



2024:DHC:8250-DB



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

*Reserved on: 18.10.2024*

*Pronounced on: 24.10.2024*

+ W.P.(C) 15281/2023

GOPAL MOHAN ATRI

.....Petitioner

Through: Mr. Arvind Kumar Nigam, Sr.  
Advocate with Mr. Manish  
Sangwan and Mr. Ashwani  
Tehlan, Advocates

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Harish Vaidyanathan  
Shankar, CGSC with Mr. Srish  
Kumar Mishra and Mr.  
Alexander Mathai Paikaday,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

### **J U D G M E N T**

#### **SHALINDER KAUR, J**

1. The petitioner, who is an officer of 1990 Batch of the Army Ordnance Corps (in short "AOC") and is presently serving in the rank of Brigadier and posted as the Head, Faculty of Higher Ordnance Management, College of Material Management (in short "CMM"), has approached this Court under Article 226 of the Constitution of India, assailing the Order dated 14.09.2023, passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short "Tribunal") in Original Application (in short "OA") bearing No. 2663/2021, whereby the learned Tribunal has dismissed the



petitioner's OA. The petitioner has also challenged the Orders dated 18.06.2021 and 07.09.2021 passed by the respondents.

2. Before dealing with the rival submissions of the parties, we may note the factual background of the case as emanating from the record. The petitioner was commissioned in the Indian Army on 09.06.1990 and earned promotions based on his professional competence. He was promoted to the rank of Colonel in April, 2009 and was later promoted to the rank of Brigadier in March, 2018.

3. It is the case of the petitioner that during the span of his career, he has performed exceptionally well and has topped all the professional courses. He has consistently maintained a high grading of an Alfa Instructor (in short "AI") and a Qualified Instructor (in short "QI") in various courses undergone by him. He also holds the best profile in his batch and has served in various sectors. In addition to his accolades as an Army officer, the petitioner has also obtained further educational qualifications, which are MBA, MMS, M.Phil and a PhD degree. The petitioner also claimed that he has maintained an "Outstanding" profile during the reckonable period for his promotion since April, 2009.

4. Upon being promoted to the rank of Colonel, he was initially posted as the Commanding Officer of 24<sup>th</sup> Division Ordnance Unit (in short "DOU"), and he received four Confidential Reports (in short "CRs"), wherein, the petitioner in the three CRs has been assessed as "Outstanding" with a Box Grading of '9' by his Initiating Officers (in short "IO"). However, in the first Impugned CR for the period from



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April, 2009 to August, 2009, he was downgraded by the Reviewing Officer (in short “RO”) and by the Senior Reviewing Officer (in short “SRO”).

5. Thereafter, the petitioner was selected for the prestigious High Defence Management Course (in short “HDMC”) at the College of Defence Management (in short “CDM”) from May, 2012 to March, 2013, which he successfully completed. He was, then, retained and posted as an Instructor at the CDM w.e.f. March, 2013 to May, 2016. During this period, he has earned four CRs, all of which are “Outstanding” with a Box Grading of ‘9’ by the IOs.

6. On completion of his tenure at the CDM, the petitioner was posted as Colonel (Ordnance) at the Headquarter (in short “HQ”), Northern Command, wherein he officiated as the Major General - AOC. During the period from May, 2016 to February, 2018, the petitioner earned two CRs, both being “Outstanding” with a Box Grading of ‘9’ by the IO.

7. On 09.03.2018, the petitioner was posted as Brigadier (Ordnance) HQ, II Corps. from March, 2018 to October, 2019, during which period, he earned two CRs, with a Box Grading of ‘9’ by all the Reporting Officers except for the down gradation of the petitioner by the RO in the second Impugned CR for the period from July, 2018 to June, 2019. He was considered for nomination for the National Defence College (in short “NDC”) course/equivalent courses in October, 2019 but was not nominated despite his excellent professional record. Later, he was posted as Commandant, Central



Ordnance Depot (in short “COD”), Delhi Cantonment from 25.10.2019 to 05.11.2021, where the petitioner earned four CRs, which are also “Outstanding” with a Box Grading of ‘9’ by the IOs. Subsequent thereto, while being posted at CMM, Jabalpur, Madhya Pradesh, where he presently serves, the petitioner has earned two CRs in the relevant time, both of which are graded as “Outstanding” by all the Reporting Officers.

8. Meanwhile, in the month of October, 2019, the petitioner was considered for the NDC course and for promotion to the rank of Major General by the No. 1 Selection Board (in short “SB”) in the month of August, 2020, however, he was not empanelled. At that time, his first and second Impugned CRs i.e. April to August, 2009 and July, 2018 to June, 2019 respectively were taken into consideration while assessing his case for the said promotion. Subsequent thereto, the petitioner was given a second consideration for NDC course in October, 2020 but was, again, neither nominated for the NDC course nor for the Advance Professional Programme in Public Administration (in short “APPPA”) course. The two Impugned CRs were again the reason for his non-selection / nomination.

9. Aggrieved by his non-empanelment, the petitioner submitted a non-statutory complaint dated 23.10.2020, in which, the petitioner challenged his three CRs, which are as below:-

- (i) CR for the period 09.04.2009 – 31.08.2009 (CR April-August, 2009),
- (ii) CR for the period 01.09.2010 – 20.06.2011 (CR



September, 2010 – June, 2011) and,

- (iii) CR for the period 01.07.2018 – 30.06.2019 (CR July, 2018 – June, 2019).

10. The aforesaid complaint was disposed of *vide* Impugned Order dated 18.06.2021 and the petitioner was granted a partial redressal by the respondents thereby expunging the overall Box Grading of the RO in the second Impugned CR from July, 2018 to June, 2019, however, the other two CRs were held to be valid. Following which, in October, 2021, a special review (fresh) consideration for the NDC course was made in favour of the petitioner and he was again not nominated for the said course or for the APPPA course due to the aforementioned other two CRs.

11. Subsequent thereto, the petitioner was intimated *vide* the Impugned Order dated 07.09.2021 that the entire “Outstanding” assessment of IO earned by him as the Commandant, COD and as reflected in the third Impugned CR from July, 2020 to February, 2021 has been expunged holding it to be inflationary. This led to filing of the OA before the learned Tribunal, challenging the Order dated 18.06.2021, whereby the respondents had been granted only a partial redressal through expunction of Box Grading by the RO at paragraph 13 in the second Impugned CR for the period from July, 2018 to June, 2019, however, with respect to the first Impugned CR for the period from April to August, 2009 and other CR for the period September, 2010 to June, 2011, the same was observed to be well corroborated, performance based and technically valid. In addition, the petitioner



also assailed the Order dated 07.09.2021 observing that the third Impugned CR for the period from July, 2020 to February, 2021, was expunged being inflationary in terms of paragraph 148 of AO 02/2016/MS.

12. The learned Tribunal, however, agreed with the respondents and concluded that the respondents have fairly considered the non-statutory complaint of the petitioner and disposed it of on the merits of the case. The learned Tribunal further held that none of the CRs merited any interference as the petitioner had been given his due considerations for nomination to the NDC course / equivalent courses and the No. 1 SB, however, the petitioner could not be nominated for the said courses nor been empanelled by the No. 1 SB due to his overall comparative merit amongst those considered. Consequently, the learned Tribunal dismissed the said OA, leading to the filing of the present writ petition impugning three CRs of the petitioner. Notably, the petitioner has given up the challenge to one of the CR for the period from 01.09.2010 – 20.06.2011.

#### **SUBMISSIONS BY THE PETITIONER**

13. Mr. Arvind Kumar Nigam, learned Senior Counsel for the petitioner, in support of the submissions made in the writ petition, contended that the assessment of an officer for the purpose of recording his CR has to be done objectively, fairly and dispassionately, founded upon the facts and circumstances of an individual's performance. He, by drawing our attention to paragraph 5 contained in Part-I of 'General Instructions of AO-02/2016/MS'



submitted that the guidelines outline the importance of recording the CRs instructing the superior officers to be impartial in recording their assessments. The objectivity and consistency, being the fulcrum for recording the CRs of Force personnel / officers, the superior officers should not derail from diligently following administrative orders, rules and regulations, while recording the CRs, otherwise, it may jeopardise the career advancement of such Force personnel / officers.

14. He pointed out that the learned Tribunal failed to consider that the CRs for the periods from April, 2009 to August, 2009 and July, 2018 to June, 2019 do not reflect objectivity and consistency and the same are not performance based assessments. More so, the expunction of the IO's assessment with respect to the CR for the period from July, 2020 to February, 2021 is erroneous and in contravention to their guidelines and policies. In this background, he submitted that the learned Tribunal failed to appreciate that the respondents had acted in contravention of their own rules and regulations as the procedure adopted by the concerned superior officers was contrary to the laid down rules which has caused grave prejudice to the petitioner.

15. The learned Senior Counsel submitted that in so far as the CR for the period from April, 2009 to August, 2009 is concerned, the respondents made illegal and arbitrary assessments, which suffer from inconsistency between the actual performance of the petitioner and the reporting made by the RO and SRO during the relevant period. Though, the IO has assessed the petitioner as “Outstanding” with Box Grading of ‘9’, however, both the RO and SRO have downgraded his



assessment to '8' that is 'Above Average'. He submitted that this arbitrary downgrading without providing any cogent reasons has not only affected the merit of the petitioner but has also undermined his overall service profile.

16. He submitted that the RO and SRO have not taken into account the recommendations and commendations that the petitioner has received for his excellent and noteworthy performance during the same period. In fact, because of the effective command and leadership of petitioner as Commanding Officer, his Unit was awarded the 'Best Unit Award'. Thus, the reporting by the RO as well as SRO lack objectivity in assessing the performance and potential of the petitioner, which is inconsistent and incompatible with his service profile during the relevant period.

17. Learned Senior Counsel further submitted that in so far as the CR for the period from July, 2018 to June, 2019 is concerned, the petitioner was granted partial redressal by the respondents as they expunged the Box Grading given by the RO, but without expunging the other figurative assessments, which indeed were also 'subjective' and 'inconsistent'. He vehemently submitted that the Box Grading is primarily based upon the figurative assessments and in the absence of Box Grading, the figuratives could not be sustained.

18. While drawing our attention to paragraph 35 of 'Guidelines for Rendering Confidential Reports' issued by respondent no. 3, the learned Senior Counsel submitted that there could not be a mismatch between the Box Grading and individual qualities. As a matter of fact,





the Box Grading is a reflection of the figurative assessments of an officer. He submitted that in the case of petitioner, the expunction of Box Grading only means that the Box Grading from 'Above Average' has been changed to 'Outstanding' though, the figurative assessment remains 'Above Average', which is a glaring contradiction in itself. In these circumstances, the learned Senior Counsel submitted that necessarily, the whole assessment of the RO was required to be expunged.

19. Mr. Nigam further submitted that with respect to CR for July, 2020 to February, 2021, the entire 'Outstanding' assessment of the IO has been expunged, holding it to be inflationary, which is not only illegal but also arbitrary. He submitted that the respondents had been indifferent and insensitive while dealing with the CR of the petitioner. They have adopted an inconsistent approach as in the second CR for the period from July, 2018 to June, 2019 only the Box Grading of RO was expunged without touching the figurative assessment, however, in the third CR for July, 2020 to February, 2021, the entire assessment of the IO has been expunged, reflecting the arbitrariness on the part of the respondents.

20. The learned Senior Counsel further pointed out that the petitioner had an outstanding service record throughout, except in the CR for the period from April, 2009 to August, 2009 and the CR for the period from July, 2018 to August, 2019 wherein the RO has assessed the petitioner as 'Above Average'. The said CRs, he submitted, were inconsistent reports, which in no manner



commensurate with the performance of the petitioner.

21. He, therefore, prayed that the writ petition be allowed and in the light of these considerations, the Impugned Orders as well as the assessments by the RO and SRO in the first Impugned CR for the period from April to August 2009 and RO in the second Impugned CR for the period from July, 2018 to June, 2019 be set aside. Further, the expunged assessment by the IO in the third Impugned CR for the period from July, 2020 to February, 2021 be restored and the petitioner be considered afresh for nomination of NDC course / equivalent courses as well as for promotion to the rank of Major General by No.1 SB.

#### **SUBMISSIONS BY THE RESPONDENTS**

22. *Per contra*, Mr. Harish Vaidyanathan Shankar, learned counsel for the respondents sought for dismissal of the writ petition at the threshold, and urged that this petition should not be entertained. He contended that even though this Court has the powers of judicial review, it cannot analyse the orders of the learned Tribunal as an Appellate Authority. The power of judicial review can be exercised only where the findings of the learned Tribunal has failed to consider that the CR is technically invalid for being in contravention of any rule or procedure or that it establishes bias or *malafide* by the Reporting Officer. Thus, the jurisdiction of this Court is supervisory and while exercising it, this Court is not to act as a Court of appeal. He further submitted that the writ petition is not maintainable since



the order of the learned Tribunal is detailed, well reasoned and suffers from no illegality.

23. Mr. Vaidyanathan urged that the assessment of an officer for the purpose of recording of the CR is made by three different reporting officers that are the IO, RO and the SRO, whose assessments are independent of one another. On the basis of numerical values from 9 to 1, the grading as 'Outstanding' to 'Below Average' is made. However, no officer has any right to claim a particular grading, which in fact is made on the basis of an objective assessment of the concerned officer's performance. Moreover, while considering an officer for promotion, the SB takes into account a number of facts based upon the overall profile of an officer and comparative merit within the batch as evaluated by it. The recommendations of the SB are then to be approved by the Competent Authority, that is the Chief of the Army Staff (CoAS) or the Central Government, as applicable to the respective SB.

24. The learned counsel submitted that in the present case, the respondents have acted fairly while assessing the performance of the petitioner and reported the same in the Impugned CRs. He submitted that the respondents have in no manner transgressed the limits as provided under the guidelines, rules and regulations essential for recording the CRs of the petitioner.

25. He further submitted that the overall profile of the petitioner was examined in all aspects while assessing his performance for recording the Impugned CRs by all the Reporting Officers, which are



well corroborated, performance based and technically valid, thus, do not require any interference by this Court.

26. Moreover, the petitioner was not empanelled for promotion by No. I SB as a special review (fresh) held in April, 2020 due to being low in merit. He elaborated that it is immaterial that the past record of the petitioner was 'Outstanding' as there is no obligation on the authorities to consider the past performance of the officer while recording the CR for a particular period. He submitted that a CR could not be merely expunged solely for the reason that the same has been downgraded in comparison to the previous CRs of the officer, it is only when it is shown that there has been violation of a prescribed procedure or there are technical faults for expunging the assessment are made out, the relevant CR is then liable to be expunged.

27. By referring to the Additional Affidavit dated 24.08.2024 filed by the respondents in pursuance to the order of this Court passed on 24.07.2024, he submitted that the officers for the NDC course are governed by a policy letter no. 04485/MS dated 24.01.2018 on 'Nomination of Officers on NDC course and APPPA'. As per paragraph 13(a) of which, an officer is required to meet the policy requirements / eligibility criteria for detainment / nomination for NDC course. In view of the above policy provision, the learned counsel submitted, that the petitioner was given two considerations for NDC-60 and NDC-61 as Look-I and Look-II in normal course. The petitioner got partial redressal in his CR for the period from July, 2018 to June, 2019 *vide* Order dated 18.06.2021. On the basis of the



redressal and other eligibility criteria, he was given two additional Looks as Review-I and Review-II for NDC-62 and NDC-63.

28. He contended that the petitioner was promoted to the rank of Brigadier on the recommendations of the SB No. 2 as his Impugned CR for the period from April, 2009 to August, 2009 was also considered, therefore, he cannot now be permitted to assail such CR which had earlier formed the basis for his promotion.

29. The entire range of circumstances, the learned counsel submitted, thus, suggest that the petitioner has been accurately assessed by the respondents based on his performance and relevant attributes, therefore, no interference is required from this Court. In support of his contentions, the learned counsel placed reliance on the decision in *Brig. Rohit Mehta vs. Union of India & Ors.*, W.P. (C) 15167/2023.

#### ANALYSIS AND CONCLUSION

30. We have carefully considered the submissions addressed on behalf of the parties and perused the record submitted before us.

31. To begin with, we may note that ordinarily, this Court would not exercise its discretionary jurisdiction under Article 226 of the Constitution of India to interfere with the assessment and recording of CR of an officer by his superior unless there is a doubt about impartiality and fair assessment by such superior while assessing the performance of the concerned officer and in recording remarks about his performance or in a case where such assessment has been made



with malafide or with a bias. At the same time and even though we are conscious of the fact that military and paramilitary Force personnel are governed by special statutes which are complete codes in themselves and the prescribed procedure laid down therein is to be followed in cases governed by it, however, it does not place an embargo on this Court to exercise its powers under Article 226, where such a case is squarely covered by the aforesaid parameters of misjudging the performance, as held by catena of decisions of the Supreme Court as well as the Co-ordinate Benches of this Court.

32. It is well established by the Supreme Court in various judgements such as in *Shama Prashant Raje vs Gapatrao and Others* (2000) 7 SCC 522 and *Tulsidas Paul vs Second Labour Court, W.B. and Others* (1972) 4 SCC 205 regarding the scope of judicial review with respect to the decision of a Tribunal and it has been held that while exercising the power of judicial review, the High Courts must limit their role and interfere only if any legal error has been committed in the decision making process. It cannot enter into the merits of the decision. Furthermore, while exercising the power of judicial review, the Court should not sit in appeal as an Appellate Court and must remain confined to see whether the decision has been made in accordance with the settled principles of law.

33. Having noted the legal position regarding the use of power of judicial review to interfere with the decision of a Tribunal, at this stage itself, it would be apposite to note the observations of the learned Tribunal while dismissing the OA of the petitioner. The



relevant extracts of the Impugned Order dated 14.09.2023 read as under:-

*“18. At the time of No 1 SB held in Aug 2020, there were a total of 13 CRs covering the period 04/2009 to 04/2020 in the reckonable profile. Of these 13 CRs, 10 CRs were in the rank of Col and three were in the rank of Brig. In the Col's rank, in the overall profile, the applicant had 80% box grading as outstanding, with the balance being above average. In the criteria appointments, he had 70% box grading as outstanding with the balance 30% as above average. In the technical reports, the applicant had 87% outstanding box grading with the balance 13% being above average. In the Brig's rank, he had 89% box grading as outstanding with 11 % of the box grading as above average. There are no 7s or weak remarks in any of the reports. The pen pictures are complementary and all ROs have made positive recommendations for promotion and employment.”*

*19. It is the applicant's prayer that since the RO's box grading in CR-3 has been expunged on grounds of subjectivity and inconsistency, the whole assessment of the RO would suffer from similar inconsistency and subjectivity and thus the entire RO's report ought to have been expunged. We have examined this CR in detail and we are of the opinion that the figurative assessment and overall grading by the RO are comparable and commensurate with the profile of the officer in the reckonable period and therefore the CR does not merit any further interference. As regards the expunction of the IO's assessment in CR-4, the internal assessment examined the CR and concluded that the assessment was in gross difference to that of the average CR rating in the past. Thus, the IO's grading was found to be not in consonance with the past profile of the officer. The assessment also indicated that it was a near-perfect 9 point report and gradings were thus inflatory. The case was approved for expunction by the competent authority on 18.08.2021 and the applicant was informed of the expunction vide letter dated 07.09.2021.*

*20. Though not part of the reckonable profile in Aug 2020 consideration, it is seen from the CR dossier that in yet another report covering the period 03/2022 to 07 /2022,. the RO's assessment had been found to be inflatory and has been expunged by the competent authority on 24.01.2023.*



However, this expunction has not been intimated to the applicant since as per Para 137 of Army Order 2/2016/MS the applicant is only required to be intimated about the expunction of the IO's report. Para 137 is reproduced below:

137. A ratee will not be communicated any portion of assessment by second/ higher level reporting officers except in the following cases: -

(a) Lower than Average marks (i.e. 6 or less) in any of the PQs/DPV/ TPV /QsAP or box grading (as applicable in CR forms promulgated by MS Branch from time to time).

(b) Adverse remarks in the pen picture.

(c) When ratee is Not Recommended for promotion.

21. The issue regarding intimation to a ratee, of only the expunction of IO's report, has already been examined by us in our order dated 16.11.2022 in OA 1248/2022 **Maj Gen SPS Siddhu v. UoI** wherein we have directed the respondents to review the policy on communication of the 2nd / higher ROs' assessments to the ratee and make necessary amendments to include intimation of partial/complete expunction of such reports.

NDC Consideration

22. Nomination of officers to NDC/equivalent course is governed by the MS Branch policy letter dated 24.06.2018. Under this policy, each officer is given two considerations. The AOC has one vacancy on NDC each year and an additional vacancy on APPA course every alternate year. The applicant was granted two considerations in Oct 2019 and Oct 2020 for the course commencing in Jan 2020 and Jan 2021 respectively. However, based on his overall comparative merit amongst those considered he was not nominated. Consequent to the relief granted in the non-statutory complaint, the applicant was given two additional fresh considerations for nominations to NDC course in Oct 2021 and Nov 2022, for the course commencing in Jan 2022 and Jan 2023 respectively. Based on the statutory complaint dated 10.04.2023, the applicant was granted partial redressal vide order dated 18.08.2023 and this redressal was factored in during the consideration in Nov 2022. The details of the consideration are summarized below.

Ser	Consideration	No of Vac for AOC	Remarks
(a)	Oct 2019	NDC-01	Considered-09





	<i>NDC-60 (Jan 2020)</i>	<i>APPA-01</i>	<i>Merit-5<sup>th</sup></i>
<i>(b)</i>	<i>Oct 2020 NDC-61 (Jan 2021)</i>	<i>NDC-01</i>	<i>Considered-10 Merit-6<sup>th</sup></i>
<i>(c)</i>	<i>Oct 2021 NDC-62 (Jan 2022)</i>	<i>NDC-01 APPA-01</i>	<i>Fresh consideration after partial redressal in non- statutory complaint.  Considered-07 Merit-5<sup>th</sup></i>
<i>(d)</i>	<i>NDC-63 (Jan 2023)</i>	<i>NDC-01</i>	<i>Second fresh consideration after partial redressal in non- statutory complaint.  Considered-12 Merit-2<sup>nd</sup></i>

No 1 SB

23. We have examined the board proceedings of the various No 1 SB considerations given to the applicant. He was first considered as a fresh case by No 1 SB held in Aug 2020. The Board considered a total of 19 officers for a single vacancy. The 19 officers consisted of six including the applicant who were considered as fresh cases, with the balance of 13 being review cases. Consequent to the partial redressal given in the non-statutory complaint vide order dated 18.06.2021, the applicant was considered as a Special Review Fresh case by No 1 SB in Apr 2022. This Board considered 19 officers for 3 vacancies . The applicant was then considered as a First Review Special case by No 1 SB held in Feb 2023. The applicant remained non-empanelled in all these considerations due to his overall comparative merit amongst those under consideration. The details of the No 1 SB considerations are summarized below.

<i>Ser</i>	<i>No/SB</i>	<i>Consider- ation</i>	<i>BYOS</i>	<i>Remarks</i>
<i>(a)</i>	<i>Aug 2020 (AOC 1990 Batch</i>	<i>Fresh</i>	<i>1990</i>	<i>NE Merit- 94.841 Last offr-</i>



				95.823
(b)	<i>Partial redressal in non-statutory complaint vide Order dated 18.06.2021-</i>			
(c)	<i>Apr 2022 (AOC -1991 Batch)</i>	<i>Special Review (Fresh)</i>	<i>1990</i>	<i>NE Merit- 95.349 Last offr- 95.823</i>
(d)	<i>Feb 2023 (AOC 1992 Batch)</i>	<i>First Review Special</i>	<i>1991</i>	<i>NE Merit- 95.640 Last offr- 96.073</i>

34. What emanates from the above extracts of the learned Tribunal's order is that it agreed with the respondents and upon perusing the CR dossier of the petitioner, found no inconsistency or subjectivity in the assessments by the superiors while dealing with the three Impugned CRs (therein) of the petitioner. The learned Tribunal also did not find any merit in the petitioner's grievance that the Impugned CRs were inconsistent reports, which in no manner commensurate with his overall performance and held that the petitioner remained non-empanelled as a fresh case by No. 1 SB held in August, 2020 and again as a special review (fresh) case by No. 1 SB in April, 2022 and subsequently, in February, 2023, due to his overall comparative merit amongst those under consideration.

**April-August, 2009**

35. It can be seen from the above narration that the controversy at hand pertains to the issue whether the respondents acted in contravention of their own policies for rendering the CRs of the petitioner and thus, failed to adhere to the laid down procedures. Before us, the learned Senior Counsel for the petitioner submitted that



the learned Tribunal failed to appreciate that the respondents, while recording petitioner's CR for the period from April-August, 2009, overlooked his profile including the awards and commendations earned by him and passed the Impugned Order. He further submitted that while being at the post of Commanding Officer, 24<sup>th</sup> DOU, he earned four CRs at CDM and two CRs as Colonel (Ordnance) at Northern Command. He emphasised that all his reports were 'Outstanding' except for the first Impugned CR, that is, from April to August, 2009. Also, petitioner's Unit was adjudged as the Best Unit and that he was awarded CoAS' commendation. The learned Senior Counsel contended that in this background, the aforementioned CR is not commensurate with petitioner's demonstrated performance and prayed that the said CR be expunged.

36. It is no longer *res integra* that an officer cannot lay a claim for a particular grading as there cannot be a comparison of CRs. Merely because the petitioner has been graded as 'Outstanding' in the other three CRs while he was posted as Commanding Officer, 24<sup>th</sup> DOU, it does not mean that he should also have been graded as 'Outstanding' in the first Impugned CR. This is also highlighted by paragraph 118 of the AO 45/2001/MS, which reads as under

**"Objectivity in Reporting**

*118. In accordance with the aim as defined at Paragraph 5 above, the assessment contained in a CR will be restricted to the performance and potential as observed during the period covered by the report."*

37. The petitioner, thus, has failed to show any procedural lapse on



the part of RO or SRO while recording the Impugned CR for the aforesaid period. It is not in dispute that the Reporting Officers, being superior officers, have their own independent objective assessment and service experience. More so, the petitioner has not laid any claim that the said superiors exhibited any bias or acted malafidely while assessing his profile for his career progression. Further, the parties are *ad idem* on the fact that the petitioner has been promoted to the rank of Brigadier on the basis of said Impugned CR. We find that the learned Tribunal while adjudicating the OA filed by the petitioner has also not found any arbitrariness or bias on the part of the RO or the SRO while reporting the said CR of the petitioner or that the said superiors deviated from the established procedure / practice to be followed by them so as to render the said CR to be in contravention of the same.

38. At this stage, we may note the observations of the Co-ordinate Bench in the decision of **Brig. Rohit Mehta (supra)**, which reads as under:-

*“20. The grading/assessing of CR-5 of the petitioner herein is a result of a policy decision taken by the respondents after they have devised specific procedure/ mechanism after due deliberation. The CR-5 involved the due application of mind by not one, but as many as three officials being first the IO, then the RO and finally the SRO and that too at three different stages. Thus, there is no scope of overlap or connection inter se them. Needless to mention, each of the IO, the RO and the SRO are specialised experts in their respective fields. In view thereof, this Court is neither inclined to meddle nor dwell upon the correctness of the CR-5 of the petitioner. Even otherwise, as per settled law, this Court ought not to generally interfere where such factors are involved. This Court is fortified by **Jacob Puliyel v. Union of***



**India and Ors., 2022 SCC OnLine SC 533 wherein the Hon'ble Supreme Court has held as under:**

*"21..... It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary."*

*21. This is more so since there can be no straight jacket formula or fix benchmark or some yardsticks or specific prescribed guidelines for grading/ assessing by the IO, the RO or even the SRO as it all depends upon their respective discretion as also on the surrounding, intrinsic and extraneous circumstances involved in every case separately. As such, merely because the petitioner had previously been graded/ assessed as 'Outstanding' in CR-1, CR-2, CR-3, does not necessarily mean that he ought to be graded/ assessed as such even at the time of his CR-5. In any event, grading/ assessing by the IO or the RO or even the SRO, is not a matter of right. Thus, holding such would render any fresh CR, in this case the CR-5 of the petitioner, otiose. Therefore, since there can be no comparison of CRs, the petitioner cannot avail any benefit of any of his previous CRs be it CR-1, CR-2, CR-3 or for that matter CR-4.*

39. From the aforesaid extracts of the decision, it is evident that the IO, RO and the SRO are required to follow prescribed guidelines for



grading and assessing the Force personnel. In absence of any doubt raised with respect to lapses in procedure followed by them, no judicial review is called for as neither there can be a comparison of CRs of a Force personnel nor he can avail any benefit of his previous CRs. Thus, this Court's power of judicial review does not extend to re-assess a Force personnel and to overrule the assessment made by a Competent Authority in the matter of recording of CRs, since this Court cannot step into the shoes of the said Competent Authority. Therefore, in our view, the learned Tribunal has rightly observed that the first Impugned CR for the period from April – August, 2009 does not exhibit 'inconsistency' or 'subjectivity' and had refused to interfere with the Impugned CR. Accordingly, no interference is required with respect to the first Impugned CR.

**July, 2018 to June, 2019**

40. Now, turning to the second Impugned CR for the period from July, 2018 to June, 2019, the learned Senior Counsel for the petitioner vehemently submitted and in our view, rightly so, that if the Box Grading itself had been found to be subjective and inconsistent then necessarily the rest of the assessment by the RO would indeed suffer from the same subjectivity and inconsistency. Thus, in such circumstances, the complete assessment by the RO in the aforementioned CR was required to be expunged by the respondents.

41. Noticeably, during the aforesaid reckoning period of the second Impugned CR, the petitioner was posted as Brigadier, Ordnance-2 Corp. The IO had graded the petitioner as "Outstanding", however, the



RO had downgraded him as “Above Average”, though, thereafter, the SRO, had graded him as ‘Outstanding’. We do not find merit in the arguments raised on behalf of the respondents that even though the Box Grading by the RO was expunged, nonetheless, the figurative assessment reflected in the said CR was well corroborated and performance based.

42. It is not disputed that the Box Grading of the RO was expunged solely on the ground that the same suffers from ‘subjectivity’ and ‘inconsistency’. Once the Box Grading is opined to be such, a possibility cannot be ruled out that the entire assessment by the RO also suffers from similar ‘subjectivity’ and ‘inconsistency’. Therefore, the respondents could not have expunged only the Box Grading given by the RO while maintaining the assessment of potential qualities of the petitioner reported figuratively in the said CR. More so, when the said assessment appearing in Part-III of the CR proforma would be a basis for his promotion.

43. In this regard, reference is also made to paragraph 35(b) of the “Guidelines for Rendering Confidential Reports”, which is as under:-

**“35: (b) Box Grading.**

- i) Box grading represents overall assessment of performance as well as potential for promotion.*
- ii) Reporting offr must clearly differentiate between truly outstanding offr and others. Grading all offr outstanding would defeat the very purpose of appraisal system. Box grading reflects the quality of interplay amongst indl characteristics being assessed. It also reflects the performance and potential which are not being separately assessed but hold value for the org.*
- iii) Box grading is not meant to be a mathematical average of the awards in indl qualities. However, a total mismatch between awards in boxgrade and indl qualities*



*is also not in order. For instance, award of predominantly '9' in PQs/DPVs/QsAP with an award '8' in box, may not be in order."*

44. A reading of the above would show that while the Box Grading is not meant to be a mathematical average of the grading of individual qualities, however, a total mismatch between awards in Box Grading and individual qualities is also impermissible. Box Grading represents an overall assessment of performance as well as potential for promotion. It reflects the quality of interplay amongst individual characteristics being assessed. Once the Box Grading was not found to be equitable and dispassionate, the grading of individual qualities cannot be said with certainty to be fair. It must be remembered that the aim of a CR is to have an objective assessment of an officer's competence and all the Reporting Officers must, therefore, be fair and impartial in their assessments. Once the attribute of 'objectivity' is found to be lacking in the assessment by the Reporting Officer in the Box Grading, in our view, the other figurative gradings should also have been expunged.

45. To dwell further, we have also examined the original CR dossier of the petitioner produced by the respondents before us in the Court. From the records, we find that the pen picture endorsed by the RO does not match with the figurative assessment made by him in Part-III of the second Impugned CR, specifically, when the RO has endorsed that the report by the IO is "justified" and has not found the same to be liberal/strict. Therefore, in our considered view, once the respondents found the assessment by the RO in Box Grading as





‘subjective’ and ‘inconsistent’, they could not have expunged only the Box Grading while retaining the figurative assessment by the RO.

46. Ideally, the respondents should have expunged the entire reporting made by the RO as some part of it admittedly being ‘subjective’ would impact the career progression of the petitioner. In case, the assessment is not ‘balanced’ and ‘consistent’, same cannot be relied upon as the basis for petitioner’s promotion. In view thereof, the entire assessment including the figurative assessments by the RO cannot be sustained and needs to be expunged from the second Impugned CR for the period from 01.07.2018 to 30.06.2019.

**July, 2020 to February, 2021**

47. Insofar, the argument of the petitioner challenging the findings of the learned Tribunal being erroneous with respect to the third Impugned CR (CR-4 therein) for the period from 01.07.2020 to 28.02.2021 goes, the learned Senior Counsel submitted that the respondents have arbitrarily expunged the reporting of the IO in *toto* on a frivolous ground of internal assessment according to which the reporting of IO was violative of the guidelines as well as the norms and was erroneously held to be inflationary in nature.

48. He drew our attention to the Guidelines dated 14.10.2013 and submitted that all the CRs received in MS Branch, CRD Libraries are subjected to internal assessment in order to ensure that the same are technically valid and objective in reporting so that necessary and timely corrective actions can be undertaken to resolve the inconsistencies, if any. He submitted that to conduct internal



assessments, the CRs are separated for detailed examination to find out if they suffer from 'Technical Defects' or with 'Assessment Variations'. For analysing the CRs on both the parameters, various assessment validations are required to be made.

49. He submitted that the CRs are considered to be inflated assessments where award of '9' points in the Box Grading are given without an adequate justification in the pen picture, hence indicating an inflatory reporting and inconsistency, thus, will be put through a detailed scrutiny. He pointed out that in case of assessment of a 'Brigadier' having 13 or more '9s' out of 16 figuratives along with box grading of '9' is defined as a Near Perfect Nine (in short "NPN") assessment.

50. In the present case, the learned Senior Counsel submitted that the CR of the petitioner contained 13 '9s' out of 16 figuratives with a Box Grading of '9' and therefore, it was considered as an NPN. More so, the respondents do not contend that while conducting internal assessment, the IO's figurative and Box Grading was not found to be in consonance with his pen picture. Since it was an NPN report, his case was approved for expunction by the competent authority being inflationary.

51. He further submitted that in case the assessment is found to be inflated, a counselling letter is issued to the Reporting Officer for endorsing such assessment, therefore, a possibility cannot be ruled out that in order to escape such counselling which may reflect upon the assessment of the Reporting Officer, he may usually not grade the



‘ratee’ appropriately which is not so with the petitioner, therefore, figurative ratings of the IO could not have been doubted and expunged considering it to be an NPN case.

52. The learned Senior Counsel submitted that the petitioner had received similar assessments in many of his earlier ‘Outstanding’ CRs and none of these had been previously expunged. He further submitted that nonetheless, the assessment by the IO for the said Impugned CR is performance based and consistent with his overall service profile. Even otherwise, there is no statutory bar to grant perfect nines in all the figurative assessments. Therefore, the discretion to expunge an assessment as inflationary has to be exercised within the framework of various guidelines provided in this regard and while maintaining the overall aim of rendering ‘objective’ and ‘consistent’ CRs.

53. *Per contra*, learned counsel for the respondents, while raising serious objections to the aforesaid submissions, contended that the respondents have adhered to all the guidelines scrupulously and also being aware that any negligence may affect the promotional avenues and career progression of the petitioner. As per the guidelines, since the petitioner was awarded 13 ‘9s’ with a Box Grading of ‘9’, following the rules, such assessment being NPN had to be considered by the Military Secretary (MS) Branch. On overall consideration of the profile of petitioner, his CR was found to be inflationary and his grading was not found in consonance with his past profile and, thus, was rightly expunged.

54. To consider the pleas of the learned counsels, it would be



relevant to refer to the extracts of the Guidelines issued by the MS Branch, Army HQs, DHQ PO, New Delhi bearing no. A/17151/4/MS 4 CR Policy dated 22.07.2019, which are reproduced hereinbelow:

**“INFLATIONARY TREND IN REPORTING : BRIGS & MAJ GENS**

1. Further to MS Branch letter No A/17151/4/MS4 CR Policy dt 22 Jul 19, wherein an advisory was issued on inflationary trends in reporting.

2. It is observed that in spite of repeated advisories, in some cases there continue to be violations in reporting norms. This ‘inflationary trend in reporting’ has led to **difficulties in merit discernibility during various selection boards/ panels especially in higher ranks** and has necessitated the reiteration of fwg critical aspects of reporting norms enunciated vide letter under ref at Para 1 above:-

(a) **Perfect Nine (PN) Assessment** An assessment with only '9' in Personal Qualities and Demonstrated Performance (PQDPVs) and Qualities to Assess Potential (QsAP) along with Box Grading '9' by a reporting officer is

(b) **Part Perfect Nine (Part PN) Assessment** An assessment with all figuratives as '9' in PQDPVs or QsAP by a reporting officer is defined as a Part Perfect Nine Assessment.

(c) **Near Perfect Nine (NPN) Assessment**

(i) **Brigadiers** An assessment with thirteen or more '9's out of sixteen figurative along with Box grading '9' is defined as NPN assessment in case of civilian reporting officer, an assessment with nine or more '9's out of eleven figurative in PQDPVs of the CR Form along with Box grading '9' is a NPN assessment.

(ii) **Major Generals** An assessment with ten or more '9's out of twelve figurative along with Box grading '9' is defined as NPN assessment in case of civilian reporting officer, an assessment with six '9's out of seven figuratives in PQDPVs of the CR Form along with Box grading '9' is a NPN assessment.

3. **Role of RO & SRO.** The essence of a "three tier sys" lies in the RO functioning optimally as a 'moderator' and SRO as a 'balancer' to ensure an overall obj report mitigating any inflationary reporting by lower tier reporting



*offrs For the sys to function effectively, it is imperative that all higher tier reporting offrs are cognizant of their imp roles in the appraisal sys and disch them with utmost diligence.*

4. **Award of Outstanding Grading.** *Reporting offrs need to ex requisite discretion while awarding “Outstanding” grading to rates, to ensure that benefit of exceptional performance is given to deserving offrs. The offr should have exhibited exceptional demonstrated performance with specific achievements as well as professional and personal conduct of the highest order, to be considered for such an assessment. Timely adv intimation justifying the proposed “Outstanding” assessment in r/o such an offr must be given to the higher tier reporting offrs in accordance with provisions enunciated in MS Br Letter No. A/17151/10/MS 4 CR Policy dt 27 Nov 2015. Further, specific aspects of exceptional demonstrated performance mentioning award of “Outstanding” grading must clearly be mentioned in detail in the pen picture.*

5. **Internal Assessment at MS Br.** *It is emphasized that all CRs are diligently scrutinized during internal assessment process at the MS Branch to include comparison with the offrs’ past profile derived from a computer generated “Dynamic Asymmetric Variation” Table & those found outside the norms (as enunciated in Para 2 above) are processed for corrective action. Thus, the reporting offrs are requested to ex great discretion/diligence while endorsing CRs to ensure that the assessment is truly reflective of the performance of the ratee & the laid down norms are not exceeded, lest they inadvertently disadvantage the offr(s).*

55. From the above extracts of the guidelines, it emerges that in assessment of a Brigadier rank officer, figurative assessment with 13 or more 9s, out of 16 figuratives along with Box Grading ‘9’ is determined to be an NPN assessment.

56. The Internal Assessment (IA) guidelines issued on 14.10.2013 bearing no. A/17151/MS4 (Coord.) by the MS Branch provide that all the CRs received by the said Branch are subject to an auto - profile check followed by a manual scrutiny to identify (i) CRs with



‘Technical Defects’ on the basis of various aspects as ranging from (a) to (k) contained in the said guidelines. On detection of such technical defects, a query / observation is raised with the ‘ratee’ or with the concerned Reporting Officer. Such CR may be set aside on technical grounds or based on the clarification received, the technical defects are rectified and the CR is accepted by the CRD library. (ii) CRs with ‘Assessment Variations’ generally get highlighted in the Internal Assessment and Profile (IAP) check sheet. For further confirmation, the ratee’s performance profile sheet is referred to, which gives out a detailed breakdown of assessments of past reports. The MS Branch considers various factors while analysing the CRs for assessment validity, which are as under:

- “(a) CR average variation as compared with past OAP (Overall Average Profile - CR average of past 5 yrs) This is Just one of the inputs, and not the only input to arrive at a decision on CR*
- (b) Corroboration in assessments within various parts of the individual assessment and between the reporting officers*
- (c) Opinion of higher tier reporting officers on rating tendency of lower tier officers and recommendations for Corrective Action*
- (d) Corroboration of the assessments in the CR with the past profile of the ratee*
- (e) Justification in the pen picture*
- (f) Rating tendency of reporting officers*
- (g) Environment of current and past CRs (Difficulty of appointment/area/operations)*
- (h) Low assessments/adverse remarks in present/past CRs*
- (J) Course profile, honours/awards and selection board status*
- (k) **Factors Indicating Subjectivity/Sympathy.***
  - (i) No/inadequate justification with specifics in the pen pictures in inflated/deflated CRs*
  - (ii) Biases due to regimental or other affiliation between reporting officer and ratee.*



(iii) *Personal differences for reasons other than professional when highlighted by the reporting officers in chain*

(iv) *Sympathy factor during cut off CRs prior to Selection Boards and HC/HDMC nomination & halo effect of selection for DSSC, HC and other panels”*

57. The guidelines also provide for detection of inflated assessments, as under:-

**8. Inflated Assessment.** *Award of '9' points in the box grading without adequate justification in the pen picture indicates inflationary reporting and inconsistency. Any perfect Nine/Near Perfect Nine/ Near Perfect Nine less Box/ Part Perfect Nine assessments by any reporting officer without adequate justification with specific achievement will be considered as an assessment inconsistency and will be put through a detailed scrutiny during IA. A counseling letter may be issued to the reporting officer for endorsing such assessments in accordance with Para 134 of AO 45/2001/MS.*

58. From the aforementioned extracts of the guidelines, it is evident that the MS Branch analyses the CRs to scrutinise and to identify if there are any technical defects or assessment variations with the CRs so that the same can be accordingly dealt with. The guidelines lay down different parameters to analyse the CRs for 'Technical Defects' and for 'Assessment Variations'. As far as an inflated assessment is concerned, award of perfect '9s' etc., without adequate justification with specific achievements may be considered as inflated assessment.

59. On this note, we proceed to examine the Impugned Order passed by the learned Tribunal with respect to third Impugned CR for the period of July, 2020 to February, 2021. The learned Tribunal has only noted the proceedings conducted during the IA, however, has not assigned any reasons while upholding the expunction of the IO's assessment in the aforesaid CR of the petitioner. The relevant findings



read as under:-

*“19. ... .. As regards the expunction of the IO's assessment in CR-4, the internal assessment examined the CR and concluded that the assessment was in gross difference to that of the average CR rating in the past. Thus, the IO's grading was found to be not in consonance with the past profile of the officer. The assessment also indicated that it was a near-perfect 9 point report and gradings were thus inflatory. The case was approved for expunction by the competent authority on 18.08.2021 and the applicant was informed of the expunction vide letter dated 07.09.2021.”*

60. We find that with respect to the said third Impugned CR for the period from July, 2020 to February, 2021, the assessment was done by IO and RO only. SRO did not endorse the CR as he had superannuated. During the IA, the assessment of the IO was expunged, being NPN, as it contained 13 '9s' with a Box Grading of '9'. From perusal of the original CR dossier record produced by the respondents in the Court, we find that the petitioner's CR was separated out for a detailed internal examination as there were 'Assessment Variations' in his CR and for this purpose his CR average variation as compared with past Overall Average Profile (OAP) was considered. However, the other relevant factors as mentioned in the said guidelines for analysing the 'assessment validity' were not taken into account. Needless to say, the guidelines clearly lay down that CR average variation as with past OAP is just one of the inputs and not the only input to arrive at a decision on CR. The guidelines further provide that in order to check if an assessment is inconsistent, being inflated, if the '9' points in the box grading are without an adequate justification in the pen picture the same indicates it to be an inflated reporting.





Therefore, it is necessary to note that the relevant pen picture. Upon perusal of the original record, it is found that the pen picture by the IO not only justifies and is commensurate with his box grading but is also in consonance with the pen picture as endorsed by the RO.

61. That being said, we have no hesitation in holding that the IA with respect to the third Impugned CR for the period from July, 2020 to February, 2021 was not carried out as per the Guidelines no. A/17151/MS4 (Coord.). While considering the 'assessment variation', the respondents had only taken into account a comparison between CR average variation with past OAP of the petitioner, which admittedly is just one of the inputs and not the only input to arrive at a decision on CR. The other parameters, which are equally important for making an assessment variation as mentioned in the guidelines, have not been considered by the respondents. The respondents have also failed to note that the said comparison was to be made with the petitioner's previous CRs of five years. We find that the pen picture by the IO for the said CR provides adequate justification for awarding '9' points in the Box Grading. Therefore, the respondents were not justified for having expunged the assessment made by the IO in the aforesaid Impugned CR.

62. In the light of the foregoing analysis, we have no reluctance in coming to the conclusion that there was no basis for the respondents to have expunged only the box grading by the RO in the second Impugned CR for the period from July, 2018 to June, 2019, and to have expunged the entire assessment by IO in the third Impugned CR



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for the period from July, 2020 to February, 2021. Accordingly, we hereby expunge the entire assessment made by the RO in the second Impugned CR for the period from 01.07.2018 to 30.06.2019 and restore the entire assessment of IO in the third Impugned CR for the period from 01.07.2020 to 28.02.2021. However, we find no infirmity with respect to the first Impugned CR for the period 09.04.2009 – 31.08.2009.

63. In view thereof, the Impugned Order dated 14.09.2023 passed by the learned Tribunal to the extent of second and third Impugned CRs for the period from 01.07.2018 to 30.06.2019 and 01.07.2020 to 28.02.2021 as well as the Impugned Order dated 18.06.2021 to the extent of second and third Impugned CRs as also the Impugned Order dated 07.09.2021 are set aside.

64. Keeping in view the above findings of this Court with respect to the modification in the second and third Impugned CRs of the petitioner, the respondents are directed to consider the consequential reliefs for which the petitioner will be entitled to, subject to law, policies and his meeting with other required eligibility criteria.

65. Accordingly, the petition is partly allowed in the aforesaid terms.

**SHALINDER KAUR, J**

**NAVIN CHAWLA, J**

**OCTOBER 24, 2024/ss/km/sds/sk**

*Click here to check corrigendum, if any*