

**RESERVED**  
**Court No.1**

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

**ORIGINAL APPLICATION No. 163 of 2015**

Wednesday, this the 19<sup>th</sup> day of July 2017

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

No. IC-55047L Lt Col Ray Gautam Prasad s/o Lt Col Ray Amarendra Prasad presently posted to Ordnance Depot, Allahabad, U.P.

....Applicant

Learned counsel for the : **Shri V.A. Singh, Advocate**  
Applicant

Verses

1. Union of India through Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of Army Staff, IHQ of Min of Def (Army) South Block, New Delhi-110011.
3. Military Secretary Military Secretary's Branch Integrated Headquarters of Ministry of Defence (Army) South Block, New Delhi.

...Respondents

Learned counsel for the : **Shri Kaushik Chatterji,**  
Respondents Central Govt Standing Counsel.

OIC Legal Cell : Col Ajeen Kumar, Col MS (Legal)

**ORDER****“Per Hon’ble Air Marshal Anil Chopra, Member ‘A’”**

1. By means of present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has challenged the order passed by the competent authority dated 29.04.2013 on the statutory complaint of the applicant to the extent that all the Confidential Reports (CRs) in the reckonable profile of the applicant are well corroborated performance based and technically valid. The applicant has prayed to quash this observation of the appellate authority to the extent of not granting applicant full remedy in view of statutory representation dated 27.09.2012. The applicant has further prayed for expunction of his ACRs for the period of June 2007 to May 2008 and Jun 2008 to Dec 2008 in totality. He has further prayed for expunction of his ACR for the period Sep 2009 to May 2010 being biased. The applicant has also prayed that he be considered afresh by the next Selection Board with retrospective seniority.

2. We have heard Shri V.A. Singh, Learned counsel for the applicant and Shri Kaushik Chatterji, Learned counsel for the respondents assisted by Col Ajeen Kumar, Col MS (Legal) and have perused the records.

3. Brief facts of the case are that the applicant was commissioned in the Indian Army in the year 1993 in the Corps of Ordnance. During his tenure in the Army, the applicant participated in Military Adventure High Altitude Trekking Expedition under HIMEX, Shakti Jal Thal Vayu

Abhiyan apart from other formation/unit level expeditions. The applicant claims to be a qualified paratrooper. He is recipient of Chief of the Army Staff (COAS) Commendation Card and Vice Chief of the Army Staff (VCOAS) Commendation Card twice. He was also awarded Lt Gen Robinder Sharin Medal for outstanding 'Young Officer' of the Army Ordnance Corps (AOC) in the year 2001. During the national calamity of earthquake in Jan 2001, while posted at Bhuj he was appreciated for dedication to national cause by the ambassador of U.S.A.

4. During June 2007 to December 2008 the applicant while posted at 18 Inf Div Ord Unit, earned two CRs. It is submitted that figurative assessment in the box-grading, personal qualities, demonstrated performance variables and qualities to assess potential has to be awarded objectively. Box grading is not meant to be a mathematical assessment, but the same cannot be totally mismatch to individual grading. According to Learned counsel for the applicant during said period of assessment, the applicant performed commendably as is depicted from the pen picture by the Initiating Officer (IO) and was awarded eighteen or nineteen 9's in figurative individual assessment by the IO including Technical portion in the figurative award, but he was awarded only 8 in the box grading. Submission of learned counsel for the applicant is that predominantly, the applicant was awarded 9's and this figurative assessment does not commensurate with the box grading. It depicts a total mismatch. It is submitted by learned counsel for the applicant that the IO and the First Technical Officer (FTO) of the

applicant was the same officer. Learned counsel for the applicant further submitted that the applicant earned Box Grading of 9's in the later years of his service profile which reflects his competence.

5. So far as applicant's ACR for the period August 2009 to May 2010 is concerned, the applicant during said period was serving at 23 Field Ammunition Depot (FAD) on completion of Higher Munitions Course where he secured 'A' grading and was appointed as Administrative Officer of the depot. He continued to function as such for 68 days where after he was detailed for Advance Work Study Course, ITM Mussoorie. On completion of the course, the applicant rejoined the unit on 01.02.2010 and continued to perform his duties as such till 20.05.2010. He was also selected to be OIC Reunion Cell for the 9<sup>th</sup> AOC Reunion. A verbal clearance was taken from the Commandant regarding availability of the applicant. The Army Headquarter commanded the applicant to report back on 05.05.2010 but since he had certain incomplete assignments in the 23 FAD, he could join only on 21.05.2010. It is submitted that the Commandant wanted the applicant to return to the unit leaving the unaccomplished work which was denied by the Army Headquarters. This irked the then Commandant of 23 FAD (IO of the applicant) which induced a bias which is reflected in the CR covering period of August 2009 to May 2010 and resulted in downgrading of ACR of the applicant.

6. Respondents while filing counter affidavit have submitted that in the pyramidal rank structure of the Army the number of vacancies in higher ranks are limited and from the broad base of the pyramid, only

those officers whose record within the particular batch are better are selected to fill up the vacancies available in the higher ranks. Promotion policy as applicable till 15.12.2004 provides that promotions in the Army up to the rank of Lt Col are time scale and from the rank of Col and above were decided through Selection Boards. All officers of a particular batch are considered together with same cut off ACRs and inputs and on the basis of individual profile of the officer and the comparative batch merit, they are approved or not approved, as the case may be. It is submitted that seniority is not the sole consideration before the Selection Board for approval or non-approval. In case any officer gets any relief through complaint etc. in any CR after the Selection Board has been held, the officer is entitled to a special corresponding consideration by Selection Board with his changed profile and in case he is approved by such special consideration, his original seniority is protected.

7. In brief, the grievance of the applicant is that predominantly he was granted "9" in the ACR but with a avowed intention to deprive him his right of further progression in service in utter disregard to the provisions contained in the Guidelines for Rendering Confidential Report of the MS Branch (para 35(b), he was granted "8" in the box grading. The IO was biased which culminated in lowering down his box grading. Applicant has raised apprehension that there are cuttings in the ACR and provisions of AO 45/2001 which prohibits use of whitener or eraser or overwriting, and violation of the above provision renders a CR completely or in part technically invalid.

Further grievance of the Applicant is that by the wrongful action of the respondents, the CR profile of the Applicant has been manipulated with the object of lowering down his quantified merit in a manner which may result in getting promotion of few chosen officers.

8. Learned counsel for the respondents assisted by Col Ajeen Kumar, Col MS (Legal) submitted that as per the applicable policy, each officer is entitled to only three considerations for promotion to the selection ranks, i.e. Fresh Consideration, First Review and Final Review. In case an officer is not approved as a Fresh Case but approved as a First Review or Final Review he loses his seniority vis-à-vis his original batch and in case after all three considerations if the officer is not approved he is finally superseded.

9. The gradings are numerical from 1 to 9 in overall assessment as well as in personal qualities and performance variables in different qualities as also in the pen picture.

10. The respondents have submitted challenge to the CRs for the periods Jun 2007 to May 2008, Jun 2008 to Dec 2008 and Aug 2009 to May 2010 being barred by limitation provided under Section 22 (a) of the Armed Forces Tribunal Act, 2007 on the ground that the said ACRs were within the knowledge of the applicant when they were initiated and non challenge at the relevant time by filing O.A. against non empanelment cannot revive the period of limitation against the impugned CR.

11. So far as contention of the applicant that he was qualified for all mandatory/obligatory courses with distinction, the same has been

denied by the respondents. It is submitted that the assessments of reporting officers in the impugned CRs are well corroborated with respective assessment as well as assessment of other reporting officers. The applicant has been granted partial redressal by expunction of SRO's assessment at para 24 (a) "Foresight and Planning", in the CR for the period Sep 2009 to May 2009 while disposing off the statutory complaint preferred by the applicant vide order dated 29.04.2013. It is vehemently argued that assessment of the IO is based on demonstrated performance of the applicant during the reporting period and all the CRs commensurate with the overall profile of the applicant. The CRs are better than few other reports and this negates pre-determined mind set of the IO. Relevant portion of the order dated 29.04.2013 granting partial redressal to the applicant is reproduced as under:

*"3. The Statutory Complaint of the officer has been examined in the light of his career profile, relevant records and analysis of recommendations of Army Hqrs. After consideration of all aspects of the complaint and viewing it against the redress sought, it has emerged that all the CRs. in the reckonable profile are well corroborated, performance based and technically valid, except SRO's assessment in Para 24 (a) of CR 09/09-05/10, which is found to be inconsistent with the overall reckonable profile of the officer.*

*4. The Central Government, therefore, expunction of the SRO's assessment at Para 24 (a) 'Foresight and Planning in CR 09/09-05/10 on the grounds of inconsistency.*

*5. Subject to the partial redress, ordered as above, the Central Government rejects the other averments in the Statutory Complaint dated 27 Sept 2012 submitted IC-55047L Lt Col Ray Gautam Prasad, against non empanelment, being devoid of merit*

*By order and in the name of the President*

*Sd/- x x x*

*(R.Sunder)*

*Under Secretary to the Government of India."*

12. Repelling contention of the applicant that he was awarded box grading of 9 by IOs in certain other reports and thus he was entitled to be box graded 9, learned counsel for the respondents submitted that even if it is accepted that the applicant has been graded 9 in certain reports this would not guarantee that he must be awarded 9 in subsequent reports. Assessment in each CR is performance based for a particular assessment period and has no link with past or subsequent performance. Admitting that the applicant was awarded 9<sup>s</sup> in more number by the IO in his both assessments, it is submitted that grading of 8 in the box is above average assessment and duly corroborated with pen picture. Learned counsel for the respondents submitted that the IO, RO and SRO have graded the applicant as per the parameters for grant of ACRs and no exception can be taken to it.

13. We have considered the rival contentions of the parties.

14. Learned counsel for the applicant submitted that the pen picture depicts inconsistency and does not match with service profile of applicant. It is submitted that predominantly the applicant has been rated '9's but in the pen picture the IO and RO have rated him '8' which is not in sync with the overall grading and pen picture. Before proceeding further we feel it proper to extract the impugned ACRs. The ACR awarded to the applicant by the IO and RO for the period 01 June 2007 to 31 May 2008 is reproduced as under:-



No, Rank & Name of the officer:-	
IC-55047L	LT COL RAY
GAUTAM PRASAD	
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).	08	8
(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).	09	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).	09	9
(d) <b><u>Morale Courage</u></b> . (Degree of intellectual honesty and courage of convictions).	09	9
(e) <b><u>Integrity</u></b> . (Degree of honesty and just approach in personal and official dealings).	09	9
(f) <b><u>Loyalty</u></b> . (Extent if willing, faithful and loyal support provided to the service, peers, supervisors and subordinates).	09	9
(g) <b><u>Ingenuity and Initiative</u></b> . (Skill of devising means and degree of resourceful to solve unforeseen contingencies).	09	8
(h) <b><u>Maturity</u></b> . (Degree of understanding and balance commensurate with age and service).	09	8
(j) <b><u>Tenacity</u></b> . (Degree of will to persevere in face of odds and difficulties).	08	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).	09	8

**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 [R]/Professional knowledge and its application to assigned duties [S]/Professional knowledge and its application [I]	09	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]	08	8
(c) Effectiveness in training of his Command [R]/has analytical mind and goes into details [S]/Innovative Ideas [I]	09	8
(d) Ability to motivate his Command [R]/Provides impartial and frank advice [S]/Motivation of students and standards achieved [I]	09	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]	09	9
(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]	08	8
(g) Dedication to the organisation and service and selflessness [Common for R,S and I]	09	9

	Sd/- x x x	Sd/- x x	Sd/- x x x
11. Signature and date	Officer reported	IO	RO
	30 Jun 08	30 Jun 08	09 Jul 08

Rank and Name of the officer:- IC-55047L LT COL RAY GAUTAM PRASAD Initials Sd/-
--

**Pen Picture by IO, RO.**

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. <b><u>Initiating Officer</u></b>			08
<p>Lt Col Ray Gautam Prasad is smart, stockily built with winsome manners and good soldierly bearing. Sharp, focused, upright, he is cool, calm and unfazed by any adversity. Displays foresight and plans beyond horizon, maintains excellent rapport with subordinate, superiors and peers. As an administrative offr of the unit ensured high standard of discipline. He is Quick in decision making and displays good sense of honesty and propriety. He is happily married and well adjusted socially. Fit for higher comd and staff appts.</p>			
(a) <u>Advisory Remarks/Performance of LMC Officers (as applicable)</u> . -			
(b) Details of guidance for improvement during the Reporting Period.			
(i) <b><u>Verbal</u></b>		(ii) <b><u>Written</u></b>	
-		-	
Sd/- x x x x 30 Jun 08		Sd/- x x x x 30 Jun 2008	
13 Signature and date	Officer reported upon	IO	
If communicated by post, <b>indicate reasons</b> and registered letter No.....and date.....			
			Report by the IO is justified.
14. <b><u>Reviewing Officer</u></b>			8
<p>Ray Gautam Prasad is a dedicated and matures officer who remains cool under stress and strain. Capable and full of foresight. The officer has displayed an ability to go into the minutest of details.</p>			
(a) Details of guidance for improvement during the Reporting Period.			
(i) <b><u>Verbal</u></b>		(ii) <b><u>Written</u></b>	
<b>Nil</b>		<b>Nil</b>	
(b) Do you recommend any portion of the report by the IO to be expunged? If so, state such portions and reasons. No			
15. Signature and date	Officer reported upon	RO 09 Jul 08	

<input type="checkbox"/>	Report by the IO is Justified. Report by RO is Liberal.
<b>16. <u>Superior Reviewing Officer</u></b>	
SRO does not wish to endorse.	
Sd/-	
(a) Details of guidance for improvement during the Reporting period.	
(i) <b>Verbal</b>	(ii) <b>Written</b>
(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).	
17. Signature and date	
Col Col MS HQ 10 Corps	

A perusal of the original record makes it evident that the FTO and HTO of the applicant have also pre-dominantly awarded 9s in ACR for the period Jun 2007 to May 2008 whereas box grading is 8 by FTO and HTO.

15. Extract of ACR for the period 01 Jun 2008 to 31 Dec 2008 is reproduced as under:-

No, Rank & Name of the officer:-	
IC-55047L	LT COL RAY GAUTAM PRASAD
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).	08	8
(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).	09	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).	09	9
(d) <b><u>Morale Courage</u></b> . (Degree of intellectual honesty and courage of convictions).	09	9
(e) <b><u>Integrity</u></b> . (Degree of honesty and just approach in personal and official dealings).	09	9
(f) <b><u>Loyalty</u></b> . (Extent if willing, faithful and loyal support provided to the service, peers, supervisors and subordinates).	09	9
(g) <b><u>Ingenuity and Initiative</u></b> . (Skill of devising means and degree of resourceful to solve unforeseen contingencies).	09	8
(h) <b><u>Maturity</u></b> . (Degree of understanding and balance commensurate with age and service).	09	9
(j) <b><u>Tenacity</u></b> . (Degree of will to preserve in face of odds and difficulties).	08	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).	09	8

**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 [R]/Professional knowledge and its application to assigned duties [S]/Professional knowledge and its application [I]	09	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]	08	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>	09	8
(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>	09	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>	09	8
(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>	08	8
(g) Dedication to the organisation and service and selflessness <b>[Common for R,S and I]</b>	09	9

11. Signature and date	Sd/- x x x Officer reported 3 Jan 2009	Sd/- x x IO 3/1/09	Sd/- x x x RO 29 Jan 09
------------------------	--	--------------------------	-------------------------------

Rank and Name of the officer:- IC-55047L LT COL RAY GAUTAM PRASAD 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**

08

Lt Col Ray Gautam Prasad a paratrooper has smart Military Bearing. He exhibits praiseworthy demeanour. Quick in decision making. He has accomplished the desired task to the best and innovative in his work has ensured he produces the best. He has willingly accepted additional responsibilities and discharged his duties with remarkable aplomb. Gautam has been instrumental in designing and planning the DOU KLP which was accepted and sanctioned in record time. He shows absolute honesty and propriety towards Org reqmts. As an administrative officer of the unit he has been considerate towards his subordinates and colleagues and has shown immense maturity in handling precarious situations. Remains calm in difficult situations and willingly cooperates with all the members. Conducts himself very well as per service norms. He is happily married and keeps his personal affairs in order. He is acceptable to meet in both peace and war. He is fit to hold higher ranks and appts.

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

(b) Details of guidance for improvement during the Reporting Period.		
(i) <b><u>Verbal</u></b> NA	(ii) <b><u>Written</u></b> Nil	
	Sd/- x x x x 03 Jan 09	Sd/- x x x x 3/1/9
13 Signature and date	Officer reported upon	IO
If communicated by post, <b>indicate reasons</b> and registered letter No.....and date.....		
		Report by the IO is justified.
14. <b><u>Reviewing Officer</u></b>	<input type="text" value="08"/>	
Lt Col Ray Gautam Prasad is an extremely sincere and hard working offr who has put tremendous effort into improving the organizational effectiveness of the DOU. An able administrator, the offr is an asset to the unit.		
(a) Details of guidance for improvement during the Reporting Period.		
(i) <b><u>Verbal</u></b>	<b>Nil</b>	(ii) <b><u>Written</u></b> <b>Nil</b>
(b) Do you recommend any portion of the report by the IO to be expunged? If so, state such portions and reasons. No		
(c) Letter No. and date of communication of extracts (if any). NA		
15. Signature and date	Officer reported upon	RO 29 Jan 09

		Report by the IO is Justified. Report by RO is Liberal.
		<input type="text"/>
16. <b><u>Superior Reviewing Officer</u></b>	SRO does not wish to endorse.	
		Sd/-
(a) Details of guidance for improvement during the Reporting period.		
(i) <b><u>Verbal</u></b>	(ii) <b><u>Written</u></b>	
(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).		
17. Signature and date	Col Col MS HQ 10 Corps	

16. In Transfer Application No. 96 of 2016: ***Maj Gen DVS Rana vs. Union of India***, decided on 08.02.2017 the Bench had considered in

great detail the onerous responsibility on the Reporting Officer to eschew his subjectivity and personal prejudices and proclivity or predilections and to make objective assessment. Considering a number of decisions of Hon'ble Supreme Court it was observed that in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee during relevant period, if not strictly adhered to in making an honest assessment, the purpose and career of the officer/employee will be put to great jeopardy. Relevant paras of the decision in the case of **Maj Gen DVS Rana** (supra), for convenience sake, are reproduced as under:-

*“28. 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.*

*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.*

*We are of the considered opinion that the parameters given in Forms for evolution of Basic Qualities of an officer Part-II of Form Basic Assessment subsequently covers 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 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. Further more, 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."*

29. *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.*

30. *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."*

17. In **Maj Gen DVS Rana** (supra), we had also considered the importance and necessity of pen picture as provided in para 36 of the Guidelines for Rendering Confidential Reports which envisages that quality of pen picture provides valuable input for selection. For convenience, relevant portion from the decision in **Maj Gen DVS Rana** (supra) is excerpted as under:

*"32. 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 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 offr **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:-

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

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

(11) **Conceptual Skill.**

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

(111) **Esprit-de-Corps.** *Altruist behavior exhibited by the ratee.*

(1V) **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 / I T / Foreign language / Financial Management / Project Management)*

(V1) **Foresight and Planning.** *Demonstrated ability to analyse / foresee a problem and formulate a plan for its solution.*

(V11) **Man Management.** *Efficient handling of troops/subordinates and specific activities aimed at maintenance of their morale and welfare.*

(V111) **Self improvement.** *Endeavour of the ratee to improve self in terms of acquiring knowledge and adjusting socially.*

(1X) **Tact.** *Skilful handling of men and situations which may include mention of specific instances.”*

33. 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.”*

*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.”*

(Emphasis supplied)

18. In the case of **Maj Gen DVS Rana’s** case (supra), we had also considered the objectivity of the box-grading and held that box grading depends upon overall assessment and performance as well as potential for promotion of the officer and in case the pen picture shows outstanding performance, possessing different qualities and recommended for promotion, then ordinarily box grading should be ‘9’. For convenience sake, para 33, 34 and 35 of the case of **Maj Gen DVS Rana** (supra) are reproduced as under:

*“33. Army has introduced the quantified system for figurative awards since they contribute to overall merit of an officer. The purpose is that only deserving officers, who are competent, be promoted to the senior ranks of the Indian Army to meet out the requirement and challenges at Border during war as well as peace. Para 35 of the Guidelines (supra) deals with Figurative Awards and Box Grading. For convenience, the same is reproduced as under:*

*“35. **Figurative Awards.** With the introduction of quantified system, the figurative awards have assumed greater significance as they contribute to*

the overall merit of an offr. It is the moral responsibility of all reporting offr to render an objective assessment to ensure that only deserving and professionally competent offr are promoted to senior ranks to tenant crucial command and staff appointments.

(a) Figurative assessment in Box Grading, Personal Qualities (PQs), Demonstrated Performance Variables (DPVs) and Qualities to Assess Potential (QsAP) should be awarded.

(b) **Box Grading.**

(i) Box grading represents overall assessment of performance as well as potential for promotion.

(ii) Reporting offr must clearly differentiate between truly outstanding offr and others. Grading all offr outstanding would defeat the very purpose of appraisal system. Box grading reflects the **quality of interplay amongst indl characteristics being assessed.** It also reflects the **performance and potential which are not being separately assessed but hold value for the org.**

(iii) Box grading is **not meant to be a mathematical** average of the awards in indl qualities. However, **a total mismatch between awards in box-grade and indl qualities is also not in order.** For instance, award of predominantly '9' in PQs/DPVs/QsAP with an award '8' in box, may not be in order.

(iv) Award of '9' in box grading should be explicitly justified in the pen-picture, indicating specific achievements by the ratee.

(c) **QsAP.** The assessment of **performance is de-linked from potential** based on the rationale that it is **not necessary** that an offr **who performs well in the present rank has the capability to do well in higher ranks also.** While assessing QsAP, however, the following aspects should be kept in mind.

(i) **Low awards in QsAP affect the promotion prospects significantly** more as compared to similar awards in PQs/DPVs.

(ii) Reporting offr must be more deliberate while awarding QsAP and endorse the actual promotion aspects of the ratee.

(iii) **In order to guard against IOs harming ratee's "on the sly", discernable variations** between PQs/DPVs (open portion) on the one hand and QsAP (closed portion) on the other come under scrutiny at the MS Branch. However, elaboration of any such variations by the reporting offr aid in acceptance of their assessment. Pen picture can be suitably endorsed to justify the assessment."

34. A plain reading of the aforesaid Guidelines shows that Box Grading is depending upon overall assessment and performance as well as potential for promotion and is broadly based on pen-picture. However, a total mismatch between awards in Box Grade and individual's qualities, like opinion expressed in Pen-Picture (Emphasis supplied) may not be in order.

35. There is one more thing which requires to be considered. In case Pen-Picture shows the outstanding performance, possessing different qualities required for an armed forces personnel and recommended for promotion to higher/superior post, then ordinarily Box Grading should be '9' i.e. outstanding."

(Emphasis supplied)

19. In O.A. No. 905 of 2015, **Brig Mandeep Singh vs. Union of India and ors** decided by the Principal Bench of the Armed Forces Tribunal (New Delhi) on 26.07.2016, the Bench observed as under:

*"(l) In the CR for the period 21.07.2009 to 30.06.2010, the applicant was rated '8' in the box grading by the I.O. There were many '9's with few '8' in the ratings of individual qualities. Though the pen picture by the IO reflects excellent performance and achievements, the numerical grading given in the 'Box' does not match with the same. A per existing instructions was well as logical deductions, the box grading in the CR should have been '9' and not '8' The applicant believes that taking clues from the IO's assessment, the RO & SRO have assessed the applicant similarly.*

*(m) In the CR for the period 01.07.2010 to 03.12.2010, the applicant was again graded '8' in the box grading with an excellent 'pen picture' by the RO who initiated the CR. He wrote "His painstaking effort in generating intelligence and meticulous planning of operations led to his Senior achieving outstanding of successes and neutralization of terrorist leadership". In the personal qualities the applicant was rated "9" in 7 out of 11 parameters. Yet the box grading was '8' which was not in sync with the overall grading and the 'pen picture'. The applicant believes that SRO too has assessed the applicant similarly. Therefore, as in the previous CR, as also in this CR, as per existing instructions on the subject as well as by logical deductions, the box grading in the said CR ought to have '9' and not '8'."*

*(q) Guidelines for Rendering Crs issued by the MS Branch on 05 April 2013 states that box grading represents overall assessment of performance as well as potential for promotion. The said guidelines also state that award of predominantly '9' in Personal*

*Qualities (PQs), Demonstrative Performance Variables (DVPs) and Qualities to Assess Potential (QsAP) with an award of '8' in box is not in order. As per AO 45/2001/MS and subsequent amendments, all CRs received at MS Branch are required to be scrutinized for technical and assessment defects. When found to be grossly inconsistent with past profile of the rate or containing inflationary/ deflationary/ subjective reporting, corrective action is required to be applied. This includes 'Change of Box/figurative to a lower or higher value.'*

(Emphasis supplied)

20. As mentioned hereinbefore, box grading is not meant to be a mathematical average of the awards in individual qualities. At the same time, a total mismatch between awards in box grading and individual qualities cannot be said to be in order. It is in this perspective to assess the aspect of consistency/inconsistency, we may examine the impugned ACRs of the applicant.

**ACR FOR THE PERIOD 01.06.2007 TO 31.05.2007:**

21. In the ACR for above period, the applicant has been rated '8' in the box grading by the IO. There are predominantly '9's with a few '8's. The pen picture by the IO reflects excellent performance with remarks, 'fit for higher command and staff appointment'. The First Technical Officer (FTO) and the Higher Technical Officer (HTO) have also rated the applicant with many '9's and a few '8's in the Technical Performance. The FTO has remarked him in the pen picture to be fit to hold higher appointments in the Corps. The HTO has rated him in the pen picture to be an asset to the Organization.



ACR FOR THE PERIOD 01.06.2007 TO 31.12.2008:

22. Similarly, in the ACR for the above period, The IO has rated the applicant '8' in box grading with remarks, "He is fit to hold higher ranks and appointments" in the pen picture. In Personal Qualities, the IO has rated '9's in 8 out of 10 parameters. Thus the overall grading and pen picture is not in sync. The FTO and HTO have also rated the officer with six '9's and two '8's with excellent pen picture but at the same time have rated him '8' in the box grading.

23. Therefore, with regards to both the CRs. the box grading as per the instructions (supra) on the subject, should be '9' and not '8'.

24. So far as argument of learned counsel for the applicant based on bias in ACR for the period 01.09.2009 to 31.05.2010, we refrain to dwell on the subject and record any finding with regard to rating of the officer in Personal Qualities, Demonstrated Performance Variables and Quality to Assess Potential criteria, and box grading for the reckonable period i.e. 01.09.2009 to 31.05.2010 since the applicant has not arrayed the concerned officers as party in the O.A.

25. It was next argued by learned counsel for the applicant that the applicant is apprehensive that there are several cuttings and use of erasure in the ACRs of the reckonable period without following the procedure as envisaged in AO 45/2001, which makes the ACRs technically invalid. Respondents have produced before the Tribunal original records of the applicant which has been perused by us. We do not find that there is any use of eraser, overwriting or use of whitener,

thus the apprehension ventilated by the learned counsel in this regard is baseless and without any foundation and is rejected outright.

26. Learned counsel for the applicant further argued that para 34 (b) of the MS Guidelines for Rendering Confidential Report provides that courses done by the ratee and his performance in these courses is an important input and should be reflected in his confidential report. Para 34 of the Guidelines for Rendering Confidential Reports published by the Military Secretary's Branch provides thus:

**“Rendering an Objective Assessment**

*34. Factors to be Considered while Rendering Objective Assessment. Certain factors which should be kept in mind while assessing a ratee are listed below:*

*(a) **Service of the Offr.** The performance of the ratee should be commensurate to the service of the ratee. It should form an important consideration while analyzing and assessing his performance. This factor enables distinguishing the offr's of various service brackets and allows the report offr's to assess them independent of each other.*

*(b) **Courses.** The courses done by the ratee and his performance in these courses is an important input. The knowledge and expertise gained by virtue of attending courses, especially career courses, should reflect in his performance and special consideration may be given to this aspect while assessing his performance.*

*(c) **Appointments Held.** Appointments tenanted by the ratee in past and exposure gained will have a direct effect on his demonstrated performance. Consideration of this factor will enable reporting offr's to render a more objective assessment.*

(d) **Performance in Appointment.** The ratee is assessed primarily for the appointment tenanted by him during the period of report. His performance in discharge of duties can be assessed on certain parameters as listed:-

- (i) Discharge of his primary responsibilities.
- (ii) Achievement of objectives set out.
- (iii) Accountability in functioning.
- (iv) Aspects of man management / staff work / instructional abilities as applicable.
- (v) Value addition to the existing procedures / functioning.
- (vi) Equipment management / financial management / as applicable.
- (vii) Interaction with peers and subordinates.
- (viii) Social acceptance of the individual.

(d) **Relative Performance Amongst Peers 'Peers'** refers not just to contemporaries of the ratee serving reporting offr but **to all offrs of his service bracket who are expected to possess similar capabilities and performance levels.** For instance, while assessing a coy cdr. A CO must evaluate his performance not merely after comparison with other coy cdrs of his bn but against capabilities expected of a coy in general.”

27. We have perused the original record of the applicant and find the argument of learned counsel for the applicant that specialized courses undergone by the applicant do not find mention in the ACR awarded by the IO in the ACR for the period 01.09.2009 to 31.05.2010 on the face of the record is correct. Para 34 (b) (supra) mandates inclusion of the

courses done by the ratee and his performance in these courses, especially career courses, for providing an important input while assessing his/her performance. Non-mention of the courses in the CRs may prejudice a ratee in his future progression in service career especially keeping in view the pyramidal structure of the Army.

28. In view of the above, the O.A. is accordingly **partly allowed**. The ACRs for the period Jun 2007 to May 2008 and Jun 2008 to Dec 2008 are expunged. Order dated 29.04.2013 is set aside to the extent it provides that all the Confidential Reports in the reckonable profile of the applicant are well corroborated, performance based and technically valid. Let a Special Selection Board be constituted within three months to consider the applicant for promotion to the rank of Col (selection grade) with bench mark of immediate junior batch mates to the applicant in view of his changed profile.

No order as to costs.

Let this order be communicated to the respondents by respondents counsel as well as OIC Legal Cell immediately.

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

**(Justice Devi Prasad Singh)**  
**Member (J)**

Dated: July, 2017  
anb