

UNION OF INDIA AND ORS.

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v.

G.R. MEGHWAL

(Civil Appeal No. 2021 of 2022)

SEPTEMBER 23, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Service Law: Promotion – Suitability for grant of Senior Administrative Grade – Assessment of Annual Confidential Report (ACR) – Deputy General Manager, BSNL of Indian Telecom Group A cadre, graded “Very Good” for the years 2005-2006 and 2006-2007, however, only ‘Good’ for the year 2007-2008 – Officer was communicated the same – He submitted his representation but the same was rejected – Thereafter, in Departmental Promotion Committee (DPC) held for grant of Non Functional-upgradation in SAG, the officer was not found eligible on the ground that in the year 2007-2008, his ACR was “Good” – Challenge to, by the officer – Tribunal set aside the rejection of the representation and directed to review the case of the respondent ignoring the below benchmark “Good” for the year 2007- 2008 – Said order upheld by the High Court – On appeal, held: Though the officer was graded as “Very Good” in the ACRs for the years 2005-2006 and 2006- 2007, and was graded only “Good” in the ACR for the year 2007-2008 by the very same reporting and reviewing officer, despite the fact that specifically the respondent was given the opportunity against the ACR for the year 2007-2008 – However, no valid reasons are given for rejecting the representation – Thus, the tribunal and the High Court did not commit any error in directing the Department to call for a review meeting of the Screening Committee to re-assess the suitability of the officer for the purpose of grant of SAG and while doing so to exclude the ACR for the year 2007-2008.

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Dismissing the appeal, the Court

HELD : 1.1 In the instant case, the below benchmark ACR reporting the period from 01.04.2007 to 31.03.2008 was communicated to the respondent vide communication dated 08.06.2010 in respect of which representation was made by the respondent on 19.06.2010. The same was rejected as per the

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- A communication dated 01.10.2010. According to the respondent, the reviewing officer was due for retirement on 31.03.2008 and the respondent submitted self-appraisal report on 15.04.2008 for the period 01.04.2007 to 31.03.2008 and reporting officer graded as "Good" on 17.04.2008. Further, reviewing officer signed and accepted the same without any date in spite of fact that he had retired on 31.03.2008 as per Annexure A-6 to the application filed by the respondent before the Tribunal. According to the respondent, his representation was not being objectively considered. In the circumstances, Departmental Screening Committee subsequently assessed him unfit for grant of promotion i.e., grant of NFU in SAG of ITS Group-A. [Para 7][495-D-F]
- B 1.2 The tribunal on perusal of Annexure A-4/being ACRs for three years i.e., 2005-06, 2006-07 and 2007-08 has noted that for the year 2007-08 highly damaging remarks have been recorded by the same reporting authority and endorsed by the same reviewing authority. The remarks are totally opposite to those entered by the same authority previous years. The comparison of the remarks made in the ACRs for the year 2007-08 and for the years 2005-06 and 2006-07 have been made and extracted in the order of the Tribunal. [Para 8][495-G-H]
- C E 1.3 The Tribunal noted that adverse remarks were not communicated to the respondent herein within the time limits prescribed for such communication under the prevailing rules governing the ACRs. Further attention of the officer was not drawn during the year itself, to supposed falling standards along with necessary caution/advice so as to give him a chance to improve. The tribunal further noted that it is not the case of below benchmark grading but a case of recording adverse remarks in the extreme. That the representations made by the respondent were not considered objectively, dispassionately, and fairly as there were contradiction in the qualities or attributes communicated in the said ACRs which were wholly contradictory to each other. In the circumstances, the tribunal held that "adverse remarks made for the year 2007-08 were sweeping, extreme, and inconsistent with the previous remarks. Hence it was held that the rejection of the representation was unjustified
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and the same was set aside. It was further observed by the tribunal that the assessment of 2007-08 were clearly arbitrary and inconsistent and ought not to be allowed to stand in the way of proper assessment of the respondent by the Screening Committee for his suitability to be promoted to a higher grade. Hence, a direction was issued to the Screening Committee to consider and reassess the suitability of the respondent herein for the purpose of grant of SAG by excluding the ACR of 2007-08 and if the respondent was found suitable for grant of consequential benefits. Against the order of the tribunal the Union of India, the appellant preferred a writ petition before the High Court, which reiterated what had been observed by the tribunal in its order and dismissed the writ petition. [Para 8.1][498-A-E]

1.4 On perusal of what has been extracted by the Tribunal from the ACRs of 2005-06, it is noted that the respondent has been graded as "Very Good" since he has very good knowledge in technical field as well as of administrative matters; willing to assume responsibility; has good organizing capability; motivating ability and timely and proper guidance giving capability. The respondent has the capacity/resourcefulness to anticipate problems in advance as well as unforeseen situations. He has very good quality decision-making ability and is able to weigh pros and cons of alternatives and good capability of communication and present arguments in oral and written manner and good skill and capacity of evaluating and recording performance of subordinates in an impartial and objective manner. Similarly in the remarks for the year 2006-07, it has been written that the respondent has very good technical knowledge as well as administrative knowledge. He has very good organizing capacity and was able to motivate and provide timely and proper guidance to subordinates. He has good skill and capacity in evaluating and recording performance of subordinates in an impartial and objective manner. As against the said favourable remarks for the previous two years, in the year 2007-08 it has been stated that though the technical knowledge of the respondent is good, his financial and administrative knowledge is poor; that he has hardly understood the environment in anticipating change; that he was never willing to assume responsibility, and had poor organising

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- A capacity and cannot anticipate problems and unforeseen situations and does not take additional responsibility and has poor decision-making quality and average ability in communication and presenting case problems. [Para 9][498-F-H; 499-A-D]

- 1.5 In the facts and circumstances of the case and
- B considering the fact that though the respondent was graded as "Very Good" in the ACRs for the years 2005-2006 and 2006-2007 and was graded only "Good" in the ACR for the year 2007-2008 by the very same reporting and reviewing officer, despite the fact that specifically the respondent was given the opportunity against the ACR for the year 2007-2008. However, no valid reasons are given for rejecting the representation, the Court is of the opinion that in view of the said facts and circumstances, the tribunal and the High Court have not committed any error in directing the Department to call for a review meeting of the Screening Committee to re-assess the suitability of the
- C respondent for the purpose of grant of SAG and while doing so to exclude the ACR for the year 2007-2008. Therefore, in the facts and circumstances of the case, no interference is called for. [Para 10][499-D-F]

- E *Dev Dutt Vs. Union of India and Ors., (2008) 8 SCC 725 : [2008] 8 SCR 174; Abhijit Ghosh Dastidar Vs. Union of India & Ors., (2009) 16 SCC 146 : 2015 (9) SCALE 39; Sukhdev Singh Vs. Union of India and Ors., (2013) 9 SCC 573; Sukhdeo Vs. Commissioner Amravati Division, Amravati and Anr., (1996) 5 SCC 103 : [1996] 2 Suppl. SCR 287; High Court of Judicature at Allahabad Vs. Sarnam Singh and Anr., (2000) 2 SCC 339 : [1999] 5 Suppl. SCR 344; Dalpat Abasaheb Solunke and Ors. Vs. Dr. B.S. Mahajan and Ors., AIR 1990 SC 434 : 1989 (4) JT 487 – referred to.*
- F *Case Law Reference*

G	[1996] 2 Suppl. SCR 287	referred to	Para 3.1
	[1999] 5 Suppl. SCR 344	referred to	Para 3.1
	[2008] 8 SCR 174	referred to	Para 3, 6.2

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2021 A
of 2022.

From the Judgment and Order dated 29.03.2016 of the High Court of Judicature for Rajasthan Bench at Jaipur in DB Civil Writ Petition No.740 of 2016.

Ms. Madhavi Divan, ASG, Gurmeet Singh Makker, Ms. Neela Kedar Gokhale, Ms. Praveena Gautam, Ms. Vimla Sinha, Nacjoleta Joshi, Advs. for the Appellants. B

Mukesh Kumar Sharma, Adv. for the Respondent.

The Judgment of the Court was delivered by C

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature for Rajasthan at Jaipur in DBCWP No. 740 of 2016 by which the High Court has dismissed the said writ petition preferred by the appellants and has confirmed the judgment and order passed by the learned Tribunal allowing the O.A. No.430 of 2011 by directing the Department to call for a review meeting of the Screening Committee to re-assess his suitability for the purpose of grant of SAG and while doing so to exclude the ACR of 2007-2008, Union of India and others have preferred the present appeal. D E

2. The facts leading to the present appeal in a nutshell are as under:-

2.1 The respondent herein, who belonged to the cadre of Indian Telecom Group A was sent on deputation to BSNL. He was posted as Deputy General Manager, BSNL, Sikar. His ACR grading was “Very Good” for the years 2005-2006 and 2006-2007. However, for the year 2007-2008, his ACR grading was only “Good”. The below benchmark grading for the year 2007-2008 was communicated to him vide letter dated 13.05.2010. The respondent was informed that if he was not satisfied with the same, he may submit his representation to the General Manager, Telecom, Rajasthan Circle, Jaipur. The respondent accordingly submitted a representation on 19.06.2010. It was the case on behalf of the respondent that he got ACR grading as “Very Good” for the years 2005-2006 and 2006-2007, however, for the year 2007-2008, he got ACR grading as only “Good”, despite the fact that in all the three years, the reporting officer and the reviewing authority was F G H

- A same. It was also the case on behalf of the respondent that despite there being no deficiency or inefficiency in performance of his work, the Reviewing Officer erroneously rated him "Good" in the ACR of the year 2007-2008, instead of "Very Good", as was given to him in ACRs of previous two years.
- B 2.2 His representation came to be turned down/rejected vide communication/order dated 01.10.2010. That thereafter the meeting of the Departmental Promotion Committee (hereinafter referred to as the "DPC") was held on 28.12.2010 to consider the grant of NFU in SAG. The respondent was not found eligible by the DPC on the ground that in the year 2007-2008, his ACR was "Good". Therefore, the respondent preferred O.A. No. 430 of 2011 before the Central Administrative Tribunal.
 - C 2.3 Before the Tribunal, it was the case on behalf of the respondent that his grading as "Good" in the year 2007-2008 and rejection of his representation against the below benchmark was arbitrary and unjustified in as much as no shortcomings in his work during the period in question were ever brought to his notice.
 - D 2.4 The Tribunal opined that the remarks entered for the year 2007-2008 were clearly adverse, which warranted communication to the officer concerned within the time limit prescribed. This was to enable E him to submit his representation but no such opportunity was given to the officer. Considering the fact that in the earlier two years his ACRs were found to be "Very Good" and the subsequent ACR for the year 2007-2008 though was by the same reporting officer, the same was "Good", the same was arbitrary. The Tribunal hence set aside the rejection F of the representation and directed to review the case of the respondent ignoring the below benchmark "Good" for the year 2007-2008 and to reconsider the case of the respondent accordingly.
 - G 2.5 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Tribunal, the Union of India and others preferred the writ petition before the High Court. By the impugned judgment and order, the High Court has dismissed the said writ petition, the Union of India and others have hence preferred the present appeal.
 - H 3. Ms. Madhavi Divan, learned ASG has vehemently submitted that in the present case before the DPC met, an opportunity was given to the respondent to make his representation against the below

benchmark ACR of the year 2007-2008. It is submitted that the same was in accordance with the O.Ms. dated 14.05.2009 and 13.04.2010, which were issued after considering the decision of this Court in the case of **Dev Dutt Vs. Union of India and Ors., (2008) 8 SCC 725**. It is contended that the High Court as well as the learned Tribunal have erred in directing to ignore the below benchmark ACR for the year 2007-2008 mainly and solely on the ground that prior to writing the below benchmark ACR, no opportunity was given to the respondent officer. It is submitted that the aforesaid view has been taken relying upon the decisions of this Court in the case of **Dev Dutt (supra); Abhijit Ghosh Dastidar Vs. Union of India & Ors., (2009) 16 SCC 146** (in this case view taken in **Dev Dutt (supra)** was approved by this Court) and the decision of this Court in the case of **Sukhdev Singh Vs. Union of India and Ors., (2013) 9 SCC 573**.

3.1 Learned ASG appearing on behalf of the appellants has submitted that though it was held by this Court in the case of **Sukhdeo Vs. Commissioner Amravati Division, Amravati and Anr., (1996) 5 SCC 103** that downgrading by the Reviewing Officer in comparison to his previous grading without opportunity of hearing to the concerned employee is illegal, however, this Court in the subsequent decision in the case of **High Court of Judicature at Allahabad Vs. Sarnam Singh and Anr., (2000) 2 SCC 339** has explained the decision in the case of **Sukhdeo (supra)** and this Court has not accepted the view that before an adverse entry was recorded in the character roll, an opportunity of hearing was, by any principle, required to be given to the officer.

3.2 It is submitted that in that view of the matter and when the respondent was having below benchmark ACR, i.e., “Good” in the year 2007-2008, which was considered by the DPC, the respondent was rightly denied the functional upgradation in the SAG of ITS Group-A in the pay band-4 of Rs. 37,400-67,000 with grade pay of Rs. 10,000/-.

3.3 It is further submitted by Ms. Divan, learned ASG that merely because in the earlier years, the respondent achieved “Very Good”, only on that ground, it cannot be held that awarding “Good” in the subsequent year was arbitrary and/or mala fide. It is submitted that the quality of work performance of any employee may differ during the different period even under the same reporting officer/reviewing authority. It is only upto the reporting officer and reviewing authority to judge his performance and give suitable grading.

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- A 3.4 It is submitted that in the present case, the subsequent representation against the below benchmark was considered by a duly constituted committee consisting of expertise on the subject. It is submitted that after considering the grading of 2007-2008 and material on record, the Committee rejected the representation of the respondent herein. Reliance was placed upon the decision of this Court in the case of **Dalpat Abasaheb Solunke and Ors. Vs. Dr. B.S. Mahajan and Ors., AIR 1990 SC 434**. It is submitted that as held by this Court whether a particular candidate is fit for a particular post or not, has to be decided by the duly constituted committee, which has expertise on the subject. It is submitted that as observed, the Court has no such expertise and the decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection or proved mala-fides affecting the selection etc.
- B 3.5 Now, so far as the reliance placed upon the decision of this Court in the case of **Dev Dutt (supra)**; subsequent decision in the case of **Abhijit Ghosh Dastidar (supra)** and in the case of **Sukhdev Singh (supra)** is concerned, it is submitted by Ms. Divan, learned ASG that none of the aforesaid decisions shall be applicable to the facts of the case on hand. It is submitted that in fact after the decision of this Court in the case of **Dev Dutt (supra)**, the department issued two O.M.s dated 14.05.2009 and 13.04.2010 and the opportunity to the employee/ officer against the below benchmark ACR was given. It is submitted that even otherwise in the aforesaid decisions, either the ACRs were not communicated at all or it was found that adverse remarks suffer from inconsistency or lack of bona fides.
- C 3.6 Making the above submissions and relying upon the decision of this Court in the case of **Sarnam Singh (supra)** and on the O.Ms. dated 14.05.2009 and 13.04.2010, it is prayed to allow the present appeal and quash and set aside the orders passed by the High Court as well as the learned Tribunal.
- D 4. Present appeal is vehemently opposed by Shri Mukesh Kumar Sharma, learned counsel appearing on behalf of the respondent officer.
- E 4.1 It is vehemently contended by the learned counsel appearing on behalf of the respondent that considering the fact that in the earlier years 2005-2006 and 2006-2007, the respondent's ACRs were "Very Good" and in the year 2007-2008, the very reporting officer/reviewing

authority gave the below benchmark “Good” and before giving the below benchmark ACR – “Good”, no opportunity was given to the respondent to improve himself against the proposed below benchmark ACR, both, the learned Tribunal as well as the High Court have rightly directed to review the case of the respondent ignoring the below benchmark ACR of the year 2007-2008.

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4.2 Relying upon the decisions of this Court in the case of **Dev Dutt (supra)**, **Abhijit Ghosh Dastidar (supra)** and **Sukhdev Singh (supra)**, it is urged that as observed and held by this Court an opportunity to make representation against the adverse remarks/below benchmark has to be given within a reasonable time. That in the present case, such an opportunity was not given within a reasonable time and even otherwise on facts also when the very reporting officer/reviewing authority gave “Very Good” in the previous years and in the subsequent year all of a sudden gave below benchmark “Good”, it is rightly directed to ignore the below benchmark “Good”.

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5. Heard the learned counsel for the respective parties at length.

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6. In the present case, the learned Tribunal as well as the High Court have directed the department to review the case of the respondent by ignoring the below benchmark of “Good” in the year 2007-2008 mainly on the following grounds:- (i) that in the earlier years, the very reporting officer/reviewing authority awarded “Very Good” for the years 2005-2006 and 2006-2007 and the very reporting officer/reviewing authority has given below benchmark “Good” for the year 2007-2008 and therefore the same is arbitrary and there is no basis to award the below benchmark – “Good”; (ii) that before the below benchmark ACR “Good” for the year 2007-2008, no opportunity was given to the respondent officer to improve himself and no deficiency was pointed out; and (iii) that no opportunity was given to the respondent officer to make representation against the proposed below benchmark ACR of the year 2007-2008. While giving the aforesaid findings and while arriving at the aforesaid final conclusion, the Tribunal as well as the High Court have heavily relied upon the decisions of this Court in the case of **Sukhdeo (supra)**; **Dev Dutt (supra)**; **Abhijit Ghosh Dastidar (supra)** and **Sukhdev Singh (supra)**. However, on considering the aforesaid decisions, it emerges that in the aforesaid cases, the adverse ACRs either were not communicated at all and/or on facts found to be inconsistent and suffering from lack of bona fides.

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A 6.1 In the case of **Dev Dutt (supra)**, this Court has held in paragraphs 36 and 37 as under:-

“**36.** In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no rule/G.O. requiring communication of the entry, or even if there is a rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

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“**37.** We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.”

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6.2 In the instant case, the respondent was graded as “Very Good” in the ACRs for the years 2005-06 and 2006-07. However, in the year 2007-08 he was graded only “Good” despite the fact that for all the three years, the reporting and reviewing officer were same. In the case of **Dev Dutt Vs. Union of India - [(2008) 8 SCC 725]**, it was observed that all entries in the ACR of a public servant must be communicated to him within the reasonable period so that he can make a representation for his upgradation despite there being no rule or government order to that effect. Pursuant to the judgment in **Dev Dutta (supra)**, OMs dated 14.05.2009 and 13.04.2010 were issued by the appellant herein. The same are extracted as under:

“ANNEXURE P-2 A

No. 2101 1/1/2005-Estt (A) (Pt-II)

Government of India

Ministry of Personnel, Public Grievances and Pensions

(Department of Personnel and Training) B

North Block, New Delhi, 14th May, 2009

OFFICE MEMORANDUM

Subject:- Maintenance and preparation of Annual Performance Appraisal Reports-communication of all entries for fairness and transparency in public administration. C

The undersigned is directed to invite the attention of the Ministries/ Departments to the existing provisions in regard to preparation and maintenance of Annual Confidential Reports which inter-alia provide that only adverse remarks should be communicated to the ‘officer reported upon for representation, if any. The Supreme Court has held in their judgment dated 12.5.2008 in the case of Dev Dutt vs. Union of India (Civil Appeal No. 7631 of 2002)’ that the object of writing the confidential report and making entries is to give an opportunity to the public servant to improve the performance. The 2nd Administrative Reforms Commission in their 10th Report has also recommended that the performance appraisal system for all services be made more consultative and transparent on the lines of the PAR of the All India Services. D

2. Keeping in view the above position, the matter regarding communication of entries in the ACRs in the case of civil services under the, Government of India has been further reviewed and the undersigned is directed to convey the following decisions of the Government: F

- (i) The existing nomenclature of the Annual Confidential Report will be modified as Annual Performance Assessment Report (APAR). G
- (ii) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority wherever H

- A such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached to officers, such communication shall be made after the reporting officer has completed the performance assessment.
- B (iii) The section entrusted with the maintenance of APARs after its receipt shall disclose the same to the officer reported upon.
- (iv) The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observations contained in the report leading to assessment of the officer in terms of attributes, work output etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the concerned officer on or before fifteen days from the date of disclosure, the APAR will be treated as final.
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- E (v) The new system of communicating the entries in the APAR shall be made applicable prospectively only with effect from the reporting period 2008-09 which is to be initiated after 1st April, 2009.
- F (vi) The competent authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the material placed before him within a period of thirty days from the date of receipt of the representation.
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- H (vii) The competent authority after due consideration may reject the representation or may accept and modify the APAR accordingly. The decision of the competent authority and the final grading shall be communicated to the officer

reported upon within fifteen days of receipt of the decision A
of the competent authority by the concerned APAR Section.

3. All Ministries/Departments are requested to bring to the notice
of all the offices under them for strict implementation of the above
instructions.

(C.A. Subramanian)

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Director

ANNEXURE P-3

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No. 21011/1/2010-Estt.A

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

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North Block, New Delhi

Dated the 13th April, 2010

OFFICE MEMORANDUM

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Subject: Below Benchmark gradings in ACRs prior to the reporting period 2008-09 and objective consideration of representation by the competent authority against remarks in the APAR or for upgradation of the final grading.

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The undersigned is directed to say that prior to the reporting period 2008-09, only the adverse remarks in the ACRs had to be communicated to the concerned officer for representation, if any to be considered by the competent authority. The question of treating the grading in the ACR which is below the benchmark for next promotion has been considered in this Department and it has been decided that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of

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- A such communication, it may be noted that only below benchmark ACR for the period relevant to promotion need be sent. There is no need to send below benchmark ACRs of other years.
- B 2. As per existing instructions, representations against the remarks or for upgradation of the final grading given in the APAR (previously known as ACR) should be examined by the competent authority in consultation, if necessary, with the Reporting and the Reviewing Officer, if any while considering the representation, the competent authority decides the matter objectively in a quasi-judicial manner on the basis of material placed before it. This would imply that the competent authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the views of the Reporting and Reviewing officer if they are still in service on the points raised in the representation vis-à-vis the remarks/gradings given by them in the APAR. The UPSC has informed this Department that the Commission has observed that while deciding such representations, the competent authorities sometimes do not take into account the views of Reporting/Reviewing Officers if they are still in service. The Commission has further observed that in a majority of such cases, the competent authority does not give specific reasons for upgrading the below benchmark ACR/APAR gradings at par with the benchmark for next promotion.
- C 3. All Ministries/Departments are therefore requested to inform the competent authorities while forwarding such cases to them to decide on the representations against the remarks or for upgradation of the grading in the APAR that the decision on the representation may be taken objectively after taking into account the views of the concerned Reporting/Reviewing Officers if they are still in service and in case of upgradation of the final grading given in the APAR, specific reasons therefore may also be given in Inc order of the competent authority.
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(C.A. Subramanian)

Director”

- H On perusal of OM dated 14.05.2009, it is noted that the new system of communicating the entries in Annual Performance Assessment Report (APAR) provides that the same should be communicated within a period

of fifteen days from the date of receipt of the entries in the APAR. The new system is applicable prospectively with effect from the reporting period 2008-09, which is initiated after 01.04.2009.

6.3 Further as per OM dated 13.04.2010, it has been stated that the question of treating the grading in the ACR which is below the benchmark for next promotion has been considered by the Department and it has been decided that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPCs contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation if any, within fifteen days of such communication and only below benchmark ACR for the period relevant to promotion need be sent. There is no need to send below benchmark ACRs of other years.

7. In the instant case, the below benchmark ACR reporting the period from 01.04.2007 to 31.03.2008 was communicated to the respondent vide communication dated 08.06.2010 in respect of which representation was made by the respondent on 19.06.2010. The same was rejected as per the communication dated 01.10.2010. According to the respondent, the reviewing officer was due for retirement on 31.03.2008 and the respondent submitted self-appraisal report on 15.04.2008 for the period 01.04.2007 to 31.03.2008 and reporting officer graded as "Good" on 17.04.2008. Further, reviewing officer signed and accepted the same without any date in spite of fact that he had retired on 31.03.2008 as per Annexure A-6 to the application filed by the respondent before the Tribunal. According to the respondent, his representation was not being objectively considered. In the circumstances, Departmental Screening Committee subsequently assessed him unfit for grant of promotion i.e., grant of NFU in SAG of ITS Group-A.

8. The Tribunal on perusal of Annexure A-4/being ACRs for three years i.e., 2005-06, 2006-07 and 2007-08 has noted that for the year 2007-08 highly damaging remarks have been recorded by the same reporting authority and endorsed by the same reviewing authority. The remarks are totally opposite to those entered by the same authority previous years. The comparison of the remarks made in the ACRs for the year 2007-08 and for the years 2005-06 and 2006-07 have been

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- A made and extracted in paragraphs 4 and 5 of the order of the Tribunal.
The same are extracted as under:

- B “4. We agree with the respondents that an officer need not earn the same grading every year and the grading could be different each year based on his performance. If, this was not the case, the whole purpose of an annual assessment would stand defeated. However, a careful perusal of the copies of ACRs produced by the applicant at Annexure A/4 for the 3 years i.e. 2005-06, 2006-07 & 2007-08 shows that in the year 2007-08 highly damaging remarks have been recorded by the same reporting authority and endorsed by the same reviewing authority. Even in regard to matters which could be regarded as personal attributes as different from performance parameters – such as communication skills, capacity for appraisal, ability to weigh pros and cons before taking a decision, organizing capability, domain knowledge in respect of the area of work etc. the remarks appear to be virtually the opposite of those entered by the same authority in the previous years. To illustrate, the reporting authority had entered the following remarks in his ACR of 2005-06, 2006-07 and 2007-08 :-

ACR comments for the year 2005-06:

- E He has very good knowledge of technical field. Also level of application of related instructions was also very good. He has very good knowledge of administrative matters and his level of application related instruction was very good. He was willing to assume responsibility. He has very good organizing capability, motivating ability and timely and proper guidance giving capability. He has very good capacity/resourcefulness to anticipate problems in advance and to take action to handle such situations as well as unforeseen situations. He has very good quality of decision making and is able to weigh pros and cons of alternatives. He has good capability of communication and present arguments in oral and written way. He has very good skill and capacity of evaluating and recording performance of subordinates in an impartial and objective manner.

ACR Comments for the year 2006-07:

- H He has very good technical knowledge. He has very good administrative knowledge. He has very good capacity to set

targets. He can anticipate change, understood environment and contributed new ideas. He was generally willing to assume responsibilities. He has very good organizing capacity and was able to motivate and provide timely and proper guidance to subordinates. He could handle unforeseen situations at his own and was willing to take responsibility. He has good skill and capacity in evaluating and recording performance of subordinates in an impartial and objective manner.

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5. As against the aforesaid remarks, ACR of the officer for the year 2007-08 contains following remarks recorded by the same authority:

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Technical knowledge is good. Financial knowledge is poor. Administrative knowledge is very poor particularly in tender work/rulings application. He was always have to be chased to set targets for himself and subordinates. He hardly understood the environment in anticipating change and contributing new ideas/methods of work he was just average. He was never willing to assume responsibility, had poor organizing capacity and was average in motivating/providing timely and proper guidance to staff. He was incapacitated and very poor in anticipating problems and handle unforeseen situations on his own. He was never willing to take additional responsibility and new areas of work. He had very poor decision making quality and also very poor in weighing pros and cons of alternatives. He has average ability to communicate and present arguments in written and poor in verbal.”

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6. It would be clear from remarks entered for the year 2007-08 that they were clearly adverse which warranted communication to the officer within the time limits prescribed to enable him to submit his representation. Many of the remarks were the exact opposite of the positive attributes found in him in the previous years by the same authority. Admittedly, remarks were not communicated to the applicant within the time limits prescribed for such communication under the prevailing rules governing ACRs. There is also no evidence of the attention of the officer being drawn during the year itself to his falling standards along with necessary caution/advice so as to give him a chance to improve.”

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- A 8.1 The Tribunal has also noted that adverse remarks were not communicated to the respondent herein within the time limits prescribed for such communication under the prevailing rules governing the ACRs. Further attention of the officer was not drawn during the year itself, to supposed falling standards along with necessary caution/advice so as to give him a chance to improve. The Tribunal has further noted that it is not the case of below benchmark grading but a case of recording adverse remarks in the extreme. That the representations made by the respondent were not considered objectively, dispassionately, and fairly as there were contradiction in the qualities or attributes communicated in the said ACRs which were wholly contradictory to each other. In the circumstances,
- B the Tribunal held that “adverse remarks made for the year 2007-08 were sweeping, extreme, and inconsistent with the previous remarks. Hence it was held that the rejection of the representation was unjustified and the same was set aside. It was further observed by the Tribunal that the assessment of 2007-08 were clearly arbitrary and inconsistent and ought not to be allowed to stand in the way of proper assessment of the respondent by the Screening Committee for his suitability to be promoted to a higher grade. Hence, a direction was issued to the Screening Committee to consider and reassess the suitability of the respondent herein for the purpose of grant of SAG by excluding the ACR of 2007-08 and if the respondent was found suitable for grant of consequential
- C benefits. Against the order of the Tribunal the Union of India, the appellant herein preferred a writ petition before the High Court, which reiterated what had been observed by the Tribunal in paragraph 6 of its order and dismissed the writ petition.

- F 9. On perusal of what has been extracted by the Tribunal from the ACRs of 2005-06, we note that the respondent has been graded as “Very Good” since he has *very good knowledge in technical field as well as of administrative matters; willing to assume responsibility; has good organizing capability; motivating ability and timely and proper guidance giving capability. The respondent has the capacity/resourcefulness to anticipate problems in advance as well as unforeseen situations. He has very good quality decision-making ability and is able to weigh pros and cons of alternatives and good capability of communication and present arguments in oral and written manner and good skill and capacity of evaluating and recording performance of subordinates in an impartial and objective manner.*

Similarly in the remarks for the year 2006-07, it has been written that the respondent has *very good technical knowledge as well as administrative knowledge. He has very good organizing capacity and was able to motivate and provide timely and proper guidance to subordinates. He has good skill and capacity in evaluating and recording performance of subordinates in an impartial and objective manner.*

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As against the aforesaid favourable remarks for the previous two years, in the year 2007-08 it has been stated that *though the technical knowledge of the respondent is good, his financial and administrative knowledge is poor; that he has hardly understood the environment in anticipating change; that he was never willing to assume responsibility, and had poor organising capacity and cannot anticipate problems and unforeseen situations and does not take additional responsibility and has poor decision-making quality and average ability in communication and presenting case problems.*

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10. Therefore, in view of the above and in the facts and circumstances of the case and considering the fact that though the respondent was graded as "Very Good" in the ACRs for the years 2005-2006 and 2006-2007 and was graded only "Good" in the ACR for the year 2007-2008 by the very same reporting and reviewing officer, despite the fact that specifically the respondent was given the opportunity against the ACR for the year 2007-2008. However, no valid reasons are given for rejecting the representation, we are of the opinion that in view of the aforesaid facts and circumstances, the learned Tribunal and the High Court have not committed any error in directing the Department to call for a review meeting of the Screening Committee to re-assess the suitability of the respondent for the purpose of grant of SAG and while doing so to exclude the ACR for the year 2007-2008. Therefore, in the facts and circumstances of the case, no interference of this Court is called for.

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In view of the above and for the reasons stated above, present appeal fails and the same deserves to be dismissed and is accordingly dismissed.

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