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

+ **W.P.(C) 5689/2015**

VINIT KUMAR

..... Petitioner

Through: Ms. Saahila Lamba, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Rajesh Gogna, CGSG for R-1 & 3.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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12.11.2018

CM APPL. 46637/2018

1. With the consent of parties, the application is allowed and the writ petition is taken up for final hearing.

W.P.(C) 5689/2015

2. The challenge in the writ petition is to the adverse remarks given to the Petitioner for the year 2011-12 in his Annual Performance Assessment Report (APAR).

3. The Petitioner at the relevant time was an Inspector in the BSF on deputation to the National Disaster Response Force (NDRF Kolkata). In his APAR for the period 1st April 2011 to 1st March 2012 his Reporting Authority gave him a good review stating that he has successfully conducted

many courses in the battalion with full devotion and that his overall performance during the year “remains good”. The Reporting Authority stated that he would “grade him as good on the basis of his participation in the rescue operations”. These remarks were made on 25th April 2012.

4. However, when the matter was placed before the Reviewing Authority i.e. the Commandant 2nd battalion NDRF Kolkata, he graded him as ‘poor’ as he was of the view that he was unable to command a team independently and was ‘languid, coward and irresponsible’. The Accepting Authority i.e. the KS Rawat, the Deputy Inspector General (NDRF) agreed with the decision of the Reviewing Authority.

5. Earlier in a W.P.(C) 5689/2015, the Division Bench of this Court dealt with the grievance of the Petitioner that corrective steps were not being taken to expunge the adverse remarks notwithstanding a signal dated 27th May 2015 whereby the Reviewing Authority had considered the Petitioner’s case favorable and recommended restoring his grade as ‘good’.

6. This Court by the said order dated 28th May 2015 asked a Review DPC to be held for considering the case of the Petitioner’s promotion to the post of Assistance Commandant after completing the exercise of expunging the adverse remarks from his APAR.

7. However, a review petition was filed by the Respondents against the aforementioned order dated 28th May 2015. The said review petition came to be allowed by this Court by an order dated 8th December 2015 and the

earlier order dated 28th May 2015 was recalled. The present writ petition was thereafter restored to file.

8. This Court has been shown a copy of a signal dated 27th May 2015 which sets out the Reviewing Authority's opinion dated 19th February 2013. This in fact was annexed with the review petition filed by the Respondents themselves. In the said opinion, the Reviewing Authority, offered his comments/recommendations on the representation submitted by the Petitioner, that on examining the overall performance of the Petitioner, and this being a first instance and considering the long tenure in future, the adverse remarks awarded to the Petitioner in APAR 2011-12 should be expunged. It was further recommended that he should be graded 'good'.

9. It appears that notwithstanding the above recommendation when the matter was again placed before the Accepting Authority, who was the same DIG NDRF Mr. Rawat, he by an order dated 31st January 2014 rejected the two representations of the Petitioner dated 17th July 2012 and 24th December 2013. The said order is a non speaking one and simply states that after careful consideration of the representations, the Authority was "pleased to reject the same."

10. In the application for early hearing, the Petitioner has stated that in each of the subsequent years, his grade has remained "very good". There is no denial of by the Respondents of this averment.

11. Considering that in his entire carrier, barring a single year 2011-12, the

Petitioner has consistently been awarded “very good”, and even for 2011-12 the Reviewing Authority has recommended that the Petitioner be awarded the grade ‘good’, the Court is of the view that it was incumbent on the Accepting Authority i.e. the DIG NDRF to apply his mind to the entire facts including the subsequent excellent record of the Petitioner and consider whether the Petitioner’s representations deserve acceptance.

12. Accordingly, the Court sets aside the impugned order dated 31st January 2014 and directs that the matter of the Petitioner’s representations dated 17th July 2012 and 24th December 2013 as regards the adverse remarks in his APAR for 2011-12 be once again placed before the DIG NDRF for reconsideration in accordance with the above observations and particularly in the light of the fact that the Petitioner’s track record previous to 2011-12 and subsequent thereto has been consistently “very good”. If for some reason Mr. JKS Rawat is no longer the DIG NDRF, then the Petitioner’s representations will be placed before the person incumbent in that post. A fresh decision of the DIG NDRF will be communicated to the Petitioner not later than eight weeks from today. If the Petitioner is still aggrieved by the said decision, it will be open to him to seek appropriate remedies in accordance with law. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 12, 2018/nk