

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.3468 of 2018

Vishal Kumar Pandey .. Petitioner

-vs-

1. The Director General of BSF
Border Security Force
CGO Complex
Lodhi Road
New Delhi 110 003
2. The Deputy Inspector General
Border Security Force
Sector Headquarters
Chennai, Tamil Nadu
Village Keerapakkam
Post Nallampakkam
Teh-Chengalpattu
District Kancheepuram
Chennai 600 127
3. Shri Narayan Chand
(Then Commandant 118th Battalion, BSF) .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records from the second respondent relating to the impugned order issued by second respondent in No.PA/APAR-SOS/SHQ-CHEN/2016/9589-90 dated 19.08.2016 and quash the same so far as it relates to the petitioner and consequently direct the second respondent so that he may reconsider the petitioner's representation dated 30.1.2016 for expunction of adverse remark in APAR and also consider the petitioner's entitlement for promotion with effect from the date of promotion as per his seniority with all consequential benefits.

For Petitioner :: Mr.Vivek Kumar Srivastava

For Respondents:: Mr.M.Arvind Kumar, Sr.Panel Counsel

ORDER

This writ petition has been filed questioning the correctness of the order passed by the Deputy Inspector General of Border Security Force, Chennai dated 19.8.2016 returning the representation of the petitioner seeking to enpunge the remark of 'reprimand', being an adverse remark from his ACR for the

period 2014-15. Since the petitioner was keeping off without any sufficient cause for most of the months, he has been awarded with 'reprimand' by order dated 25.6.2015. As per the rules, the petitioner should have preferred the appeal/representation before the competent authority within one month, which he has not done so. However, with a delay, he made his representation/appeal against the remark and grading to the Deputy Inspector General, SHQ, Border Security Force, Chennai on 30.1.2016 after a huge delay. Since the petitioner failed to respond to the adverse remark of 'reprimand' within the time limit and only after a huge delay of four months, he has represented against the adverse remarks and final grading endorsed in his APAR 2014-15, which is against the Rule position enumerated by DOP&T at Para Fir.4.17 of APAR procedure and instructions, 2012, the Deputy Inspector General, SHQ, Border Security Force, has returned the representation/appeal by the impugned order, as a result he has come to this Court.

2. Learned counsel for the petitioner submitted that although the petitioner suffered the adverse remark of 'reprimand' on 25.6.2015, which was communicated to him on 10.8.2015, he was unable to make the representation within the time. Moreover, he met with an accident on 3.4.2014, as an auto pushed his bike from behind, he had to consult the doctor in the nearby hospital and was taking treatment. That was the reason why he was unable to report for duty. This fact was also properly brought to the Commandant of 118th Battalion, BSF in his communication dated 5.4.2014. Therefore, the adverse remark of 'reprimand' put against the petitioner is required to be expunged, he pleaded.

3. It may be true that the petitioner met with an accident on 3.4.2014, which prevented the petitioner from attending his duties. But when he suffered the adverse remark of 'reprimand' vide order dated 25.6.2015, which was communicated to him on 10.8.2015, as per the provision, he was given only a month's time to make the representation. But he has miserably failed to make any representation within the said period of one month. As contended by the learned Senior Panel Counsel for the respondents, since there was a delay of four months in making the representation to expunge the adverse remark, this Court, taking note of the reason given by the Initiating Officer for refusing to expunge the adverse remark, is not inclined to entertain the writ petition. Accordingly, the writ petition stands dismissed. Consequently, W.M.P.No.4240 of 2018 is also dismissed. No costs.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

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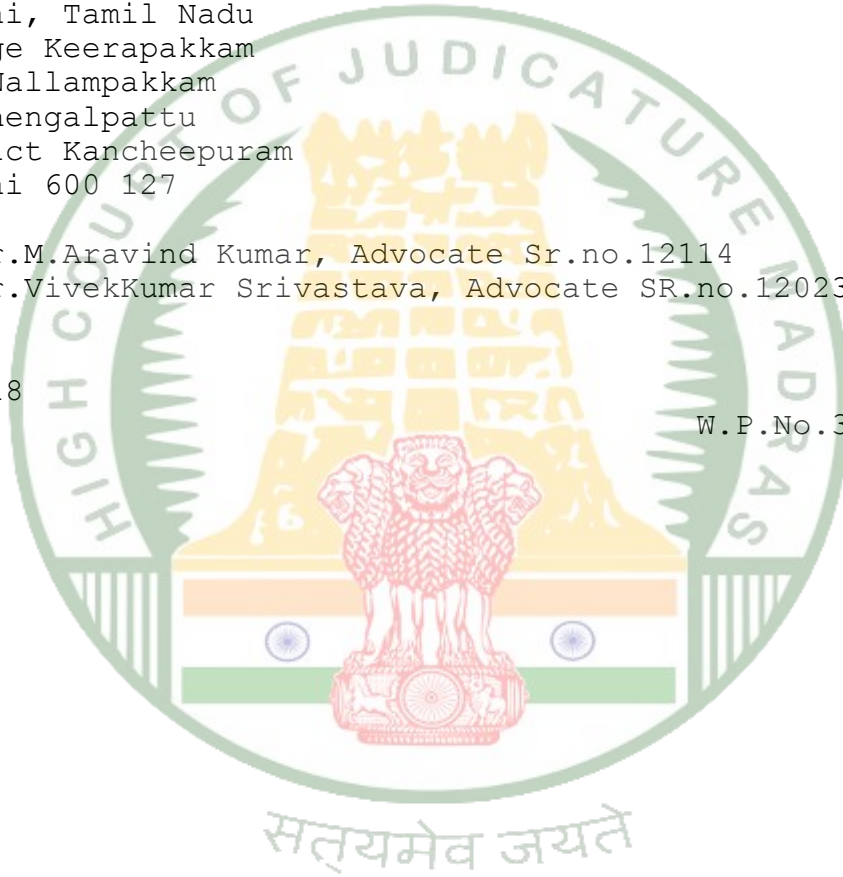
+2cc to Mr.M.Aravind Kumar, Advocate Sr.no.12114

+1cc to Mr.VivekKumar Srivastava, Advocate SR.no.12023

SV(CO)

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