

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WA No. 100 of 2022

Ref:- WP(C) No. 681 of 2019

Shri Munna Kumar Singh, aged about 52 years, S/o (L)
Awadhesh Kumar Singh, permanent resident of 15-a,
Kashyap Kutir, Nitibagh, Jagdeo Path, P.O. B.V. College,
P.S. Rukunpura, and District Patna, Bihar, Pin – 800014.

.... Appellant

-Versus-

1. The Union of India, through the Secretary (Home), Ministry of Home Affairs, Govt. of India, North Block, New Delhi – 110001.
2. The Director General of Central Reserve Police Force, Govt. of India, Block No.-I, C.G.O. Complex, Lodhi Road, New Delhi – 110003.
3. Shri Vikram Sehgal, I.G.P., Central Reserve Police Force, Govt. of India, Block No.-I, C.G.O. Complex, Lodhi Road, New Delhi – 110003.
4. Shri S.C. Parasar, DIG (Adm), NEZ HQr, Amerigog, 9th Mile, Kamrup Metropolitan, Guwahati, Assam- 781023.

... Respondents

BEFORE

**HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

For the appellants	::	Mr. M. Devananda, Sr. Adv. Ms. N. Jyotsana Devi, Adv.
For the Respondents	::	Mr. Kh. Samarjit, DSGI Mr. N. Armananda, Adv.

Date of Hearing and
reserving Judgment & Order :: 21.06.2023

Date of Judgment & Order :: **04.07.2023**

JUDGMENT AND ORDER

(CAV)

(M.V. Muralidaran, Acting CJ)

This writ appeal is directed against the order dated 17.8.2022 passed by the learned Single Judge in W.P.(C) No.681 of 2019, whereby the learned Single Judge dismissed the writ petition, which was filed to quash the order dated 16.1.2019 passed by the Director General, CRPF refusing to consider the representations dated 4.10.2018 and 13.11.2018 submitted by the appellant against the entries of grading “good” in his Annual Performance Appraisal Report (APAR) for the period from 1.4.2017 to 31.3.2018.

2. Brief facts which led to the filing of the writ appeal are as follows:

The appellant joined the CRPF on 1.12.1994 as Assistant Commandant and he has always been graded “outstanding” during his command of units. While he was posted as Commandant (IRLA3998), GC, CRPF, Langjing, Imphal, he had submitted his APAR for the year ending 2017-2018 on 5.4.2018 to the Reporting Officer, DIGP, GC, Langing. The said self appraisal was accepted by the Reporting Officer. However, the Reviewing Authority in Part IV of the APAR downgraded the numerical

grading given by the Reporting Officer without giving any cogent reason and the same was communicated to the appellant vide letter dated 16.8.2018. The said letter along with the copy of APAR was served on the appellant on 28.8.2018 to make a representation against the entry in the APAR. According to the appellant, by virtue of the downgrading of numerical grading by the Reviewing Authority, the overall grade of the appellant has been reduced from “very good” to “good” without giving the factual reason. The only reason given by the Reviewing Authority for disagreement with the Reporting Officer is that the grading of the officer is over assessed.

2.1. The appellant requested extension of time for submission of the representation against the grading/remarks recorded in APAR through letter dated 10.9.2018 and 26.9.2018. On 4.10.2018, the appellant has submitted his representation against the grading/remarks and the same was not considered as time barred. Again on 13.11.2018, the appellant submitted another representation against the grading/remarks and the same was also not considered as time barred by issuance of the order dated 16.1.2019. Aggrieved by the order dated 16.1.2019, thereby refusing to consider the representation, the appellant has filed the writ petition.

2.2. By the impugned order dated 17.8.2022, the learned Single Judge dismissed the writ petition holding that there is no illegality in refusing to consider the representations submitted by the appellant and in issuing

the order dated 16.1.2019. The learned Single Judge also held that the Reviewing Authority had recorded in writing the reasons for downgrading the assessment given by the Reporting Officer in the APAR of the appellant in the year 2017-2018 and the authorities have not violated any provisions of the relevant guidelines of the Standing Order and have acted well within the power and jurisdiction. Challenging the said findings of the learned Single Judge, the appellant has filed the writ appeal.

3. Assailing the order of the learned Single Judge, the learned senior counsel for the appellant submitted that the comments on pen picture written by the Reviewing Authority have been construed as reasons and justifications for downgradation by the learned Single Judge and the said comments are mere comments on the pen picture and are not justification for downgradation of individual attributes. The learned Single Judge accepted the general comment given by the Reviewing Authority against the downgradation.

4. Mr. M. Devananda, the learned senior counsel for the appellant would submit that the learned Single Judge has overlooked the provision contained in the Standing Order of the CRPF that displeasure is not a penalty and cannot be considered for denial of promotion. In the present case, acceptance of the displeasure by the learned Single Judge as a valid ground for downgradation has the effect of denying promotion to the appellant and this also goes against the current position of law.

5. The learned senior counsel for the appellant further submitted that no such notice or intimation was given prior to the preparation of the APAR. The respondents could not exhibit if such notice or intimation had in fact been given. However, the learned Single Judge accepted the contention of the respondents that the same was communicated verbally without any proof.

6. According to the learned senior counsel for the appellant, the learned Single Judge overlooked that only one line has been recorded in the impugned APAR for the downgradation. The learned Single Judge failed to consider that on top of providing cogent reasons for downgrading the APAR, the Reviewing Authority must also exhibit why the Reporting Officer had awarded inflated grading and why the grading is not commensurate. The only thing mentioned with regard to the aforesaid in the APAR is "Quoting of displeasure and grading of officers "very good", I do not agree in totality. The grading of the officer is over assessed. Has been over assessed in all attributes brought out in numerical assessment. Performance has not been commensurate to grading". However, no justification for recording the same has been provided by the Reviewing Authority.

7. The learned senior counsel for the appellant then submitted that the learned Single Judge failed to appreciate and follow the judgment rendered by a Co-ordinate Bench, which is in gross violation of the law laid

down by the Apex Court in the case of *Dasharath Rupsingh Rathod v. State of Maharashtra*, (2014) 9 SCC 129.

8. The learned senior counsel for the appellant next submitted that the learned Single Judge failed to appreciate that the Reviewing Authority has exceeded his power with respect to his duties for reviewing of the APAR of the appellant without giving cogent reasons for downgrading in writing. The learned Single Judge also failed to appreciate that the Reviewing Authority had taken into consideration the displeasure issued by the higher authorities against the appellant, which is not at all related or relevant to the period of consideration of the appellant's APAR and downgraded the grading of the appellant without any justification. He would submit that in all the years since 2007-2008, the appellant had been graded either as "outstanding" or "very good" and that downgrading his grade as "good" in the APAR for the period 2017-2018 is unacceptable. Arguing so, the learned counsel for the appellant prays for setting aside the order of the learned Single Judge and allow the writ petition.

9. Per contra, Mr. Kh. Samarjit, the learned DSGI appearing for the respondents submitted that the entries in the APAR of the appellant were communicated to him on 16.8.2018 with an instruction that any representation against the grading in the APAR should be submitted within a period of 15 days from the date of receipt of the APAR. Though the appellant received the APAR on 28.8.2018, he has failed to submit the

representation within 15 days and he has submitted his representation only on 4.10.2018 and thereafter another representation on 13.11.2018 after a lapse of more than 35 days. Since the representations of the appellant are time barred, the respondent authorities rightly rejected the same vide order dated 16.1.2019 taking into consideration the provisions of Standing Order No.4/2015.

10. Insofar as the argument of the learned senior counsel for the appellant that without giving any reason, the Reviewing Authority downgraded the appellant is concerned, the learned DSGI submitted that sufficient reasons have been given by the Reviewing Authority for downgrading the assessment of the appellant's performance. In fact, the appellant has deliberately suppressed his own acts of indiscipline, violation of orders and misbehavior for which the appellant had been awarded displeasure and punishment of stoppage of increments after conducting an enquiry. Since the displeasure relates to the period from 1.4.2017 to 31.3.2018 and the appellant did not challenge the same and accepted the commission and omission of the misconduct, the Reviewing Authority was right in downgrading the assessment of the appellant's performance.

11. The learned DSGI argued that if the appellant was not satisfied with the final grading in the APAR, he ought to have submitted his representation within the prescribed period of 15 days and having failed to do so, he cannot blame the respondent authorities for his lapse. Having

considered all these aspects in proper perspective, the learned Single Judge dismissed the writ petition. Since the order of the learned Single Judge is well considered one, there is no need to interfere with the same and, thus, prayed for dismissal of the writ appeal.

12. We have considered the rival submissions and also perused the materials available on record.

13. The following facts are not in dispute - The appellant joined the CRPF on 1.12.1994 as Assistant Commandant and he has been graded outstanding during his command of units. While he was posted at Langjing CRPF, on 5.4.2018, the appellant has submitted his APAR for the year ending 2017-2018 to the Reporting Officer i.e. DIGP, GC, Langjing, Imphal and the said self appraisal was accepted by the Reporting Officer, however, the Reviewing Authority of the APAR downgraded the numerical grading given by the Reporting Officer and the overall grading of the appellant has been reduced from "very good" to "good". The reason given by the Reviewing Authority for disagreement with the Reporting Officer and downgrading of the grades given by him is stated as under:

"Quoting of displeasure and grading officer very good. I do not agree in totality. The grading of the officer is over assessed. In attributes brought out in numerical assessment performance has not been commensurate to grading."

14. The grading of “good” assessed by the Reviewing Authority in the APAR was communicated to the appellant under letter dated 16.8.2018 of the Special DG, NEZ, CRPF with a direction to submit a representation against the entry in the APAR if so desired. It is admitted by the appellant that the said letter dated 16.8.2018 was received by him on 28.8.2018.

15. It appears that on 10.9.2018, the appellant submitted a letter to the DG, CRPF, Dte. Genl, CRPF, New Delhi, requesting to grant 15 days more time for submission of his representation against the APAR grading for the year 2017-2018. The said letter dated 10.9.2018 of the appellant reads thus:

“Grading of APAR for the year 2017-2018 has been communicated to me on 28/08/2018 through DIG GC Imphal vide Spl. DG, NEZ, Guwahati letter No.A.XII-2/2018-NEZ-PS dated 16/08/2018 (copy enclosed for ready reference.

Since Reviewing/Accepting authority has graded me as “Good”, I intent to represent against grading of Reviewing/Accepting authority. To submit proper justification and specific factual observations against grading of Reviewing/Accepting authority, I need 15 days more in addition to given time limit for submission of my representation against grading of Review/Accepting authority.

It is, therefore, requested to kind grand me 15 days more time for submission of my representation against APAR

grading for the year 2017-2018 for which I shall every grateful to you.”

16. Again on 26.9.2018, the appellant sent another letter dated 26.9.2018 to the authority requesting to grant him 15 days further time to submit his representation against the APAR grading. The said representation dated 26.9.2018 reads thus:

“In continuation to my application dated 10/09/2018 in connection with time extension for submission of representation against APAR for the year 2017-2018.

Due to heavy work load (i.e. completion of PIS data and verification of character, caste certificate & education certificate) and pressure for booking e-lekha upto 50% by 20.09.2018, I am not able to submit my representation within extended time limit. Since Reviewing Authority/Accepting authority has granted me as “Good”, I intent to represent against grading of Reviewing/Accepting authority. To submit proper justification and specific factual observations against grading of Reviewing/Accepting authority, I need 15 days more in addition to given time limit and further extension of 15 days for submission of my representation against grading of Review/Accepting authority.

It is, therefore, requested to kind grand me 15 days more time for submission of my representation against APAR grading for the year 2017-2018 for which I shall every be grateful to you.”

17. It is not in dispute that those two request letters of the appellant dated 10.09.2018 and 26.9.2018 have not been received by the authority concerned. The factum of receipt of the said representations has been stated in the Signal dated 3.10.2018 issued by the Digcent (CR & Vig) and the same is quoted hereunder:

“SIGNAL

To : Digcent GC IMP
Info : Cespil NEZ/Polcent MN
From : Digcent (CR&Vig) Dte

No.R.XIII-48/2018-DA-13(APAR) Dated 03/10/2018

U/V (.) Regarding permission for submission of representation against the remarks/grading recorded in the APAR after expiry of scheduled time (.) Shri Munna Kumar Singh, Commandant (IRLA-3998) of GC Imphal has submitted an application dated 10/09.2018 seeking 15 days of additional time for submission of representation against the remarks in the APAR for the year 2015-2016 after expiry of scheduled time (.) Application to the Officer examined in Dte and it is observed that, Shri Munna Kumar Singh, Commandant (IRLA-3998) received copy of the APAR on 28/08/2018 (.) He submitted application on 10/09/2018 requesting to grant him additional time of 15 days for submission of representation (.) The additional time of 15 days requested by him expired on 25/09/2018 (.) His application was received on 25/09/2018 (.) The additional time requested for by him is over (.) His representation will be examined on receipt of as per rules (.) He may be apprised accordingly.”

18. The adverse remarks recorded were communicated to the appellant through letter dated 16.8.2018 calling upon the appellant to submit his representation within 15 days. The said letter along with the copy of APAR was served on the appellant on 28.8.2018 and the 15 days period starts from 28.8.2018.

19. As stated supra, on 10.9.2018, the appellant submitted a letter requesting to give another 15 days time for submission of the representation. Again on 26.09.2018, he has submitted a letter requesting to extend the time by a further period of 15 days enabling him to submit the representation. Finally, on 4.10.2018, the petitioner submitted his representation against the remarks made in the APAR, followed by another representation on 13.11.2018. The representations of the appellant were rejected on the ground that the appellant had submitted the representations beyond the time stipulated.

20. Technically speaking, if we take the service of the letter dated 16.8.2018 along with copy of the APAR on the appellant on 28.8.2018, the 15 days time granted to the appellant for submission of his representation expire on 12.09.2018. Since the appellant was busy with his work, on 10.09.2018, the appellant submitted a letter seeking to extend the time period for another 15 days. If we take the 15 days time from 12.09.2018 i.e. on the expiry of the original 15 days time, the extended 15 days time expires on 27.09.2018. Stating that he was busy with official work, the

appellant had submitted another request letter dated 26.9.2018 to further grant 15 days time to submit his representation. If we take the 15 days time from 27.09.2018, the extended 15 days time expires on 12.10.2018. As admitted, the appellant has submitted his representation against the grading/remarks of the Reviewing Authority on 4.10.2018. On a perusal of the representation dated 4.10.2018, it is seen that in the very opening paragraph itself the appellant referred to his two request letters dated 10.9.2018 and 26.9.2018 for extension of time for making the representation against the grading given in APAR by the Reviewing Authority. Thus, from the above, it is clear that the representation of the appellant dated 4.10.2018 is well within the period after the last extended period of 15 days. However, without seeing the reality, on 29.10.2018, the representation dated 4.10.2018 was rejected by the respondent authority on the ground that the same is time barred. On 13.11.2018, the appellant has submitted another representation against the grading recorded in the APAR and by the order dated 16.1.2019, the said representation dated 13.11.2018 was also rejected on the ground that there is no provision to consider representation against grading recorded in the APAR after expiry of scheduled time.

21. The appellant had time till 12.10.2018 for submission of his representation after the extended period of time based on the request submitted by him. In the order rejecting the representation of the appellant passed by the DIG (CR & Vig) dated 29.10.2018, the said authority has not

gone into the merits of the grading awarded by the Reviewing Authority and the authority simply rejected the representation on the ground of delay.

22. As stated supra, the representation dated 4.10.2018 was rejected basically on the ground that the same has been submitted after the prescribed period. The conclusion arrived at by the DIG (CR & Vig) that the representation of the appellant dated 4.10.2018 is after 35 days of the date of receipt of the letter dated 16.8.2018 cannot be appreciated. The learned Single Judge has also erred in affirming the view taken by the respondent authority qua the delay aspect. Since the rejection of the first representation of the appellant dated 4.10.2018 itself is wrong, the rejection of the appellant's second representation dated 13.11.2018 is also liable to be interfered with. In view of the above, we are of the view that the representation dated 4.10.2018 is well within the prescribed time after taking into account the two extension request letters submitted by the appellant. Therefore, the findings of the respondent authority as well as the learned Single Judge qua the representation of the appellant is time barred is liable to be interfered with.

23. The appellant has questioned the grading of "good" entered by the Reviewing Authority in the APAR for the period from 1.4.2017 to 31.3.2018 by contending that though the Reporting Officer accepted the self-appraisal report of the appellant and recorded his assessment in numerical figures with regard to assessment of work output, personal

attributes and functional competency and gave a grading “very good”, the Reviewing Authority without any reason downgraded the assessment as “good” which is below the benchmark of “very good”.

24. The appellant also contended that the Reviewing Authority has used the displeasure issued by him only for a case related to 2016 which does not form part of the assessment period as a ground for reducing the overall numerical grading to below the benchmark which has an effect of making the officer ineligible for promotion and financial upgradation in NFFU/OGAS.

25. Taking us through paragraph 3.11(i) of the Standing Order, the learned counsel for the appellant submitted that the displeasure is not a penalty enlisted in Rule 11 of the CCS (CCA) Rules, 1965 and, therefore, it cannot be considered for denial of promotion and financial upgradation in NFFU/OGAS. However, in complete defiance of the Standing Order No.4/2015, the Reviewing Authority has used the displeasure to downgrade the numerical grading to make the appellant ineligible for promotion despite being otherwise eligible. Therefore, the action of the Reviewing Authority downgrading the numerical grading is erroneous in law.

26. Countering the argument, the learned Additional Solicitor General argued that only based on the performance and the other related documents, the Reviewing Authority downgraded the numerical grading and for the deliberate suppression of his own acts of indiscipline, violation

of orders and misbehavior, the petitioner was awarded displeasure and punishment of stoppage of increments.

27. It is pertinent to note that having been dissatisfied with the grading/remarks recorded in the APAR, the appellant has submitted a representation dated 4.10.2018 and, as stated supra, the same has been not considered by the respondent authority, as according to the respondent authority the same is time barred. Followed by the representation dated 4.10.2018 and its rejection, on 13.11.2018, the appellant has submitted another representation. The same was also rejected on 16.1.2019 by holding as under:

“Please refer to your representation dated 13/11/2018 against the remarks/grading recorded in your APAR for the period from 01/04/2017 to 31.03.2018.

Your representation dated 13/11/2018 has been examined in Dte/ It is observed that APAR for the period from 01/04/2017 to 31/03/2018 was communicated to you by SDC, NEZ vide letter No.A.XII-2/2018-NEZ-PS dated 16/08/2018 and the same was received by you on 28/08/2018. As per para 6 and 13(iv) of the S/O.04/2015, the representation against the grading in APAR for the period from 01/04/2017 to 31/03/2018 should have been submitted by your within 15 days from the date of receipt of the APAR, whereas you have submitted your representation on 04/10/2018 i.e. after 35 days instead of the stipulated time of 15 days. Accordingly, your earlier representation dated 04/10.2018 has not been considered

by the Competent Authority being time barred. You have not brought out any new facts in your representation dated 13/11/2018.

3. Therefore, it is intimated that, there is no provision to consider representation against grading/remarks recorded in APAR after expiry of schedule time.”

28. As stated supra, the Reviewing Authority has used the displeasure issued as a ground for reducing the overall numerical grading to below the benchmark which has an effect of making the appellant ineligible for promotion. According to the appellant, the issue on which the displeasure has been issued relates to the previous period i.e. the period before the reporting period and, therefore, it becomes infructuous in view of Para 3.11 (iii) of the Standing Order No.4/2015 and using the said displeasure for denying promotion is in violation of the Standing Order. We are of the view that this aspect has not been properly dealt with by the Reviewing Authority while issuing the impugned order dated 16.1.2019.

29. As rightly argued by the learned counsel for the appellant, the system of APAR has two principal objectives, namely (i) improve the performance of subordinate in his present job; and, (ii) assess the potentialities of the subordinate and prepare him through appropriate feedback and guidance for future possible opportunities in service. The basic philosophy underlying APAR is that both the superiors and his subordinates should be necessarily aware of the ultimate goal of the

organization, which can be achieved through the joint efforts of both of them.

30. The learned counsel for the appellant drew our attention to Para 5 of the APAR under the head of pen-picture of the Officer reported by the Reporting Officer, which reads thus:

“Adhikari apne saunpe gaye dayitvon ko pura karne kaa prayas karte hain. Prashashnik karyon kia anybhav hai. Reportadheen Awadhi ke dauran adhikari ka karya evam vyahar bahoot achchha raha.”

31. However, in Para 6 of the APAR the Reviewing Authority stated as under:

“Behaviour of officer is not commensurate to his rank and seniority. He is belligerent and arrogant in his general behavior. Despite repeated warning from seniors in the past has not brought about change in his behavior towards subordinates. Needs to bring about perceptible change in his behavior to control his temper. Has a tendency to loose talk. Not fit for independent command.”

32. In the instant case, nothing is on record to show that any advisory/warning/displeasure/penalty with regard to the duties performed by the appellant and/or behavior for the period of assessment has been issued by the Initiating Officer and, in fact, the records reveal that the

Initiating Officer has always praised the work of the appellant and assessed him as “very good”.

33. Primarily, the impugned rejection order dated 16.1.2019 was issued on the ground that the representation against the grading in APAR was submitted belatedly, i.e., after the expiry of schedule time. As stated supra, the first representation of the appellant is well within time and hence that the respondent authority ought not to have rejected the representation dated 4.10.2018. Resultantly, the order dated 16.1.2019 thereby rejecting the representation of the appellant dated 13.11.2018 will go. Since the impugned order dated 16.1.2019 does not deal with the merits of the grading and it only deals with the time period for submission of the representation and the said time limit has been clarified by us in the preceding paragraphs to the effect that the representation of the appellant dated 4.10.2018 is well with the prescribed time limit, we are of the view that in order to consider the claim of the appellant afresh qua the order/letter dated 16.8.2018 issued by the Spl. DG, NEZ, Guwahati, the matter is liable to be remanded to the authority concerned.

34. In the result, the judgment and order of the learned Single Judge dated 17.8.2022 passed in W.P.(C) No.681 of 2019 is set aside and the writ appeal is allowed. The matter is remitted to the authority concerned for considering the claim of the appellant afresh qua the order/letter dated 16.8.2018 issued by the Spl. DG, NEZ, Guwahati. While considering the

claim of the appellant, the authority concerned is required to look into the representations of the appellant dated 4.10.2018 and 13.11.2018 respectively and pass orders on merits and in accordance with law after affording a reasonable opportunity to the appellant. The aforesaid exercise is directed to be completed within a period of three months from the date of receipt of a copy of this judgment. No costs.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Sushil