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

+ **W.P.(C) 8144/2014**

ARVIND GHILDAYAL

..... Petitioner

Through: Mr Ankur Chhibber, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Akshay Makhija, CGSC and
Mr Sanjugeeta Moktan and Mr Siddharth Jhakur,
Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **05.11.2015**

The petitioner's grievance is that his Annual Performance Appraisal Report (APAR) for the period 01.04.2011 to 31.03.2012 was recorded as 'Average' at 5 out of 10. It is submitted that the Initiating Officer had graded the petitioner at 8 points which was brought down by the Reviewing Officer, i.e., Deputy Inspector General (DIG) concerned to 5.

At the relevant time, the petitioner Second-IC was officiating as Commandant in the Border Security Force (BSF) at Tura, Meghalaya. He was required to report to the border.

It is not in dispute that he did so at the relevant time. However, he returned to the Battalion Headquarters on 28.02.2012 without informing the (DIG) who was in charge of the Operations which

commenced on 24.02.2012. The petitioner's case firstly was that he was suffering from acute dysentery and secondly that as Officiating Commanding he was also saddled with the responsibility of Drawing and Disbursing Officer (DDO). Consequently, he went back to the Battalion Headquarters for disbursement of salary on 29.02.2012.

The incident led to the constitution of the Court of Inquiry which rendered its opinion on 16.05.2012. The Court of Inquiry recorded: (i) that from 27.02.2012 to 05.03.2012, the petitioner was suffering from vomiting, throat ache and dysentery. He had been prescribed medicine by the Unit CMO on 01.03.2012. He subsequently was admitted to a hospital for a better treatment on 05.03.2012, where he remained for about 5 days till 09.03.2012; (ii) the petitioner was at the border from 26.02.2012 to 28.02.2012, but returned to the Battalion Headquarters on the evening of 28.02.2012; (iii) as Officiating Commandant of the concerned Unit, the petitioner was also acting as Drawing and Disbursing Officer (DDO). The Court of Inquiry was of the opinion that the petitioner had no intention to defy the lawful command or not to follow the advice of unit Chief Medical Officer. In its opinion, it was only because of his severe physical ailment that petitioner could not comply with the directions issued by higher HQrs and that this needed sympathetic consideration. However, the Court of Inquiry also opined that the officer could have sought exemption or at least informed Sector HQ, BSF, Tura about his inability to appear before DIG as directed on 02.03.2012 and given reasons for the same.

The rationale of downgrading APAR by the Reviewing Officer

appears as an ‘advice’ given by the DIG concerned *inter alia* recorded as follows:-

“Advice

- | | | | |
|--------|-----|-----|------|
| 1. XXX | XXX | XXX | XXXX |
|--------|-----|-----|------|
2. *Whereas, it was noticed that you have returned to the Bn HQ Dhanakgiri on 28 Feb 2012 and stayed on at your home without seeking prior permission, which has been viewed as a serious lapse.*
3. *On query of your unwarranted absence from the Tac HQ you stated the reason as poor health condition as you were suffering from severe dysentery. However, it has come to light that you neither report this to the Medical Officer nor visited the Unit Hospital. Also, the Medical Officer who attended to you on 01 Mar 2012 did not place you ‘Sick in Quarters’ since he did not find your condition serious enough to warrant complete set.*
4. *The casual attitude towards performance of sensitive duties of Offg Comdt has been viewed seriously and you are hereby “ADVISED” to show significant improvement in performing the onerous responsibility of Offg Comdt and refrain from such activities in future, failing which I will constrain to reflect the same in your APAR.”*

This Court has considered the record of the Court of Inquiry which concludes that in fact the petitioner was suffering in the manner he alleged between the period 28.02.2012 to 09.03.2012. In fact, he appears to have been admitted on account of the acuteness of his condition. Furthermore, the Court of Inquiry has also concluded that the petitioner was working as DDO and in these circumstances,

appears to have gone back to the Unit. No doubt, as the Court of Inquiry rightly observed that the petitioner could well have sought exemption of his presence. In these circumstances, the observations of the DIG which are contained in the advice concluding that the petitioner displayed a casual approach towards his duties (which led to the serious consequence of the downgrading of his APAR from 8 to 5) are clearly unreasonable.

Consequently, the said advice and the APAR grading of 5 out of 10 that was finally accepted for the relevant period is hereby quashed. The respondents are hereby directed to make a suitable order with respect to the most appropriate grading awarded in the APAR for the period 2011-2012 to the petitioner within four weeks from today. In other words, the Reviewing Officer shall re-consider the matter and grade the petitioner suitably. The necessary orders shall be issued within six weeks.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 05, 2015

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