

**Central Administrative Tribunal  
Madras Bench**

**OA/310/01723/2018**

**Dated the 19<sup>th</sup> day of February Two Thousand Twenty**

**P R E S E N T**

**Hon'ble Mr. P.Madhavan, Member(J)  
&  
Hon'ble Mr.T.Jacob, Member(A)**

M.V.Jaya Gowri, IPS,  
D/o G.Muthu Venkatachalam,  
DIG of Police,  
Chennai Range, Armed Police,  
No.10, Luttrel Garden, Kilpauk,  
Chennai 600 010. .. Applicant  
By Advocate **M/s.Menon, Karthik Mukundan & Neelakantan**

**Vs.**

1. Union of India, rep. by  
Secretary to Government,  
M/o Home Affairs,  
Govt. of India, North Block,  
New Delhi 110 001.
2. The Chief Secretary & Chairperson of  
Referral Board for IPS Officers working in States  
Government of Tamil Nadu,  
Fort St. George, Chennai 600 009.
3. The Secretary to Government,  
Home Department,  
Government of Tamilnadu,  
Fort St.George,  
Chennai 600 001.
4. Director General of Police,  
Tamilnadu. .. Respondents

By Advocate **Mr.SU.Srinivasan(R1), Mr.R.Kadhirvelu(R2)**

**ORDER**

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief(s):-

“To quash/set aside the order/letter dated 06.11.2017 issued by the respondent No.2 rejecting the representation submitted by the applicant and confirming the overall grade “5” given by the Reporting/Reviewing authorities and confirmed by the Accepting authority.

To upgrade the PAR of the applicant for the period from 01.4.2015 to 06.3.16 as outstanding (numeric grading more than 8) in view of the outstanding work and performance rendered by her as revealed in the performance appraisal report submitted by the applicant.

Pass such other order(s) or direction(s) as this Tribunal may deem fit and proper in the facts and circumstances of the present case.”

2. The applicant in this case who belongs to Indian Police Service had worked as Superintendent of Police, Cyber Cell CB CID during the period between 15.10.12 to 28.5.17. The grievance of the applicant is that her PAR for the period starting 1.4.15 to 6.3.16 was downgraded to “5” by the Reporting Officer. The Reporting Officer himself reviewed the PAR and confirmed it. The Accepting Authority had accepted the same. Then she approached the Referral authority (R2) by giving a representation showing the procedural violations and illegalities as per Annexure A3 dt. 08.3.17. The Referral authority by order dt. 06.11.17 (Annexure A7) had confirmed the PAR without giving a speaking order.

3. According to her, she had good gradings in previous years and her gradings

were as follows:-

<b>Period</b>	<b>Grading</b>
05.5.2009 to 23.12.2009	8.06
01.4.2010 to 31.3.2011	8.9
28.5.2011 to 09.11.2011	9.1
10.11.2011 to 31.3.2012	9.5
01.4.2012 to 06.10.2012	9.5
15.10.2012 to 31.3.2013	9
12.8.2013 to 31.3.2014	9
01.4.2014 to 04.7.2014	7
05.7.2014 to 26.12.2014	7
27.12.2014 to 31.3.2015	7
01.4.2015 to 06.3.2016	5

4. According to the applicant, she had put in unstinted and sincere efforts and co-ordinated with officials of Police Headquarters, Government Departments, TN Police Housing Corporation and other Departments and accomplished the work of supervision in an effective manner.

5. During her tenure in the CB CID, her Reporting Officer has to be (1) Deputy Inspector General (DIG), (2) Reviewing Officer – Inspector General of Police(IG) (3) Accepting Officer – Additional Director General, CBCID(ADGP) as per rules.

6. During the period of question, the post of DIG was vacant. So, the next higher authority is IG of Police acted as Reporting Officer. Thereafter, he himself acted as Reviewing Officer for reviewing the report prepared by himself. So, the Reporting Officer/Reviewing Officer IG of Police himself approved it and send to the Accepting

Officer ADGP. According to the counsel for the applicant, the same person acting as Reporting Officer and Reviewing Officer has vitiated the procedure for preparing PAR and it is against the principle of natural justice.

7. The applicant had given representation to Referral Board. According to her, the Committee without applying its mind and without going through her representation (Annexure A3) had passed a cryptic order when the rules prescribe for a reasoned order. So, according to the applicant, on that count itself the order of Referral Board is liable to be set aside. The respondents had not followed All India Services (PAR) Rules. The Reporting/Reviewing Officer/Accepting Officer has not considered the report of self assessment made by the applicant. The Referral Board is bound to consider the representation of the officer in detail and should have given clear findings on various factual aspects raised before it by the applicant. As per Rule 7B of the All India Services (Performance of Appraisal Report) 2017, the PAR recorded in violation of procedure has to be treated as non est.

8. The respondents 2 to 4 had filed a detailed reply contending that there is no merit in the OA. It is admitted that the then Mr. Mahesh Kumar Aggarwal who held the charge of the DIG had acted as the Reporting Officer in this case. He has acted as Reviewing Authority in the capacity of IG and there is no illegality committed. There is sufficient reasons for downgrading her PAR to “5.04”. The ADGP, CBCID agreed by the remarks and grading and has accepted the PAR. The Referral Board has also

considered the representation of the applicant and disposed off her case accepting the appraisal of Reporting Officer.

9. We had perused the pleadings and various documents produced as annexures and heard counsels appearing on both sides. Though the counsel appearing for the applicant has drawn our attention to certain facts relied on by the respondents for downgrading of her PAR, and the illegalities in it, he mainly concentrated his argument to the following points:-

1. Whether the PAR prepared for 01.4.2015 to 06.3.16 is in violation of the rules and principles of natural justice is liable to be declared a non est.
2. Whether the order passed by the Referral Board Annexure A7 is non-speaking and liable to be set aside.

The points:-

10. The applicants case is that the respondents had violated the procedure prescribed in the rules and guidelines in preparation of PAR and hence it has to be treated as non est.

11. The applicant has produced the All India Services (Performance Appraisal Report) Rules 2007 as Annexure A1. The rules prescribe who should be the Reporting Authority, Reviewing Authority and Accepting Authority which is as follows:-

“Rule 2(J): Reporting Authority means such authority or authorities supervising the performance of the member of the service reported upon as be specifically empowered in this behalf by the Government.

Rule 2(K) defines Reviewing Authority – means such authority or

authorities supervising the performance of the Reporting Authority as may be specifically empowered in this behalf by the Government.

Rule 2(a) Accepting Authority means the authority who supervises the performance of Reviewing Authority as may be specifically empowered in this behalf by Government.”

From the above, it can be seen that a Reviewing Authority should be an authority supervising the reporting authority. Here it is an admitted fact that the same officer Shri Mahesh Kumar Agarwal has acted as Reporting Authority as well as Reviewing Authority. Since the IGP has prepared the appraisal report, he should have submitted the same for review by an officer who is authorised to supervise him by the Government. Here the same person has acted in both capacities. Nobody should be permitted to act as a Judge on his own actions. This is a basic principle of law. The act of Reporting and Reviewing done by Shri Mahesh Kumar Agarwal is against the rules and it is in violation of the fundamental principle of natural justice and fair play. It is not a PAR prepared in accordance with rules. The issue is answered accordingly.

12. The next point to be decided is whether the decision of the Referral Board is liable to be set aside. Rule 9(a) of the All India Services (PAR) Rules states that -

“(9)(a) The Referral Board shall consider the representation of the officer reported upon in the light of the comments of the reporting authority, the reviewing authority and the accepting authority and confirm or modify the performance appraisal report, including the overall grade and the decision of the Referral Board shall be confined only to errors of facts and the decision of the Referral Board shall be final.”

It clearly says that the Referral Board should give clear findings on the representation and take a final decision on the assessment. The decision of the Referral Board is produced as Annexure A7. It reads as follows:-

“I am to inform that your representation dated 8.3.2017 submitted to the Referral Board requesting to enhance the overall grading in your performance Appraisal Report for the period from 01.4.2015 to 06.3.2016 was examined in detail.

After due diligence and careful consideration the Referral Board has decided to confirm the performance Appraisal Report, including the overall gradings of '5'.”

Annexure A7 does not show any reasons or findings in it to show that the authority has applied its mind to the representation and it does not give any reasons for rejecting the representation. The counsel for the applicant has invited our attention to the Hon'ble Apex Court decision in ***Kranti Associates Private Ltd. & Another. v. Masood Ahamed Khan & Others. Reported in I(2010)9 SCC 496*** wherein the importance of giving a speaking order is laid down as follows:-

“The necessity of giving reasons by a body or authority in support of its decision has come up for consideration before the Supreme Court in several cases. Initially, the Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point. The Supreme Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the “inscrutable face of a sphinx”

He also relies on the decision of this Bench in ***Ms.Nalini S.Rao v. BSNL Ltd. & Others (OA 1046/2010 & 492/2011) decided on 13.3.2013*** wherein it was held that the failure to apply the mind and giving a reasoned order is held fatal. The order passed in this case by the Referral Board constituted under rules is not a speaking order and it does not give any reason for rejecting. So, we find that the order of the Referral Board is liable to be set aside. So, this point goes in favour of the applicant.

13. Accordingly, we hereby set aside the decision of the Referral Board dt.

06.11.17. We direct that the respondents will place the matter again before Referral Board and the Referral Board will take a decision on the matter in the light of discussions made in para 11 & 12 of this order and pass a speaking order on the representation as per rules and guidelines within a period of two months from the date of receipt of a copy of this order.

14. OA is disposed off accordingly. No costs.

(T.Jacob)  
Member(A)

(P.Madhavan)  
Member(J)

19.02.2020

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