

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.A.No.967 of 2018

Vishal Kumar Pandey ... Appellant/Petitioner

Vs

1.The Director General,
BSF, CGO Complex,
Lodhi Road, New Delhi-3

2.The Deputy Inspector General
B.S.F. Sector Headquarters,
Chennai, Tamil Nadu,
Village Keerapakkam,
Post Nallampakkam,
Tech-Chengalpattu,
District Kancheepuram,
Chennai 600 127

3.Shri Narayan Chand ... Respondents/Respondents

Appeal filed against the order passed by this Court dated 16.02.2018 in WP No.3468 of 2018.

Prayer in WP No.3468 of 2018: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari 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 appellant : Mr.S.Nagarajan

For Respondents : Ms.C.Keerthika
for Mr.M.Aravind Kumar

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The representation submitted by the appellant for upgradation of Annual Performance Assessment Report, grading and expunging the adverse remarks was returned by the Sector Headquarters BSF, Chennai, primarily on the ground that it was belated. However, after making an observation that it is belated, the authority considered the merits of the matter and rejected the representation. The said order was unsuccessfully challenged before the writ court. Feeling aggrieved, the appellant is before this Court.

2. We have heard the learned counsel for the appellant. We have also heard the learned counsel for the respondents.

3. The Annual Performance Assessment Report (APAR) in respect of the appellant for the year 2014-15 was passed awarding him over all grading of 4.28. However, there were certain adverse remarks against him in respect of his overstayed leave. The appellant submitted a representation for upgradation and expunging the adverse remarks. The representation was submitted after three months. Since the representation was submitted beyond fifteen days, the Competent Authority returned it.

4. It is not in dispute that fifteen days is the prescribed time for submitting the representation. It is also not in dispute that only after the said period, representation was submitted by the appellant. The appellant has given certain reasons for condoning the delay. The authority was expected to consider those reasons given by the employee for the delay in submitting the representation.

5. The Competent Authority without indicating any reasons muchless justifiable reasons, returned the application on the ground that it is belated. While returning the application on the ground of delay in making the representation, the authority was not expected to consider the matter on merits. In case of taking up the matter on merits, the appellant should have been given an opportunity to submit his response. It would not be correct on the part of the authority to consider the matter on merits, after recording a finding that the representation was belatedly submitted. This aspect was not considered by the learned Single Judge. We are therefore of the view that the appellant must succeed.

6. The order dated 19 August 2016, is set aside. We also set aside the order dated 16 February 2018 in W.P.No.3468 of 2018. The Writ Petition filed the appellant is allowed.

7. We direct the Competent Authority, Sector Headquarters BSF Chennai, to consider the representation submitted by the appellant on merits, including his explanation for the delay. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

8. The intra court appeal is allowed as indicated above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Director General,
BSF, CGO Complex,
Lodhi Road, New Delhi-3

2.The Deputy Inspector General
B.S.F. Sector Headquarters,
Chennai, Tamil Nadu,
Village Keerapakkam,
District Kancheepuram,
Chennai 600 127

+1 cc to Mr.S.Nagarajan, Advocate, S.R.No.34585

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W.A.No.967 of 2018

NA (CO)
SSM(12/06/2019).

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