

A.F.R  
RESERVED  
Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**O.A. No. 200 of 2015**

Monday, this the 17<sup>th</sup> day of July, 2017

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

IC-52371X Col VJS Varaich, Signal Branch, Headquarters Central Command, Lucknow.

.... Applicant

By Legal Practitioner **Shri V.A.Singh**, Learned Counsel for the applicant.

Verses

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army HQ, New Delhi.
3. Military Secretary, Army Headquarters, New Delhi.
4. Lt Gen AS Chabbewal (Retd) House No. 156, Sector 38A, Chandigarh.
5. Brig KR Anand, Deputy Director General SI (East Zone), C/O 99 APO.

...Respondents

By **Shri Alok Mathur and Shri Yogesh Kesharwani**, Learned Counsel for respondents, assisted by Maj Alifa Akbar, OIC Legal Cell (MS Branch).

**ORDER****Per Justice Devi Prasad Singh, Member 'J'**

1. The present OA under Section 14 of the Armed forces Tribunal Act, 2007 has been preferred by the applicant being aggrieved with the Annual Confidential Reports (in short, ACRs) made against him for the period 15.03.2011 to 31.08.2011 and 01.09.2011 to 31.08.2012 and the order dated 08.07.2014 passed by the Government of India, Ministry of Defence, whereby the statutory complaint of the applicant dated 13.05.2013 was partially allowed, but the other reliefs sought were rejected.

2. We have heard Shri V.A.Singh, learned counsel for the applicant and Shri Alok Mathur and Shri Yogesh Kesarwani, learned counsel for the respondents, assisted by Maj Alifa Akbar, OIC Legal Cell and perused the record.

3. The applicant joined the Indian Army through National Defence Academy (in short, NDA). He was commissioned on 11.12.1993 in the Corps of Signals and granted the rank of 2<sup>nd</sup> Lieutenant. Thereafter he was promoted to the rank of Lt Col with bright service record. While working in the rank of Lt Col, the applicant was posted as General Staff Officer (GSO) at Weapon and Equipment Directorate, Army Headquarters. He was awarded Vice Chief of Army Staff's Commendation Card during this tenure. The applicant was further posted as GSO-1 of Mountain Brigade. He also secured a seat competitively for attending M. Tech degree course at MCTE and won

Chief Instructor's Medal. In September, 2010, the applicant was promoted to the rank of Colonel in first attempt and posted as Commanding Officer of 2 Corps Signal Regiment (AREN) located at Ambala. He took over this assignment on 19.03.2011. The Unit was directly placed under the Corps HQ. The immediate superior officer of the applicant was the Chief Signal Officer (in short, CSO) of the Corps and thereby the Initiating Officer and First Technical Officer (in short, IO and FTO) for the purposes of ACR entries. When the applicant took over the command of this Unit, Brigadier K.R. Anand was the CSO in the Corps Headquarters i.e. IO and FTO of the applicant. The next superior officer in the chain of reporting was the Chief of Staff (in short, COS) and then the General Officer Commanding (in short, GOC) of Corps.

4. During the period 15.03.2011 to 31.08.2011, when the first ACR in respect of the applicant was completed, Major General Sher Singh was the Chief of Staff (COS) and Lt Gen AS Chabbewal was the GOC of the Corps. Thus, Brig KR Anand was the IO and FTO, Maj Gen Sher Singh was the RO and Lt Gen AS Chabbewal was the SRO for the period in question.

5. It may be mentioned here that 2 Corps was forming part of Western Command and its HQ is located at Chandimandir. An officer of the rank of Major General, also known as Chief Signal Officer (CSO) was posted there and he became the Higher Technical Officer (in short, HTO) for the purposes of ACR of CO of 2 Corps Signal

Regiment. During the period of applicant's first ACR in this Unit, Maj Gen T.K. Das was the CSO and thereby the HTO.

6. It has been alleged that respondent No. 5 Brig K.R. Anand was interfering in day-to-day functioning of the Unit. He used to frequently visit the Unit even without prior or short notice, besides holding a monthly visit as a routine. He directed the CO to post the officers of the Regiment as per his directions on various assignments. He used to insult the subordinate officers, JCOs and other men in presence of persons and also used to direct the CO to take actions against them on unfounded grounds. The then CO because of his persecution took premature retirement from service. Thereafter the applicant took over the command of the Unit. Within a short period of 10 days of taking over the command of the Unit, the applicant along with his Unit moved to Rajasthan in connection with a major exercise of Corps. The exercise was conducted between 28.03.2011 and 20.05.2011 (54 days). During the exercise, the applicant's performance was lauded by superiors, including Maj Gen Sher Singh, COS and Maj Gen T.K. Das, CSO Command, who witnessed the applicant's performance. Commendation was given to the applicant for his successful discharge of duty (**Annexure A-1**). Another DO Letter with full of appreciation (**Annexure A-2**) was given to the applicant on 16.07.2012. There is also another DO letter dated 27.09.2011 written by Col GS (Ops) of Headquarters 2 Corps appreciating the applicant's work during the Comd SAT 2011.

7. After operational exercise, the applicant was detailed to attend a Signals Regimental Commanders Course commencing from 23.05.2011, which concluded on 18.06.2011. The applicant attended the course and achieved highest place in merit. After completing the aforesaid course, the applicant joined the Unit on 01.07.2011.

8. In paras 4.11 and 4.12 of the O.A., the applicant has referred to some letters to indicate the maltreatment meted out by the CSO to the officers and JCOs of the applicant's Unit, on account of which some of the officers raised voice against the respondent No. 5 and that an unwarranted and illegal pressure was made by the CSO on the applicant being CO for assessing his subordinate officers as per performance and assessment of the Initiating Officer. For convenience, paras 4.11 and 4.12 are reproduced as under:

*“4.11 That ill treatment meted out by the CSO to the officers and JCOs of the applicant's unit is expressed in the letters addressed by some of them which are marked and attached with OA s follows:*

*(i) Letter of Maj VK Dutta, OC, 3 Coy Dt 26 Aug 2011. **Annexure A-4.***

*(ii) Letter of Lt Col Gurvinder Singh, QM dt 6 Sep 2011 **Annexure A-5.***

*(iii) Letter of Sub Maj Vishwanath Singh, SM Dt Nil. **Annexure A-6.***

*4.12 That an unwarranted and illegal pressure on the applicant by the CSO for assessing his subordinate officer as per his performance and assessment of the Initiating Officer is clearly*

*exhibited and evident in the correspondence marked and attached here under:*

*HQ 2 Corps letter dt 22 Oct 2011 **Annexure A-7**.*

*HQ 2 Corps letter dt 1 Nov 2011 **Annexure A-8**".*

9. In reply to the aforesaid pleadings contained in paras 4.11 and 4.12 of the O.A., the respondent No. 5 in para 16 of his counter affidavit has stated that the purported originators were interacted with formally by respondent No. 5 before being posted out, and no such issue was raised by them. According to him, no such issue related to the above ever surfaced either through the unit or through superiors of Respondent No. 5 until receipt of the Statutory Complaint after a gap of approximately two years. It has been stated in para 16.1 of the counter affidavit that the applicant had acted in contravention to Para 155 of Army Order 45/2001/MS. It is also stated that one letter relates to allotment of married accommodation and the other is undated. The events referred to in the letters seem to have occurred much earlier. In reply to para 4.12 of the O.A., it has been stated that the letters **Annexures A-7** and **A-8** related to two officers, namely, Maj Ravinder Kumar and Maj V.K. Dutta. The applicant was not following various mandatory requirements such as completion of 90 days' physical service before such intimation/copy of intimation being forwarded to SRO and the respondent No. 5 acted under the existing policy.

10. However, while giving reply to the counter affidavit filed by the respondents, in rejoinder affidavit the applicant has brought on record

a chart annexed as **Annexure R-1**, paras 6 and 7 of which indicate the glaring inconsistencies in the counter affidavit and injustice and damage done to the applicant by IO and SRO. The applicant states that the facts given in the counter affidavit are misleading; there are procedural violations in dealing with the matter and the respondents have deliberately ignored documented facts and evidence against the IO/FTO in utter disregard to justice, which show the bias and prejudices being borne by the IO/FTO against the applicant. It is further stated that the respondents though admit the excellent performance and achievements by Signal Unit commanded by the applicant during a major EWT exercise "Vijayee Bhav", but contradict themselves, for which they have assigned no reason or justification. The performance of the applicant has always been outstanding. The assessment of RO, who was witness to the performance of the applicant, has been deliberately and unfairly overlooked by IO and SRO, who have undermined the authority of the ratee (applicant) as a Commanding Officer. It is further stated that the manner in which the endorsement in the CR has been made by respondent No. 4 is in violation of Para 119 (f) of Army Order 45/2001/MS, wherein the adverse remarks/guidance for improvements to be consistent and acceptable are to be supported by the figurative assessments, which are not so in the present case. Further, the respondents have acted against Policy dated 15.11.1984 and the applicant was never given any intimation in respect of any weakness or opportunity to either improve upon or make a representation against the same if at all it

existed. There is non-application of mind on the part of the respondents while dealing with statutory complaint of the applicant and their actions suffer from the vice of bias and arbitrariness.

11. From the Chart annexed with the rejoinder affidavit, there appears to be no room for doubt that while writing pen-picture, the respondent No. 5 as IO has not considered the applicant's service report and achievements (supra), which was expected of him while assessing the performance of the officer. The commendations and performance of the applicant during operations and training were required to have been taken note of in terms of Guidelines issued by Military Secretary's Branch as well as Army Order No. 45/2001/MS for rendering Confidential Reports, but the same does not seem to have been done.

12. In para 17 of the ACR, the IO assessed the applicant's performance as above average, but in hidden column he tagged three letters of warning and recommended for essential career courses. The SRO made some feeble adverse remark, which was not communicated to the applicant in accordance with the policy. It was only after filing of statutory complaint by the applicant that the remarks made by SRO were communicated to him. It has been averred by the applicant in para 4.14 of the OA that on 24.09.2011, Brig K.R. Anand called the applicant in his office and in the presence of his PA Hav Jagdeep Singh he handed over ACR form duly completed by him to the applicant to make his signatures over it. It is further stated that in



spite of the request made by the applicant, the respondent No. 5 did not send his PA outside his chamber and the applicant's request was turned down. However, while going through the ACR, the applicant noted that the three letters, references of which were given in the ACR, are in the form of warning, hence the applicant made an endorsement in the ACR; to quote-"No guidance/warning was received by me from IO during reporting year. Facts above are not correct." The applicant also wrote letters on 01.11.2011 and 07.11.2011 (**Annexures A-9** and **A-10** respectively) raising the issue. However, the applicant learnt that RO Maj Gen Sher Singh, the then Chief of Staff, HQ 2 Corps has given fair assessment. The applicant also wrote a letter to HQ 2 Corps (MS), in response to which the matter was got investigated by the GOC and he arrived at the conclusion that the two letters dated 16.11.2011 and 22.07.2011 never existed, hence not received. In this respect, the Corps letter dated 03.02.2012 has been filed as **Annexure A-11** to the OA, according to which there appeared to be some error in referring to letters dated 16.08.2011 and 22.07.2011. As per report of one man inquiry, the letter dated 10.08.2011 has been received by the applicant. In these circumstances, the applicant wrote a letter dated 08.02.2012 (**Annexure A-12**) to Col Sanjay Bhatia, Col MS HQ 2 Corps for taking up this issue with MS Branch for obtaining a waiver/debarment against the initiation of ACR of the applicant by respondent No. 5 for the current and future period of reporting. The concluding portion of the said letter is reproduced as under:

*“7. As stated above the undersigned is quite junior in rank and service. However, deserves justice and dignity. It is evident from the above that he has been subject to repeated injustice, biased reporting in performance appraisal and humiliations by the IO/FTO at the numerous occasions. Notwithstanding the performance of the offr and the unit he is commanding, has ever excelled and would continue to do so. This has also given me the courage of conviction against the wrongs being committed. In view of the foregoing, the undersigned has following please:-*

*(a) IO/FTO be held responsible for furnishing false info at Para 12.20 of the impugned CR thus misguiding the ratee. Amdts being solicited by him at this belated stg when the career interest of the ratee has already suffered should not be acceptable. This also amounts to tampering of a CR which has already been initiated & the same be info to MS Br for further necessary action please.*

*(b) IO/FTO be queried for the reasons for denying the ‘details of verbal and written guidance for improvement’ to me as ratee as enunciated at Para 3 of MS Branch letter No 32301/34/P/MS 4 Coord dt 21 Aug 89. This has further prevented me from initiating a non stat complaint, my basic right, seeking redressal against the false & irrelevant endorsement.*

*(c) Veracity check of the letters as solicited at Para 4 above be carried out.*

*(d) Since the ratee has already missed the opportunity to seek justice by initiating a non stat complaint against the biased & false performance*

*appraisal endorsed by the IO/FTO, necessary intimation be made to the MS Br so as to assist the ratee in getting the desired justice during validity check of the impugned CR at CRD library, MS Br.*

*(e) Having alleged the above against the current IO/FTO (Brig KR Anand, CSO HQ 2 Corps), it is obvious that the undersigned has surely antagonized him. He will thus be further biased and subjective in his report thereby victimizing the undersigned once again. Accordingly, a case be taken up with MS Branch for obtaining a waiver/debarment against the initiation of CR of the undersigned by him for the current & future period of reporting.*

*Sd/-----  
(VJS Varaich)  
Col  
CO”*

13. The averment with regard to the above request of the applicant that respondent No. 5 should be debarred from initiating any further report upon the applicant is contained in para 4.18 of the OA, which has neither been denied by respondent No. 5 nor by the Union of India in their counter affidavits. Whereas the respondent No. 5 states that as it relates to the actions by SRO, no comments are required, the reply of the Union of India is that there was no reason to bar respondent No. 5 from initiating Confidential Report of the applicant. They relied upon the Policy Letter of MS Branch dated 10.07.2006.

14. Submission of learned counsel for the applicant is that in spite of the aforesaid letter of the applicant dated 08.02.2012, the respondent

No. 5 Brig K.R. Anand initiated the applicant's ACR for the period 01.09.2011 to 31.08.2012. In para 4.20 of the O.A., it has been very specifically averred that IO and RO sent the said ACR to GOC, the SRO for his assessment on 01.10.2011, who was required to complete it within a period of 10 days i.e. by 11.10.2011 but he kept the ACR with himself for a period of 114 days and forwarded it to HTO on 21.02.2012. The remark of SRO in the ACR was that the applicant "*was suitably counselled/guided/advised by the IO and the ratee was aware of the existence of such correspondence as noted by the IO in his remarks at para 12 (b) above*". Submission of learned counsel for the applicant is that while disposing of the statutory complaint of the applicant, the Government of India vide impugned order dated 08.07.2014 expunged the IO's assessment at Para 24 (e), namely, 'Professional competence to handle Higher Appointments' in ACR of the period 15.03.2011 to 31.08.2011. Learned counsel for the petitioner submits that the IO in both the ACRs (supra) is the same; they both are interlinked and the *modus operandi* was to spoil the applicant's service career. It was done only because the applicant had denied doing injustice to his subordinates at the dictates of respondents No. 4 and 5. The adverse remarks in the ACR were not communicated in the manner prescribed and it itself shows the intent of private respondents, who have not acted with fair and free mind while awarding CR entries to the applicant for the period in question.

15. On the other hand, it has been argued by learned counsel for the respondents that whatever relief to which the applicant was entitled,

was granted by the Ministry of Defence vide order dated 08.07.2014. There was no *mala fide* and the difference in perception between the IO and the ratee was mainly on organisational issue. The verbal and written guidance given by respondent No. 5 was in the interest of Organisation and the applicant was aware that the letters which were annexed with the CR were for the period 15.03.2011 to 31.08.2011. It is also argued that the applicant has failed to substantiate the alleged *mala fide* on the part of respondent No. 5, who is ten years senior to the applicant. It is further submitted that the merit consideration in pyramidal structure of the Army is strict and does not leave any gallery open for relaxation. The applicant has accepted the receipt of letters as guidance for improvement in one man inquiry and then attempted to question the validity of the said letter to nullify the guidance for improvement. The petition is, therefore liable to be rejected.

**ACR FOR THE PERIOD 15.03.2011 TO 31.08.2011**

16. The respondents have produced the record and we have perused the same. Keeping in view the controversy involved, we feel it appropriate to reproduce the ACR for the period in question as hereinbelow:-

No, Rank & Name of the officer:-	
IC-52371X Col VJS VARAICH	
Initials	Sd/-

**PART-II BASIC ASSESSMENT**

A. In case assessment in qualities designated by asterisk (\*) is AVERAGE OR LOWER THAN AVERAGE JUSTIFICATION IS REQUIRED at Paras 12 and 14 by IO and RO respectively.

B. IO's assessment in Part II will be communicated to the ratee, in person. In respect of RO/SRO, only adverse remarks will be communicated.

C. **Communication of IO's assessment by post will only be in exceptional and unavoidable circumstances.**

### **Personal Qualities (PWs)**

Qualities	Assessment of	
	IO	RO
9. (a) <b><u>Physical Attributes.</u></b> (Physical Fitness, Military Bearing, Deportment and Turnout).	9	9
(b) <b><u>Drive Determination and Decisiveness.</u></b> (Resoluteness, vigor and dynamism in execution of tasks and capability to promptly arrive at logical and balanced conditions both under normal and adverse conditions).	8	9
(c) <b><u>Dependability.</u></b> (Intensity of involvement and consistency in executing the assigned tasks without supervision and accepting additional obligation of duty).	8	9
(d) <b><u>Morale Courage.</u></b> (Degree of intellectual honesty and courage of convictions).	9	9
(e) <b><u>Integrity.</u></b> (Degree of honesty and just approach in personal and official dealings).	8	9
(f) <b><u>Loyalty.</u></b> (Extent if willing, faithful and loyal support provided to the service, peers, supervisors and subordinates).	8	9
(g) <b><u>Ingenuity and Initiative.</u></b> (Skill of devising means and degree of resourceful to solve unforeseen contingencies).	8	8
(h) <b><u>Maturity.</u></b> (Degree of understanding and balance commensurate with age and service).	8	8
(j) <b><u>Tenacity.</u></b> (Degree of will to preserve in face of odds and difficulties).	8	8
(k) <b><u>Communication Skills.</u></b> (Ability to express clearly, concisely and effectively, both orally and in writing and possession of good listening skill. Capability to make an impact on the reader/listener towards achievement of aim/result).	9	9

**Demonstrated performance Variables (DPVs)**

A. Depending upon assignment of the Ratee, assessment is to be rendered in one of the assignments marked below.

B. In case Reporting Officer is a civilian or from Navy/Air Force, he may not render assessment at Para 10 below, provided he is not in position to render objective assessment.

10. <b>Regimental and Command (R)/Staff and ERE (S)/Instructional (I) Assignments:-</b>	Assessment	
	IO	RO
<b>Performance Variables</b>		
(a) Knowledge of own Arm/Service and its practical application on ground <b>[R]</b> /Professional knowledge and its application to assigned duties <b>[S]</b> /Professional knowledge and its application <b>[I]</b>	9	9
(b) Knowledge of other Arms and Service <b>[R]</b> /Thoroughness and efficiency of work in his sphere including allocations of priorities <b>[S]</b> /Instructional ability including conduct of training indoor and outdoor <b>[I]</b>	9	8
(c) Effectiveness in training of his Command <b>[R]</b> /has analytical mind and goes into details <b>[S]</b> /Innovative Ideas <b>[I]</b>	8	9
(d) Ability to motivate his Command <b>[R]</b> /Provides impartial and frank advice <b>[S]</b> /Motivation of students and standards achieved <b>[I]</b>	8	9
(e) Effectiveness in carrying out administration of his Command <b>[R]</b> /Relationship and rapport at all levels including ability to understand other's point of view <b>[S]</b> /Relationship and rapport at all levels including ability to accept other's point of view <b>[I]</b>	8	9
(f) Equipment management and ability to utilize resources economically <b>[R]</b> /Ability to train and supervise the subordinates <b>[S]</b> /Impartial attitude and evenhandedness towards students <b>[I]</b>	8	8
(g) Dedication to the organisation and service and selflessness <b>[Common for R,S and I]</b>	8	9

	Sd/- x x x	Sd/- x x	Sd/- x x x
11. Signature and date	Officer reported	IO	RO
	24.09.11	24.09.11	01 Oct 11

Rank and Name of the officer:- IC-52371X Col VJS VARAICH	
Initials	Sd/-

**Pen Picture by IO, RO and SRO**

- A. Mark overall assessment of the officer in the block provided at the top centre.
- B. Mention separately, advisory remarks (if any) and about performance of the Ratee if LMC.
- C. The officer reported upon will sign in Para 15 only in case the CR is initiated by RO under provision of AO 45/2001/MS.

12. **Initiating Officer**

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Col VJS Varaich is a technically and tactically well qualified officer who has sound knowledge of operations communication aspects.

The officer has applied himself to assigned tasks and has been working towards professional development of subordinates and administrative efficiency of the unit.

The officer is progressing the Handing Taking over of KLP of unit accommodation in an organised manner.

(a) Advisory Remarks/Performance of LMC Officers (as applicable). **Nil**

(b) Details of guidance for improvement during the Reporting Period.

(i) **Verbal**  
25 July 2011

(ii) **Written**  
12203/Rev/Sigs 4(b) dt  
10 & 16 Aug 2011.

(c) I have intimated.....(RO/SRO) vide letter No.....dt.....that the ratee is likely to be assessed as 'Outstanding' (if applicable) **Not applicable**

**Ref 12 (a) & (b), No guidance/warning was received by me from IO during reporting year. Facts above are not correct.**

Sd/- x x x x  
24.09.11

Sd/- x x x x  
22 Sep 2011

13 Signature and date Officer reported upon IO

If communicated by post, **indicate reasons** and registered letter No.....and date.....



9

Report by the IO is Strict

**14. Reviewing Officer**

Col Varaich is a very hard working officer with a excellent record of service. The officer is dynamic and professionally very sound. He is very articulate and precise in exposing himself. He has administered his unit brilliantly. Varaich performed exceedingly well in the just officer and I feel that he has been under assessed by his IO.

(a) Details of guidance for improvement during the Reporting Period.

(i) **Verbal** Nil (ii) **Written** Nil

(b) Do you recommend any portion of the report by the IO to be expunged? If so, state such portions and reasons.

(c) Letter No and date of communication of extracts (if any).

(d ) Adequate notice was given to me by my IO that he intended to grade the ratee 'Outstanding' (if applicable).

Yes

No

15. Signature and date

Officer reported upon  
(See Note C on Page 7RO  
01 Oct 11

8

Report by the IO is Justified.  
Report by RO is Liberal.

## 16. Superior Reviewing Officer

Varaich is well qualified offr with an enviable record. Despite his potential, his performance in comd has been marred by unpleasant working relations with the CSO. The personality clash has imparted the performance of Col Varaich and his unit. Despite considerable guidance and advice by various appts in chain of comd and on staff the unsavory relationship has persisted. Col Varaich must accept his share of blame for the impasse. A more mature handling and understanding by both the offr would have avoided the state of affairs. Under the circumstances I am not in a position to assess the potential of the offr. However his demonstrated performance could have been much better, considering his calibre and past profile. Although a separate case has been taken up and afforded a fresh reporting environment to the offr, I must place on record the fact that the offr has not been able to maint a healthy working relationship with his superior. He has also taken recourse to recording in this CR that no counselling has been administered by the IO. My investigations reveal that the offr was suitably counselled/guided/advised by the IO and the ratee was aware of the existence of such correspondence as rated by the IO in his remarks at Para 12 (b) above.

I feel the offr has better potential than what has been possible to have been demonstrated. However he must accept his fair share of the blame and irrespective of his future performance, his profile be always viewed in backdrop of this report.

Sd/-  
21 Feb 2012

(a) Details of guidance for improvement during the Reporting period.

(i) **Verbal**

(ii) **Written**

(b) Do you recommend any portion of the report by the IO to be expunged? If so, state such portions and reasons.

(c) Letter No and date of communication of extracts (if any).

(d)  **Yes**  **No** Adequate notice was given to me by the IO/RO that he intended to grade the ratee 'Outstanding' (if applicable).

17. Signature and date

Rank and Name of the officer:-  
IC-52371X Col VJS VARAICH  
Initials Sd/-

### **PART III – TECHNICAL AND SPECIAL TO CORPS ASSESSMENT**

A. FTO/FSCRO's assessment in Part III will be communicated to the ratee. In respect of HTO/HSCRO, only adverse remarks will be communicated.

B. Recommendations for promotion to be endorsed in Para 26.

#### **18. Technical Performance**

Performance Variable	Assessment of	
	FTO/ SCRO	HTO/ HSCRO
(a) Knowledge of own Arm/Service relating to technical aspects	9	9
(b) Knowledge of the capabilities and equipment pertaining to Supported Arm/Service	9	9
(c) Planning skills relating to effective utilisation of technical resources	8	9

(d) Technical ingenuity and innovativeness	8	9
(e) Care, maintenance and physical utilisation of available resources efficiently and economically	8	8
(f) Reliability of technical support provided for the assigned tasks during Peace/Exercise/War	8	9
(g) Capability to inculcate technical development and awareness in his subordinates for achieving the desired results	8	8
(h) Awareness of futuristic technological development	8	9

	Sd/- x x x 24.09.11	Sd/- x x x 22 Sep 2011	Sd/- xxx 03/05/2012
19. Signature and date	Officer reported upon	FTO/FSCRO	HTO/HSCRO Maj Gen TK Das (Retd)

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20. **FTO/FSCRO**

Col Varaich is a technically well qualified officer who has excelled in all courses of instruction. The officer has applied himself towards combat communication aspects of Corps and Divisional levels during the formation EWT. He has potential for instructional duties.

(a) Advisory Remarks (if any)      **Nil**

(b) Details of guidance for improvement during the Reporting Period.

(i) **Verbal**  
**21 May 2011**

(ii) **Written**  
**12204/(Rev)/Sigs 4 (c)/CSO**  
**dt 22 Jul 2011.**

(c) Letter No and date of communication of extracts when

despatched by post. **NA**

**No verbal/written guidance/warning was received by me from IO during said reporting period.**

21. Signature  
and date

Sd/- x x x  
24.09.11  
Officer reported upon

Sd/- x x x  
22 Sep 2011  
FTO/FSCRO

9

Report by FTO is strict

22. **HTO/HSCRO**

An outstanding officer with well developed character qualities he has displayed high professional stds during my visit to his unit in ex loc. A keen tech acumen he is well Op with all surprise technologies. The offr is tech and tac sound and has the potential to higher appts within and outside the Corps. An asset to the org.

(a) Advisory Remarks (if any) **Nil**

(b) Do you recommend any portion of the report by the FTO/FSCRO to be expunged? If so, state such portions and reasons. **No**

(c) Details of guidance for improvement during the Reporting period.

(i) **Verbal** - (ii) **Written** -

(d) Letter No and date of communication of extracts (if any), when despatched by post.

23. Signature and date 03.05.2011

Sd/- x x x  
HTO/HSCRO  
Maj Gen TK Das (Retd)

Rank and Name of the officer:-  
IC-52371X Col VJS VARAICH

Initials

Sd/-

**PART IV-POTENTIAL FOR PROMOTION**

- A. Not to be shown to the officer reported upon.
- B. Potential not linked to PQs/DPVs.
- C. Variation of three or more grades between reporting officers to be elaborated in Para 27.

**24. Qualities to Assess Potential (QAP)**

Qualities	Assessment of		
	IO	RO	SRO
(a) <b><u>Foresight and Planning.</u></b> (Ability to plan beyond immediate requirement)	8	9	8
(b) <b><u>Delegation.</u></b> (Understanding of subordinate's suitability towards fulfilment of various tasks and responsibilities. Willingness to take risks)	9	9	8
(c) <b><u>Vision and Conceptual Ability.</u></b> (Ability to visualise and conceptualise short/medium/long term perspective)	8	9	8
(d) <b><u>Tolerance for Ambiguity.</u></b> (Ability to take decisions in the absence of clear cut mandate and in an environment of uncertainty)	8	8	8
(e) <b><u>Professional competence to handle Higher Appointments.</u></b>	X E (Expunged)	9	8

	Sd/- x x x	Sd/- x x x	Sd/- x x x
25. Signature and date	IO	RO	SRO
	22 Sep 11	01 Oct 11	21.02.12

IO's assessment at para 24 (e) in CR 03/1-08/11 expunged as per Central Govt. order No 36501/ 14999/ Signs/ 13/ MS19/59/SC/2014-D(MS) dt 8<sup>th</sup> Jul 14.

Dated: 11 Jul 2014

Sd./- xxx  
(TK Das)  
Dy Dir, DAMS-19"

**CONFIDENTIAL**

**26. Recommendation for Promotion/Employment/Courses.**

- A. **Only if the ratee is 'Not Recommended' for promotion will the same be communicated to the ratee and letter No and date endorsed in Para 27 below.**

B. Para 26(b) is applicable only to officers of Artillery, AAD, Engineers and Signals, Int Corps, Army Avn when recommended for General Cadre.

<b>Recommendations (Mark ✓ or X against appropriate Column, specify 'Course'/X in Para 26 (e))</b>		IO	RO	SRO	FTO/ FSC RO	HTO / HSC RO
(a) Promotion to the next rank (State "Yes" again <b>st one grade only</b> )	<b>Should promote</b>	✓	✓	✓	✓	
	<b>May promote</b>	x	x	x	x	
	<b>Not yet Recommended</b>	x	x	x	x	
	<b>Not Recommended</b>	x	x	x	x	
(b) Suitability for induction into General Cadre (See Note B above)		X	X	X	x	
(c) Time Scale Promotion		✓	✓	✓	✓	
(b) Foreign Assignments		✓	✓	X	✓	
(e) Recommendation for Courses (HC/HDMC/NDC)		x	HC	x	x	
(f) PRC (for SS and WSES Offrs of AEC & JAG)		NA	NA	x	NA	

27. (a) Details of letter of communication, only in case 'NOT' recommended.

(b) Reasons for variation of three grades or more in QsAP.

IO	Sd/- 22 Sep 2011
RO	Sd/- 01 Oct 11
SRO	Sd/- 21/2

28. Signature and date

Sd/- 22 Sep 2011	Sd/- 01 Oct 11	Sd/- 21/2/12	Sd/- 22 Sep 2011
IO	RO	SRO"	FTO"

17. Under the policy, '9' denotes 'outstanding', '7' or '8' 'above average', '6' or '5' 'high average', '4' 'average', '3' or '2' 'low average' and '1' 'below average'. According to instructions, fraction should not be used. A perusal of the assessment done for Personal Qualities (PQs) and Regimental and Command [R]/Staff and ERE[S]/Instructional [I] Assignments, there appears to be much difference between the entries awarded by the IO and RO. For PQs, whereas the IO has awarded three '9s' and seven '8s' the RO has given seven '9s' and three '8s'. For Performance Variables, the IO has awarded two '9s' and five '8s' whereas the RO has given five '9s' and two '8s'. The controversy relates to pen-picture by IO whereby the three letters in question have been referred to. The pen-picture and comments made in their entirety by IO, RO and SRO have already been reproduced above:

18. From the aforesaid factual material on record, there appears to be no reason to award Box Grading of '8' by SRO more so when the RO has given overwhelmingly '9'. No reason has been assigned by SRO while taking a different view than one what RO had taken. Rather the entry made by SRO seems to be adverse in nature when he comments that despite his potential, his performance in Command has been marred by unpleasant working relation with CSO. Thus, at the face of record, the SRO has endorsed the opinion of CSO i.e. IO against the officer and made the entry accordingly. Why the aforesaid adverse entry was not communicated to the applicant in the manner prescribed is not understandable.



In Para 26 of ACR, all have recommended "Should promote". The SRO has not recommended foreign assignments. Only the RO has recommended HC course. Both IO and SRO have not recommended. It is once again clear that that SRO has been endorsing opinion of IO.

**ACR FOR THE PERIOD 01.09.2011 TO 31.08.2012**

19. We have perused the record produced by the respondents with respect to the ACR for the period 01.09.2011 to 31.08.2012. It would be relevant to reproduce the same as hereinbelow:-

No, Rank & Name of the officer:- IC-52371X Col VJS VARAICH
---

Initials	Sd/-
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**PART-II BASIC ASSESSMENT**

A. In case assessment in qualities designated by asterisk (\*) is AVERAGE OR LOWER THAN AVERAGE JUSTIFICATION IS REQUIRED at Paras 12 and 14 by IO and RO respectively.

B. IO's assessment in Part II will be communicated to the ratee, in person. In respect of RO/SRO, only adverse remarks will be communicated.

C. **Communication of IO's assessment by post will only be in exceptional and unavoidable circumstances.**

**Personal Qualities (PWs)**

Qualities	Assessment of	
	IO	RO
9. (a) <b>Physical Attributes.</b> (Physical Fitness, Military Bearing, Deportment and Turnout).	9	9
(b) <b>Drive Determination and Decisiveness.</b> (Resoluteness, vigor and dynamism in execution of tasks and capability to promptly arrive at logical and balanced conditions both under normal and adverse conditions).	9	9

(c) <b><u>Dependability</u></b> . (Intensity of involvement and consistency in executing the assigned tasks without supervision and accepting additional obligation of duty).	9	9
(d) <b><u>Morale Courage</u></b> . (Degree of intellectual honesty and courage of convictions).	9	9
(e) <b><u>Integrity</u></b> . (Degree of honesty and just approach in personal and official dealings).	8	9
(f) <b><u>Loyalty</u></b> . (Extent if willing, faithful and loyal support provided to the service, peers, supervisors and subordinates).	8	9
(g) <b><u>Ingenuity and Initiative</u></b> . (Skill of devising means and degree of resourceful to solve unforeseen contingencies).	8	9
(h) <b><u>Maturity</u></b> . (Degree of understanding and balance commensurate with age and service).	8	8
(j) <b><u>Tenacity</u></b> . (Degree of will to preserve in face of odds and difficulties).	9	8
(k) <b><u>Communication Skills</u></b> . (Ability to express clearly, concisely and effectively, both orally and in writing and possession of good listening skill. Capability to make an impact on the reader/listener towards achievement of aim/result).	9	9

### **Demonstrated performance Variables (DPVs)**

A. Depending upon assignment of the Ratee, assessment is to be rendered in one of the assignments marked below.

B. In case Reporting Officer is a civilian or from Navy/Air Force, he may not render assessment at Para 10 below, provided he is not in position to render objective assessment.

10. <b>Regimental and Command (R)/Staff and ERE (S)/Instructional (I) Assignments:-</b>	Assessment	
	IO	RO
<b>Performance Variables</b>		
(a) Knowledge of own Arm/Service and its practical application on ground <b>[R]</b> /Professional knowledge and its application to assigned duties <b>[S]</b> /Professional knowledge and its application <b>[I]</b>	9	9

(b) Knowledge of other Arms and Service [R]/Thoroughness and efficiency of work in his sphere including allocations of priorities [S]/Instructional ability including conduct of training indoor and outdoor [I]	9	8
(c) Effectiveness in training of his Command [R]/has analytical mind and goes into details [S]/Innovative Ideas [I]	8	9
(d) Ability to motivate his Command [R]/Provides impartial and frank advice [S]/Motivation of students and standards achieved [I]	8	9
(e) Effectiveness in carrying out administration of his Command [R]/Relationship and rapport at all levels including ability to understand other's point of view [S]/Relationship and rapport at all levels including ability to accept other's point of view [I]	8	8
(f) Equipment management and ability to utilize resources economically [R]/Ability to train and supervise the subordinates [S]/Impartial attitude and evenhandedness towards students [I]	9	9
(g) Dedication to the organisation and service and selflessness [Common for R,S and I]	9	9

11. Signature and date	Sd/- x x x Officer reported Upon 04 Sep12	Sd/- x x IO 04 Sep 12	Sd/- x x x RO 08 Oct 12
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Rank and Name of the officer:-  
IC-52371X Col VJS VARAICH

Initials

Sd/-

**Pen Picture by IO, RO and SRO**

A. Mark overall assessment of the officer in the block provided at the top centre.

B. Mention separately, advisory remarks (if any) and about performance of the Ratee if LMC.

C. The officer reported upon will sign in Para 15 only in case the CR is initiated by RO under provision of AO 45/2001/MS.

12. **Initiating Officer**

8

Col VJS Varaich is a technically and tactically well qualified officer who is aware of operational comn aspects.

The officer has created trg infrastructure at unit levels and attended to the military and technical training facets.

He has organized making up of initial deficiencies of WE equipment and back loading of obsolete equipment thereby effecting equipment management.

The offr has looked into Cyber Security measures at Corps HQ including periodic audit and cyber security training. He was involved in implementation of Army Red Network at Corps HQ. He has handled assigned comn duties adequately.

Col VJS Varaich has contributed to station responsibilities to include FAFA accn.

(a) Advisory Remarks/Performance of LMC Officers (as applicable). **Nil**

(b) Details of guidance for improvement during the Reporting Period.

(i) **Verbal**  
Nil

(ii) **Written**  
Nil

(c) I have intimated.....(RO/SRO) vide No.....dt.....that the ratee is likely to be assessed as 'Outstanding' (if applicable) **Not applicable.**

(d) It is certified that ratee is under/not under any discp proceedings on the due date of CR & necessary sanction of MS Branch/SRO has been obtained where due.

Sd/- x x x x

Sd/- x x x x

04 Sep 2012

04 Sep 12

13. Signature and date Officer reported upon IO

If communicated by post, **indicate reasons** and registered letter No.....and date.....

Report by the IO is Strict.

9

**14. Reviewing Officer**

Varaich is a mentally robust officer who exudes energy and professional excellence. He manages resources effectively and has jurged a strong team in accomplishing the desired tasks exceedingly well. He has a sharp analytical mind and with his proaction appch has achieved the set goals.

His technical knowledge is par excellence and has significantly record the techniques threshold of his unit.

An asset to the org.

(a) Details of guidance for improvement during the Reporting Period.

(i) Verbal      **NA**      (ii) Written      --

(b) Do you recommend any portion of the report by the IO to be expunged? If so, state such portions and reasons.

(c) Letter No and date of communication of extracts (if any).      **NA**

(d) Adequate notice was given to me by my IO that he intended to grade the ratee 'Outstanding' (if applicable).

(e)  Yes       No Adequate notice was given to me by the IO/RO that he intended to grade the ratee 'Outstanding'(if applicable)

(f) It is certified that ratee is not under any discp proceedings on the due date of CR & necessary sanction of MS Branch/SRO has been obtained where due.

15. Signature and date      Officer reported upon      Sd/- x x x  
(See Note C on Page 7)      RO  
08 Oct 12

9

Report by the IO is Strict  
Report by RO is Justified**16. Superior Reviewing Officer**

The Offr is competent and capable. He is upright, forthright and straight in his dealings. Despite a not so benign attitude of the IO, the offr has worked with sincerity and delivered outstanding results. Has the potential to do well in higher ranks.

(a) ~~Details of guidance for improvement during the Reporting period.~~

~~(i) **Verbal**~~

~~(ii) **Written**~~

(b) ~~Do you recommend any portion of the report by the IO to be expunged? If so, state such portions and reasons.~~

(c) ~~Letter No and date of communication of extracts (if any).~~

(d)  **Yes**  **No** Adequate notice was given to me by the IO/RO that he intended to grade the ratee 'Outstanding' (if applicable).

17. Signature and date

Sd/- xxx

SRO

05 Dec 12

Rank and Name of the officer:-  
IC-52371X Col VJS VARAICH  
Initials Sd/-

**PART III – TECHNICAL AND SPECIAL TO CORPS ASSESSMENT**

A. FTO/FSCRO's assessment in Part III will be communicated to the ratee. In respect of HTO/HSCRO, only adverse remarks will be communicated.

B. Recommendations for promotion to be endorsed in Para 26.

**18. Technical Performance**

Performance Variable	Assessment of	
	FTO /FS CRO	HTO/ HSC RO
(a) Knowledge of own Arm/Service relating to technical aspects	9	9
(b) Knowledge of the capabilities and equipment pertaining to Supported Arm/Service	9	9
(c) Planning skills relating to effective utilisation of technical resources	9	9
(d) Technical ingenuity and innovativeness	8	8
(e) Care, maintenance and physical utilisation of available resources efficiently and economically	9	9
(f) Reliability of technical support provided for the assigned tasks during Peace/Exercise/War	8	9
(g) Capability to inculcate technical development and awareness in his subordinates for achieving the desired results	8	8
(h) Awareness of futuristic technological development	8	9

	Sd/ -xxx 04 Sep 2012	Sd/- xxx FTO/FSCRO 04 Sep 12	Sd/- xxx 27 Oct 12 HTO/HSCRO
19. Signature and date	Officer reported upon		

8

**20. FTO/FSCRO**

Col VJS Varaich is a technically well qualified officer who has excelled in various technical courses of instructions. The officer has been involved in User Trials of Radio Sets STARS V Mk II and trials

for revision of EEP Status on fmn trg areas. He has contributed to study on Spectrum Management and utilization of RTS Mk II and Strike Corps Comn Restructuring. He has coordinated Project KRANTI implementation in Corps Z. He has implemented eqpt management and back to basics trg at unit level.

(a) Advisory Remarks (if any) **Nil**

(b) Details of guidance for improvement during the Reporting Period.

(i) Verbal  
**Nil**

(ii) Written  
**Nil**

(c) Letter No and date of communication of extracts when despatched by post.

	Sd/- x x x	Sd/- x x x
21. Signature and date	Officer reported upon 04 Sep 2012	FTO/FSCRO 04 Sep 12

9

22. HTO/HSCRO

Col Varaich is professionally very sound, very hard working and meticulous offr. The offr has contributed tremendously in settling down the unit in the new KLP and he has been able to set up all tech trg wherewithal with absolute perfection. The offr is well qualified and suited to take on higher resp.

(a) Advisory Remarks (if any) **Nil**

(b) Do you recommend any portion of the report by the FTO/FSCRO to be expunged? If so, state such portions and reasons.

**No**

(c) Details of guidance for improvement during the Reporting period.

(i) Verbal **Nil**

(ii) Written **Nil**

(d) Letter No and date of communication of extracts (if any), when dispatched by post.

	Sd/- x x x
23. Signature and date	HTO/HSCRO 27 Oct



Rank and Name of the officer:-  
IC-52371X Col VJS VARAICH

Initials

Sd/-

### **PART IV-POTENTIAL FOR PROMOTION**

- A. Not to be shown to the officer reported upon.
- B. Potential not linked to PQs/DPVs.
- C. Variation of three or more grades between reporting officers to be elaborated in Para 27.

#### **24. Qualities to Assess Potential (QAP)**

Qualities	Assessment of		
	IO	RO	SRO
(a) <b><u>Foresight and Planning.</u></b> (Ability to plan beyond immediate requirement)	8	9	9
(b) <b><u>Delegation.</u></b> (Understanding of subordinate's suitability towards fulfilment of various tasks and responsibilities. Willingness to take risks)	8	8	8
(c) <b><u>Vision and Conceptual Ability.</u></b> (Ability to visualise and conceptualise short/medium/long term perspective)	8	9	9
(d) <b><u>Tolerance for Ambiguity.</u></b> (Ability to take decisions in the absence of clear cut mandate and in an environment of uncertainty)	8	8	8
(e) <b><u>Professional competence to handle Higher Appointments.</u></b>	8	9	9

	Sd/- x x x	Sd/- x x x	Sd/- x x x
25. Signature and date	IO	RO	SRO
	04 Sep 12	08 Oct 12	05 Dec 12"

20. The record pertaining to the ACR for the period 01.09.2011 to 31.08.2012, as reproduced above, indicates that for Personal Qualities

of the applicant, the IO has granted six '9s' whereas the RO has given eight '9s'. For Performance Variables, the IO has granted four '9s' and three '8s' whereas the RO has granted five '9s' and two '8s'. From the pen-pictures written by IO, RO and SRO, as reproduced above, it is interesting to note that the Box Grading given by RO and SRO in the second ACR is '9' while IO has given '8'. The Technical and Special to Corps Assessment indicates that for Personal Variables, the FTO/FSCRO has given four '9s' and four '8s' while HTO/HSCRO has given six '9s' and two '8s'. The FTO/FSCRO has given Box Grading of '8' whereas HTO/HSCRO has given Box Grading of '9'. With regard to Potential for promotion, IO has given Box Grading of four '8s', RO three '9s' and two '8s' and SRO three '9s' and two '8s'. All five i.e. IO, RO, SRO, FTO/FSCRO and HTO/HSCRO have recommended for promotion and HC course.

### **COUNSELLING**

21. Coming to first limb of arguments that while writing ACR for the period 15.03.2011 to 31.08.2011, three letters in Column of 'Warning and Guidance, it has been submitted by learned counsel for the applicant that these letters were never communicated in accordance with Army Order 45/2001/MS. In response, learned counsel for the respondents refuting the argument advanced by the applicant's counsel have submitted that the said letters were well within the knowledge of the applicant, which has been ascertained by appointing

one man inquiry. In sum and substance, the applicant has raised the following grounds:

- (i) Letters were not in consonance with the procedure prescribed by law;
- (ii) Letters were never communicated to the applicant after due counselling, which is in violation of Paras 121(c), 124, 125(b) read with Policy Letter dated 15.11.1984 (Paras 1 and 5), Policy letter dated 04.04.1996 Paras 2 and 3 (d) and Policy Letter dated 20.09.1999.
- (iii) The contents of said three letters covered incidents which had occurred much earlier to the applicant's joining the command of the Battalion. Otherwise also the incidents referred to were suitably replied and acted upon by the applicant keeping in view the fact that they had no bearing upon the performance of the applicant nor were they connected with him. The inclusion of the said letters in the ACR shows the biasness and vindictiveness of the respondents.
- (iv) All three letters were routine official correspondence and not counselling per se. Had they been for counselling, then the same should have been marked 'confidential'.
- (v) All the three letters with the Unit were not attached with the ACR as required under Policy Letter dated 15.11.1984, Paras 1 and 5.

22. Para 121 of the Army Order 45/2001/MS deals with Adverse/Advisory Remarks. For convenience sake, the same is reproduced as under:

“121. **Adverse/Advisory Remarks.**

(a) **Adverse Remarks.** *These remarks are essential to place on records the weakness of the ratee and will be endorsed in the pen picture of the ratee. All weaknesses in the pen picture will be treated as adverse remarks.*

(b) **Communication of Adverse/Advisory Remarks.** *Both adverse and advisory remarks by any reporting officer(s) required to be communicated to the ratee.”*

23. Paras 124 and 125 of the Army Order 45/2001/MS deal with communications as well as showing of CR entry to the ratee, which are reproduced as under:

“124. *Communicating the relevant portions of the assessment by first level of reporting officers, is one of the basic principles for achieving objectivity in the system of reporting.*

125. *Following assessments in the CR/UAC will be shown to the ratee by first level of reporting chain i.e. IO/FTO/FSCRO (or RO/HTO/HSCRO when they initiate respective reports, under the provisions of the AO) including circumstances when HTO/HSCRO are first reporting officers due to non entitlement of Present/Previous FTO/FSCRO:-*

(a) *Part I of the CR/UAC if amended by the officer initiating report.*

(b) *Figurative assessment in PQs, DPVs, TPs, box grading and pen picture including advisory remarks.*

(c) *When ratee is Not Recommended for Promotion or Not Recommended for Permanent Regular Commission/Extension for Short Service Commissioned Officers.”*

24. A combined reading of the aforesaid provisions shows that all adverse/advisory remarks are required to be communicated to the ratee. The adverse remarks indicate the weakness of the ratee and are required to be endorsed in the pen picture. All such endorsements regarding weaknesses in the pen picture will be treated as adverse remarks. The purpose of advisory remarks endorsed by reporting officer is to bring in further improvement in the ratee's performance and over all development though *per se* they may not be adverse. The advisory remarks will be endorsed separately in the space provided for the pen picture. In CR forms, which do not have space specifically for endorsing advisory remarks, these will be written on a separate sheet and be pasted below the pen picture.

25. Keeping in view the aforesaid mandatory provisions, in case the applicant's case is considered, at the face of record we find that the provisions contained in Para 121(b) and (c) of the Army Order (*supra*) have not been followed by the respondents. Mere reference of

aforesaid three letters without pasting them over the CR Form and without writing down the opinion by the reporting officer with regard to their nature that they are advisory, shall not meet the requirement of law.

26. In **Black's Law Dictionary**, the words 'adverse' and 'advisory opinion' have been defined as under:

*“Adverse. 1. Against; opposed (to). 2. Having an opposing or contrary interest, concern, or position. 3. Contrary (to) or in opposition (to). 4. Hostile.”*

*“Advisory opinion. 1. A nonbinding statement by a court of its interpretation of the law on a matter submitted for that purpose.”*

27. Thus, 'adverse remark' means the note that expresses the personal opinion with reason with regard to ratee indicating his weaknesses or flaw, if any, and improvements required to meet the exigencies of service. 'Advisory opinion' means an opinion given in writing, instead of referring to some letters as has been done in the present case. It cannot be treated as advisory remark under Para 121 (b) read with Para 125 (b). Mere referring to the said letters instead of writing down or pasting the opinion by reporting officer in CR form in terms of Army Order (supra) seems to be mischievous, putting the ratee in darkness to assess and improve himself in terms of the advice. Such letters must be communicated to the ratee for future use and pasted over the CR form so that the same may be taken into account by the appropriate body or authority conferred with the power,

to form an opinion, which may be adverse to the ratee, to decide his future career.

28. Paras 121(b) and (c) read with Para 124 of the Army Order (supra) use the word 'communication'. 'Communication', according to **Black's Law Dictionary** means:

*“Communication. 1. The expression or exchange of information by speech, writing, gestures, or conduct; the process of bringing an idea to another's perception. 2. The information so expressed or exchanged. “*

29. A combined reading of the aforesaid provisions indicates that it is the advisory opinion in terms of Paras 1 (b) and (c) of Army Order (supra) that is required to be communicated. The opinion must be in first tense written down in CR book or pasted over there. In view of aforesaid guiding principles, the stand of the respondents that the applicant was aware of these three letters, is not sustainable. It is not the reference of the aforesaid three letters but the actual remark that is required to be shown to the ratee in terms of Para 125 (b) of the Army Order (supra). If at all, the said letters ought to have been pasted over CR form, which has not been done in the present case.

30. The observation made above is fortified by Policy Letter dated 15.11.1984 Paras (1) and (5), Policy Letter dated 04.04.1996 Paras (2) and (3) (d) and Policy Letter dated 20.09.1999. By not recording or pasting the advisory opinion in CR profile and mere reference to

certain letters amounts to jeopardise the career of the ratee and also constitutes a gross negligence on the part of the IO to follow the procedure prescribed by law. All the aforesaid three letters ought to have been pasted over CR form so that when the open portion was shown to the ratee (applicant) by respondent No. 5, he could have immediately known the advisory opinion and the fault lying in his service career.

31. Apart from above, the condition precedent for adverse or advisory remark is that the officer should be warned of his shortcomings, which must be reflected in the report. In Para 111(d) of the Army Order (supra), the officer will be given a period of 60 days to show improvement. However, this period of 60 days may be waived by the SRO. Under Paras 119 and 120 of the Army Order (supra), it shall be incumbent upon the reporting officer while making adverse or advisory remark to indicate reason or related grounds, supported by figurative assessment in the relevant variables of PQs, and if it is not justified adequately in the pen picture, the MS Branch may make a query from the concerned reporting officer. For convenience, Paras 111, 119 and 120 of Army Order (supra) are reproduced as under:

*“111. Before an Adverse Report is initiated, the following will be ensured:-*

*(a) The officer will be warned in writing of all his shortcomings, which are intended to be reflected in the Adverse Report.*



(b) *The written warning as in Paragraph 111 (a) above will specifically mention that the same has been issued for the purpose of initiating an Adverse Report/Drop in Performance.*

(c) *The next higher headquarters, reporting officers and MS Branch will be informed of the fact that the officer has been warned. A copy of the warning letter will also accompany the Adverse Report, if and when initiated.*

(d) *The officer will be given a period of 60 days to show improvement. However, this period of 60 days may be waived by the SRO not below the rank of Divisional or Area Commander or a PSO at Army Headquarters.”*

“119. *On receipt in the MS Branch, A CR will be scrutinized for consistency in reporting. Criteria for the same is defined below :-*

(a) **Outstanding Assessment.** *Award of 9 marks in the box grading has been explicitly justified in the pen picture, indicating achievement by the ratee beyond the call of normal duty.*

(b) **Wide Variations.** *Variations of three or more grades in PQs, DPVs, QsAP, Technical Qualities and two points in box grading by the various reporting officers, need to be explicitly elaborated by the reporting officer(s).*

(c) **Inconsistent Recommendations for Promotion and Employment.** *The Recommendation for Promotion will be primarily based on the QsAP. No*

reason is required to be endorsed by the reporting officers for endorsing a particular shade of Recommendation for Promotion including NOT YET and NOT. However, variation of three points or more in figurative grading of QsAP and/or three grades in Recommendation for Promotion between reporting officers will be elaborated. Any ratee Not Recommended for Promotion will be communicated the same by the concerned reporting officer(s) and extracts duly signed by the ratee will be forwarded to the MS Branch.

(d) **Average Assessment.** Award of Average grading (4marks or C plus in UAC) as specified below has been adequately and explicitly justified in the pen picture:-

(i) **Officers from three to eight years service.** C plus in box grading in UAC.

(ii) **Officers from ninth year service to Cols.** Four marks or below in mandatory PQs which have been designated by an asterisk (\*) in the CR form and box grading.

(iii) **Brigs and Maj Gens.** Four marks or below in all PQs, DPVs, QsAP and box grading.

(e) **Low and Below Average Assessment.** When an officer is awarded low or Below Average (i.e. 3 or less) marks) in any PQ, DPV, QAP, Technical Quality and box grading in the CR, the same will be adequately justified in the pen picture.

(f) **Adverse Remarks and Guidance for Improvement.** For these to be consistent and acceptable, it will be essential that the remarks

*endorsed by the reporting officer(s) are supported by figurative assessment in the relevant variables of PQs and/or DPVs.*

*120. Whenever the variations in figurative assessments between various reporting officer(s) are not adequately justified in the pen picture or the figurative gradings of the reporting officer (s) is not in consonance with their pen picture, the concerned reporting officer(s) may be queried by the MS Branch. It will thereafter be mandatory upon the reporting officer(s) to provide the requisite justification. During this process, the following will not be accepted:*

*(a) Revision of figurative assessment to avoid explicit justification.*

*(b) Exclusion of adverse remarks or Guidance for Improvement to avoid communication to the ratee.*

32. In the present case, the record does not reveal that the aforesaid procedure given in the Army Order (supra) has been followed, which vitiates the entry recorded by the IO. The pen picture of the IO does not reflect that any instruction was issued to the applicant to improve his shortcomings. The IO thus failed to put on record the adverse/advisory remark against the applicant as per law.

33. The CR relating to the aforesaid period seems to lack consistency and has not been recorded keeping in view the guidelines and Army Order (supra). Learned counsel for the applicant has relied upon Paras 10 and 14 of the Army Order (supra) as well as Policy Letter dated 20.09.1999 asserting that the presence of Hav Jagdeep

Singh in the office of IO breached the confidentiality required to be maintained by the IO, which also amounts to an act done by the IO to humiliate the applicant. For convenience, Paras 10 and 14 of the Army Order (supra) are reproduced as under:

*“10. The CR of an officer is a privileged document. The report is to be treated as ‘Confidential’ between the officer reported upon and the reporting officer; and therefore, the form will normally be filled in hand. Typing of the report may be resorted to only when the reporting officer either does it himself or takes appropriate action in conformity with its security classification.”*

*“14. At level of unit, brigade headquarters, training centres and establishments/installations commanded by Brig or below, the CRs will be handled by the initiating officers and reviewing officers themselves.”*

34. Policy Letter dated 20.09.1999 also speaks to maintain confidentiality. Submission of learned counsel for the applicant seems to be correct that the IO should not have permitted Hav Jagdeep Singh to remain present when the applicant was called to look at the CR and sign over the same.

35. Appendix ‘O’ of the Army Order (supra) provides a time-bound action for CR entry and its movement. For convenience sake, **Appendix ‘O’** is reproduced as under:

Appendix ‘O’  
(Refers to Paras 99 and 133 of AO)

**ACTION PTS FOR CHECKING CRs AND MOVEMENT OF CRs**  
**ACTION FOR CHECKINGS CRs**

**Date/Days**

1. 10 days prior to moving out on permanent posting from station of IO/ratee or date due for initiation CR.

2. Date due for initiation/prior to moving of ratee/IO permanently out of station.

**Action by Ratee/IO/RO/SRO**

(a) Ratee hands over CR duly filled and validation for personal particulars and physical service.

(b) IO checks correctness of personal/ validation data.

(a) IO initiates CR. Ensure Outstanding assessments are explicitly justified in pen picture by tasks/acts beyond call of duty.

(b) Relevant portion shown to ratee Including negative recommendations for promotion.

(c) Ratee signs on CR.

**OR**

Within 10 days after date due For initiation (in case CR not shown to ratee due to official separation of IO/ratee on due date)

(a) CR initiated by IO.

(b) Extracts forwarded by registered post to new unit in a sealed envelope to be handed over to ratee by new IO/higher reporting chain and new formation HQ of ratee info by IO.

(c) New IO hands over sealed envelope to Ratee within 10 days of receipt and arrangements return of extracts in sealed envelope to originator.

3. Within 10 days of initiation/ return of extracts (not later than 30 days of initiation).

(a) IO despatches CR to next reporting officer (RO/FTO/FSCRO as applicable).

(b) In case extracts are not forwarded, attach detailed reasons for same along with CR.

(c) FTO/FSCRO when applicable endorses report, sends extracts to ratee and forwards CR to RO within 10 days of receipt of extracts, procedure same as at Paragraph 2.

4. Receipt of CR by RO (or HQ).

(a) CR checked by RO/staff Authorized to handle CR as per AO, for following:-

- (i) Correctness of validation data.
- (ii) Channels of reporting.
- (iii) Erasures, overwriting, use of whitener authenticated by IO/FTO/FSCRO and ratee wherever relevant with full signatures and data.
- (iv) If extracts sent, the same duly signed by ratee are attached/reasons are justified.

(b) Endorse CR as applicable and despatch to next reporting offr within 10 days. Ensure variation of three or more pts from IO's assessment points are adequately justified in pen picture. Also that outstanding assessment is explicitly justified in pen picture.

(c) In case of weak/advisory and negative recommendations for promotion, ensure same are communicated to ratee before forwarding CR to next reporting offr.

5. Receipt of CR by SRO (or HQ)

(a) Check for correctness of data and completion of CR form by IO/FTO/FSCRO and RO/HTO/HSCRO.

(b) Check for channel of reporting.

(c) Obtain HTO/HSCRO endorsement if in same HQ.

(d) Attach extracts if sent earlier.

(e) Ensure weak/advisory remarks/negative recommendations for promotion by RO communicated to ratee by RO and signed extracts attached.

(f) Endorsement by SRO.

(g) Despatch CR to Army HQ/HTO/HSCRO in higher HQ by Registered SDS.

(h) Above actions to be completed within 10 days of receipt of CR.

6. Action of HQ Command (MS) In case of CRs requiring endorsement by GOC-in-C and/or HOA/S/Org
- (a) Ascertain if GOC-in-C wishes to endorse CR.
  - (b) Obtain endorsement by HOAS.
  - (c) Check completion and whether CR seen by Ratee/extracts signed.
  - (d) Endorsement by GOC-in-C, when applicable.
  - (e) Despatch CR to MS Branch.
  - (f) Actions to be completed within 20 days of receipt of CR.

### **Examples to illustrate Movement of CRs.**

#### 7. **Example No. 1.**

- (a) **Case and the Channel of Reporting.** Consider an ACR in respect of OC of Div Engr Regiment which follows the following channel of Reporting:-

- |       |            |   |             |
|-------|------------|---|-------------|
| (i)   | <u>IO</u>  | - | GOC Div     |
| (ii)  | <u>RO</u>  | - | GOC Corps.  |
| (iii) | <u>SRO</u> | - | Army Cdr.   |
| (iv)  | <u>FTO</u> | - | CE Corps.   |
| (v)   | <u>HTO</u> | - | CE Command. |

8. **Movement of the CR.** The CR will be initiated by the GOC Div and forwarded to MS Branch at the Corps HQ. Col MS at the Corps HQ will first obtain endorsement of the CE and then get the CR endorsed by RO i.e. GOC Corps. Thereafter, the CR will be forwarded to the Command HQ (MS). Dy MS at the Command HQ will first obtain endorsement of the CE Command and then put up the CR to the Army Cdr. CR will then be sent to MS Branch at the Army HQ.

#### 9. **Example No. 2**

- (a) **Case and the Channel of Reporting.** Consider an ACR in respect of CSO Corps which follows the following channel:-

- |       |             |   |                 |
|-------|-------------|---|-----------------|
| (i)   | <u>IO</u>   | - | COS Corps       |
| (ii)  | RO          | - | GOC Corps.      |
| (iii) | SRO         | - | Army Cdr.       |
| (iv)  | FTO         | - | CSO Command     |
| (v)   | HTO         | - | Not Applicable. |
| (vi)  | Head of Arm | - | SO-in-C.        |

10. **Movement of the CR.** CR will be initiated by the COS Corps, reviewed by the GOC Corps and then sent to Command HQ (MS). Dy MS at the Command HQ will first obtain endorsement of the CSO Command. The Dy MS will then

ascertain from the SRO i.e. the Army Cdr, if he wishes to endorse the CR. In case the Army Cdr wishes to do so, the CR will be first forwarded to the Head of Arm (SO-in-C) for endorsement. The HOA will endorse the CR and forward it to Command HQ (MS) who will send the CR to MS Branch after obtaining the endorsement of the Army Cdr. In case the Army Cdr does not wish to endorse, the CR will be sent to the HOA who will forward the same to MS Branch after his endorsement.”

36. Admittedly, ACR initiated by the IO was sent to SRO on 01.10.2011. Instead of doing his job within 10 days as per **Appendix ‘O’** (supra), the SRO sent it after 114 days on 21.02.2012, which seems to be dereliction of duty on his part. One of the most important things is that the IO and SRO were required to follow Para 118 of the Army Order (supra) and Paras 34 and 36 (iii) of MS Branch Guidelines for rendering CRs and it was incumbent upon them to highlight the service career of the applicant, but they failed to follow the said mandatory requirement.

37. In the present case, the IO has dispatched a letter dated 22.07.2011 to a senior authority for outstanding entries of the applicant, which also seems to reflect from a letter dated 09.11.2011 filed as **Annexure CA-8**. The letters dated 22.07.2011, 10.07.2011 and 16.07.2011 do not seem to reflect the drop in performance of the applicant or warning, counselling and guidance to him. These are merely correspondences with respect to day-to-day functioning of the Battalion and they in no way constitute advisory opinion preceded by some counselling or warning. If these were to be counselling or warning to the CO, then they should have been marked ‘Confidential’.



38. The period of 90 days' service of the applicant under the IO begins from 21.07.2011. Out of three, the two letters referred to in the ACR pertain to the period after 25.07.2011. In such circumstances, it is mischievous to refer to the aforesaid three letters in ACR, that too when in no way they are advisory in nature keeping in view the letter and spirit of Army Order (supra).

39. Now, coming to one man inquiry constituted by respondent No. 4 to ascertain the allegations made by the applicant, we find it a farce. Vide letter dated 02.11.2011, the opposite party No. 4 had directed to ascertain the veracity of the allegation of the applicant that he was not served with any warning, but the convening authority Brig R.K. Rajput did not indicate any provision under which the inquiry was constituted. There is nothing to show in the report of one man inquiry as to how the applicant was incorrect in making the aforesaid grievance. It is admitted by the respondents that the applicant was not present during the course of inquiry, though his statement was taken in writing. It is in gross violation of principles of natural justice as well as Army Rule 180. Keeping in view the fact that one man inquiry was held in violation of the principles of natural justice and the applicant was not provided any opportunity to cross-examine the witnesses and defend his case by producing his own witnesses, it suffers from the vice of arbitrariness, hence not sustainable. It appears to be an eye-wash, done by the respondents merely to cover up their illegal actions.

40. Further, while holding one man inquiry, the officer concerned had not taken note of the provisions of Army Order (supra), which require not only confidentiality, but also manner, mode and purpose to record advisory opinion in the CR. A show cause notice dated 13.01.2012 was served on the applicant on the ground that the remark made by him on CR was in violation of Para 132 of the Army Order seeking reply by 20.01.2012. The applicant submitted his reply on 19.01.2012 to SRO/respondent No. 4, who thereafter shared for the first time the references of the letters written by the IO/FTO in the CR vide his letter dated 03.02.2012. A detailed reply was again given by the applicant to the SRO on 08.02.2012. The SRO without any further clarifications from the applicant processed the CR on 21.02.2012. The record does not reveal that the applicant's stand was taken into account by the SRO with regard to advisory opinion in terms of the Army Order. It shows that he proceeded mechanically without objective assessment as mandated by Para 41 of the Army Order (supra).

41. It is pertinent to mention that the extract of adverse remark was communicated only after the receipt of statutory complaint of the applicant by MS Branch, endorsed by SRO in CR. The record reveals that by no stretch of imagination, the explanation given by the applicant was taken into account by the SRO, rather he followed the one man inquiry report dated 19.01.2012 (supra) in violation of law.

42. Non-communication of adverse remarks in contravention of Paras 121(c), 124, 125 (b) read with Policy Letter dated 15.11.1984

(Paras 1 and 5), Policy letter dated 04.04.1996 Paras 2 and 3 (d) and Policy Letter dated 20.09.1999, seem to be a serious lapse on the part of the respondents, hence an inference may be drawn that action of respondents No. 4 and 5 while dealing with the applicant's CR profile suffers from bias. Concealment of adverse remarks for one year and seven months without follow up action in pursuance to Army Order (supra) within the time frame prescribed, is a serious lapse on the part of the respondents; it must have affected the applicant's promotional avenues and service profile.

43. As observed above, the finding of one man inquiry seems to be mechanical. It presumed the existence of verbal warning, receipt of ACR and knowledge of three letters by the ratee, that too in the absence of any opinion recorded or pasted over the CR profile. The finding with respect to the endorsement of protest by the ratee in contravention of Army Order etc, seems to be not sustainable being a finding recorded without taking into account the written note submitted by the applicant. Thus, the report of one man inquiry being one-sided and in violation of principles of natural justice is a document, which lacks legal sanctity. The respondents should have initiated a Court of Inquiry on applicant's complaint by following the procedure provided by Army Rule 180 instead of proceeding whimsically in a manner not known to the procedure (supra) dealing with the complaint through a fact finding body. Apart from procedural illegality (supra), bias seems to be apparent on the face of record while dealing with the applicant ACR profile by respondents No. 4 and 5.

44. Keeping in view the action of respondents No. 4 and 5 i.e. IO and SRO, they seem to have acted with bias and have not followed the procedure prescribed by law (supra) while endorsing the ACR for the period 01.09.2011 to 31.08.2012. It may not be ruled out that the ACR entry of the period in question must have been influenced with extraneous reasons.

45. The IO issued a letter dated 11.11.2011 to the ratee (applicant) as a guidance for improvement. This letter has not been referred to in second ACR profile of the period in question. By not referring to the advisory letter dated 11.11.2011 in the ACR of the period, again the respondents have not followed the mandatory provisions (supra), which puts a question mark on the fairness of respondents No. 4 and 5 while dealing with the applicant's ACR profile.

46. The aforesaid fact may also be inferred from the letter of the IO dated 09.11.2011 filed as **Annexure-8** to the Counter Affidavit. Why the contents of letter dated 09.11.2011 are not reflected in the pen pictures recorded by the IO and the SRO is not understandable. In service jurisprudence, anything which affects the career of a serviceman cannot be done behind his back and that is why the Army Order (supra) and other Army Orders direct to maintain transparency in the matter of entry in service profile of a serviceman.

47. As discussed above, the SRO (respondent No. 4) had given adverse remarks while making entry for the period 09.03.20011 to 31.08.2011, that too without due communication. Once the SRO had

given adverse remarks in first ACR, his prejudices against the applicant while awarding second ACR may not be ruled out.

### **CONSISTENCY**

48. It has been argued by the applicant's counsel that barring the period during which the aforesaid entries were awarded to the applicant, the performance of the applicant has throughout been excellent. We have perused the record pertaining to three previous years as also of latter years and find that his box grading in the said years has been '8' or '9'. Thus, the applicant is enjoying excellent service record and there seems to be nothing which may debar him from consideration with respect to his further promotion to higher rank.

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

50. We are of the considered opinion that for assessment of overall service working of an officer is required to be assessed strictly objectively, fairly and dispassionately as has been held in the case of **S. Ramachandra Raju vs. State of Orissa**, (1994) Supp 3 SCC 424 and reiterated in the case of **State of U.P. versus Yamuna Shankar Misra and another**, (1997) 4 SCC 7. Writing Confidential Report puts onerous responsibility on the Reporting Officer to eschew his subjectivity and personal prejudices and proclivity or predilections and

to make objective assessment. Hon'ble Supreme Court in ***Yamuna Shanker Misra's*** case, held that, in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives, if not strictly adhered to, in making an honest assessment, the purpose and career of the officer will be put to great jeopardy. Hon'ble Supreme Court in the case of ***State Bank of India vs. Kashinath Kher*** (1996) 8 SCC 762 held that, object of writing the Confidential Report is two-fold, i.e. to give an opportunity to the officer to remove deficiency and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. The case of ***Kashinath Kher*** was also considered by the Hon'ble Supreme Court in the case of ***Yamuna Shanker Mishra***.

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

are required to give overall figurative assessment of the officers in the box which is a box for grading Clause 117 reads as under:

*“The reporting officers are required to give overall figurative assessment of the officers in the box provided for this purpose: commonly known as box grading. This assessment is NOT numerical average of the assessment made in other parts of the report but overall assessment which includes potential of the officer as well. Following need to be ensured by the reporting officers with regard to the box grading.”*

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

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

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

55. The Military Secretary's Branch issued a Brochure under title "Guidelines for Rendering Confidential Reports". Foreword appended to the said Guidelines, contains the observations made by the Military Secretary on 05.04.2013, as follows:

*"1. Confidential Reports form the foundation of an efficient Human Resource Management System to ensure that only professionally competent and best officers are selected for promotion and tenant higher select ranks of*



*Indian Army. It is the **shared and collective responsibility of all reporting officers** to further strengthen and appraisal system so as to assist the MS Branch in fulfilling its mandate.*

*2. It is the desire of COAS that the environment be continuously sensitized and educated on all important aspects of appraisal, from time to time. Towards that end the need was felt for a **publication that can be brief, handy and encompass all essential aspects of CR policy.** This is a nascent effort to provide such a publication to the environment.*

*3. In addition to the basic issue of technical correctness of CRs, responsibilities of ratee/reporting officers, detailed guidelines have been included for **reporting officers to enable them to render an objective assessment on the ratee.** A small brief on methodology of analysis of CRs at MS Branch and certain other misc aspects have also been covered to amplify the existing instructions.*

*4. I am confident that these guidelines will assist all offrs both as ratee and reporting offrs to ensure correct, timely and objective rendition of confidential reports.”*

56. In para 2 of the aforesaid guidelines, reference has been made to Army Order 45/2001/MS. With regard to Reporting Officer, it has been observed that the period for which the Reporting or Initiating Officer endorses his opinion is the period which the ratee has actually served under the IO. Para 9 (e), (f), (g), (h) and (i) of the said Guidelines relevant for adjudication of the present controversy are reproduced as under:

“(e) **Period Covered by Report.** This is the period which the **ratee has actually served under the IO.(Para 17 of AO).** Complete **details of physical service** of ratee under IO, RO and SRO are required to be provided as part of docus to be att with CR.

(f) **Reporting Offrs.** The details should be as per the **Channel of Reporting** applicable. The entitlement of Reporting Offr (Present/Previous) can be ascertained as per Appx F & H of AO. As a guiding principle the period served under RO/SRO should be concurrent with the period actually served under IO.

(g) **Reason for Initiation.** Mention the type of CR (eg. Annual CR/ Interim CR/ Early CR/ Delayed CR) and the reason for initiation of current CR (eg. ACR on due date/Posting out of Ratee/IO or Special CR as the case may be).

(h) **Appts Held.** Mention all appts held by ratee for the period of report. Appt should be same as reflected in IAFF 3008.

(i) **Correctness of details.** The ratee will authenticate the details given in Part I of the CR form. The ratee will be **personally responsible for the correct completion of details** in the CR form. **Certificate of correctness of details rendered by the ratee is irrevocable.”**

57. The aforesaid guidelines are in tune with Army Order 45/2001/MS. It seems to have been issued to fill up the vacuum to supplement the Army Order 45/2001/MS and Army Act, Rules and Regulations and has binding effect. Vide AIR 2008 SC 3, **Union of**

**India versus Central Electrical & Mechanical Engineering Services.**

**Pen-Picture**

58. Pen-Picture has been provided under Para 36 of the Guidelines. It says that the quality of a pen-picture **provides valuable input for selection** of officers for important and sensitive appointments, analysis of an assessment for objectivity during Internal Assessment and analysis of complaints. Different qualities which are required to be appreciated while writing pen-picture by IO, RO and SRO, is borne out from Para 36 of the Guidelines. For convenience sake, para 36 of the Guidelines (supra) is reproduced as under:

**“36. Pen Picture**

*(a) The purpose of the pen-picture is to give soul to the skeleton of figurative assessment. The manner in which this is done is left to the indl style of the reporting offr. The same may be formatted under following heads:-*

*(I) Personality and Leadership.*

*(II) Employment and performance.*

*(III) Any other Special Attributes and Achievements.*

*(b) The quality of a pen-picture provides valuable input for selection of offr for important and sensitive appointments, analysis of an assessment for objectivity during Internal Assessment and analysis of complaints.*

(c) *Internal assessment in the MS Branch indicates that most reporting offrs **concentrate on the figurative assessment and neglect the pen-picture**, which are cryptic and non-committal in nature.*

(d) **Use of superlative adjectives should be avoided.** *It is clarified that **no standard list of words or phrases** are expected in support of different grades of figurative awards.*

(e) *Pen picture must highlight specific achievements by the ratee during the reporting period. This could be his contribution during ops, trg, ex, op discussion, adm, improvement in stn, quality of instr, staff work etc as per the appt tenanted by the offr.*

(f) *Pen picture should **provide additional information over and above** what is implicit in **the figurative assessment**. A suggested list of qualities which may be commented upon in the pen picture is as under:-*

(I) **Acceptance of Suggestions and Criticism.**

*Attitude of the ratee towards suggestion and reaction to objective criticism/ corrective measures,*

(II) **Conceptual Skill.** *Demonstrated ability to conceive and comprehend plans/concepts. It may also include value additions carried out in discharge of duties.*

(III) **Esprit-de-Corps.** Altruist behaviour exhibited by the ratee.

(IV) **Emotional.** Capability to resist undesired agitation of the mind.

(V) **Employability.** This may include potential of the ratee for employment in various Important / specific appointments based on his ability, flair and talent. (eg. Media / IT/ Foreign language / Financial Management / Project Management)

(VI) **Foresight and Planning.** Demonstrated ability to analyse / foresee a problem and formulate a plan for its solution.

(VII) **Man Management.** Efficient handling of troops/subordinates and specific activities aimed at maintenance of their morale and welfare.

(VIII) **Self improvement.** Endeavour of the ratee to improve self in terms of acquiring knowledge and adjusting socially.

(IX) **Tact.** Skilful handling of men and situations which may include mention of specific instances.”

59. While writing pen-picture, recommendations are also to be made for promotional avenues keeping in view the merit of the ratee, as provided under Para 38 of the Guidelines, which is reproduced below:

**“38. Recommendations for Promotion.**

(a) Recommendations for promotion are required to be given in four shades, i.e., **Should Promote, May promote, Not yet Recommended and Not Recommended.**

(b) These shades are meant to provide requisite dispersal in the otherwise congested figurative grades. Amongst these, **only ‘Not Recommended’ is a definite negative recommendation** while the other three shades are meant to be positive, although on a reducing scale.

(c) Reporting offrs are required to base their Recommendations for Promotion based on the awards in QsAP.

(d) Reporting offrs must ensure that there is no mismatch between QsAP and Recommendations for promotion. **A quantified relationship between QsAP and Recommendation for Promotion has been specified.** However, in its absence a broad co-relationship can still be drawn.”

60. Keeping in view the Guidelines referred to hereinabove, there appears to be no room for doubt that pen-picture is the foundation to award Box Grading in a quantified system for figurative awards. Having regard to the previous ACR entries and a few later entries, it appears that the applicant’s CR profile suffers with certain drops at the level of IO and SRO (supra). The sudden drop with adverse remark and keeping in view the facts and circumstances discussed in the

preceding paras, there appears to be lacking of consistency in the applicant's CR profile. Certain facts from the pleadings on record, which have drawn our attention, indicate that IO has not followed the procedure with regard to counselling and advisory opinion. Three things are required to render advisory opinion, namely-

- (i) Inefficiency or dereliction in duty must be pointed out to the ratee followed by counselling and some breathing time may be granted to upgrade or improve the deficiency in service.
- (ii) It must be recorded that in spite of counselling and breathing time granted, the ratee has failed to improve in discharge of duty; and
- (iii) The advisory opinion with reason must be recorded in ACR profile; it may be written on a separate sheet and pasted on ACR profile. Departmental communication with regard to any fault or grievance noted by IO is a ministerial act and does not meet the requirement of law (supra).

61. The allegations of the applicant with regard to usual functioning of the Unit (paras 4.4 and 4.5) have been denied by the respondents as misleading, but there appears to be some truth in the applicant's contention as is evident from the letter written by the JCOs against the CSO (Respondent No. 5) making certain accusations against him. Ignorance of the said letters by respondent No. 5 does not seem to be correct. However, we decline to record any conclusive finding thereon

since the persons who wrote the said letter are not parties to the proceedings to make their submissions.

62. The denial by respondents with regard to the applicant's performance in Signal Unit of 2 Corps during exercise 'VIJAYEE BHAV' seems to be not well-founded for the reason that the SRO was not posted in 2 Corps during the said period. Similarly, the denial of the contents of para 4.6 by the respondents in para 8 of their counter affidavit also does not seem to be well-founded. IO and SRO must know the quality of duty discharged by their subordinates during every exercise, like one in the present case 'VIJAYEE BHAV'. The denial seems to be an afterthought to negate the good work of the applicant, that too without assigning any reason. Similarly, vide para 4.9 of the O.A., the applicant pleaded to have topped in the prestigious Signals Regimental Commanders Course, but while giving reply to the said para, the respondents have stated in para 9 of the counter affidavit that it is a matter of record. Such a reply on the part of the respondents seems to be evasive. Why the IO and the SRO have not recorded in the pen picture the applicant's achievement, is a matter of concern.

63. The letter of IO with regard to outstanding entry may not have been materialised, but it speaks good for the applicant. What caused to change the mind of authorities followed by adverse entry, that too under the garb of alleged advisory opinion under the teeth of rules, raises doubt on their intention.



64. Similarly showing of ACR profile in the presence of Hav Jagdeep Singh (supra) appears to have breached the confidentiality required to be maintained under Army Order 45/2001/MS (supra).

65. Mere mention of letters in CR profile without showing them to the applicant and asking him to make signatures thereon seems to be an unwarranted action on the part of the IO. It was the applicant's right to see all records to the extent of open ACR profile and which could not be denied by the IO while asking him to make his signatures. This is gross abuse of powers affecting the career of the ratee in violation of principles of natural justice.

66. Bias attitude may be inferred from the fact that in the absence of any adverse remark in the pen picture by the IO indicating counselling and advice done while discharging the task or duty assigned by the Commanding Officer, he indicated the three letters without referring to the contents in the ACR profile in contravention of Army Order (supra). It in no way shows the fair treatment imparted to the applicant. Under Para 119(f) of the Army Order (supra) read with Policy dated 09.03.2001, it was incumbent upon the IO to make an endorsement in the CR with regard to advisory remark and guidance for improvement to be consistent and acceptable with figurative assessment. Negative recommendation for promotion should have been communicated. Advisory remarks may be given when the officer fails to show the desired improvement as a condition precedent.

67. Allowing the applicant's statutory complaint with regard to promotional avenues itself indicates that prima facie the entry awarded to the applicant is not based on fair assessment as per law. The one man inquiry seems to be an eye-wash since it was held in gross violation of principles of natural justice and the provisions contained in the Army Act, Army Rules and Army Orders regulating an inquiry. The respondents ought to have held Court of Inquiry with due compliance of Army Rule 180 so that the applicant could have got reasonable opportunity to put his defence. Under Army Rules 178, 179 and 180, a fact finding inquiry should have been held. The only option before the respondents was to proceed in accordance with the statutory provisions, in which they appear to have failed.

68. Without adjudicating the allegations raised by the applicant in his statutory complaint dated 13.05.2013, second time ACR entry by the respondents or superior authorities does not seem to be fair and justified keeping in view the letter and spirit of Paras 34, 36 and 37 of the Army Order (supra). Non-communication of adverse remark within a specified time (supra) indicates the arbitrary exercise of power by the authority followed omission and commission on the part of the respondents in contravention of Paras 121(c) and 127(b) of the Army Order (supra). The MS Branch letter No. A/17151/MS 4 Coor dated 10.07.2006 to the extent it is relevant, is reproduced as under:

*“4. In view of above following time-frame is being laid down for initiation, completion, disposal and movement of confidential reports:-*

*(a) IO/FTO/FSCRO- 20 days (from the due date of initiation) in respect of each reporting officer (Only when Initiating Officer and First Technical Officer/First Special to Corps Reporting Officer are different).*

*(b) RO/SRO/HTO/HSCRO/HOA- 30 days in respect of each Reporting Officer ) only when Reporting Officer and Higher Technical Officer/Higher Special or Corps Reporting Officer are different).*

*(c) Total time (including transit period) by which confidential reports should reach Military Secretary's Branch:-*

*(i) Officers not entitled to technical/special to corps reporting- 130 days.*

*(ii) Officers entitled to technical/special to corps reporting- 175 days."*

69. It was only after receipt of the complaint that the respondent No. 5 forwarded the extract of SRO remarks in pen picture, which itself indicates gross negligence on the part of the respondents in imparting unfair treatment to the applicant, affecting his service career adversely. Similarly, the inordinate delay on the part of SRO in making endorsement in CR profile is also not justifiable.

70. Apart from aforesaid facts, it is unfortunate that the appellate authority while dealing with the applicant's statutory complaint as contained in **Annexure A-13** to the O.A. has not assigned any reason nor does it appear to have considered the applicant's grievance against the IO and the SRO. It is well settled law that whenever an order is passed, it must be a reasoned one after taking into account

the grounds raised by an incumbent. It was not fair on the part of the appellate authority to decide the statutory complaint granting partial relief without advertent to the grounds raised therein.

71. The question with regard to bias, arbitrary exercise of power or malus animus is no more a res integra being settled by the Hon'ble Supreme Court in catena of decisions. The issue of "malus animus" was considered in ***Tara Chand Khatri vs. Municipal Corporation of Delhi and Ors***, AIR 1977 SC 567, wherein the Hon'ble Supreme Court has held that the High Court would be justified in refusing to carry on investigation into the allegation of mala fides, if necessary particulars of the charge making out a prima facie case are not given in the writ petition and burden of establishing mala fide lies very heavily on the person who alleges it and there must be sufficient material to establish malus animus. The Hon'ble Supreme Court, ***in E.P. Royappa vs State of Tamil Nadu & Anr***, AIR 1974 SC 555; ***M/S. Sukhwinder Pal Bipan Kumar & Ors vs. State of Punjab & Ors***, AIR 1982 SC 65; and ***Shivajirao Nilangekar Patil vs. Dr. Mahesh Madhav Gosavi & Ors.***, AIR 1987 SC 294 reiterated the same view. In ***M. Sankaranarayanan, IAS vs. State of Karnataka & Ors.***, AIR 1993 SC 763, the Hon'ble Supreme Court observed that the Court may "draw a reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of institution, surmise or conjecture". In ***N.K. Singh vs. Union of India & Ors.***, (1994) 6 SCC 98, the Hon'ble Supreme Court has held that "the inference of mala fides

should be drawn by reading in between the lines and taking into account the attendant circumstances”.

72. There has to be strong and convincing evidence to establish the allegations of mala fides, specifically alleged in the petition as the same cannot merely be presumed. The presumption is in favour of the bona fides of the order unless contradicted by acceptable material. (vide **State of U.P. vs Dr. V.N. Prasad**, 1995 Suppl (2) SCC 151; **Arvind Dattatraya Dhande vs. State of Maharashtra & Ors.**, (1997) 6 SCC 169; **Utkal University vs. Dr. Nrusingha Charan Sarangi & Ors.**, (1999) 2 SCC 193; **Kiran Gupta & Ors vs. State of U.P. & Ors.**, (2000) 7 SCC 719; **Netai Bag & Ors. Vs. State of W.B. & Ors.**, (2000) 8 SCC 262; and **State of Punjab vs. VK Khanna & Ors.**, (2001) SC 343; and **M/s. Samant & Anr. Vs. Bombay Stock Exchange & Ors.**, AIR 2001 SC 2117). In First **Land Acquisition Collector & Ors. Vs. Nirodhi Prakash Gangoli & Anr.**, AIR 2002 SC 1314; and **Jasvinder Singh & Ors. Vs. State of J&K & Ors**, (2003) 2 SCC 132, the Apex Court held that burden of proving mala fides is very heavy on the person who alleges it. Mere allegation is not enough. Party making such allegations is under the legal obligation to place specific materials before the court to substantiate the said allegations.

73. In the present case, there is enough material on record (supra) which establishes malicious intent of the respondents, to persecute the applicant. The State is under obligation to act fairly without ill will or

malice-in facts or in law. “Legal malice” or “malice in law” means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide ***Jaichand Lal Sethia vs. The State of West Bengal & Ors.***, AIR 1967 SC 483; ***A.D.M. Jabalpur vs Shiv Kant Shukla***, AIR 1976 SC 1207; ***State of AP vs. Goverdhanlal Pitti***, AIR 2003 SC 1941. 73. Learned counsel for the applicant invited attention to a case reported in (1986) 1SCC 133 ***Express Newspaper Papers Pvt Ltd and others vs 62 Union of India and others***. In the said case, Hon’ble Supreme court relied upon Judicial Review of Administration Action, Fourth Edn by Prof. De Smith as well as Administrative law by Prof. H.W.R Wade and held that in case power is not exercised bonafide for the end design, then it shall be fraud on powers and void the order. Their Lordship held that concept of a bad faith eludes the decision where allegation is uncontroverted. The person, against whom such allegations have been made, should come

forward with answer refuting or denying such allegations. Relevant portion of the said decision is quoted below for ready reference. “Where certain allegations against the Minister went uncontroverted, had occasion to administer a word of caution. Where mala fide are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain unrebutted and the Court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability. That precisely is the position in the present case, in the absence of any counter- affidavit by any of the respondents.”

74. Hon’ble the Supreme Court while concluding the findings with regard to abuse of power held as under:

*“119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Pratap Singh v. State of Punjab, [1964] 4 S.C.R. 733. A power is exercised maliciously if its repository is motivated by personal Animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred in mala fide use of that power. Same is the position when*

*an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in General Assembly of Free Church of Scotland v. Overtown, L.R. [1904] A.C. 515, 'that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred'. It was said that Warrington, C.J., in Short v. Poole Corporation, L.R. [1926] Ch. D.66, that :*

*"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.*

*In Lazarus Estates Ltd. v. Beasley, [1956] 1 Q.B. 702 at pp.712-13, Lord Denning, L.J. said :*

*"No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.*

*See also, in L Lazarus case at p.722 per Lord Parker, CJ :*

*"'Fraud' vitiates all transactions known to the law of however high a degree of solemnity.*

*All these three English decisions have been cited with approval by this Court in Partap Singh's case."*

*'120. In Dr. Ram Manohar Lohia v. State of Bihar & Ors., [1966] 1 S.C.R. 708, it was laid down that the Courts had always acted to restrain a misuse of statutory power and more readily when improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be a sufficient reason to strike down the action. In State of Punjab v. Ramjilal & Ors., [1971] 2 S.C.R. 550, it was held that it was not necessary that any named officer was responsible for the act where the validity of action taken by a Government was challenged as mala fide as it may not be known to a private person as to what*



*matters were considered and placed before the final authority and who had acted on behalf of the Government in passing the order. This does not mean that vague allegations of mala fide are enough to dislodge the burden resting on the person who makes the same a though what is required in this connection is not a proof to the hilt as held in Barium Chemicals Ltd. & Anr. v. Company Law Board, [1966] Supp. S.C.R. 311, the abuse of authority must appear to be reasonably probable.”*

75. In another case reported in 1992 Supp (1) SCC 222 **State of Bihar and Another vs P.P.Sharma & Anr.**, the Apex Court re-asserted that the order with bad faith or malice should not stand on record. Their Lordships held that even in the absence of any prohibition expressed or implied, preliminary enquiry is desirable. Their Lordships further held as under:

*“In State of U.P. v. B.K. Joshi, [1964] 3 SCR 71 Mudholkar, J. in a separate, but concurring judgment at page 86 and 87 held that even in the absence of any prohibition in the Code, express or implied, a preliminary enquiry before listing the offence was held to be desirable. In this view, though it was desirable to have preliminary inquiry done, the omission in this regard by the Administrator or to obtain administrative sanction before laying the First Information Report would at best be an irregularity, but not a condition precedent to set in motion the investigation into the offence alleged against the respondents.”*

76. The Supreme Court also held that freedom from bias is an integral part of principles of natural justice. When bias is imputed to exist, the person ought not to take part in decision making process. The para 55 of the said decision being relevant is quoted below:

*“It is a settled law that the person against whom mala fides or bias was imputed should be impleaded economize as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegation would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped enquiry into the allegation of mala fides or bias alleged against them. Nothing has been alleged, nor brought to our notice that preceding laying the complaint before the police, R.K. Singh had any personal animosity against the respondents. Nothing has also been brought to our notice, nor alleged either in the High Court or in this court that after his filing the complaint he had any say in the investigation conducted by the Investigating Officer or exercised any pressure to investigate the case in any particular way to secure the conviction of the respondents. The only allegation relied on by the High Court is that R.K. Singh before laying the First Information Report did not look into certain documents or did not deliver them up for a week to the Investigating Officer. Had he considered things would be favourable to the respondents and that no administrative sanction was obtained. That by itself in our considered view would not lead to any irresistible conclusion that R.K. Singh was actuated with any personal bias or mala fides against Sharma or Dutt. At the most it may be said that he had not properly exercised his discretion before laying the complaint. Equally no personal bias was alleged to the 66 Investigating Officer nor found in this regard by the High Court. The ground on which reliance was placed and found acceptable to the High Court is that when the documents said to be favourable to the respondents were brought to his notice, he did not investigate into those facts on the ground of being "irrelevant". Free from bias is an integral part of the principles of natural justice. When bias was imputed to be existed, he ought not to take part in a decision making process. Police Officer has a*

*statutory duty to investigate into the crime suspected to have been committed by the accused, by collecting necessary evidence to connect the accused with the crime. Investigator exercises no judicial or quasi-judicial duty except the statutory function of a ministerial nature to collect the evidence. With his expertise, skill or knowledge he has to find whether the accused committed the offence alleged against. If the accused is aware that the Investigating Officer was personally biased against him, it is his primary duty to bring it to the notice of the higher authorities or the court at the earliest, of the circumstances or on the grounds on which he believed that the Investigating Officer is actuated with malice and impartial investigation cannot be had. If he allows the Investigating Officer to complete the investigation and the report submitted, it amounts to his waiving the objection and he would not be allowed to impeach the charge-sheet on the ground of the alleged bias or mala fides. Moreover, the Investigating Officer would be available to cross-examination at the trial of the case and it would be open to the accused to elicit from the Investigating Officer necessary circumstances of ground to throw doubt on the impartiality of the Investigating Officer and must establish its effect on the prosecution evidence adduced at the trial. It is for the court to consider how far it has effected materially the result of the trial. The evidence collected during investigation would be subject to proof as per Evidence Act and tested by cross-examination. The reasoning of the Courts below that it an authority does not act impartially or in good faith then a reasonable mind can 67 definitely infer the bias for reason best known to the authorities is too wide a statement of law in the context of police/Investigating Officer.”*

77. Hon'ble Supreme Court in the case of P.P.Sharma (supra) further held that when material is brought to the notice of investigating officer regarding existence of certain documents that throw doubt on complicity of accused, the matter should have been investigated, Another case cited by the learned Counsel for the applicant is **Col**

***A.K.Singh vs Union of India and Others, 2010 SCC Online AFT 795.***

In this case Hon. Apex Court set aside the entry initiated by the Initiating Officer even though Initiating Officer and Reviewing Officer were not made party.

78. The manner in which the three letters were referred to in CR profile of the applicant, followed by uncommunicated adverse remark and other materials on record lead to the only inference that the ACR entries in question suffer from arbitrariness as well bias and they being in contravention of Army Order (supra), hence not sustainable. The OA deserves to be allowed.

### **ORDER**

The OA is **allowed**. The ACR entries for the period 15.03.2011 to 31.08.2011 and 01.09.2011 to 31.08.2012 to the extent they were recorded by IO and SRO are expunged. The order dated 08.07.2014 passed by the Government of India, Ministry of Defence, as contained in **Annexure A-14** to the OA is set aside with all consequential benefits. The respondents shall consider the applicant's name for promotion on higher post afresh with his new ACR profile within a period of three months from today, with all consequential benefits.

However, we make costs easy.

**(Air Marshal Anil Chopra)**  
**Member (A)**

Dated: July 17, 2017  
LN/-

**(Justice D.P. Singh)**  
**Member (J)**

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

After pronouncement of the judgment, Shri Alok Mathur, learned counsel for the respondents, without pointing out any question of law of public importance, made an oral prayer for grant of leave to appeal in pursuance to provisions of Section 31 of the Armed Forces Tribunal Act, 2007.

The petition has been decided keeping in view the settled proposition of law. No good ground for grant of leave to appeal is made out. Oral prayer made for leave to appeal is hereby rejected.

**(Air Marshal Anil Chopra)**  
**Member (A)**

**(Justice D.P. Singh)**  
**Member (J)**

Dated: July 17, 2017  
LN/-