

COURT NO.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1046/2023 WITH MA 1629/2023

Col Rizwan Khan Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. Indra Sen Singh, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC with
Mr. Rudra Paliwal, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 1629/2023

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

OA 1046/2023

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed the OA with following prayers:-

(a) *Call for the Entire Record of the case leading to the Impugned order dated 06.04.2021 and set aside the said order dated 06.04.2021 being arbitrary and non-speaking stock order;*

(b) *Call for the complete record of service of the Applicant and after perusal thereof set aside the Early Confidential Report (ECR) for*

the period 01.09.2018 to 01.07.2019, the same being illegal, technically invalid, inconsistent and subjective/non-subjective;

(c) After setting aside the Impugned ECR, direct the Respondents to reconsider the Applicant afresh for nomination/detailment to the Higher Command Course (HCC)/Higher Defence Management Course (HDMC)/Equivalent Courses starting in May 2024 with his modified record of service, and detail/nominate the Applicant for the said Course if his modified/updated quantified merit with that of the last person in the order of merit nominated for the HCC/HDMC/Equivalent Courses in the consideration held from 2020 to 2023; and

(d) Issue any other order(s) and direction(s) as deemed appropriate by this Hon'ble Tribunal under the facts and circumstances of this case.

Facts of the Case

3. As per the records submitted by the respondents, the applicant is a 2000 Batch Arty Officer. He was considered for Higher Command and equivalent courses in the year 2020 and 2021 but was held to 'Not nominated'. Subsequently, he submitted a Statutory Complaint dated 07.04.2020 against CR for the period 09/18 – 07/19, which was disposed off vide order dated 06.04.2021 granting 'Partial Redress' to the applicant, wherein the assessment of RO at Para 20(a) of the impugned CR was expunged on ground of inconsistency. After being granted 'Partial Redress', the applicant was again considered for the Higher Command nomination in Feb 2022 and Feb 2023, but he was held to be 'Not Nominated'. Aggrieved by the aforesaid action by the respondents, the applicant has approached this Tribunal.

Submissions on behalf of the Applicant

4. Relating to background of service and performance, the applicant submits that during the period from 18.07.2008 to 18.12.2016, which marks the commencement of his reckonable profile period, he served in various capacities within the Army and earned a total of eight Confidential Reports (CRs). Among these, four were Criteria CRs and four were Non-Criteria CRs, all of which were 'Outstanding' reports with box-grading of '9'. The only exception is the first CR, covering the period from 18.07.2008 to 19.01.2009, which is classified as 'Nearly Outstanding' due to the applicant having only eight years of service and the relatively short duration of the reporting period.

5. On promotion and command, the applicant further submits that he was approved by No 3 SB for promotion to the rank of Colonel and was subsequently posted to the 322 Field Regiment with effect from 28.10.2016 to take over command following his physical promotion. The applicant officially assumed command of the 322 Field Regiment (under the operational command of 26 Arty Brigade) on 19.12.2016 and relinquished the command on 03.11.2019. During this period, he earned a total of three CRs, including the

impugned CR, which was the last CR earned as Commanding Officer of the 322 Field Regiment. The first two CRs covering the periods of (i) 02.06.2017 to 31.08.2017 and (ii) 01.09.2017 to 28.07.2018 were both 'Outstanding' reports as assessed by the Initiating Officer (IO), reflecting the applicant's exemplary performance during those periods. The applicant firmly believes that both the Reviewing Officer (RO) and the Senior Reviewing Officer (SRO) would have rated him as 'Outstanding' in alignment with his demonstrated performance and potential during the aforementioned periods.

6. On circumstances surrounding the Impugned CR, the applicant submits that on 16.04.2019, prior to the initiation of the last (impugned) CR covering the period from 01.09.2018 to 01.07.2019, a Court of Inquiry (CoI) was ordered against him based on a false, frivolous, and motivated complaint lodged by a disgruntled LMC officer of the regiment. The provisions of Army Rule 180 were invoked against the applicant in the said CoI, thereby categorizing him technically as a subject of a disciplinary case in accordance with Para 27 of Army Order (AO) 02/2016/MS.

7. The applicant submits that this complaint led to the convening of a One Man Inquiry by the Formation

Headquarter. However, the applicant represented his case verbally and in writing to his chain of command, including a personal interview with the Corps Commander, but was instructed to proceed through the CoI process.

8. On the lack of evidence against the applicant, the applicant highlights that witnesses called by the CoI to verify the claims made against the applicant did not provide any statements or testimony that would support accusations of one Major Saroha. Ultimately, the inquiry concluded that no major lapses were found, nor was any financial impropriety or integrity issue proven against the applicant. While minor procedural mistakes were identified in the findings of the Court, these lapses were not related to the impugned reporting period and could be found in any unit if the hierarchy sought to establish them.

9. The applicant contends that he was conveyed a reproof from the Corps Commander, but this reproof reflects a premeditated decision, bias, and a vengeful attitude from the hierarchy. The reproof pertains to minor issues from previous reporting years and does not relate to the impugned reporting period. The applicant further emphasizes that he had received 'Outstanding' gradings in prior reporting years, and he is perplexed as to why he was assigned low grades during the

impugned period, especially given that the alleged lapses were not attributable to this timeframe.

10. Detailing about the Impugned CR, the applicant submits that the impugned CR pertaining to the period from 01.09.2018 to 01.07.2019 became due on 02.07.2019, coinciding with the 322 Field Regiment's movement out of the operational command of the 26 Artillery Brigade in July, 2019. To the best of the applicant's knowledge, prior to the initiation of the impugned CR, the IO had sent a written intimation to the RO, the General Officer Commanding (GOC) of the 26 Infantry Division, recommending that the applicant be rated as 'Outstanding' in the impugned CR, in alignment with the applicant's demonstrated 'Outstanding' performance and potential during the relevant period. However, the applicant has reason to believe that the IO, having been unduly influenced by the aforementioned complaint letter and the subsequent Col, ultimately underrated the applicant by assigning an overall box-grading of '8' (Above Average). This decision disregarded the applicant's continued 'Outstanding' performance during the relevant period and contradicted the IO's prior commitment conveyed to the RO.

11. On the issue of inconsistency in grading, the applicant highlights the irony in the grading process, as the IO rated the applicant as 'Outstanding' with a numerical grading of '9' in the majority of the columns (Personal Qualities and Demonstrated Performance Variables) of the CR, specifically achieving eleven '9s' out of a total of seventeen columns. Despite this, the IO awarded an overall numerical box-grading of '8' (Above Average) instead of the expected '9' (Outstanding). Furthermore, the IO provided an excellent 'Pen Picture' of the applicant in the impugned CR, describing the applicant's performance and potential in highly commendable and superlative terms, which further underscores the inconsistency in the overall grading.

12. The applicant further submits that the IO, who was the then Commander of the 26 Artillery Brigade, initiated the CR on 02.07.2019 and subsequently forwarded it to the RO, the GOC of the 26 Infantry Division, on the same day. However, it is inexplicable that the RO delayed the endorsement of the CR for an inordinate period of approximately 150 days, only endorsing it on 04.12.2019. According to the mandate of AO 02/2016/MS, the RO is required to endorse his assessment within a period of 30 days from the date the CR becomes due. The SRO also endorsed the CR on 09.12.2019,

which reflects a similar delay of about 150 days. It is pertinent to note that during this entire period, the applicant continued to be classified as a 'subject of a disciplinary case', which may have further influenced the assessment process.

13. The applicant submits that as per Para 27 of AO 02/2016/MS, for the purpose of initiation of an CR an officer shall be considered to be subject of a 'disciplinary case' w.e.f the earlier of the following two dates, i.e., (i) the date on which a formal CoI is ordered involving his character or military reputation (invoking of Rule 180 of Army Rules, 1954) or (ii) the date on which the formal cognizance is taken against him. The sequence of events listed hereinabove would clearly show that by the time the IO and RO/SRO initiated/endorsed the applicant's impugned ECR: 01.09.2018 to 01.07.2019, the applicant was 'subject of a disciplinary case' within the meaning of Para 27 and 28 of AO 02/2016/MS, as the CoI was ordered, involving his Military Reputation, on 16.04.2019 and he remained so "subject of a disciplinary case (for the purpose of writing of CR) until award of Reproof" by the GOC 9 Corps on 12.02.2020.

14. The applicant further submits that Para 28(b) of AO 02/2016/MS stipulates that even in a case where the CR

has been initiated in respect of an officer who is 'subject of a disciplinary case', it shall be ensured that the assessments made in the said CR are objective. In the instant case, the IO and RO/SRO have violated even this mandatory stipulation of Para 28(h) of AO 02/2016/MS, as the assessment made by them in the applicant's impugned ECR is a lukewarm, downgraded/underrated assessments which do not match with the applicant's actual performance and potential exhibited during the relevant period and the same was unduly influenced by the Complaint Letter/CoI which was yet to finalise. Therefore, the impugned ECR is liable to be set aside on this ground, as the impugned underrated assessments are evidently biased on the applicant being the 'subject matter of a disciplinary case'.

15. The applicant submits that though the IO rated the applicant 'Outstanding', with numerical grading '9' in majority of columns of the shown portion (i.e. Eleven '9' out of 17 columns) of the CR, yet he awarded the overall numerical box-grading '8' (Above Average) and not '9' (Outstanding). The IO gave an excellent pen-picture of the applicant in the impugned CR thereby describing the applicant's performance and potential in excellent terms and superlative form. The applicant has further reasons to believe

that the RO and SRO would have just dittoed the assessment of the IO or may have further downgraded it as the applicant hardly had any meaningful interaction with them, either personally or professionally, during the relevant period, as well as been unduly influenced by said complaint letter/Col. As per Para 35 of the Guidelines for Rendering Confidential Reports – 2013, “.....with the introduction of the Quantified System the figurative awards has resumed has greater significance as they contribute to the overall merit of the officer it is the moral responsibility of all reporting officer to render an objective assessment.....”

16. The applicant contends that as per Para 35 (b) (iii) of said guidelines *‘total mismatch between awards in box-grading and individual qualities is also not in order. For instance, award of pre-dominantly ‘9’s in PQs/DPVs/QsAP with an award of ‘8’ in box may not be in order’*. The Army HQ MS Branch Policy letter bearing No.A/17151/MS-4 Coord dated 15.06.2007 stipulates that *‘figurative assessment and descriptive pen-picture are closely interlinked and reporting officers are required to ensure that the two are in harmony with each other’*.

17. The applicant argues that to the best of knowledge, i.e. before impugned CR became due, the IO had sent a written

intimation to the RO (GOC 26 Inf Div) to rate the applicant 'Outstanding' in the impugned CR in consonance with the applicant's 'Outstanding' performance and potential. However, as the applicant has reason to believe, having been unduly influenced by said Complaint Letter/CoI, the IO underrated the applicant by giving an overall box-grading '8' (Above Average) thereby disregarding the applicant's continued 'Outstanding' performance during the relevant period and renegeing his own commitment conveyed to the RO. This change of mind by the IO without reference to higher reporting officers 'not' to grade the applicant 'Outstanding' is in violation of policy promulgated vide Army HQ Letter No.A/17151/MS4 Coord dated 31.10.2011. This policy has already led to expunction of assessment of IO in a CR of Brig HS Ratnaparkhi as unjustified/illegal in the OA No.202 of 2015 decided on 17.03.2016 by the Hon'ble AFT, Regional Bench, Lucknow. As in the case of Brig HS Ratnaparkhi Vs. Union of India & Others (OA No.202 of 2015), so also in the pen-picture written by the IO is at par with an 'Outstanding' report. Therefore, being a similar case, the applicant relies upon said judgement of this Hon'ble Tribunal and seeks the same relief

as in said case to set aside the impugned ECR on this ground alone.

Submissions on behalf of the Respondents

18. It is submitted by the respondents that it is not disputed that the applicant was subject of a disciplinary proceeding prior to the due date of the CR. However, since the applicant was discharging his official duties as CO, 322 Fd Regt on the due date despite being subject of a disciplinary proceeding, he was entitled to a CR on move of unit in Jul, 2019, in accordance with Para 28(b) of AO 02/2016/MS. Further, detailed Internal Assessment of ibid CR was carried out based on extant norms/policies. The CR was found to be technically valid and was accepted by the competent authority.

19. The respondents further submit that a reporting officer is not bound to endorse 'Outstanding' assessment even if intimation of likely initiation of an 'Outstanding' assessment has been communicated to the higher reporting officer in advance. Notwithstanding the same, there is no mention of communication by any reporting officer with respect to Advance Intimation for 'Outstanding Assessment'. The document issued by MS Branch in 2013 is a mere guideline, advisory in nature and cannot be deemed as a policy, whereas

the Internal Assessment of CRs is bound by AO/policy letters on the subject.

20. It is submitted by the respondents that while it is desirable that there is a correlation in the endorsement of box grade, individual qualities/figurative assessment and pen picture, the reporting officers are free to assess an officer as they deem appropriate based on the assessment norms and demonstrated performance. Further, assessment in individual qualities as per performance of officer during CR period is sole prerogative of the reporting officer, in accordance with MS Branch letter No.A/17151/10/MS4 CR Policy dated 03.06.2016. All CRs are scrutinized in detail at MS Branch as per extant policies to identify any inconsistencies and accepted by the competent authority, if found in order.

21. The respondents submit that Para 75 of AO 02/2016/MS and MS Branch letter No.A/17151/MS-4 Coord dated 21.07.2004 essentially lays down provisions for initiation/endorsement of CRs by reporting officers for timely processing of CRs. However, delay in endorsement of CR will not render a CR technically invalid. The CR was found to be objective/consistent during Internal Assessment and was accepted by the competent

authority. The other statements by the officer are based on his perception and cannot be commented upon.

22. Furthermore, the respondents submit that the applicant was granted a partial redressal on 06.04.2021 after which he was given two looks in accordance with extant policy vide MS Branch letter No.04485/MS Policy dated 10.12.2018. Two additional looks were given in the years 2022 and 2023. In both years he was not nominated on HC and Equivalent Course due to being lower in comparative merit, and now, the applicant as on date is ineligible for consideration for HC and Equivalent Course in year 2024, since he has exhausted his additional two 'look' in years 2022 and 2023, an officer is eligible for consideration only if in consonance with Para 11(b) of extant policy vide MS Branch letter No.04485/MS policy dated 10.12.2018 (Annexure R-1). The officer's eligibility with respect to 'Promotion Board' is as per Para 13 (b) of Extant Policy vide MS Branch letter No.04485/MS Policy dated 10.12.2018 and not as Para 11 of MS Branch letter No.04485/MS Policy dated 28.06.2013 quoted by the applicant.

Consideration

23. We have heard the learned counsel for the parties and perused the CR dossiers and documents of Complaint Advisory Board (CAB), Chief of Army Staff Secretariat which processed the statutory complaint of the applicant. The only question that merits to be answered is whether the CR of the applicant for period 09/2018 to 07/2019 has been initiated and reviewed as per policy and is legally sustainable without bias/prejudice and if not, whether the applicant is entitled to consequential benefits, if the CR in question is set aside.

24. In Transfer Application No. 96 of 2016: Maj Gen DVS Rana Vs Union of India, decided on 08.02.2017, a Coordinate Bench had considered in great detail the onerous responsibility on the Reporting Officer to eschew his subjectivity and personal prejudices and proclivity or predilections and to make objective assessment. Considering a number of decisions of Hon'ble Supreme Court it was observed that in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee during relevant period, if not strictly adhered to in making an honest assessment, the purpose and career of the officer/employee will be put to great jeopardy. Relevant paras

of the decision in the case of Maj Gen DVS Rana (supra), for convenience sake, are reproduced as under:-

“28. It is a well-settled law that CR is a tool for human resource development and it should not be used as a fault finding process. The assessment should be strictly objectively, fairly and dispassionately, keeping in view the service rendered by such officer, his/her commitment to the duty assigned to him/her.

We are of the considered opinion that for assessment of overall service working of an officer is required to be assessed strictly objectively, fairly and dispassionately as has been held in the case of S. Ramachandra Raju vs. State of Orissa, (1994) Supp 3 SCC 424 and reiterated in the case of State of U.P. versus Yamuna Shankar Misra and another, (1997) 4 SCC 7. Writing Confidential Report puts onerous responsibility on the Reporting Officer to eschew his subjectivity and personal prejudices and proclivity or predilections and to make objective assessment. Hon'ble Supreme Court in Yamuna Shankar Misra's case, held that, in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives, if not strictly adhered to, in making an honest assessment, the purpose and career of the officer will be put to great jeopardy. Hon'ble Supreme Court in the case of State Bank of India vs. Kashinath Kher (1996) 8 SCC 762 held that the object of writing the Confidential Report is twofold, i.e. to give an opportunity to the officer to remove deficiency and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. The case of Kashinath Kher was also considered by the Hon'ble Supreme Court in the case of Yamuna Shankar Mishra.

We are of the considered opinion that the parameters given in Forms for evolution of Basic Qualities of an officer Part-II of Form Basic Assessment subsequently covers the various aspects of one officer which individually is different subject for overall assessment of personality of the officer which depends upon the combination of or independent assessment value and thereafter assessment of "potential value" of the officer and other facets to be judged at the different level. An officer can be judged on the basis of initially, by addressing to the various gamut of the person's personality and then by drawing objectively inference about his overall personality. This cannot be done mechanically or numerically and therefore, it is specifically provided in the instruction No.117 of the instructions of 1989 that, reporting officers are required to give overall figurative assessment of the officers in the box which is a box for grading Clause 117 reads as under:

“Clause 117 clearly says that ‘assessment is not a numerical average of the assessment made in other parts of the report but overall assessment which includes potential of the officer as well. The “potential of an officer” is not any of the attributes mentioned in Form Part-II of Basic Assessment of the officer nor in Clause 12, 14 and 16 whereunder officers “regimental and command assignments” are assessed. Furthermore, we are of the considered opinion that any objective assessment of an officer guidelines gives them guidance to examine the officer and while doing so, the initiating officer is required to look into the aspects mentioned in the above Form and that Form alone is not the totality of the objective assessment and therefore, numerical calculation has not been made the criteria for objective assessment of the officer in “Box Grading” and for “potential assessment” of an officer is also required to be assessed though it is not mentioned in Part-II of the Form whereunder personal qualities are assessed by the Initiating Officer.”

29. The Hon^{ble} Supreme Court in the case reported in S.T. Ramesh vs. State of Karnataka and Anr. (2007) 9 SCC 436 by expressing its opinion observed that confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career. The performance appraisal through CRs should be used as a tool for human resource development and should not be used as a fault-finding process but a developmental one.

30. It is well settled that assessment of overall service of an officer is to be assessed strictly objectively, fairly and dispassionately, keeping in view the service rendered by such officer, his/her commitment to the duty assigned to him/her. That is why Para 15 of the Army Order (supra) mandates for full signature indicating the date, so that in the event of any controversy or during the course of judicial review of the action, the Initiating Officer or others may be called upon to explain their conduct, keeping in view over all profile contained in the pen picture of the officer concerned.”

25. In the case of Maj Gen DVS Rana (supra), we had also considered the objectivity of the box-grading and held that box grading depends upon overall assessment and performance as well as potential for promotion of the officer and in case the pen picture shows outstanding performance, possessing different qualities and recommended for promotion, then, ordinarily box

grading should be "9". Para 33, 34 and 35 of the Maj Gen DVS Rana (supra) are reproduced as under:

"33. The Army has introduced the quantified system for figurative awards since they contribute to the overall merit of an officer. The purpose is that only deserving officers, who are competent, be promoted to the senior ranks of the Indian Army to meet out the requirements and challenges at Border during war as well as peace. Para 35 of the Guidelines (supra) deals with Figurative Awards and Box Grading. For convenience, the same is reproduced as under:

"35. Figurative Awards. With the introduction of a quantified system, the figurative awards have assumed greater significance as they contribute to the overall merit of an offr. It is the moral responsibility of all reporting offr to render an objective assessment to ensure that only deserving and professionally competent offr are promoted to senior ranks to tenant crucial command and staff appointments.

(a) Figurative assessment in Box Grading, Personal Qualities (PQs), Demonstrated Performance Variables (DPVs) and Qualities to Assess Potential (QsAP) should be awarded.

(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 the 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, an award of predominantly "9" in PQs/DPVs/QsAP with an award "8" in box, may not be in order.

(iv) Award of "9" in box grading should be explicitly justified in the pen-picture, indicating specific achievements by the ratee.

(c) QsAP. The assessment of performance is de-linked from potential based on the rationale that it is not necessary that an offr who performs well in the present rank has the capability

to do well in higher ranks also. While assessing QsAP, however, the following aspects should be kept in mind.

(i) Low awards in QsAP affect the promotion prospects significantly more as compared to similar awards in PQs/DPVs.

(ii) Reporting offr must be more deliberate while awarding QsAP and endorse the actual promotion aspects of the ratee.

(iii) In order to guard against IOs harming ratee"s "on the sly", discernable variations between PQs/DPVs (open portion) on the one hand and QsAP (closed portion) on the other come under scrutiny at the MS Branch. However, elaboration of any such variations by the reporting offrs aid in acceptance of their assessment. Pen picture can be suitably endorsed to justify the assessment."

34. A plain reading of the aforesaid Guidelines shows that Box Grading is depending upon overall assessment and performance as well as potential for promotion and is broadly based on pen picture. However, a total mismatch between awards in Box Grade and individual's qualities, like opinion expressed in Pen-Picture (Emphasis supplied) may not be in order.

35. There is one more thing which requires to be considered. In case Pen-Picture shows outstanding performance, possessing different qualities required for an armed forces personnel and recommended for promotion to higher/superior post, then ordinarily Box Grading should be "9" i.e. outstanding. (Emphasis supplied)

26. Proceeding to examine the impugned CR in the above background, it is essential to analyze several letters placed on record which gives us a clear indication of events leading to the assessment in the aforesaid CR, which in our fair observation would have had an impact on the CR 09/2018 to 07/2019.

27. We note that as per the Show Cause Notice (SCN) served to the applicant vide HQ 9 Corps letter No.2716/2/DV(PC) dated 12.12.2019, it is evident that a Col was ordered by HQ 26

Inf Div vide their convening order dated 16.04.2019 wherein the applicant was found blameworthy on few accounts of administrative lapses and exonerated from many other allegations made by Maj Ashok Saroha of 322 Fd Regt as per his letter dated 28.03.2019 and 24.03.2019 and accordingly, administrative action was contemplated for award of a Censure to the applicant.

28. We observe that the applicant submitted a reply of the SCN served upon him through a detailed communication dated 25.01.2020. However, after consideration of the response of the applicant the General Officer Commanding, 9 Corps concluded that the procedural lapses had been fully established and the CoI was conducted without any mala fide intent.

29. We find that accordingly, the applicant was found blameworthy and the Reproof of the General Officer Commanding, 9 Corps was conveyed to the applicant. Since the CoI or the Reproof itself has not been challenged in this OA, we refrain ourselves from expressing any opinion on the said account.

30. In this background of factual context, we find it essential to consider the contents of AO 02/2016/MS of which Para 28 reads to the effect:-

"28. Ratee Involved in Disciplinary Case. CR/ NIR will be initiated on officers under disciplinary proceedings as given below:-

(a) In case disciplinary proceedings are completed within the reporting period before the due date of CR, officer is entitled to CR as per normal provisions of AO.

(b) If the disciplinary proceedings are not completed within the reporting period and the officer continues to discharge his official duties for the appointment posted, CR as and when due will be initiated. It will be ensured that assessment in such CR is objective and does not contain reference to the officer's involvement in the disciplinary case. In such CRs endorsement of SRO is mandatory to ensure objectivity.

(c) If the officer continues to remain under a disciplinary case during the reporting period and the officer has not been discharging his official duties for the appointment posted, no CR (when due) will be initiated and NIR for the period will be forwarded to MS Branch."

31. Keeping in view the principles laid down by aforesaid Para 28, we proceed to examine the impugned CR for period from 09/2018 to 07/2019 which has been initiated by the IO on 30.06.2019, RO on 28.11.2019 and SRO on 07.12.2019. A perusal of the aforesaid CR reveals no reference in the CR about the applicant's involvement in the disciplinary case and the same has been endorsed by SRO as per Para 28(b) of the aforesaid policy and, thus, any technical infirmity in the CR is ruled out.

32. It has been contended by the applicant that the IO had intended to grade him as 'Outstanding' in the box gradings as per provisions of MS Branch Letter No.A/17151/MS 4 Coord dated 31.10.2011. However, contrary to the same, we do not find any evidence or record to substantiate this claim by the applicant and even if the same was conveyed to Ratee, this assurance by IO cannot be treated as a promissory estoppel. If we have to assume that there was an expression of intent by the IO to grade the applicant as 'Outstanding'; the CR in our considered opinion is

required to take into consideration the performance of the employee for the entire period of reporting and, thus, in the eventuality of any adverse performance by the employee, the reporting officer cannot be held accountable for award of a grading lesser than the one intended and conveyed earlier. Therefore; we do not find any merit in the contention preferred on behalf of the applicant.

33. With regard to the issue of delay in the endorsement of the CR by the RO contrary to provision of MS Branch letter No.A/17151/MS4 Coord dated 21.07.2004 and AO 02/2016/MS, we find it essential to refer to Para 75(c) of the aforesaid Army Order, which reads to the effect:-

“75(c) Timelines for Reporting Offrs. It is the responsibility of the rate and the reporting officers to ensure that the CRs/NIRs as due are initiated and processed expeditiously so as to reach MS Branch. Following timelines will be followed for initiation, completion, disposal and movement of confidential reports by reporting officers:-

*IO/FT
O/FSC
RO*

A max of 20 days for each officer, from the date of receipt of CR to the date of dispatch (only in case IO and FTO/FSCRO are different).

It will be ensured that CRs in respect of all officers under their command is initiated prior to relinquishing their appointment or rate proceeding on posting.

*RO/H
TO/H
SCRO*

A max of 30 days for each officer, from the date of receipt of CR to the date of dispatch. (Only in case RO

and HTO/HSCRO are different).

SRO/
HOA/
S/O

A max of 60 days for each officer, from the date of receipt of CR to the date of dispatch.

GOC-
in-C

A max of 90 days for each officer from date of receipt of CR to the date of dispatch.

COAS

A max of 120 days for each officer from date of receipt of CR to the date of dispatch.

Note: The reporting officers will attach a "Delay Report" in case they exceed the timelines mentioned above. Delay in endorsement of CRs by itself, will not render a CR technically invalid. CRs of officers being screened in the selection boards/panels and other considerations will be processed expeditiously to reach MS Branch."

34. On an analysis of the CR movement, we observe that while the RO endorsed the CR and forwarded to the SRO on 04.12.2019, the CR was initiated by the IO on 30.06.2019. While going through records of CAB, COAS Sectt. which has been produced before us, we take note of the factum that the while there was a delay, the same was taken cognizance of by the SRO and the RO was accordingly advised in writing; even though the RO has submitted on record to the effect that the delay was caused due to unavoidable exigencies in service and operational commitments of the formation during this period.

35. Taking note of above observations, we do not consider it befitting to set aside the CR merely on the grounds of delay in reviewing of CR by one of the reporting officers. However, we find

it essential to observe that the Army HQ needs to adopt strict measures to ensure implementation of their own guidelines by the reporting officers without which such guidelines become infructuous.

36. Subsequently, we have perused in detail the records pertaining to the examination of statutory complaint of the applicant dated 07.04.2020 by the Complaint Advisory Board of COAS Sectt. The comments of IO, RO and SRO on the complaint of the applicant have been placed on record as per policy in vogue, which clearly elucidate the reasons for rating the applicant relatively lower in the CR for period 09/2018 to 07/2019.

37. A close scrutiny of the CR reveals that the IO has graded the applicant as an 'Above Average' officer with 13x9s out of 22 boxes with a box grading of '8'. At the same time, the RO has graded the applicant with 6x9s with the balance boxes for individual performance and personal qualities being graded as '8s'. The SRO has also graded the applicant as 'Above Average' at '8' with identical gradings in the Qualities to Assess Potential similar to that of the RO.

38. We note that the only adverse endorsement in the CR being 'Recommendation for Promotion' by the RO has been taken note of and the same has been expunged by the MoD vide their order dated 06.04.2021 with the same being communicated to the applicant vide MS branch letter dated 26.04.2021.

39. We have given due consideration to "Guidelines for Rendering Confidential Reports" placed at Annexure A-11 by the applicant and particular refer to Para 35 of the document reproduced as under:

"35. Figurative Awards. With the introduction of Quantified System, the figurative awards have assumed greater significance as they contribute to the overall merit of an offr. It is the moral responsibility of all reporting offr to render an objective assessment to ensure that only deserving and professionally competent offr are promoted to senior ranks. to tenant crucial command and staff appointments.

(a) Figurative assessment in Box Grading, Personal Qualities (PQs), Demonstrated Performance Variables (DPVs) and Qualities to Assess Potential (QsAP) should be awarded objectively.

(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 box-grade and indl qualities is also not in order. For instance, award of predominantly '9's in PQs/ DPVs/ QSAP with an award of '8' in box, may not be in order.

(iv) Award of '9' in box grading should be explicitly justified in the pen-picture, indicating specific achievements by the ratee.

(c) QsAP. The assessment of performance is de-linked from potential based on the rationale that it is not necessary that an offr who performs well in the present rank has the capability to do well in higher ranks also. While assessing QsAP, however, the following aspects should be kept in mind:-

(i) Low awards in QsAP affect the promotion prospects significantly more as compared to similar awards in PQs/ DPVs.

(ii) *Reporting offr must be more deliberate while awarding QsAP and endorse the actual promotion aspects of the ratce.*

(iii) *In order to guard against IOs harming ratee's "on the sly", discernable variations between PQs/DPVs (open portion) on the one hand and QsAP (closed portion) on the other come under scrutiny at the MS Branch. However, elaboration of any such variations by the reporting offr aid in acceptance of their assessments. Pen picture can be suitably endorsed to justify the assessment."*

40. Having perused the impugned CR and in light of our discussion in aforesaid paragraphs, we find that the guidelines have been adequately taken note of by the reporting officers without any deviation from the same and they are justified in award of a box grading of '8' in keeping with guidelines at Para 35(b) of the aforesaid policy letter.

41. As far as the handling of the statutory complaint of the applicant by the CAB is concerned, we are of the view that the same has been processed and handled as per the policy in vogue and in absence of any malafide to that effect, we do not find any reason to interfere in the same through the exercise of power of judicial review.

42. We find it pertinent to record that the gradings awarded by the reporting officers to the employees are essentially administrative actions based on their assessment of performance of the employee for the duration of report. A higher grade in earlier CR does not necessarily and automatically become a reference point to grade the employee with the same grading as

per previous performance. If that were to be the principle, there would be no necessity for successive CRs being written.

43. We observe that a CR must be based on the performance of the employee for the period of report as per assessment of reporting officers. An employee who is graded '8' cannot demand the reporting officers to grade him '9' on the ground of non-consonance with the reckonable profile which would then render the entire appraisal system and resultantly the CR based quantified selection system for promotions defunct as every candidate would be graded '9' and there cannot be a scope of drawing a merit list of the competing candidates in Selection Boards for higher professional courses and promotions.

44. Hence, we are extremely loathe to arbitrarily set aside the ACRs which are the administrative right and responsibility of the superior officers in an organization to grade their subordinates for rightful career progression; keeping with the overall organizational interest to ensure that more meritorious are graded higher and accordingly tenant higher ranks and assignments.

45. Noting the fact that we do not wish to express our views on gradings awarded to the applicant in the impugned CR, we find our reliance on the views expressed by this very Bench while passing orders in the case of Brig Vishal Mohanlal Murada Vs. Union of India & Ors. in OA 1256/2022 which reads to the effect:

"16. It is our considered opinion that the courts are not in a position to assess the competence of the employee and over ride the assessment of the reporting officers to upgrade for Above

Average (8) to Outstanding (9). We are neither privy to the performance of the employee nor the inter personal aspects of the organizational health. This aspect has been adequately answered by Honorable Supreme Court in the case of Union of India Vs Lieutenant General RS Kadyan (2000) 6 SCC 698 and Major General IPS Dewan Vs Union of India and Ors (1995) 3 SCC 383 (Supra). If the courts were to upgrade all above average (8) Confidential Reports to Outstanding (9), we will be swarmed by applicants seeking the intervention of courts for upgradation of their CR ratings which would cause gravious injury to the overall health of the Armed Forces and render the entire system of Confidential Report and Quantification System of Selection redundant. Thus we do not consider it prudent to upgrade the Confidential Report ratings through our judgment. For this, case of Brigadier Mandeep Singh Vs Union of India (OA No 905/2015) deserves mention wherein the Armed Forces Tribunal has noted :-

"Firstly, we would like to reiterate that the guidelines have no statutory effect. Thus it is clear that box gradings are assessments to be made by the Reporting officers who are in the best position to assess the officer in his individual qualities and also his performance when compared to his peers. They are legally entitled to do so and being responsible officers senior in the chain of Command to the applicant, are eminently competent to do so. Unless any clear infraction of rules, orders, regulations or instructions in the recording of the impugned CRS are brought to our notice, we would not be in a position to interfere in the matter in any way".

17. In a similar case of Union of India Vs SK Goel and Ors 2007; 14 SCC 641, the Hon'ble Apex Court has observed :-

"It has to be held that the Tribunal was in error in going into the question whether the applicant had been rightly graded as 'outstanding' in ACR for the years 1990-91 and 1991-92. The observations of the Tribunal that of the two 'outstanding grading' does not flow from various parameters given and the reports entered there in, cannot thereof, be upheld and are accordingly set aside".

Commenting further on the issue, the Apex Court held :

"Evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose".

18. Dwelling further on the aspect of examination of the other Confidential Reports of the applicant in the rank of Brigadier, we have once again observed that there is no bias or arbitrariness in any of the four reports examined and thus there is no cause of action therein. Similar impressions have also resonated in the disposal of the second statutory complaint by the Respondents. The entire CR profile of applicant has mix of Above Average (8) and Outstanding (9) box gradings by reporting officers. Since the ratee officer is not privy to the entire contents of the Confidential Report except for the part which he/she signs as read, most rating being Outstanding as perceived by the applicant are not true. In conclusion, we do not find any cause for us to affect an upgradation in the subject Confidential Report."

46. Similar observations have made by this Tribunal in the case of *Brig Mandeep Singh* in OA 905/2015 while discussing the judicial review of CRs and the interaction between the reporting officers with the ratee which read to the effect :

9. As far as adjudicating on the grading given in a CR is concerned, we would like to emphasize that the role of the courts on this account is restricted within a very narrow compass confined to bias, arbitrariness or illegality, Hon'ble Apex the case of UOI v. S.K. Goel, 2007: 14 sec. 641 has held as follows:-

"It has to be held that the Tribunal was in error in going into the question whether the applicant had been rightly graded as 'outstanding' in ACR for the years 1990-1991 and 1991-1992. The observations of the Tribunal that of the two outstanding grading' does not flow from various parameters given and the reports entered there in cannot therefore, be upheld and are accordingly set aside".

*Commenting further on the issue, the Apex Court held:
"Evaluation made by an expert committee should not be easily interfered with by the Courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose".*

10 to 11

xxx

xxx

xxx

12. As regards the issue of following the guidelines and the claim of the applicant that getting seven '9's in the individual qualities out of 11 would amount to predominance and the box grading should have been '9', we find no legal mandate to support the claim of the applicant. Firstly, we would like to reiterate that the guidelines have no statutory effect. Be that as it may, para 35(b)(1) of the box grading specifically states that box grading represents overall assessment of performance as well as potential for promotion. Para 35(b)(ii) states that the reporting officer must clearly differentiate between truly outstanding officers and others. Grading all officers outstanding would defeat the very purpose of appraisal system. Para 35(b)(ii) states that the box grading is not meant to be a mathematical average of the awards in indl qualities. The word 'predominance' heavily relied upon by the learned counsel for the applicant. It has no legal definition. The dictionary meaning of 'predominant' is 'present as the strongest or main element; having or exerting greater control or power'. On the other hand Oxford English Dictionary clarifies 'Outstanding' as 'exceptionally good' or 'clearly noticeable'. Box grading of seven '9 was predominant in the gradings made but only that each grading numbered more than the lesser gradings. Predominance demands eclipsing of the lesser gradings as insignificant, and it can be so only in a case where lesser grading is limited to one or two. Thus it is clear that box gradings are assessments to be made by the Reporting Officers who are in the best position to assess the officer in his individual qualities and also his performance when compared to his peers. They are legally entitled to do so and being responsible officers senior in the chain of

Command to the applicant, are eminently competent to do so. Unless any clear Infraction of rules, orders, regulations or instructions in the recording of the impugned CRs. are brought to our notice, we would not be in a position to interfere in the matter in any way. Neither has the applicant brought any such infraction to our notice nor has he made out a case of malice or bias against any of the respondents. On the power of the courts to interfere in such matters, the Hon'ble Supreme Court in the case of Air Vice Marshal S.L. Chhabra v. UOI (1993 Supp (4) SCC 441 has stipulated as follows:

"According to us, neither the High Court nor this Court can moderate the appraisal and the grading of the appellant for a particular year. While exercising the power of judicial review, a Court shall not venture to assess and appraise the merit or grading of an officer".

In view of the above, we find no reason to interfere in the box grading of '8' given to the applicant in the impugned CRs."

47. Concluding, we are of the view that we are neither directly privy to performance of the officers or soldiers in specialized environments for defence of the country nor do we have direct awareness of interpersonal dynamics between an employee and the superiors. In our opinion, it is the responsibility of the Courts to ensure that the employee is not subjected to any illegal harassment, bias, arbitrariness and accordingly, the interests of the employee are safe guarded as per law and constitutional rights.

48. In view of the aforesaid observations, and in the absence of any such illegality or bias against the applicant in the impugned CR, we are of the considered opinion that the impugned CR is legally valid and does not warrant our judicial interference.

49. Consequently, the OA is dismissed being bereft of merit.

50. No order as to costs.

51. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 13th day of February, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P. MOHANTY)
MEMBER (A)

Neha/Ps