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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 03.07.2024

+ W.P.(C) 10749/2022

RAJNISH KUMAR

.....Petitioner

Through: Mr. Ankur Chhibber & Mr. Nikunj Arora, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Adv.

SI Shiv Kumar-CRPF for respondent nos.1 to 3.

Mr. Anupam Lal Das, Sr. Adv. with Mr. Sandeep Bisht & Mr. Anirudh, Advs. for R-4.

Mr. Manish Kumar & Ms. Shaswati Parkhi, Advs. for R-5.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

REKHA PALLI, J (ORAL)

1. The present writ petition under Article 226 of the Constitution of India seeks the following reliefs:

“i. Issue a Writ of Certiorari for quashing of the PPAR for the period 01.04.2016 to 01.09.2016 to the extent whereby adverse remarks have been given to the Petitioner and of the letter dated 07.06.2019 whereby the grievance raised by



the Petitioner through his letter dated 20.10.2018 against the impugned PPAR was rejected by the same officer who downgraded it in the first go and of the orders dated 14.10.2020 and 28.10.2021 to the extent whereby the name of the Petitioner has not been included in the list of officers who, being batchmates and juniors of the Petitioner, have been extended the benefit of Non Functional Selection Grade (NFSG); and

ii. Issue a Writ of Mandamus directing the Respondents to expunge the adverse remarks and to upgrade the same for the relevant period i.e. 01.04.2016 to 01.09.2016 in view of plethora of judgments passed by this Hon'ble Court as well as the Hon'ble Supreme Court and keeping in view the expunged remarks, hold a review DPC to consider the Petitioner for the Non-Functional Selection Grade and if found fit, grant him such benefit from the dates his batchmates have been given, i.e. w.e.f. 14.10.2020 with all consequential benefits.”

2. At the outset, the brief factual matrix as emerging from the record may be noted.
3. The petitioner had joined the CRPF as an Assistant Commandant on 30.12.2002 and was thereafter promoted as Deputy Commandant and Second-in-Command on 18.02.2009 and 20.10.2016 respectively. While the petitioner was working as a Deputy Commandant, he was sent on deputation to the State of Bihar/respondent no.5 on 04.04.2014 where he joined as an Additional Superintendant of Police, Lakhisarai, Bihar on 23.08.2014.
4. It is the petitioner's case that while working on deputation, he was discharging his duties very diligently and was always reported as 'outstanding/very good' in all his APARs except the impugned part APAR (PPAR) for the period between 01.04.2016 to 01.09.2016. In this PPAR, even though his Reporting Officer graded him as 'outstanding', his



Accepting Officer who has been arrayed as respondent no. 4, downgraded him to 'good' with the comments that he was an average officer and there were various complaints against him.

5. It may be noted at this stage itself that by the time the petitioner's impugned PPAR came to be recorded on 24.07.2018, the Reviewing Officer had already superannuated and it is in these circumstances that the grading endorsed by the Reporting Officer was straight away forwarded to the Accepting Officer i.e. respondent no.4 for his remarks.

6. The PPAR came to be communicated to the petitioner on 29.07.2018 after he had already been reverted back to the CRPF. Being aggrieved by the downgrading of his PPAR by respondent no.4, the petitioner made a representation against the same on 20.10.2018, which came to be rejected by respondent no. 4 himself vide his order dated 07.06.2019, which order has also been assailed before this Court.

7. At the outset, learned counsel for the petitioner submits that the impugned PPAR is liable to be set aside as the respondent no.4 had downgraded the petitioner without any specific reasons being assigned. The mere mention of pendency of complaints against the petitioner, he contends, was only an attempt by the respondent no.4 to justify the illegal downgrading. He contends that the respondent no.4 was holding a grudge against the petitioner because of the additional responsibilities assigned to him by the District Magistrate, Lakhisarai, Bihar on account of his outstanding performance. It is only based on the petitioner's abilities and competence that vide order dated 04.04.2014, he was handpicked by the respondents as one of the officers for deputation to Bihar Police as Additional Superintendent of Police (Ops) for an initial period of three



years.

8. Furthermore, the respondent no. 4 could not have taken upon himself to decide the petitioner's representation and that too well knowing that the petitioner was aggrieved only by the downgrading of remarks directed by him. Even otherwise, the communication of the PPAR suffers from delay and latches as even though the same pertains to the period between 01.04.2016 to 01.09.2016, the same was written after a period of almost two years.

9. In support of his plea that the downgrading of petitioner's impugned PPAR was on account of the vindictive attitude of respondent no.4, learned counsel for the petitioner submits that the petitioner has rendered 19 years of unblemished service in the Force. During his entire career, he has been appreciated by various authorities for his meritorious work and has even been conferred with several appreciation letters and commendations from various dignitaries. Further, his hard work and dedication is reflected from his past as well as APARs subsequent to the impugned PPAR, which have always been graded as '*outstanding*'.

10. He, therefore, prays that the downgrading by respondent no.4 of the petitioner's impugned PPAR from '*outstanding*' to '*good*' along with the order dated 07.06.2019 passed by him on the petitioner's representation be set aside and the respondents be directed to treat the initial grading of '*outstanding*' given in the PPAR by the Reporting Officer as final and grant the petitioner all consequential benefits.

11. On the other hand, learned counsel for the respondent no.5 opposes the petition, firstly, on the ground of lack of territorial jurisdiction by urging that the PPAR, having been written while the petitioner was posted in Bihar,



hence the petitioner ought to approach the Patna High Court. Further, on merits as well, she supports the impugned order by contending that a bare perusal of the order dated 07.06.2019 shows that there were various complaints against the petitioner and, therefore, he was rightly downgraded by respondent no.4. She contends that there was no malafide on the part of respondent no.4 in deciding the petitioner's representation against the impugned PPAR as by the time the representation was received in the office of respondent no.5, the respondent no.4 already stood promoted as Additional Director General and therefore, the representation was placed before him as per procedure. She, therefore, prays that the present petition be dismissed.

12. To rebut the submissions regarding lack of jurisdiction of this Court, Mr. Chhibber contends that as far as the territorial jurisdiction is concerned, since a part of cause of action had arisen within the jurisdiction of this Court, the PPAR having been conveyed to the petitioner in Delhi and he having addressed his representation to respondent no. 5 from Delhi through proper channel, this Court would have the necessary jurisdiction to entertain the petition. Furthermore, the benefits under the NFSG were also denied to the petitioner at Delhi. In support of his plea, he relies on the decision of the Hon'ble Supreme Court in *Abrar Ali vs. C.I.S.F.* (Civil Appeal No. 6020/2012) and of this Court in *Sumit Kumar vs. Union of India*, W.P. (C) No. 96/2017.

13. At this stage, we may note that though the other respondents are also duly represented before this Court and have sought to make submissions, taking into account that the petitioner seeks relief primarily from respondent no.5 who is defending the impugned order as also the PPAR, we do not



deem it necessary to refer to the submissions sought to be made by the other respondents.

14. Having considered the submissions of the learned counsel for the parties, we are of the view that, taking into account the fact that the petitioner was communicated the impugned PPAR at Delhi and is an officer of the CRPF with it's headquarters at Delhi. The petitioner is also justified in urging that since he is serving with the CRPF, where he has been denied the benefits of NFSG on the basis of the impugned PPAR, it cannot be said that no part of cause of action has arisen before this Court. Even otherwise, respondent nos.4 & 5 are duly represented before this Court and have made extensive submissions on merits; the petition has remained pending for over two years before this Court and therefore, it will be highly unjust to reject the same at this belated stage on the ground of lack of territorial jurisdiction. We, therefore, find no reason to reject the petition on the ground of territorial jurisdiction.

15. Now coming to the merits of the present petition, even though Mr. Chibber has vehemently urged that the grading along with remarks given by respondent no.4 be directed to be expunged, we are of the view that since it is an admitted position that the petitioner's representation against the grading given by respondent no.4 was considered by the respondent no.4 himself, the petitioner's representation ought to be reconsidered by a competent authority. In our considered opinion, the consideration of the petitioner's representation by respondent no.4 was wholly impermissible as no one can be permitted to be a judge in his own cause. In fact, what appears is that though the initial PPAR did not contain any detailed remarks as to why the petitioner was being downgraded by respondent no.4, while



rejecting the petitioner's representation, the respondent no.4 has sought to explain the reason as to why the petitioner was downgraded. We are, therefore, of the view that the order dated 07.06.2019 deserves to and is accordingly set aside.

16. At this stage, we may also note that the petitioner's plea that except for the impugned PPAR, he had always been graded as outstanding/very good is borne out from the record for which purpose, we may note his APAR record hereinbelow in a tabular form:

Sl. No.	APAR Period	Grading
1.	01.04.2012-31.03.2013	Outstanding
2.	01.04.2013-25.12.2013	Very Good
3.	26.12.2013-31.03.2014	NIC
4.	01.04.2014-23.07.2014	NIC
5.	24.07.2014-22.08.2014	NIC
6.	23.08.2014-31.03.2015	Outstanding
7.	01.04.2015-31.08.2015	Outstanding
8.	01.09.2015-31.03.2016	Outstanding
9.	02.09.2016-18.09.2016	NIC
10.	19.09.2016-20.11.2016	NIC
11.	21.11.2016-31.03.2017	Outstanding
12.	01.04.2017-31.03.2018	Outstanding
13.	01.04.2018-31.03.2019	Outstanding



14.	01.04.2019-31.03.2020	Outstanding
15.	01.04.2020-31.03.2021	Outstanding

17. Having set aside the order dated 07.06.2019 passed by the respondents rejecting the petitioner's representation, what next. Though learned counsel for the petitioner vehemently urged that the downgrading directed by respondent no.4 should be set aside and the grading given by his reporting officer in the impugned PPAR be treated as final, we are of the view that before this Court examines the merits of the downgrading, it will be appropriate that the petitioner's representation against the same is considered by a competent authority other than by respondent no.4. Further taking into account that the respondent no.4 has sought to give reasons in the impugned order dated 07.06.2019 to justify the downgrading, it would be in the fitness of things to grant the petitioner an opportunity to file a fresh representation against the impugned PPAR which ought to be considered by an appropriate authority by passing a reasoned and speaking order in a time bound manner.

18. We, accordingly, allow the writ petition partly by granting three weeks' time to the petitioner to move a representation against the impugned PPAR which representation would be decided by the respondent no.5 by a reasoned and speaking order after being considered by an independent authority other than respondent no.4. In case the petitioner's representation is favourably accepted, the respondent nos. 1 to 3 will take all consequential steps to grant due benefits of the said upgradation to the petitioner within a further period of six weeks.



2024:DHC:4925-DB



19. Needless to state, in case the petitioner is still aggrieved by any order passed by the respondent no.5, it will be open for the petitioner to seek legal recourse as per law.

20. Before we conclude, we make it clear that though the petitioner has levelled allegations of malafide against respondent no.4, taking into account that the matter is being remanded back to respondent no.5, we are not expressing any opinion on those aspects at this stage.

21. The petition is accordingly, disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

JULY 03, 2024/ab