

# THE HIGH COURT OF MEGHALAYA

## WP (C)No.37/2014

Ghasi Ram,  
S/o (L) Kesharee Singh,  
presently working as Chief Engineer,  
Research and Development Establishment,  
(BRO) Shillong, under Border Raods Development  
Board, Ministry of Roads, Transport and Highways.     ::: Petitioner

- Vrs -

1. The Union of India,  
Through the Secretary to the Govt. of India,  
Ministry of Roads, Transport and Highways,  
Border Roads Development Board, "B" Wing,  
4<sup>th</sup> Floor, Sena Bhawan, New Delhi-110011.
2. The Secretary to the Govt. of India,  
Ministry of Defence, R.No.101-A, South Block,  
New Delhi-110011.
3. The Secretary to the Govt. of India,  
Border Roads Development Board,  
"B" Wing, 4<sup>th</sup> Floor, New Delhi-110011.
4. The Director General of Border Roads,  
Seema Sadak Bhawan, Ring Road,  
Delhi Cantt., New Delhi-110010.                             ::: Respondents

### BEFORE THE HON'BLE MR. JUSTICE T NANDAKUMAR SINGH

For the petitioner                             :     Mr. IH Saikia, Adv  
For the respondents                         :     Mr. SC Shyam, CGC  
Date of hearing                               :     **19.06.2014**  
Date of Judgment                             :     **26.06.2014**

### JUDGMENT AND ORDER

The prayers sought for in the present writ petition are:

(a) Expunging the adverse remarks in the impugned ACRs of  
the petitioner for the periods (i) 01.09.2007 to 31.03.2008; (ii) 01.04.2009 to  
05.08.2009; (iii) 01.04.2011 to 31.03.2012 and; (iv) 01.04.2012 to

31.07.2012, **(b)** setting aside/ or quashing the order dated 16.11.2011 issued by the respondent No.8 for not entertaining the representation for expunging the adverse remarks mechanically and without any reason & **(c)** impugned order dated 30.12.2013 for rejecting the representation filed by the petitioner for upgradation of his ACRs for the periods 01.04.2011 to 31.03.2012 and 01.04.2012 to 31.07.2012 without any reason, **(d)** for a direction to the respondents to consider the case of the petitioner for promotion to the post of Additional Director General, Border Roads Organization (for short 'BRO') w.e.f. 01.04.2014 and **(e)** for a direction to the respondents to grant non-functional upgradation in HAG scale of Rs.67,000/- to Rs.79,000/- w.e.f. 23.08.2011 and other relief(s).

2. Heard Mr. IH Saikia, learned counsel for the petitioner and Mr. SC Shyam, learned CGC appearing for the respondents.

3. **Factual background:-** The petitioner after obtaining B.Sc., B.E. (Civil) and M.E. (Structure Engineering) was appointed as an Assistant Executive Engineer (Civil) w.e.f. 14.04.1980 under the Border Roads Development Board (for short 'BRDB'), Ministry of Roads Transport and Highways, Govt. of India. The petitioner was promoted to the post of Executive Engineer in the year 1992, Superintending Engineer in the year 1997 and ultimately, he was promoted to the post of Chief Engineer in the month of November, 2004 and after promotion to the post of Chief Engineer, the petitioner was posted at various places and projects and presently, the petitioner is working as Chief Engineer, Research and Development Establishment (BRO), BRBD, Shillong w.e.f. October, 2013. Non-functional upgradation in the HAG scale of Rs.67,000/- to Rs.79,000/- was due to the petitioner w.e.f. 23.08.2011. By an order dated 06.02.2013, the respondent

authorities granted the non-functional upgradation to his junior without considering the case of the petitioner. Non-consideration of the case of the petitioner for granting the aforesaid non-functional upgradation was done due to some ACRs which were recorded below the benchmark without any intimation to him in time. The next promotional post of Chief Engineer is the post of Additional Director General, BRO and such promotion was due to the petitioner w.e.f. 01.04.2013. One Shri.K.K.Y. Mahindrakar was to be retired from service on superannuation w.e.f. 31.03.2014 and the petitioner being the senior most Chief Engineer, was due to be promoted against the said vacancy in the post of Additional Director General, BRO w.e.f. 01.04.2014. It is an admitted case of the parties that the benchmark for promotion to the post of Additional Director General is 'very good' and so also for non-functional upgradation in the scale of Rs.67,000/- to Rs.79,000/- and also the promotion should be on the basis of 5 years ACR/ICR/APAR/IPAR starting from 2007.

4. As the present case, relates with recording of ACR/ICR/APAR/IPAR of the employee, it would be more beneficial to reproduce the relevant portions of the General Principles for writing the ACR/ICR/APAR/IPAR and also the relevant portions of the Office Memorandum. It is nobody dispute that the Brochure on Preparation and Maintenance of Annual Performance Assessment Report for Central civil services is adopted and followed by the BRDB. Para 2.2 of the said guidelines i.e. Chapter-II 'General Principles' clearly provides that the reporting officer at the beginning of the year has to set quantitative/physical targets in consultation with each of the Govt. servants, whose reports he is required to write. Under Para 2.8 assessment of the performance of a Govt. servant at more than one level has been prescribed as a general rule with a view to ensure maximum objectivity. Para 2.13(iv) provides that the

competent authority may consider the representation, if necessary, in consultation with the reporting and/or reviewing officer and shall decide the matter objectively based on the materials placed before him within a period of thirty days from the date of receipt of the representation against the recording/grading in the concerned ACR of the concerned employee. Chapter-V of the said guidelines has prescribed for Timely Completion of Annual Performance Assessment Report. In that time schedule, in case APAR is not initiated by the reporting officer for any reason beyond 30<sup>th</sup> June of the year in which the financial year ended, he shall forfeit his right to enter any remarks in the APAR of the officer to be reported upon and he shall submit all APARs held by him for reporting to the reviewing officer on the next working day. Similarly, the reviewing officer shall also forfeit his right to enter any remarks in the APAR beyond 31<sup>st</sup> August of the year in which the financial year ended. The relevant portions of the said Memorandum for Preparation and Maintenance of Annual Performance Assessment Report for the Central services are quoted hereunder:-

## **“CHAPTER I**

### **ANNUAL PERFORMANCE ASSESSMENT REPORT – AN APPROACH TO THE SYSTEM**

*1.2 It is in the interest of every Government servant that he should know how well or otherwise, he is performing his job. Without this feed back information, it will be difficult for him to plan his career development in a systematic manner. In fact, he would be more interested in knowing his defects. His defects would affect his career advancements in the long run, unless he comes to know of them in time and overcomes them by taking special efforts.*

*1.3 The immediate superior officers of a Government servant, who is the Reporting Officer, in the matter of writing his assessment Report, should be vitally concerned, in writing the Annual Performance Assessment Report (APAR) of every one of his subordinate in an objective and impartial manner. As the superior officer functions through his subordinates, he also gets credit for the good work done by them. It would, therefore, be in the interest of the Reporting officer himself to assess the*

*performance of the subordinates objectively and thereby give them counseling and proper guidance for improvement of their performance.*

*1.4 The system of APAR on the performance of Government servants is a means to an end and not an end in itself. The ultimate goal is to optimise the achievement of Government policies and programmes. This is possible only if the APAR lead to the optimization of the performance of the concerned Government servants. The main focus of the Reporting Officer should, therefore, be developmental rather than judgemental. The APAR should be a true indicator of the achievement of the Government servant; it should not be a mere tool to control or discipline him.*

*1.5 The system of APAR has two principal objectives and the Reporting Officer should have a very clear perception of these objectives. The first and foremost is to improve the performance of the subordinate in his present job. The second objective is to assess the potentialities of the subordinate and prepare him through appropriate feed back and guidance for future possible opportunities in service. To a great extent, the second objective is dependent on the achievement of the first.*

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## **CHAPTER II GENERAL PRINCIPLES**

*2.2 The Reporting Officer, at the beginning of the year has to set quantitative/physical targets in consultation with each of the Government servants, whose reports he is required to write. Performance appraisal is meant to be a joint exercise between the Government servant reported upon and the Reporting Officer. While fixing the targets, priority should be assigned item-wise taking into consideration the nature and the area of the work. The APAR is initiated by the Government servant to be reported upon himself, who gives a brief description of his duties, specifies the targets set for him wherever applicable, achievements against each targets, the shortfalls, if any, constraints encountered and areas where the achievements have been greater.*

*(Department of Personnel & Training O.M. No. 12/2/84-PP dated the 17th December, 1986)*

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*2.8 Assessment of the performance of a Government servant at more than one level has been prescribed as a general rule with a view to ensure maximum objectivity. While it might be difficult for an officer to have a detailed knowledge of the qualities of a Government servant two levels below him, his over-all*

*assessment of the character, performance and ability of the Government servant reported upon is vitally necessary as a built-in corrective. The judgement of the immediate superior can sometimes be too narrow and subjective to do justice to the Government servant reported upon. The Reviewing Officer should, therefore, consider it his duty to personally know and form his judgement of the work and conduct of the Government servant reported upon. He should exercise positive and independent judgement on the numerical grading given by the Reporting Officer and remarks of the Reporting Officer under the various detailed headings in the form of Report as well as on the pen picture, and express clearly his agreement or disagreement with these remarks. The Reviewing Officer is also free to make his own remarks on points not mentioned by the Reporting Officer. Such additional remarks would, in fact, be necessary where the Report of the Reporting Officer is too brief, vague or cryptic. However, the remarks of the Reviewing Officer himself should not be vague or self-contradictory to another remark given by himself in the APAR.*

*(Department of Personnel O.M. No. 5/5/72-Estt. (A) dated the 20th May, 1972.)*

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*2.13 The various processes in regard to completion of the APAR and its final taking on record from the reporting year 2008-09 are given below:-*

*(i) The full APAR including the overall grade and assessment of integrity shall be communicated to the concerned officer after the Report is complete with the remarks of the Reviewing Officer and the Accepting Authority wherever such system is in vogue. Where Government servant has only one supervisory level above him as in the case of personal staff attached to officers, such communication shall be made after the reporting officer has completed the performance assessment.*

*(ii) The Section entrusted with the maintenance of APARs after its receipt shall disclose the same to the officer reported upon.*

*(iii) The concerned officer shall be given the opportunity to make any representation against the entries and the final grading given in the Report within a period of fifteen days from the date of receipt of the entries in the APAR. The representation shall be restricted to the specific factual observations contained in the report leading to assessment of the officer in terms of attributes, work output etc. While communicating the entries, it shall be made clear that in case no representation is received within the fifteen days, it shall be deemed that he/she has no representation to make. If the concerned APAR Section does not receive any information from the concerned officer on or before fifteen days from the date of disclosure, the APAR will be treated as final.*

*(iv) The competent authority may consider the representation, if necessary, in consultation with the reporting and/or reviewing*

*officer and shall decide the matter objectively based on the material placed before him within a period of thirty days from the date of receipt of the representation.*

*(v) The competent authority after due consideration may reject the representation or may accept and modify the APAR accordingly. The decision of the competent authority and the final grading shall be communicated to the officer reported upon within fifteen days of receipt of the decision of the competent authority by the concerned APAR Section.*

*(Department of Personnel & Training O.M. No. 21011/1/2005-Estt.(A)(Pt-II) dated 14th May,2009.).*

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## **CHAPTER – V**

### **TIMELY COMPLETION OF ANNUAL PERFORMANCE ASSESSMENT REPORT**

*5.1 Annual Performance Assessment Reports are vital for proper personnel administration, it is essential that they are completed within a time-frame so that up-to-date Annual Performance Assessment Reports are available at any given time. With this end in view, a time-schedule has been prescribed; and the same is included as **Annexure III** at the end of the Brochure. After the expiry of the first week of the time-schedule, if the self appraisal is not received by that time, Reporting Officer should take it upon himself to remind the officer to be reported upon in writing, asking him to submit his self-appraisal. If no self-appraisal is received by the stipulated date, the reporting officer can obtain another blank APAR form and proceed to write the report on the basis of his experience of the work and conduct of the officer reported upon. While doing so, he can also point out the failure of the officer reported upon to submit his self-appraisal within the stipulated time.*

*(Ministry of Personnel & Training, Administrative Reforms and Public Grievances and Pensions O.M. No. 35014/4/83-Estt.A dated the 23rd September, 1985.)*

*5.2 As cases continue to occur where confirmation, regular promotion, appointment to sensitive posts, etc., could not be considered in time because of non-availability of APARs for the relevant period, the matter of timely completion of APARs was further reviewed and it has now been provided that in case the APAR is not initiated by the Reporting Officer for any reason beyond 30th June of the year in which the financial year ended, he shall forfeit his right to enter any remarks in the APAR of the officer to be reported upon and he shall submit all APARs held by him for reporting to the Reviewing Officer on the next working day. Similarly, the Reviewing Officer shall also forfeit his right to enter any remarks in the APAR beyond 31st August of the year in which the financial year ended. The Section entrusted with maintaining the APARs shall, while forwarding the APARs for self-appraisal with copy to the Reporting/Reviewing Officers also annex the schedule of dates. It shall also bring to the notice of the Secretary concerned in*

*the case of Ministry/Department and the Head of the organization in the case of attached and subordinate offices, the names of those Group A and B Reporting Officers and Group A Reviewing Officers in the month of October after receiving the completed APARs who have failed to initiate/review the APARs even by 30th June or 31st August as the case may be. The Secretary in the Department/Head of the organization in the case of attached/subordinate offices may direct to call for the explanation of the concerned officers for not having performed the public duty of writing the APARs within the due date and in the absence of proper justification direct that a written warning for delay in completing the APAR be placed in the APAR folder of the defaulting officer concerned.”*

5. The Govt. of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training issued a Memorandum being No.21011/1/2005-Estt.(A), New Delhi dated 06.01.2010 for the subject (*“effect on modification/expunction of adverse remarks in the ACRs and upgradation/down-gradation of the overall grading in the ACRs prior to the period of 2008-2009”*). Under the said Memorandum dated 06.01.2010, if adverse remarks of the reporting/reviewing/accepting authorities have been expunged or modified by the competent authority, the “overall grading” in the ACR be kept blank for appropriate re-grading by the DPCs and also where the authority has upgraded/downgraded the overall grading without giving sufficient reasons, the DPC shall treat such an exercise as non-est/invalid and also the general terms such as “I agree or disagree with the reporting officer/reviewing officer” used by reviewing/accepting authority shall not be construed as sufficient reason for upgrading/downgrading the overall grading given by the reporting authority/reviewing authority. For easy reference, the said Office Memorandum dated 06.01.2010 (Annexure-3 to the writ petition) is quoted hereunder:-

**“No.21011/1/2005-Estt.(A)  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training**



New Delhi, the 6th January, 2010

**OFFICE MEMORANDUM**

**Subject:- Effect on modification/expunction of adverse remarks in the ACRs and upgradation/down-gradation of the overall grading in the ACRs prior to the period 2008-2009.**

The undersigned is directed to say that instructions were issued vide O.M. of even number dated 14th May, 2009 by which the complete APAR (previously known as ACR) including the overall grading and assessment of integrity shall be communicated to the concerned officer for representation if any, with effect from the reporting period 2008-09 which was to be initiated from 1.4.2008. Prior to that only adverse remarks in the ACR were required to be communicated for representation, if any. The then existing instructions further provided that the overall grading in the ACR should remain unchanged even after modification or expunction of the entire adverse remarks. It was left to the DPC to re-determine the overall grading if it considered that the expunction of such adverse remarks had so altered the quality of the ACR. The matter has been further considered and it has been decided that in those cases where the reckonable ACRs prior to the reporting period 2008-09 are to be considered in a future DPC on which the adverse remarks of Reporting/Reviewing/Accepting Authorities have been expunged or modified by the Competent Authority, the "overall grading" in the ACR be kept blank for appropriate re-grading by the DPCs. The existing grading shall be blocked in such cases. It has also been decided that where the authority has upgraded/downgraded the overall grading without giving sufficient reasons, the DPC shall treat such an exercise as non-est / invalid. General terms, such as "I agree or disagree with the Reporting Officer / Reviewing Officer" used by the Reviewing / Accepting Authority shall not be construed as sufficient reason for upgrading / downgrading the overall grading given by the Reporting Authority / Reviewing Authority. The proposals for the DPC where ACRs upto the reporting period 2007-08 will be taken into account should specifically bring out these guidelines.

2. It is also made clear that past cases already decided will not be re-opened.

(C.A.Subramanian)  
Director

To  
All Ministries/Departments of Government of India."

6. The Govt. of India, Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training issued Office

Memorandum dated 13.04.2010 for the subject (“*Below bench mark gradings in ACRs prior to the reporting period 2008-09 and objective consideration of representation by the competent authority against remarks in the APAR or for upgradation of the final grading*”). It is categorically mentioned in Para 3 of the said Office Memorandum dated 13.04.2010 that the representation filed by the concerned employee against the remarks in the APAR should be disposed of by the competent authority by giving specific reasons thereunder. Therefore, it is very clear that any order passed by the competent authority for deciding the representation filed by the employee against the remarks in the APAR should be a speaking order. The said Office Memorandum dated 13.04.2010 is also quoted hereunder:-

**“No. 21011/1/2010-Estt.A**

**Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training**

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**North Block, New Delhi  
Dated the 13th April, 2010**

**OFFICE MEMORANDUM**

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

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

communication. It may be noted that only belowbenchmark ACR for the period relevant to promotion need be sent. There is no need to send belowbenchmark ACRs of other years.

2. As per existing instructions, representations against the remarks or for upgradation of the final grading given in the APAR (previously known as ACR) should be examined by the competent authority in consultation, if necessary, with the Reporting and the Reviewing Officer, if any. While considering the representation, the competent authority decides the matter objectively in a quasi-judicial manner on the basis of material placed before it. This would imply that the competent authority shall take into account the contentions of the officer who has represented against the particular remarks/grading in the APAR and the views of the Reporting and Reviewing officer if they are still in service on the points raised in the representation vis-a-vis there marks/gradings given by them in the APAR. The UPSC has informed this Department that the Commission has observed that while deciding such representations, the competent authorities sometimes do not take into account the views of Reporting / Reviewing Officers if they are still in service. The Commission has further observed that in a majority of such cases, the competent authority does not give specific reasons for upgrading the below benchmark ACR/APAR gradings at par with the benchmark for next promotion.

3. All Ministries / Departments are therefore requested to inform the competent authorities while forwarding such cases to them to decide on the representations against the remarks or for upgradation of the grading in the APAR that the decision on the presentation may be taken objectively after taking into account the views of the concerned Reporting / Reviewing Officers if they are still in service and in case of upgradation of the final grading given in the APAR, specific reasons therefor may also be given in the order of the competent authority.

(CA. Subramanian)  
Director

To

All Ministries/Departments of Government of India.”

7. The impugned ACRs of the petitioner recorded below the benchmark are as follows:-

“Sl. No.	ACR Period	Initiating Officer (IO)	Reviewing Officer (RO)	Accepting Officer (AO)
1.	01.09.2007 to 31.03.2008	‘good’	‘good’	Absent

2.	01.04.2009 to 05.08.2009	'good'	Absent	Absent
3.	01.04.2011 to 31.03.2012	'outstanding'	'good'	Absent
4.	01.04.2012 to 31.07.2012	'outstanding'	'good'	Absent"

The impugned ACRs i.e. adverse entries and also downgrading of the ACRs of the petitioner from 'outstanding' to 'good' were not communicated to the petitioner in time. The petitioner came to know the impugned ACRs for the first time when those were communicated to him vide letters dated 19.04.2011, 20.11.2010 and 04.07.2013 respectively. Against the said impugned ACRs i.e. adverse entries, the petitioner filed *(i)* representation dated 09.05.2011 against the three impugned ACRs for the periods 01.04.2005 to 31.03.2008; *(ii)* representation dated 09.12.2010 against the APAR for the period 01.04.2009 to 05.08.2009 and; *(iii)* representation dated 26.07.2013 for upgradation of grading for APAR for the period from 01.04.2011 to 31.03.2012 and for APAR for the period from 01.04.2012 to 31.07.2012. The said representations had been disposed of by the cryptic orders dated 16.11.2011 and 30.12.2013 respectively. For easy reference, the impugned orders dated 16.11.2011 and 30.12.2013 are quoted hereunder:-

**“Government of India  
Ministry of Road Transport and Highways  
Border Roads Development Board  
4<sup>th</sup> Floor, 'B' Wing, Sena Bhawan, New Delhi.**

*Subject: REPRESENTATION AGAINST BELOW  
BENCH MARKS IN RESPECT OF SHRI.  
GHASI RAM, CE (CIV)*

*Reference Dte GBR note No.10024/ACR/DG's/46/DGBR  
dated 20 Nov 2010 and No.10024/ACR/DG's/132/DGBR  
dated 09 Aug 2011 on the above subject.*

*2. The request of Shri. Ghasi Ram, CE (civ) for upgradation of  
the below bench mark ACRs grading for the periods mentioned*

below have been considered by the Competent Authority and the same has not been acceded to:-

- (a) 01.04.2005 to 31.03.2006
- (b) 01.04.2006 to 31.03.2007
- (c) 01.09.2007 to 31.03.2008
- (d) 01.04.2009 to 05.08.2009

Sd/-  
(Manmohan Pipil)  
Under Secretary to the Govt. of India

Lt.Col DP Nautiyal, SO to DGBR  
Seema Sadak Bhawan,  
Ring Road, Delhi Cantt.,  
New Delhi-10

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BRDB Sectt ID Note No.BRDB/04/1826/CE(Civ)/2011/GE-I dated 16<sup>th</sup> Nov 2011"

**BRDB/04/2153/2013/GE-I  
GOVERNMENT OF INDIA  
MINISTRY OF ROAD TRANSPORT & HIGHWAYS  
BORDER ROADS DEVELOPMENT BOARD.**

4<sup>th</sup> Floor, 'B' Wing,  
Sena Bhawan, New Delhi  
Dated: 30<sup>th</sup> December, 2013

**OFFICE MEMORANDUM**

Subject:- Representation of Shri. Ghasi Ram, Chief Engineer against below Benchmark gradings awarded in his APARs for the periods from 01.04.2011 to 31.03.2012 and 01.04.2012 to 31.07.2012.

The undersigned is directed to refer to the aforementioned representation and to say that that the same has been considered by the Competent Authority i.e. Defence Secretary. Having gone through the representation, grading/remarks given by Initiating Officer/Reviewing Officer and the comments of Initiating Officer/Reviewing Officer on the representation, the Competent Authority has agreed with the final gradings endorsed in the APAR/IPAR of Shri. Ghasi Ram, Chief Engineer for the periods from 01.04.2011 to 31.03.2012 & 01.04.2012 to 31.07.2012; and hence rejected the representation for upgradation for the said periods.

Sd/-  
(Rampal Singh)  
Under Secretary to the Govt. of India

To,  
Co Hemant Bhardwaj  
TS to DGBR  
Dte General Border Roads  
Seema Sadak Bhawan  
NewDelhi-10

Copy to:-  
Shri. Ghasi Ram (GO-146ON)  
Chief Engineer (Civ)  
(Through Dte GBR).”

8. It is the case of the petitioner that the impugned orders dated 16.11.2011 and 30.12.2013 are cryptic orders and are in clear infraction of the Memorandum of the Govt. of India dated 13.04.2010 wherein, it has been very clearly provided that the order for dismissing the representation, the reporting officer/reviewing officer/competent authority shall give specific reasons and in the impugned orders dated 16.11.2011 and 30.12.2013, there were no specific reasons. Copies of the impugned ACR for the period 01.09.2007 to 31.03.2008 are annexed in the writ petition. Paras 16, 17 & 18 of the said impugned ACR read as follows:-

“**16. Personal qualities**

	<b><i>I.O.</i></b>	<b><i>R.O.</i></b>
<i>(a) Fluency, precision and brevity in expression</i>	<input type="text" value="7"/>	<input type="text"/>
<i>(b) Appraising ability on subordinate performance</i>	<input type="text" value="8"/>	<input type="text"/>
<i>(c) Administrative acumen in judicious utilization of human and material resources</i>	<input type="text" value="7"/>	<input type="text"/>
<i>(d) Creativity, clarity of thought and analysis, decisive approach in reaching conclusions and in deciding on a definite course of action.</i>	<input type="text" value="7"/>	<input type="text"/>
<i>(e) Exhibition of foresight, depth of understanding and breadth of perspective beyond his limit of specific responsibility</i>	<input type="text" value="8"/>	<input type="text"/>
<i>(f) Capacity to motivate in the face of adversities</i>	<input type="text" value="7"/>	<input type="text"/>

(g) Reliability, impartially and balance in assessment of the capabilities of his subordinates	8	□
(h) Emotional stability under stress and strain	8	□
(j) Devotion to duty (willing to stake his own interest and setting of personal example through his conduct for the betterment of service and his subordinates).	8	□
(k) Inter-personnel relation and team work	7	□
(l) Relations with the public (Please grade on the officer's accessibility to the public and responsiveness to their needs).	7	□
(m) Attitude towards Scheduled Castes/ Scheduled Tribes	8	□
(n) Sensitivity to social justice towards Scheduled Castes/Scheduled Tribes.	8	□
(o) Ability to take quick and effective action to prevent and quell atrocities and ensure justice to Scheduled Castes/Scheduled Tribes.	7	□
(p) Effectiveness in bringing out the development of Scheduled Castes/Scheduled Tribes.	7	□
<b>17. INTEGRITY</b> (Refer item 20 of the instructions on submission of ACRs)	9	□
<b>18. ON-THE-JOB PERFORMANCE</b>	8	□
(a) Judicious delegation of responsibilities and balanced guidance and supervision	7	□
(b) Boldness and resoluteness in execution of his duties in face of odds and difficulties	8	□
(c) Knowledge of technical specifications and standards, codes, manuals, circulars, instructions and procedure.	8	□
(d) Commitment to the assigned task	8	□

(e) *Financial Management*

(f) *Professional ability and application*

8

(g) *Planning ability to achieve assigned task*

7

(h) *Extraction of unwavering loyalty and respect and willingness to accept full responsibility for his own and his subordinates action*

7

(i) *Effective contribution towards the personal and Professional development of his subordinate*

7

(j) *Proficiency in use of Hindi*

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**19. IQ**

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9. On bare perusal of Paras 16, 17 & 18 of the said impugned ACRs, it is clear that the reporting officer-cum-reviewing officer had mechanically written the ACRs inasmuch as, the overall performance in the form of marks would be 7.57 but he mechanically recorded as 7. 7.57 is normally rounded up to 8 if the figure after point is more than .50 and the grading for marks 8 is “very good”. The said reporting/reviewing officer awarded marks 8 for the proficiency in use of Hind. The recording of overall grade in the ACR was not as per the Office Memorandum for writing the ACR relevant portions of which had been quoted above. The reporting/reviewing officer was to give reason for assessment of the ACR and also for grading, it was not done so. The impugned ACR for the period from 01.04.2009 to 05.08.2009 was also written by the same officer, who wrote the ACR for the said periods i.e. 01.09.2007 to 31.03.2008, and had awarded the high marks for proficiency in use of Hindi, but the same officer had reduced the marks for proficiency in Hindi when recording the ACR for the period from 01.04.2009 to 05.08.2009. It is the case of the petitioner that the petitioner’s mother



tongue is Hindi and there is no question of decreasing his proficiency in use of Hindi within a short period and over and above, there is no objective assessment of performance of the petitioner as provided under the said Office Memorandum and General Principles for writing the ACRs relevant portions of which had been quoted above. The reporting officer had given the grade “outstanding” in the 2 impugned ACRs i.e. 01.04.2011 to 31.03.2012 and also from 01.04.2012 to 31.07.2012, but the grade given by the reporting officer as “outstanding” had been downgraded to two steps below i.e. “good” by the reviewing officer. The reasons for downgrading from “outstanding” to “good” for the periods from 01.04.2011 to 31.03.2012 are “I find that he put in a fair degree of labour and effort. He can be rated as a ‘Good’ officer” and the reason for downgrading from “outstanding” to “good” for the period from 01.04.2012 to 31.07.2012 are “he put in a fair amount of labour. He can be rated as a ‘Good’ officer”.

**10.** The Office Memorandum or the General Principles for writing the ACR in a very clear term stated that sufficient reasons for upgrading and downgrading the overall gradings should be given by the authority i.e. reporting/reviewing authority. In the present case, no sufficient reasons are recorded by the reviewing authority in downgrading the ACRs of the petitioner recorded as “outstanding” by the reporting officer to two steps down i.e. “good” which is also an adverse remark. No prudent person will say that the said reasons given by the reviewing officer quoted above for downgrading the ACRs of the petitioner from “outstanding” to two steps down i.e. “good” (adverse remarks) will be the sufficient reasons. The reasons given by the reviewing authority for downgrading the ACRs of the petitioner from “outstanding” to “good” is not a reason in true sense of the terms, but it will be only the conclusion of the reviewing officer for recording grade of the petitioner. The reasons would mean the materials for coming to the findings

that the grade recorded by the reporting officer for the petitioner as “outstanding” cannot be acceptable. On careful perusal of the ACRs of the petitioner, it is apparent that Chapter-V “Timely Completion of Annual Performance Assessment Report”, more particularly, Para 5.2 quoted above had been violated. The reviewing officer shall have no right to enter any remarks in the APAR beyond 31<sup>st</sup> August of the year. In the impugned ACRs, the reviewing officer who has no more right to enter the remarks in the APAR of the petitioner had downgraded the “grade” of the petitioner from “outstanding” to two steps down i.e. “good” which is also an adverse remarks without any justification or reason. Over and above, the adverse remarks were not communicated to the petitioner in time i.e. within the time permitted by the Office Memorandum aforesaid to the petitioner. Writing of the confidential reports is contributing to make the subordinate work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest to pave way for amends by erring subordinate officer or to improve the efficiency in service. The Apex Court in **S. Ramchandra Raju v. State of Orissa: 1994 Supp (3) SCC 424** held that:

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

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

11. The Apex Court in ***U.P. Jal Nigam v. Prabhat Chandra Jain: (1996) 2 SCC 363*** held that the reason for such a change i.e. outstanding gradation in one year followed by ‘satisfactory’ in the succeeding year must be recorded in the personal file and the employee must be informed of the change in the form of advice; and otherwise the downgrading cannot be sustained. The Apex Court further held that changing of outstanding to adverse should be only by a speaking order. Para 3 of SCC in ***U.P. Jal Nigam’s*** case (*Supra*) reads as follows:-

*“3. We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from ‘very good’ to ‘good’ that may not ordinarily be an adverse entry*

*since both are a positive grading. All that is required by the Authority recording confidentials in the situation is to record reasons for such down grading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasized that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The down grading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam, we do not find any difficulty in accepting the ultimate result arrived at by the High Court”.*

12. The Apex Court in ***State of U.P. v. Yamuna Shanker Misra: (1997) 4 SCC 7*** held that reporting and reviewing authority have the public responsibility to write report accurately on the basis of fact and overall assessment. Para 7 of the SCC in ***State of U.P.*** case (*Supra*) reads as follows:-

*“7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51-A (j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the*

*officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standards of excellence in services constantly rises to higher levels and it becomes successful tool to manage the services with officers of integrity, honesty, efficiency and devotion”.*

13. The Apex Court in ***Dev Dutt v. Union of India: (2008) 8 SCC 725*** held that whether an entry is adverse or not, depends upon its actual impact on the employee’s career and not on its terminology. Even a “good” entry can be adverse in the context of eligibility for promotion. In the present case, the entry i.e. “good” in the APAR of the petitioner will be adverse inasmuch as the benchmark for promotion to the post of Additional Director General is “very good”. All the gradings whether “very good”, “good”, “average”, “fair” and “poor” required to be communicated to the employee working in Govt. offices and statutory bodies. Paras 37, 41, 43 & 44 of the SCC in ***Dev Dutt’s*** case (*Supra*) read as follows:-

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

41. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.

43. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

44. We, therefore, direct that the 'good' entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.”

14. The Apex Court reiterated in **Abhijit Ghosh Dastidar v. Union of India & Ors: (2009) 16 SCC 146** held that that non-communication of the adverse entry is arbitrary and as such violative of Article 14 of the Constitution. Non-communication of the adverse entries in the ACRs should not be taken into consideration while considering for promotion to the higher post and further held that without taking into consideration of the adverse entries in his ACRs the appellant also be deemed to have been promoted to the next higher post from the date when his juniors were promoted. Paras 8 & 9 of the SCC in **Abhijit Ghosh Dastidar's** case (*Supra*) read as follows:-

“8. Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion, admittedly the entry of "good" was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances of promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision (**Dev Dutt: (2008) 8 SCC 725: (2008) 2 SCC (L&S) 771: (2008) 7 Scale 403, SCC p.738, para 41**) relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.

9. Learned counsel appearing for the appellant has pointed out that the officer who was immediately junior in service to the appellant was given promotion on 28.08.2000. Therefore, the appellant also be deemed to have been given promotion from 28.08.2000”.

15. The Apex Court again reiterated in **Pratap Singh v. State of Uttar Pradesh & Anr: (2012) 1 SCC 214** held that the non-communicated adverse ACRs may not be considered for next higher promotion. Representation filed for upgradation of un-communicated adverse ACRs should be considered judiciously and not to be rejected un-judiciously. Paras 22 & 25 of the SCC in **Pratap Singh's** case (*Supra*) read as follows:-

“22. Be that as it may, due to consideration of the remarks recorded by the District Judge and not taking into consideration that such remarks were expunged/substituted as communicated to the appellant vide communication dated 21-10-1997, the very consideration of the appellant's case for promotion in the substantive vacancy in UPHJS under the 1975 Rules by the Selection Committee in its meeting dated 18-5-1998 and by the Full Court in its meeting held on 11-7-1998 gets seriously and vitally affected.

25. In our view, the matter of the appellant's promotion in the substantive vacancy in UPHJS which was considered by the Selection Committee on 18-5-1998 and by the Full Court on 11-7-1998 needs to be reconsidered in the light of the discussion

*made above and in accordance with law. Since the appellant is likely to superannuate shortly, we expect the High Court on its administrative side to complete this exercise as early as possible and preferably within one month from the date of the communication of this order.”*

**16.** For the foregoing reasons, the adverse entries in the impugned ACRs of the petitioner for the periods (i) 01.09.2007 to 31.03.2008; (ii) 01.04.2009 to 05.08.2009; (iii) 01.04.2011 to 31.03.2012 and; (iv) 01.04.2012 to 31.07.2012 and the impugned orders dated 16.11.2011 and 31.12.2013 are hereby quashed. It is made clear that the adverse entries in the impugned ACRs cannot be taken into consideration while considering the case of the petitioner for promotion to the next higher post. It is also further made clear that if there be any DPC for promotion to the next higher post i.e. Additional Director General, BRO, while the present writ petition is pending, it shall not be given effect to, and there shall be a review DPC.

**17.** In the light of the above discussions and findings and in accordance with law, the respondents need to reconsider the case of the petitioner for promotion to the next higher post i.e. Additional Director General, BRO within a period of 45 days from the date of receipt of a certified copy of this judgment and order since the petitioner is likely to superannuate shortly.

**18.** Writ petition is allowed to the extent indicated above.

**JUDGE**

*Lam*