

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

AIZAWL BENCH: AIZAWL.

W.P.(C) No. 20 of 2012

GO – 2593W Executive Engineer
(Civil) B.K. Mishra, 24 BRTF
(GREF), C/o 99 APO

... *Petitioner*

-Versus-

1. The Union of India represented by
the Secretary to the Govt. of India,
Ministry of Shipping, Road
Transport & Highways, Border
Roads Development Board, B-Wing,
4th floor, Sena Bhavan, New Delhi.
2. The Director General,
Border Roads Organization,
Seema Sadak Bhavan,
Ring Road, Delhi Cantt.,
New Delhi- 110010
3. The Chief Engineer,
Project Beacon,
C/o 56 APO

..... *Respondents*

B E F O R E
THE HON'BLE MR.JUSTICE UJJAL BHUYAN

For the petitioner	:-	Mr. C. Lalramzauva, Sr. Advocate, Mr. A.R. Malhotra, Advocate, Ms. Lalramsangzuali, Advocate, Ms. Venus H. Zomuankimi, Advocate.
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For the respondents :- Mr. Vanlalnghaka, CGC.

Date of hearing :- **18.01.2013**

Date of Judgment :- **18.01.2013**

J U D G M E N T A N D O R D E R (ORAL)

Heard Mr. A.R. Malhotra, learned counsel for the petitioner and Mr. Vanlalnghaka, learned Central Government Counsel.

2. By way of this application under Article 226 of the Constitution of India petitioner seeks a direction to the respondents to upgrade the grading in his Annual Confidential Report (ACR) for the period from 8.8.2008 to 31.3.2009 from 'Good' to 'Very Good'.

3. Shorn of details, facts of the case may be briefly noted.

4. Petitioner is presently serving as Executive Engineer (Civil) in the Border Roads Task Force (BRTF). The post held by the petitioner is a civilian post and is in the pay scale of Rs. 10000-325-15200. Petitioner is presently the Second-in-Command of the Headquarter of 24 BRTF, Seling in the State of Mizoram.

5. For the period from 8.8.2008 to 31.3.2009, the Reporting Officer graded the petitioner as 'Very Good'. The following brief comments were made by the Reporting Officer :-

1. Shri BK Mishra is a resolute, mature and balanced officer who is fair and judicious in his dealings.

2. He has adequate knowledge of his assignment and has applied it satisfactorily.

3. He has been able to marshal his available resources and produce commensurate output.

4. Overall grading "Very Good".

The Reviewing Officer, however, graded the petitioner as 'Good' with the following remarks:-

"Mishra is a mature and experienced officer who has performed reasonably well during the year"

When the matter was placed before the Accepting Authority, he endorsed the assessment of the Reviewing Officer and graded the petitioner as 'Good' with the following remarks:-

"I endorse the assessment of RO. Overall performance 'Good' "

6. When the entries in the ACR for the aforesaid period was communicated to the petitioner, he submitted a representation dated 7.1.2010 before the Secretary, Border Roads Development Board, Ministry of Road Transport and Highways, Government of India for reconsideration. However, the same was rejected by the authority, which was communicated to the petitioner vide the Office Memorandum dated 17.2.2011 issued by the

Under Secretary to the Government of India, Ministry of Road Transport and Highways.

7. Aggrieved, petitioner has filed the present writ petition contending that the Reviewing Authority had in fact agreed with the views of the Reporting Officer and, therefore, could not have downgraded the grading of the petitioner from 'Very Good' to 'Good'. It is the further contention of the petitioner that for promotion to posts carrying a grade pay of Rs. 7600/- and above, the grading has to be 'Very Good'. Therefore, downgrading of the rating of the petitioner from 'Very Good' to 'Good' would be an adverse entry which would affect his career prospects. Petitioner's representation in this regard was also summarily rejected without assigning any reason. The performance and conduct of the petitioner justifies his grading as 'Very Good'.

8. Respondents have filed their counter affidavit. Stand taken is that the prescribed procedure in case of grading below bench mark has been followed in the instant case. Petitioner's representation was duly considered. Petitioner was advised on a number of occasions about the shortcomings in his performance and the grading of 'Good' was a fair assessment of the overall performance of the petitioner.

9. Petitioner in his reply affidavit has denied that the Reviewing Officer had at any point of time advised the petitioner about any of his shortcomings so as to improve himself. None of the Reporting, Reviewing and Accepting

Officers had provided any guidance to the petitioner to improve himself. It is further stated that the representation of the petitioner was considered by the Accepting Officer himself, who is in violation of the law laid down by the Hon'ble Supreme Court in the case of ***Dev Dutt –vs- Union of India and others*** reported in ***(2008) 8 SCC 725***.

10. Mr. Malhotra, learned counsel for the petitioner submits that the present case can be decided on the short point that representation of the petitioner was rejected by the very same Accepting Officer who had accepted the report of the Reviewing Officer. This, he submits is contrary to the law laid down by the Apex Court in ***Dev Dutt*** (supra). He further submits that the Reviewing Officer while agreeing with the comments of the Reporting Officer mysteriously downgraded the petitioner as 'Good'. No reasons were assigned for such downgrading. He, therefore, submits that the impugned downgrading should be set aside and quashed and the grading of 'Very Good' given by the Reporting Officer should be restored.

11. Mr. Vanlalnghaka, learned Central Government Counsel, however, opposes the submissions made by the learned counsel for the petitioner. He submits that the authorities had made a fair assessment of the performance of the petitioner and have correctly graded him as 'Good'. The said assessment was based on an overall assessment of his performance. He further submits that grievance raised by the petitioner was duly considered

by the authority and, therefore, no case is made out for interference by this Court in exercise of its powers under Article 226 of the Constitution of India.

12. Mr. Vanlalnghaka, learned Central Government Counsel has also produced before the Court the ACR of the petitioner for the period in question in original.

13. Submissions made have been considered.

14. From the ACR submitted by the learned Central Government Counsel, it is seen that to secure various gradings an officer has to obtain certain marks which are as under:-

- I. Outstanding – 9*
- II. Very Good – 8*
- III. Good – 7*
- IV. Average -5*
- V. Below Average- 4*

15. The Reporting Officer gave 8 marks to the petitioner, which entitled him to be graded as 'Very Good'. He gave reasons for such grading. When the matter was placed before the Reviewing Officer, he agreed with the comments of the Reporting Officer. He also commented that petitioner is a mature and experienced officer who had performed reasonably well during the period under consideration. Though against column No. 27, which puts the question *"Have you improved/reduced the overall assessment made by reporting officer. If so, give justification. If the overall grading differs by more*

than one", he remarked "No", he gave 7 marks to the petitioner, which meant that the petitioner's grading went down to 'Good'.

16. When the matter came up before the Accepting Officer, he endorsed the assessment of the Reviewing Officer and gave 7 marks to the petitioner.

17. As noticed above, petitioner had submitted representation dated 7.1.2010 to the Secretary to the Border Roads Development Board, Ministry of Road Transport and Highways but the representation of the petitioner was rejected by the authority.

18. The counter affidavit filed by the respondents indicates that the representation of the petitioner dated 7.1.2010 was considered and rejected by the same Accepting Authority. Annexure-2 to the counter affidavit is a communication dated 27.8.2010 of Shri AK Nanda, Lt. Gen., E-in-C wherein he stated that he was in agreement with the assessment of the Reviewing Officer. He further stated that he had endorsed the same grading as given by the Reviewing Officer. According to him, the grading is fair and justified. Therefore, he opined that the representation made by the petitioner lacked substance and recommend no change in the ACR of the petitioner for the period in question.

19. The Hon'ble Supreme Court in the case of **Dev Dutt** (supra) had held that the representation submitted by a public servant must be decided by an

authority higher than the one who gave the entry. The relevant portion of the said judgment is as under.

“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.”

20. As adverted to above, the representation of the petitioner was decided by the very same Accepting Authority, who had recommended no change in the ACR. In view of the law laid down by the Hon’ble Supreme Court as noticed above, the representation of the petitioner was required to be decided by an authority placed higher in hierarchy than the Accepting Authority.

21. Accordingly, it is hereby ordered that the representation of the petitioner dated 7.1.2010 (Annexure-4 to the writ petition) shall be considered afresh by an officer who is higher in rank and hierarchy than the Accepting Officer. Needless to say, such consideration shall be done without being influenced by the decision earlier made by the Accepting Officer while rejecting the representation of the petitioner. The representation of the petitioner shall be decided afresh within a period of 4 (four) months from the date of receipt of a certified copy of this order.

22. Writ petition accordingly stands allowed to the extent indicated above. No cost.

JUDGE

Sushil