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

+ W.P.(C) 4118/2011 and CM No. 8508/2011

VIJAY RAGHUNANDAN BAHU Petitioner

Through: Mr Preet Pal Singh, Adv.

versus

UNION OF INDIA & ORS. Respondents

Through: Ms Anjana Gosai and Mr V. Aggarwal,
Advs. and Mr Arvind Sharma, DC, BSF

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **26.11.2015**

The petitioner's grievance is that despite his representation for upgradation, the respondent-BSF has not applied its mind to the records while considering upgradation of the ACRs and rejected his request mechanically.

The petitioner was, at the relevant time, working as Deputy Inspector General (Provisions) on 12.07.2010 for the first time, it was confirmed to him that his ACR gradings for 2005-2006, 2006-2007, 2007-2008 (PCR, i.e., Part appraisal) and 2008-2009 were below the bench mark and consequently, he could not be considered for promotion. He represented against this belated communication of the ACR/APAR gradings. On 24.01.2011, his representation was partly accepted, the APAR/ACRs gradings for 2005-2006 and ACR

gradings were upgraded to “Very Good”. However, his representation with respect to the gradings for 2006-2007 and 2008-2009 were rejected. He again represented to the BSF—this time there was no response. It is, therefore, that the petitioner complains of arbitrariness on the part of his employer.

Learned counsel highlighted that the appraisal for 2006-2007 is suspect because the APAR/ACRs record officially disclosed some discrepancies from which it can be inferred that the records were tempered. It is highlighted that the entries in Column 9D and 9F were overlooked altogether because the printed form did not envision such entry, which was added by the concerned superior officer. So far as the grading for 2008-2009 was concerned, it is submitted that Shri K.L. Meena, the Inspector General and the petitioner’s superior officer had occasion to observe him only for less than 90 days, i.e., less than the mandatory period and, therefore, his appraisal was inconsequential.

This Court has called for the original records and perused them. At the outset, we notice that the allegations with respect to the tampering of the ACR/APAR records for 2005-2006 are groundless. The observations in para 9D, i.e. conveying the Director General’s unhappiness—is based upon a letter dated 11.10.2006. Two letters are, in fact, part of the ACR records, they pertain to the petitioner’s persistent representations to secure a gallantry award for some incident that occurred in 2003. Initially, he had been short-listed for the award, but was not approved by the Ministry of Home Affairs. According to the copy of the letter conveyed to the petitioner (which

is part of the record), despite being informed on more than one occasion that his representation was rejected, he sought redressal of this grievance repeatedly to the highest ranking officer (directly contrary to the established communication channel and also wrote several letters to other superior officers). This Court is of the opinion that the manner in which a particular personal trait is recorded should not be gone into deeply in judicial review. The observations in para 9D are backed by the communications addressed to the petitioner. The copies of those letters are on the official record. The second stipulation was that “unhappiness” is not a recognized comment—rather it is only the displeasure recorded by the superior officer which can be taken into account and that the concerned officer had not followed the procedure while making the observations which he did. This Court is of the opinion that here again the recording of a personal trait itself cannot be seen as a penalty per se as the petitioner is endeavouring to urge. As a result, the submissions with respect to the tempering and illegality in the recording of ACRs for 2005-2006 are hereby rejected as meritless.

The second limb of the petitioner’s grievance pertains to the ACRs/APAR for 2008-2009—here it is emphasized that the superior officer worked for less than 90 days and could not have, therefore, legitimately drawn any conclusion since the minimum period of 90 days for discharge of duties and responsibilities are mandated by the applicable office memoranda and instructions in this regard which governed recording of ACRs. The BSF itself, in its counter-affidavit, avers that it was not a controversy to start with because the superior

officer, i.e., Inspector General K.L. Meena had occasion to observe the petitioner for 132 days. However, the petitioner made “fine calculations” thereafter and notices that Shri K.L. Meena was on leave for some time and appears to have deducted the period of leave. This Court is of the opinion that the petitioner’s grievance in this regard is unfounded given the nature of the responsibilities assigned to him. In such circumstances, the mere physical absence of an individual may not come in the way of apprising the overall conduct in discharge of the responsibilities of the officer placed under his administrative control.

For the above reasons, this Court is of the opinion that there is no merit in the petition and the same is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 26, 2015

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