

(2025) 07 OHC CK 1290
In the Orissa High Court
Case No : Writ Petition (C) No. 2076 Of 2024

Himansu Mohan Mishra

APPELLANT

Vs

State Of Orissa And Another Vs

RESPONDENT

Date of Decision : 14-07-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2025) 07 OHC CK 1290

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : B.S. Tripathy, Atul Tripathy, B.K. Sahu

Final Decision : Allowed

Judgement

A.K. Mohapatra, J

1. The present writ petition has been filed with a prayer to quash the impugned letter of the Opposite Party No.1 dated 20.01.2024, under Annexure-11, the DO No.1509 dated 31.10.2023, under Annexure-6, and also to quash the adverse entries made in the PAR of the petitioner for the year 2021-22 (for the period from 01.10.2021 to 31.03.2022), under Annexure-4.

FACTUAL MATRIX OF THE CASE

2. A concise overview of the essential facts underlying the present writ application, is as follows; initially, on 29.05.1989 the Petitioner entered into service as a Junior Agriculture Officer at Balisankara under the District Agriculture Officer, Sundergarh. Thereafter, upon being promoted, he joined the post of Assistant Agriculture Officer at the Office of the Soil Chemist, Baripada, on 09.05.2007, followed by a promotion to the post of Assistant Director, Agriculture & Food Production on 29.01.2020, and then to the post of District Agriculture Officer, Pattamundai, which he joined on 04.10.2021. Presently, the Petitioner is continuing in the office of the Opposite Party No.2-the Principal Secretary to Govt., Agriculture & Farmers' Empowerment Department,

Bhubaneswar, Khurda, as the Joint Director, Agriculture Level-II, Directorate of Agriculture & Food Production, Odisha.

3. The heart of the contention involved in the present writ petition relates to the period 2021 to 2022 during which period the Petitioner was functioning as the ADO, Pattamundai. During the said period, i.e. the financial year 2021-2022, more specifically from 01.01.2021 to 31.03.2022 (herein referred to as the "relevant period"), the Petitioner furnished his Performance Appraisal Report (PAR). In the self-appraisal report attached thereto, a copy of which is produced under Annexure-3 to the present writ petition, the Petitioner has highlighted his achievements in respect of the work assigned to him and has indicated a brief description of duties discharged and tasks undertaken by him during the relevant period of 2021-2022.

4. While things stood thus, the Petitioner received DO No.820 dated 16.06.2023, under Annexure-4 to the present writ petition, issued by the Additional Secretary to Government, GA&PG Department communicating adverse remarks, made by the Reporting Authority Sri Siba Prasad Mallick on the PAR of the Petitioner for the Period 2021-2022 (i.e. 01.01.2021 to 31.03.2022). The adverse remarks communicated through the DO No.820 dated 16.06.2023 are reproduced hereinbelow for better appreciation;

"You lack in supervising the field work regularly. You do not review the progress of the works done under different schemes operating in the blocks under your jurisdiction.

Your overall grading is "Good". Government hopes you will try to improve."

5. Upon receipt of the aforesaid DO No.820, dated 16.06.2023, the Petitioner furnished a representation, dated 28.07.2023, reproduced under Annexure-5 to the present writ petition, ventilating his grievances before the Additional Secretary to Government, GA&PG Department and praying for expungement of the adverse remarks made against him in his PAR for the relevant period during 2021-2022. The aforesaid representation of the Petitioner has been rejected by the Opposite Party No.1 and the rejection has been communicated to him vide DO No.1509 dated 31.10.2023, under Annexure-6 to the present Writ Petition. Aggrieved by such rejection, the Petitioner had earlier approached this court by filing a writ petition bearing W.P.(C) No.38618 of 2023 with a prayer to quash the rejection order and the adverse remarks made against him in his PAR for the relevant period 2021-2022.

6. The aforesaid writ petition was taken up by this Court and disposed of vide order dated 30.11.2023 by setting aside the rejection order dated 31.10.2023 and directing the Addl. Chief Secretary, GA&PG Department, Government of Odisha, who is the Opposite Party No.1 in the present Writ Petition, to reconsider the representation of the petitioner dated 28.07.2023 within two weeks and with a further direction to defer the D.P.C to the post of Jt. Director, Level-I until the representation of the Petitioner is decided upon. Following such order, the

Opposite Party No.1 has considered and once again rejected the representation of the Petitioner vide Memo No.57, dated 20.01.2024, under Annexure-11 to the present Writ Petition on the grounds stated therein. Aggrieved by the aforesaid rejection, the Petitioner has approached this Court by filing the present Writ Petition.

CONTENTIONS OF THE PETITIONER

7. Heard Mr.B.S. Tripathy, learned Senior Counsel appearing for the Petitioner along with Mr. Atul Tripathy, learned counsel appearing for the Petitioner. The learned Senior Counsel for the Petitioner has, at the outset, disputed the adverse remarks made in the PAR of the Petitioner for the relevant period 2021-2022 (more precisely 01.10.2021 to 31.03.2022). It is the Petitioner's stance that the adverse remarks made in his PAR for the relevant period runs contrary to his actual performance during the said period. The Learned Senior Counsel for the Petitioner contended that while the Petitioner was functioning as the ADO, Pattamundai, there were four Blocks under his jurisdiction and he has a 100% achievement in respect of all of the 26 schemes under him during the relevant period 2021-2022. To substantiate his claims, the Learned Senior Counsel for the Petitioner has laid emphasis on Annexure-2 to the present writ petition, which contains the records of his achievements during the relevant period, filed in the ADAPT Portal. Additionally, it was also contended by the learned Senior Counsel for the Petitioner that following the satisfactory performance and discharge of his duties by the Petitioner during the relevant period, the Reporting Authority had himself put the Petitioner in charge of additional two ADO circles.

8. Next, undermining the veracity of the adverse remarks made in the PAR of the Petitioner for the relevant period 2021-2022, the Learned Senior Counsel for the Petitioner contended that the Reporting Authority, Sri Siba Prasad Mallick, who had made the adverse remarks in the PAR of the Petitioner for the relevant period 2021-2022, failed to attend his office during the three months preceding his retirement on 30.06.2022, and, since it was during this period of absence just before his (Reporting Authority) retirement, that the said adverse remarks were made by the Reporting Authority, there is a serious doubt cast on the credibility of the adverse remarks made in the PAR of the Petitioner for the relevant period. In fact, it has also been contended that the Reporting Authority, while making such adverse remarks in the PAR of the Petitioner, has not verified the records pertaining to the duties discharged by the Petitioner while he was the in-charge of ADO circles in Kedrapara, Marsaghai and Pattamundai during the relevant period. Therefore, the Learned Counsel for the Petitioner submits that the adverse remarks made in the PAR of the Petitioner by the Reporting Authority, are tinted with malice and have been made without any basis.

9. Additionally, it is also the contention of the Learned Senior Counsel for the Petitioner that the sole reason for making such adverse remarks in the PAR of the Petitioner for the relevant period of 2021-2022 is to deny the Petitioner the promotion to the post of Joint Director Level-I. It has been submitted that the

aforesaid promotional grade consists of 7 posts and in the provisional gradation list dated 06.11.2023 of Chief District Agriculture Officers/Joint Directors of Agriculture, Level-II, issued vide letter No.24636, reproduced under Annexure-7 to the writ petition, the Petitioner's name finds place at serial no.14 of the said list. Ergo, it is the Petitioner's apprehension that due to such adverse remarks being made in his PAR for the period 2021-2022 (i.e. 01.10.2021 to 31.03.2022), his prospects for being considered for promotion to the aforesaid post might be significantly impaired.

10. Learned Senior Counsel for the Petitioner has also contended that after the Petitioner was communicated with the adverse remarks made in his PAR for the relevant period 2021-2022, the Petitioner submitted a representation dated 28.07.2023, which was promptly rejected by the Opposite party No.1 in a mechanical manner by referring to the Substantiation Report of the then Reporting Authority-Sri Siba Prasad Mallick. In this context, the Learned Senior Counsel for the Petitioner, at this stage, has drawn the attention of this Court to the GA Department letter No.1200/PRO, dated 26.04.2006, containing the guidelines for recording the PAR of Group-B officers of the State Government (herein referred to as "the guidelines"). Referring to paragraph-5 of the said guidelines, which stipulate "Initiation of PAR recording process by Appraiser/ Reporting Authority/Reviewing Authority/Accepting Authority" and para-6 of the guidelines, which contains the "Time table for transmission of the PAR", the Learned Senior Counsel for the Petitioner contended that the aforesaid guidelines for recording and transmission of PARs have not been strictly adhered to by the Opposite Parties, inasmuch as the Reporting Authority has submitted his remarks with regard to the PAR of the Petitioner on 07.07.2022 which is a month after his retirement on 30.06.2022. Also, the Reviewing/Accepting Authority have not recorded their remarks within the stipulated time as per para 7(III) of the guidelines.

11. To buttress the aforesaid contentions, the Learned Senior Counsel for the Petitioner has relied on the "Remarks of the Reporting Authority" under Annexure-A/1 series to the Counter Affidavit by Opposite Party No.1. Additionally, it has also been submitted that the adverse remarks in the PAR of the Petitioner for the period 01.10.2021 to 31.03.2022 were communicated to the Petitioner after more than a year on 16.06.2023 and the Substantiation Report, relied upon by the Opposite Parties while rejecting the Petitioner's representation dated 28.07.2023, was called from the ex-Reporting Authority, i.e. Sri Siba Prasad Mallick after more than 13 months of his retirement from service on 30.06.2022. In addition, the Learned Counsel for the Petitioner also contended that the Reporting Authority, while submitting his Substantiation Report, has done so without referring to any official records/reports pertaining to the duties discharged by the Petitioner during the relevant period.

12. Furthermore, the Learned Senior Counsel for the Petitioner has contended that the performance of the Petitioner, in his capacity as ADO, during the

relevant period of 2021-2022 (01.10.2021 to 31.03.2022) does not, in any way, entail/invite the adverse remarks made in his PAR for the said period. To lend further credence to his contentions, the Learned Senior Counsel for the Petitioner further submitted that during the aforesaid relevant period, the Petitioner has performed all his duties diligently and he has neither committed any financial irregularities nor has he been subjected to any departmental proceedings or received any communication/Instruction from the Reporting Authority pertaining to any alleged lack of monitoring and/or supervision in any of the Petitioner's field and administrative duties. It is the Petitioner's contention that the aforesaid facts have not been taken note of by the Opposite Party No.1 while mechanically rejecting his representation dated 28.07.2023.

13. In furtherance of his assertions, the Learned Senior Counsel for the Petitioner contended that in several similar cases, the Opposite Parties have expunged the adverse remarks of the officers after considering their representations. To illustrate his point, the Learned Counsel for the Petitioner has stated that in the case of one Sabyashachi Dutta, Deputy Director, this Hon'ble High Court had disposed of W.P.(C) No.33539 of 2022 vide order dated 12.12.2022 with a direction to the Opposite Parties to consider the representation of Sri Dutta. The Opposite Party No.1, in consonance with the order of the Hon'ble High Court, considered the representation of the said officer and expunged the adverse remarks made against the abovenamed, Sabyashachi Dutta, for the period 2018-2019. The Learned Counsel for the Petitioner, in support of his contention, has also laid emphasis on the judgements of the Hon'ble Supreme Court in State of UP v. Yamuna Shankar Mishra, reported in 1997 (4) SCC 7, specifically para 7 and paragraph-11 of S.Ramachandra Raju.v. State of Orissa, reported in AIR 1995 SC 111. In addition, the Learned Senior Counsel for the Petitioner has also placed reliance on two recent decisions by Coordinate Benches of this Court in Kailash Chandra Dora V. State & Ors, bearing W.P.(C) No.20183 of 2021, decided on 08.01.2025 and Kartik Prasad Jena V. State & Ors., bearing W.P.(C) No.10034 of 2021, decided on 27.05.2022.

14. In such view of the matter, the Learned Senior Counsel for the Petitioner submitted that the performance of the Petitioner during the aforesaid relevant period 2021-2022 has not been taken into account by the Opposite Party No.1 while rejecting his representation and adverse remarks have been made in the PAR of the Petitioner for the period 2021-2022 in a mechanical manner and without abiding by the guidelines for preparation and transmission of PARs. As such, the Learned Senior Counsel for the Petitioner prayed for quashing of the impugned rejection orders under Annexure-11 and Annexure-6, and the impugned adverse remarks under Annexure-4 to the present Writ Petition.

CONTENTIONS OF THE OPPOSITE PARTIES

15. Heard Ms. B.K. Sahu, learned counsel appearing for the Opposite Party-State. Learned Counsel for the State-Opposite Parties, at the very outset has wholly opposed the stance of the Petitioner and supported the adverse remarks

made against the Petitioner in his PAR. To substantiate his contentions, the Learned Counsel for the State-Opposite Parties referred to the Counter Affidavit filed by the Opposite Party No.1 and submitted that while reviewing the PAR of the Petitioner for the year 2021-2022, i.e. for the period 01.10.2021 to 31.03.2022, it was seen that the reporting authority had made an adverse remark in the PAR of the Petitioner for the aforesaid relevant period. The said adverse remark was communicated to the appraiser-Petitioner vide GA&PG (S.E.) Department D.O. No.820/SE dated 16.06.2023 along with a request to the Petitioner to file any representation against such remarks, if he so desires, as per Para 12(i) of the G.A(S.E.) Department PAR Guidelines (reproduced under Annexure-A/1 series to the Counter Affidavit filed by the Opposite Party No.1), issued vide Memo No.1199/PRO dated 26.04.2006.

16. Following the aforesaid communication of adverse remarks, the Learned Counsel for the State-Opposite Parties contended that the Petitioner submitted his representation dated 28.07.2023, which, as per Para 15(i) of the aforesaid G.A(S.E.) Department PAR Guidelines, was duly forwarded to the Reporting Authority, who is the author of the adverse remarks in question, on 09.08.2023 vide G.A & P.G (S.E) Department D.O. No.1145 along with a request to the said Reporting Authority to furnish a Substantiation Report. Subsequently, a Substantiation Report was submitted by the author of the adverse remarks vide letter dated 16.08.2023 (under Annexure-B/1 series to the Counter Affidavit filed by the Opposite Party No.1) wherein, the Reporting Authority has decided to adhere to the earlier adverse remarks made by him in the PAR of the Petitioner.

17. Moreover, the Learned Counsel for the State-Opposite Parties has stated that after the aforesaid adverse remarks were made in the PAR of the Petitioner for the period 2021-2022 (i.e. 01.10.2021 to 31.03.2022), the same was communicated to the appraiser-Petitioner precisely as per the guidelines fixed by the G.A(S.E.) Department PAR Guidelines, issued vide Memo No.1199/PRO dated 26.04.2006. Learned Counsel for the State-Opposite Parties, further contended that, it is only after a careful consideration of the representation of the Petitioner dated 28.07.2023 along with the substantiation report of the Reporting Authority, that the Government has taken a decision to stick to the aforesaid adverse remarks made in the PAR of the Petitioner, and such decision of the Government has been communicated to the Petitioner vide GA&PG (S.E.) Department D.O No.1509, dated 31.10.2023, under Annexure-C/1 to the Counter Affidavit filed by the Opposite Party No.1. As such, the Learned Counsel for the State-Opposite Parties contended that all the requisite procedure has been followed by the Opposite Parties, as per the PAR guidelines.

18. Furthermore, again referring to the Counter Affidavit filed by the Opposite Party No.1, the Learned Counsel for the State-Opposite Parties submitted that earlier, aggrieved by the D.O. No.1509 dated 31.10.2023 wherein the representation of the Petitioner dated 28.07.2023 was rejected, the Petitioner had approached this Court by filing W.P.(C) No.38618 of 2023 with a prayer to

quash the GA & PG (S.E.) Department D.O. No. 1509 dated 31.10.2023 and the adverse remarks made in the PAR of the Petitioner for the Period between 2021-2022. This Court had disposed of the aforesaid writ petition, vide its order dated 30.11.2023, by setting aside the rejection order dated 31.10.2023 and with a direction to the Opposite Parties to re-consider the representation of the Petitioner dated 28.07.2023. At this stage, the Learned Counsel for the State-Opposite Parties submitted that subsequent to the order dated 30.11.2023 of this court, in the aforesaid writ petition, the representation of the Petitioner was once again given due consideration by the Opposite Parties. However, since no new facts had been brought to the forefront and no new developments had taken place since the last time the representation of the Petitioner was considered, the Opposite Party-State has decided not to alter the earlier decision taken on the representation of the Petitioner and, as such, it was decided to continue with the adverse remarks in the PAR of the Petitioner for the relevant period. The said decision of the Opposite Party No.1 was communicated to the Petitioner vide a speaking order dated 20.01.2024, a copy of which has been attached as Annexure-D/1 to the Counter Affidavit filed by the Opposite Party No.1.

19. It is pertinent to mention here that another Counter Affidavit has been filed by the Opposite Party No.2. Referring to the said counter affidavit, the Learned Counsel for the State-Opposite Parties contended that although the Petitioner is an employee under the administrative control of the Opposite Party No.2, i.e. the Department of Agriculture & Farmers' Empowerment, the Opposite Party No.2 does not possess the authority to take any action with regard to the prayer made in the present writ petition. In fact, it is the Opposite Party No.1, i.e. the G.A&P.G. (S.E) Department, who is the custodian of PARs of Group-A Officers of the state, and, as such, the Opposite Party No.1 is the one having the authority to expunge the remarks in the PAR of the Petitioner.

20. Next, with regard to the DPC for the promotion to the post of Joint Director Level-I, Learned Counsel for the State-Opposite Parties contended that earlier, vide order dated 26.02.2024 in the I.A No.1474 of 2024, this Court had directed that no DPC shall be held without the leave of this court. However, later on, the Agriculture and Farmers' Empowerment Department filed a petition for vacation of the aforesaid order dated 26.02.2024. Subsequently, this Court, vide order dated 07.05.2024 in I.A No.5907 of 2024, modified the earlier order dated

26.02.2024 to the extent that the DPC shall be convened, however, one post commensurate to the eligibility of the present Petitioner shall not be filled without the leave of this Court. It is the contention of the Learned Counsel for the State-Opposite Parties that the aforesaid order of this Court has been followed and the DPC has been held, however, one post of JDA-I has been not filled up. In such view of the matter the Learned Counsel for the Opposite Party-State contended that all the grievances of the Petitioner have been aptly addressed and there is no occasion for this Court to intervene in the matter. As such, it was contended that the writ petition is liable to be dismissed.

ANALYSIS OF THE COURT

21. Heard the learned Senior Counsel for the Petitioner and the learned Counsel for the State-Opposite Parties. Perused the documents annexed to the record. At the outset, it appears that the primary issue involved in the present writ petition is with regard to the adverse remarks made in the PAR of the Petitioner for the period spanning 2021-2022 (more precisely, from 01.10.2021 to 31.03.2022). The adverse remarks in question are reproduced below for better appreciation;

"you lack in supervising the field work regularly. You do not review the progress of the works done under different schemes operating in the blocks under your jurisdiction.

Your overall grading is "Good". Government hopes you will try to improve."

Indisputably, the aforesaid adverse remark was communicated to the Petitioner vide D.O. No.820 dated 16.06.2023. After receipt of such adverse remarks the Petitioner submitted a representation dated 28.07.2023 before the Opposite Party No.1, which was rejected vide D.O. No.1509, dated 31.10.2023. It is pertinent to mention here that assailing such rejection order dated 31.10.2023 the Petitioner had earlier approached this Court by filing a W.P.(C) No.38618 of 2023. This Court, disposed of the aforesaid writ petition, vide its order dated 30.11.2023, by setting aside the impugned rejection order and directing the Opposite parties to reconsider the representation the Petitioner within two weeks.

22. Subsequently, the Opposite Party No.1 has rejected the Petitioner's representation once again vide Memo No.57, dated 20.01.2024, under Annexure-11 to the writ petition. It is the aforesaid rejection order dated 20.01.2024 under Annexure-11, along with the earlier rejection order dated 31.10.2023 under Annexure-6 and the adverse remarks in the PAR of the Petitioner for the period 01.10.2021 to 31.03.2022, under Annexure-4, forms the genesis of the dispute in the present writ petition.

23. It is pertinent to note here that this Court is well aware of the restraints on the use of the power of judicial review into administrative matters of the present nature and that the remarks by the authority are to his subjective satisfaction. However, that said, interference by this Court would be permissible if the process of drawing such remarks is in anyway tainted with arbitrariness, malice or illegalities of any other nature. In this regard, reference may be had to the concluding remarks of the Hon'ble Supreme Court in paragraph 29 of the judgement dated 28.07.2000 in Union of India v. Lt. Gen. Rajendra Singh Kadyan, reported in (2000) 6 SCC 698

"29. ...Maybe one may emphasize one aspect rather than the other but in the appraisal of the total profile, the entire service profile has been taken care of by the authorities concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been

eschewed from consideration and that no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether the process in reaching decision has been observed correctly and not the decision as such...”

24. In order to adjudicate the matter at hand, this Court is required to test the veracity of the adverse remarks made in the PAR of the Petitioner for the relevant period and the process followed by the authorities. On perusal of the adverse remarks made in the PAR of the Petitioner for the period 2021-2022 (i.e. 01.10.2021 to 31.03.2022), it can be observed that the essence of the adverse remarks against the Petitioner predominantly relates to two distinct qualms, viz; not supervising field work regularly and not reviewing the progress of work done under different schemes operational in the blocks under the jurisdiction of the Petitioner. Now, an examination of the Substantiation Report dated 16.08.2023 reveals that only points 4 & 8 of the Report relate to the adverse remarks made in the PAR of the Petitioner. Next, with regard to the timeline for submission of the remarks regarding the performance of the Petitioner, the guidelines, specifically the time table under clause No.6 headlined “Time Table for Transmission of PAR”, provide for the time stipulation within which the Appraiser, the Reporting Authority, the Reviewing Authority and the Accepting Authority shall record their remarks. Serial No.1 of the table relates to “PAR at the end of financial year” and in such case the Reporting Authority must record his remarks prior to 30th June. However, on perusal of records pertaining to the “Remarks of Reporting Authority”, under Annexure A/1 series to the Counter Affidavit filed by the Opposite Party No.1, it can be seen that the Reporting Authority has submitted his remarks on 07.07.2022 which is after the stipulated time period.

25. Moreover, on a further examination of the record at hand, it is clearly borne out that the adverse remarks in question relate to the period between 01.10.2021 to 31.03.2022. However, the document under Annexure-4 to the writ petition reveals that the adverse remarks were communicated to the Petitioner only on 16.06.2023, i.e. after more than a year. In this context, reference may be had to *Baidyanath Mahapatra v. State of Orissa* and another, reported in AIR 1989 SC 2218 wherein, the Apex Court, in para-6 of the judgement, has observed that;

“...The purpose of communicating adverse entries to the Government servant is to inform him regarding his deficiency in work and conduct and to afford him an opportunity to make, amend, and improvement in his work and further if the entries are not justified the communication affords him an opportunity to make representation. If the adverse remarks awarded to a Government servant are communicated to him after several years, the object of communicating entries is defeated. It is therefore imperative that the adverse entries awarded to a Government servant must be communicated to him within a reasonable period to afford him opportunity to improve his work and conduct and also to make

representation in the event of the entry being unjustified...”

26. Similarly, in *Suchismita Misra v. Registrar (Admn.)*, Orissa High Court, Cuttack, bearing W.P.(C) No.8231 of 2015, a Division Bench of this Court, with regard to timely communication of adverse remarks, in its judgement dated 19.01.2018, has held that;

“17. With due regard to the said decision, it appears that the object of communicating adverse entries should be achieved if the communication is made within reasonable period and belated communication of entries resulted into denial of reasonable opportunity to improve his performance”

In a similar vein, in paragraph 17 of *Dev Dutt v. Union of India & others*, reported in (2008) 8 SCC 725, the Hon’ble Supreme Court, in paragraphs 17 and 18 have observed the following;

“17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future;

(2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248 : AIR 1978 SC 597] that arbitrariness violates Article 14 of the Constitution.

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.”

27. Furthermore, on an additional scrutiny of the record, specifically the document pertaining to the achievement of the Petitioner uploaded to the ADAPT portal, under Annexure-2 series to the present writ Petition, it can be clearly observed that the Petitioner has 100% achievement with regard to the implementation of various schemes under his administrative jurisdiction. Moreover, it is also the Petitioner’s contention that owing to the Petitioner’s performance and the satisfactory discharge of his duties, the Reporting Authority of the Petitioner, who made the adverse remarks in the PAR of the Petitioner for the 2021-2022 period, had himself ordered the Petitioner to take charge of two additional ADO circles. Such conduct of the Reporting Authority seems to be in stark contrast to the adverse remarks made by him in the PAR of the Petitioner for the period 2021-2022. Additionally, the Petitioner has averred that prior to the recording of the adverse remarks in his PAR he had neither received any

complaints nor had he been communicated any deficiencies pertaining to the discharge of his duties. The Opposite Parties have also failed to bring anything on record to controvert this stance of the Petitioner. Consequently, in the aforesaid context, the adverse remarks recorded in the Petitioner's PAR for the relevant period 20210-2022 appear even more confounding.

28. Additionally, the Petitioner has also made clear allegations to the effect that the Reporting Authority was absent from his office during the last three months prior to his retirement on 30.06.2022, and it is during this time that the adverse remarks were made in the PAR of the Petitioner by the Reporting Authority (i.e. on 07.07.2022). The aforesaid assertions of the Petitioner's counsel have not been specifically denied by the Opposite Parties. Therefore, by applying the doctrine of non-traverse, the aforesaid contention of the Petitioner is deemed to have been admitted by the Opposite Parties. In this context, it is needless to mention that it is a settled principle of law, as has been observed in *State of U.P. v. Yamuna Shanker Misra*, reported in (1997) 4 SCC 7 and *Union of India v. E.G. Nambudiri*, reported in (1991) 3 SCC 38, that the Reporting Authority/Controlling Authority entrusted with the responsibility of preparing confidential reports, must be objective, impartial and conduct fair assessment dispassionately, without any prejudice and with the highest sense of responsibility while giving an overall assessment of the performance of the Officer.

29. In view of the aforesaid analysis of this Court and keeping in view the factual background of the present case, taking into consideration the arguments advanced by the learned counsel appearing for the respective parties, on perusal of the documents annexed to the present petition and considering the aforesaid analysis, this court has no hesitation in quashing the impugned adverse remarks made in the PAR of the Petitioner for the period 2021-2022 (i.e. from 01.10.2021 to 31.03.2022) under Annexure-4, the D.O. No.1509 dated 31.10.2023 under Annexure-6 and the impugned letter dated 20.01.2024 under Annexure-11. Accordingly, Annexures-4, 6 and 11 are hereby quashed and set aside. Furthermore, the Opposite Parties are directed to consider the case of the Petitioner for promotion against the Post kept reserved, subject to his eligibility and seniority, within a period of eight weeks from today.

30. Accordingly, the Writ Petition is allowed. However, there shall be no order as to costs.

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