

**Non-Reportable****IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO.4655 OF 2023****Brig Sandeep Chaudhary****... Appellant*****versus*****Union of India & Ors.****... Respondents****J U D G M E N T****ABHAY S. OKA, J.****FACTUAL ASPECTS**

1. To appreciate the controversy involved, a few key factual details must be considered. After completing successful training at the Indian Military Academy, the appellant was commissioned as a Lieutenant on 14th December 1991 in the Corps of Electrical and Mechanical Engineers. It is now known as the Corps of Electronics and Mechanical Engineers (EME). Though the appellant served in the EME, he also served as operations staff in various locations, including high-altitude areas and counter insurgency (operations). He was promoted from time to time. Eventually, he reached the rank of Brigadier. He had undertaken several courses and secured

instructional gradings in all the graded courses. He was selected for the United Nations Mission. The appellant claims to be a decorated soldier who has been awarded twelve times and has been awarded the Vishisht Seva Medal (VSM) twice and was commanding the only R&D establishment of the Indian Army.

2. On 8th December 2017, the appellant was posted as a Commandant, 3 Advance Base Workshop in the Northern Command. The appellant earned two Annual Confidential Reports (for short, 'ACRs') during the period he worked in the Northern Command. He earned ACRs from the fourth respondent for the periods from December, 2017 to June, 2018 (12/17 to 06/18) and from July, 2018 to June, 2019 (07/18 to 06/19). According to the appellant's case, the fourth respondent gave lukewarm reports due to his bias against the appellant.

3. Prior to the aforesaid two ACRs written by the fourth respondent, the appellant was on the top of the batch based on his performance, profile, and awards. On 5th November 2019, the appellant submitted a first statutory complaint pointing out that he was not nominated for the NDC/APPA course. The complaint was rejected. Even the second statutory complaint filed by the appellant based on a few additional facts on the conduct of the fourth respondent, was rejected. In June/July 2021, the

appellant was considered for promotion to the rank of Major General, but was not empanelled. Therefore, he submitted a non-statutory complaint on 5th August 2021, which was rejected on 19th January 2022.

4. Being aggrieved by the said rejection, the appellant filed an Original Application No. 125/2022 before the Armed Forces Tribunal, Principal Bench, New Delhi (for short, 'the Tribunal'). In the original application, the following prayers were made before the Tribunal:

“a) Call for complete ACRs of the applicant and set aside the assessment of IO and RO in the impugned ACR for the period 12/17-06/18 and 7/18-06/19.

b) Call for the records and set aside the result of No.1 Selection Board held for consideration of the applicant for the rank of Maj Gen.”

5. The Tribunal, by the first impugned order dated 26th April 2023, granted partial relief. The Tribunal directed expunction of figurative ratings by Initiating Officer (IO) and Reviewing Officer (RO) in Qualities to Assess Potential (QsAPs) and Box gradings of ACR for the period from 07/18 to 06/19. The Tribunal also directed reconsideration of the appellant's promotion to the rank of Major General within three months, without any loss to seniority.

6. The appellant filed a Misc. App. No. 2094/2023 in the aforesaid O.A. No. 125/2022, seeking leave to file an appeal against the first impugned order before this Court. By the second impugned order dated 25th May 2023, the application for the grant of leave for filing an appeal was rejected.

SUBMISSIONS

7. The learned counsel appearing for the appellant has taken us through the documents on record. The learned counsel submitted that all throughout, the appellant's performance was beyond excellent, which is reflected from the medals conferred on him. He pointed out that the appellant had been awarded twelve times, including two VSMs.

8. The learned counsel pointed out that there is evidence adduced on record, including the statements of the officers about the conduct of the fourth respondent towards the appellant. The learned counsel submitted that there was no reason to take such a view. His submission is that the mala fides of the fourth respondent towards the appellant must be considered.

9. Inviting our attention to the first impugned order, the learned counsel pointed out that the second ACR for the period 07/18 to 06/19 has been set aside partially, but the

earlier ACR of the period 12/17 to 06/18 has not been interfered with, though the basis of both ACRs is the same. He invited our attention to the finding recorded in the first impugned order. In paragraph 35, he pointed out that there is a finding that in the portion of the ACR that is not to be disclosed to the appellant, the entries therein distinctively showed the intent of the fourth respondent to affect the lower figurative ratings intentionally, which is masked from the knowledge of the appellant. His submission is that there was no reason to treat the two ACRs separately. He pointed out the role played by the fourth respondent, who nursed a grudge against the appellant. He submitted that the fourth respondent has intelligently brought down merit in the first ACR. He submitted that the fourth respondent had a biased and premeditated intent against the appellant. He pointed out that the appellant was graded 'outstanding' by the same IO in the first ACR. Because there was a large flair of 8s in the first ACR, the competitive rating of the appellant was brought down despite an overall Box grading of 9. Thus, presumably, grading 8 with the same assessment in the second ACR is beyond the perception of any prudent man. He also pointed out that ACRs for both periods were written beyond the permitted time.

10. As noted in the order dated 26th September 2024, the learned Additional Solicitor General (ASG) has produced three sets of one file and two sets of ACRs, which were returned to the learned ASG after perusal. The learned ASG submitted that the Tribunal has provided cogent reasons for not interfering with the first ACR. In the second ACR, as it was found that the assessment was biased and premeditated, the Tribunal expunged it. The learned ASG pointed out that the assessment of the officers through ACRs is being regulated by Army Order bearing AO No.02/2016/MS. It provides for giving numeric gradings from one to nine. It also provides a pen picture of the officer by three different officers. The assessment is made by three officers: (i) Initiating Officer (IO); (ii) Reviewing Officer (RO); and (iii) Senior Reviewing Officer (SRO). She also pointed out how assessments are made using numeric values, ranging from nine to one. She pointed out that the statutory and non-statutory complaints made by the appellant were properly considered and disposed of. She would, therefore, submit that there is no reason to interfere with the finding of fact recorded by the Tribunal as regards the first ACR. She relied upon a decision of this Court in the case of ***Dev Dutt v. Union of India & Ors***¹.

¹ (2008) 8 SCC 725

CONSIDERATION OF SUBMISSIONS

11. We have given careful consideration to the submissions. Part I of the ACR in accordance with AO No.02/2016/MS consists of personal data, service record and authentication of data. Part II consists of personal and demonstrated performance, which consists of personal qualities and demonstrated performance variables. The personal qualities and demonstrated performance qualities include administrative acumen, motivation, development of subordinates, emotional stability, understanding viewpoints, foresight and understanding, loyalty and respect, judicious delegation, boldness, physical fitness and fluency in expression. The assessment is to be made by the IO and RO. The rating is given on a scale of nine to one. Then, there are pen pictures by the IO, RO and SRO. The pen pictures by RO and the SRO are not to be shown to the officer. Part III consists of the potential for promotion, which is to be shown to the officer reported upon. The Qualities to Assess Potential are termed as QsAP. There are five QsAPs. They are professional competence, vision and conceptual ability, selflessness and setting of personal example, integrity and moral courage and tolerance for ambiguity. The assessment is to be made by the IO, RO and SRO. The last portion of Part III is Box grading given by the IO, RO and SRO. This part is not to be shown to the officer.

12. As stated earlier, numerical values from 9 to 1 are used for assessment. The numerical value of 9 is stated as ‘outstanding’, and the numerical value of 7 or 8 is treated as ‘above average’.

13. Now, we turn to the finding recorded by the Tribunal. From paragraph 33 onwards, scrutiny of ACRs was made by the Tribunal. Paragraphs 34 to 36 of the first impugned order deal with the ACR of the appellant from 07/18 to 06/19. Paragraphs 34 to 36 of the first impugned order read thus:

“34. We have further examined the subsequent ACR of the applicant covering the period from 01.07.2018 to 30.06.2019, wherein the IO and the SRO remain the same whereas there has been a change of RO with effect from 01.01.2019. Compared to the previous report by the same IO, this report under examination almost has a similar pattern while grading the ratee in individual boxes in PQs (Personal Qualities) & DPVs (Demonstrated Performance Variables) which is shown to the ratee. The assessment of QsAP (Qualities to Assess Potential) is indicative of the potential of the ratee for his suitability in higher ranks in future, if promoted. The relatively lower ratings in QsAP by IO as well as the box grading which has been further endorsed by the RO has not been adequately justified by Respondents except for the reason of inaccurate

initiation of Strength Return (IAFF 3008) of the officers of No 3 ABW and non-communication of adverse remarks in the ACR to a ratee officer under the applicant.

35. Curiously, it is important to note that the Respondent No.4 as IO has maintained some figurative assessment in the portion of the ACR which is to be shown to the ratee, i.e., applicant and signed as seen. Whereas it is only in the part of the ACR which is not to be seen by the ratee, the IO has awarded relatively low gradings. Confidential reports are meant to be the appraisal of performance of the ratees. **By maintaining similar figurative gradings on the disclosed part of the ACR, the reporting officers have intended to indicate the ratee that there is no downward trend in his performance during the period of report whereas in the portion of the ACR that is not disclosed to the applicant the report has distinctively indicated the intent to affect lower figurative ratings intentionally masked from the knowledge of the applicant.**

36. We further note that the SRO who remains common for both the reports has endorsed the report of IO & RO as justified and yet he has maintained same box gradings in both his reports under analysis. Therefore, the QsAPs and the Box gradings of the CR 07/2018 to 06/2019 by RO warrant

interference and are required to be expunged.”

14. We had perused the ACRs of the appellant. The reasons recorded while dealing with the ACR of 07/18 to 06/19 can be summarised as under:

- i.** The assessment of QsAP is indicative of the potential of the ratee (appellant) for his suitability in higher ranks in future, if promoted;
- ii.** Relatively lower ratings in QsAP by the IO and relatively lower ratings in Box grading by the IO endorsed by the RO have not been adequately justified by the respondents;
- iii.** The fourth respondent, in his capacity as IO, has maintained the same figurative assessment in the portion of ACR to be shown to the ratee (appellant). However, it is only in the part of the ACR which is not to be seen by the ratee (appellant), the IO has awarded relatively low gradings;
- iv.** SRO was the same for both the ratings who has endorsed the report of the IO and the RO as justified, but had maintained the same Box gradings; and

- v. Therefore, the Tribunal ordered expunction of figurative ratings by the IO and the RO in QsAPs and Box gradings in the second ACR (07/2018 to 06/2019).

15. The challenge before the Tribunal was to both the ACRs. We may note here that IO and SRO for both the ACRs are the same. IO is the fourth respondent. However, RO for the two ACRs was different. The Tribunal has found fault with the approach of the IO in awarding relatively low gradings in that part of the ACR which is not visible to the ratee (appellant). In fact, there is a finding of fact recorded in paragraph 35 of the first impugned order, which we have quoted above. The intent of the fourth respondent is also noted. The finding is that there was an intent to affect lower figurative ratings to the appellant which is masked from the knowledge of the appellant. After having perused the ACRs, we are of the view that the same reasoning is applicable to the ACR of the period from 12/17 to 06/18. Unfortunately, the Tribunal has considered the case of the first ACR only in the context of the performance counselling letter dated 9th February 2018. We may note here that the respondents have not challenged the finding recorded in paragraphs 35 and 36 of the first impugned order. We are, therefore, of the view that the first ACR cannot be treated differently from the second ACR.

16. Therefore, we direct that the expunction of figurative ratings by IO and RO in QsAPs and Box grading of the ACR for the period 12/17 to 06/18 shall be made. Accordingly, the first impugned order dated 26th April 2023 is modified by granting the aforesaid additional relief while maintaining the relief already granted. Now, reconsideration of the appellant for promotion to the rank of Major General shall be made in terms of the operative part of the first impugned order by taking into consideration the additional relief granted as above. If the appellant has already superannuated, his case for the notional promotion and grant of monetary benefits shall be considered within three months from today.

17. The appeal is, accordingly, allowed with no order as to costs.

.....J.
(Abhay S. Oka)

.....J.
(Ahsanuddin Amanullah)

.....J.
(Augustine George Masih)

**New Delhi;
May 14, 2025.**