	Yes, he is calm and maintains balance at the time of pressure of work	Yes, he is calm and maintains balance in adverse circumstances/pr essure of work.  No.	Yes, he is calm and maintains balance generally	Yes, he is calm and maintains balance of mind at ordinary times of work. Not aware of any presence of work in his case.  No	Generally calm. Even though targets were fixed, there was no time pressure of work, hence no comments.	He is calm and maintains balance at the time of pressure of work.  No, he does not	He is calm and maintains balance at the time of pressure of work



	(b) Does he get provoked easily?  (c) Is he able to tolerate difference of opinion?	He does not get provoked easily.  Yes, he is able to tolerate difference of opinion.	No.  Yes, he is able to tolerate difference of opinion	Yes	No  To a consideration extent.	Yes, there is scope for improvement	Yes, he gets provoked easily  There is scope for improvement	get provoked easily Yes, he is able to tolerate difference of opinion	No. He does not get proved easily  Yes, he is able to tolerate different of opinion
5	General intelligence and understanding and knowledge of the organisation work as a whole, the work of the Discipline/Division/Sub-Units in particular, ability to acquire and keep up-to-date general and technical knowledge, rules, codes, manuals, instructions and procedures.	He has a good understating of the working of the organisation. He keeps himself inform of computer hardware and IT developments.	Intelligent: Has a Very good understanding of the work related to his sphere of activity. Does made effort to go through procedures, manuals, technical literature.	Intelligent. Very good understanding and knowledge of his sphere of work only.	Intelligent and satisfactory, understanding and knowledge of his unit.	Fairly intelligent Good understanding of his are of work only	Fairly intelligent. Knowledge of working of the organisation is OK. However, being a man associated with I.T., need for more professional attitude towards work is felt very much	He is intelligence and has excellent technical knowledge about the works he is handling and has good knowledge about rules, codes etc.	He is intelligent and has extra knowledge about rules, codes etc. and has excellent technical knowledge about the work he is handling.
6	Quality of work  (1) Attentiveness  (2) Judgment	He is attentive to work.  His judgment is fair.	Quite attentive  Sound in judgement	Very good  Sound	Fairly attentive  Fair in judgement	Fairly attentive  Fairly sound in judgement	Fairly attentive  Average	He is very attentive in his work He is fairly showing got judgement	Good  Good



	(3) Presentation of cases  (5) Promptness is disposal of work.	His presentation of cases is lucid  He is very prompt	Has the ability to present cases rationally  Reasonably prompt	Very good is presentation of case  Fairly prompt	Satisfactory  Fairly prompt	Fairly good in presentation  Just prompt	Just good enough  Scope for improvement	Very Good  He is reasonably prompt in disposal of work	Very good  He is reasonably prompt in disposal of work
7	Ability to analyses facts, propose alternative and visualise consequence and repercussions to help decisions and policy making.	He is able to analyse facts, visualise consequences and is able to help in decision making	Has the requisite wherewithal to analyse facts, propose alternatives. Understands the pros and cons of decisions; Quite helpful in policy making.	Able to analyse facts after giving a good thought	Good as far as ability to analyze facts are concerned. Work of his unit is such that contribution towards decision and policy making is minimums	Satisfactory as far this attribute is concerned	Scope for improvement	Good	Appreciable
8	Ability in discussions and conversation	Very good	Discusses facts quite frankly and converses to the point	Good in conversations Discussions with outsiders lead to only satisfactory output.	Tries to be convincing in discussion and conversation	Fairly good in discussions and conversation	Good	Very Good	Very Good
9	Quality of supervision	Very good	Very Good	Satisfactory	Satisfactory	Satisfactory in supervision	Good	Very Good	Good
10	Initiative and drive	Very good	Take initiative wherever required; Shows enthusiasm in work	Satisfactory	More or less satisfactory	Satisfactory	Scope for improvement	Good	Average
11	Readiness to assume	He is ready to	Quite prompt in	Satisfactory	Satisfactory	There is scope for	Just good enough	Good	Good



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	responsibility	assume responsibility whenever required.	assuming responsibility.			improvement in his readiness to assume responsibility			
12	Control and Management of staff.  (i) Ability to inspire confidence and to get the best out of the staff.  (ii) Capacity to train, help and advise the staff and ability to handle subordinates.	He is able to get the best out of his staff.  Very good	Has the ability to conform confidence and get the best out of the staff.  Very good in training, helping and advising staff. Handles staff tactfully.	He does inspire confidence in his staff to get the desired output Able to handle subordinate tactfully	Makes effort to inspire confidence  Satisfactory	Fairly good  Satisfactory	Just good enough	Very Good  Very Good	Good  Good
13	Relationship with colleagues.	His relationship with colleagues is cordial	Cordial	Cordial	Fairly cordial	Cordial	Good	Excellent	Very Good
14	Attitude towards Schedules Casts/Schedules Tribes/Weaker Sections of society.	Not applicable.	Fair and just.	Balanced attitude towards all sections of the society	Fair and just	Fair and just	Fair & just	He takes adequate care for their development	He takes care for their development
15	Other observations (This space may be utilised for remarks which complete, corroborate or supplement what	He has developed knowledge related to Information Technology and computer hardware.	Non	Nil	None	None	Needs to turn up his attitude towards work	He has make reasonable contribution in purchase of new computers, up-gradation of	Nil



	has been indicated above. This should not, however, be used for merely repeating in vague terms what has already been stated. Any outstanding notable work or work of poor quality in nature may be mentioned during the period under report. Specific points such as special accomplishment during the period under report and any other aspects not covered in the proforma given above which the reporting officer considers specially worth mentioning may also be indicated here.)							existing computers which exercise was very helpful for e-governor of CSMRS activities.	
16	Integrity	Honesty beyond doubt	Beyond doubt	Beyond doubt	Beyond doubt	Beyond doubt	Beyond doubt	Beyond doubt	Nothing doubtful
17	Observations regarding suitability for other spheres of	He is suited to Information Technology,	Suitable for other sphere of work		Not suitable for other spheres of work	None		He is mainly suitable for Information	He is more suitable for the present type of



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	work.	computer hardware and Electronic Instrumentation.						Technology related works.	work he is handling
18	Grading by the reporting officer (Outstand/Very Good/Good/Average/ Below Average) (Justification for (Outstanding and below average grading to be given with specific instances and cases)	Very good	Very Good	Good	Good	Average	Average	Very Good	Good
<b>Reviewing Officer</b>		<b>Dr. K. Venkatachalam, Director</b>	<b>A.K. Dhawan, Director</b>	<b>A.K. Dhawan, Director</b>	<b>A.K. Dhawan, Director</b>	<b>A.K. Dhawan, Director</b>	<b>A.K. Dhawan, Director</b>	<b>Murari Ratnam, Director</b>	<b>Murari Ratnam, Director</b>
1	Length of service under the Reviewing Officer	Full period	From 19-9-2002 to 31-3-2003	Entire period under review	Entire period under review	Entire period under review	Entire period under review	1.4.07 to 31.3.08	1.4.08 to 31.3.09
2	Do you agree with the Reporting Officer in regard to (a) his remarks on the resume of the work done by the officer as contained in Part II of the	In general I do agree. However, I do differ with the reporting officer's over all grading. The officer reported upon deserves only	Yes, I agree completely	I agree	Yes. I agree to remarks of Reporting Officer in regard to both (a) and (b) except the grading. As on	Yes. I agree completely in regard to both (a) and (b)	Yes. I agree completely in regard to both (a) and (b)	Yes, except overall grading of 'very good'. Being IT professional he should have developed some software for day	Yes, I agree



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	Report and (b) observations of reporting officer on other items (including the grading given). If not, indicate briefly the reasons for disagreeing with the Reporting Officer and the extent of your disagreement.	'Good'.			remarks of Reporting Officer resume and seeking the quality work also at the senior level the grading should be 'AVERAGE'.			to day use of office by now. Therefore, his grading should be 'Good'.	
3	Overall assessment of performance and qualities.	Good	Very Good	Good	Average	Average	Average	Overall performance has been 'Good'. Intelligent. If it is put to use, he can deliver.	Good
4	(a) Has the officer any special characteristics and/or any outstanding merits & abilities which would justify his special selection for higher appointment or out of turn promotion? If so, mention these characteristics briefly and indicate	Nothing specific  Nil	Nil  NIL	NIL  NIL	No  NIL	Nil  May be suitable	Nil  Nil	No.  None.	No  None



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	<p>why you consider him fit out of turn promotion?</p> <p>(b) Recommendation regarding suitability for other spheres of work</p>					<p>for electronics related instrumentation work.</p>			
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