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

+ **W.P.(C) 3804/2018**

RAMESH CHANDRA SINGH Petitioner
Through **Dr. S.S.Hooda, Advocate**

versus

UNION OF INDIA AND ORS. Respondents
Through **Mr. Rajesh Kumar with Mr.Pradeep
Kumar Jha, Advocates and Mr.Vinod
Kumar, DC, BSF.**

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

% **ORDER**
09.04.2019

Dr. S. Muralidhar, J.:

1. The Petitioner has challenged the adverse remarks in his Annual Performance Assessment Report ('APAR') for the years 2015-16, the order dated 21st February, 2017 passed by the Director General (DG), Border Security Force (BSF) rejecting his representation against the adverse remarks, the order dated 12th April, 2017 passed by the Deputy Inspector General (DIG) conveying the displeasure of the DG and the order dated 5th October, 2017 of the DG rejecting the legal notice sent on behalf of the Petitioner.

2. A perusal of the APAR for the years 2015-16 reveals that the

initiating/reporting officer, i.e. the DIG who drew up the APAR of the Petitioner wrote down in the 'PEN PICTURE' regarding the work of the Petitioner:

"A well built, disciplined and sincere officer. He took interest to complete the assigned tasks. His command & control over the troops is very good. He ensured domination of border. He looked after welfare of troops. During the period his overall performance was "very good".

3. However, when the APAR was then sent to the Reviewing Authority, viz., the Inspector General (IG), his remarks were as under:

"Partially agree. The Commandant who is supposed to lead his men from the front failed to visit the P.O. (when one of the constables of his Bn fired 18 rounds indiscriminately towards Pak side on border under the influence of liquor) timely and thereby showed lack of leadership."

4. When the above adverse remarks were communicated to the Petitioner, he made a representation on 22nd February, 2017 against Show Cause Notice (SCN) issued by letter dated 18th January 2016 tentatively proposing conveyance of the DG's displeasure. The Petitioner referred to the above incident of 25th May, 2015 in which a Constable at the Border Outpost (BOP) Vijeta, ex-52 Battalion, BSF fired 18 rounds towards the Pakistan side from his personal weapon under the influence of liquor. The allegation against the Petitioner was that being the Commandant of the Battalion, when the above information was conveyed to him, he should have immediately visited the place of occurrence (P.O). He, however, visited the P.O the next morning.

5. As it transpired, a Staff Court of Inquiry (SCOI) was constituted during

which statement of witnesses was recorded. The Petitioner was found 'blameworthy' by the SCOI. In his representation dated 22nd February 2017, the Petitioner contended that the SCOI itself was not conducted 'in a free and fair manner' and that even before the conduct of the SCOI, the then IG Frontier Headquarters, BSF, Rajasthan had made up his mind against the Petitioner.

6. By the order dated 23rd February, 2017 the DIG rejected the said representation by stating that "the adverse remarks in the said APAR have been endorsed after careful observation of his performance during the period". It was noted that the IG's advise had also been issued to the officer for not discharging his duties properly and therefore the 'below bench mark grading' and the adverse remarks were duly supported with documentary evidence.

7. The representation of the Petitioner dated 22nd February 2017 was finally rejected by the order dated 12th April, 2017, wherein the DIG conveyed the DG's 'displeasure' to the Petitioner. The Petitioner's legal notice was turned down on 5th October, 2017 by the DIG referring to certain past incidents of April, 2014.

8. In the counter affidavit filed on behalf of the Respondents, reference is again made to the same incident and the failure by the Petitioner to go to the P.O on the night of the incident. The incident is characterised as a grave one which had the potential to snowball into a major flare-up at the border. A reference is made in para 2 to the earlier advisories given to the Petitioner in

2000, 2001, 2009, 2012 and 2014. However, what we are concerned with is the particular year in question i.e. 2015-16 where the adverse remarks noted against the Petitioner in his APAR appear to have been triggered by the solitary incident at BOP Vijeta on 25th May 2015.

9. At this juncture it is necessary to refer to the policy document of the BSF with regard to “APAR procedure and instructions”. Para 2.26 of the said policy reads as under:

“2.26 The report should neither contain any assessment pertaining to a period prior or subsequent to the reporting period, nor should the assessment be based on a single or isolated instance. If the initiation/Reporting officer has insufficient personal knowledge about an officer, he should not hesitate to say so and should not endorse any part of the report. It is the responsibility of the initiating officer to counsel and guide the officer as well as to apprise him of his shortcomings, when noticed, throughout the reporting period. This obligation of duty should not be deferred to the time of initiation of APAR, so that adverse remarks, if any, do not come as a surprise to the officer reported upon.”

10. On the question of a solitary incident triggering the adverse remark, the Supreme Court has in *State of U.P v. Yamuna Shanker Misra (1997) 4 SCC 7* pointed out that

“the career prospects of a subordinate officer/employee largely depends upon the work and character assessment by the reporting officer. The latter should adopt fair, objective, dispassionate and constructive commends/comments in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives if not strictly adhered to in making an honest assessment, the prospect and career of the subordinate officer would be put to great jeopardy.”

11. Learned counsel for the Respondent referred to the SCOI during which, according to him, the Petitioner himself did not dispute the fact that he did not immediately go to the P.O on the night of the incident itself. Indeed the Petitioner does not dispute that he went to the P.O the first thing in the following morning. The question is whether that solitary instance warranted the adverse remarks? With the policy referred to being clear that an adverse remark should not be triggered by a solitary instance, it is plain that the IG did not keep the said policy in mind when he entered the adverse remarks.

12. In *M.A.Rajasekhar v. State of Karnataka and Another (1996) 10 SCC 369*, the Supreme Court noted that there had been an assessment of the officer on various parameters on which he was found to have satisfactory conduct. The remark that the officer “does not act dispassionately when faced with dilemma” was required to be pointed out with specific reference to instances when he did not perform that duty satisfactorily “so that he would have an opportunity to correct himself of the mistake”. With no such opportunity being given the adverse remarks were directed to be expunged. The decision in *Sukhdeo v. Commissioner, Amravati Division Amravati (1996) 5 SCC 103* is also to the same effect.

13. In the present case, it is seen that the Petitioner’s APAR contains remarks on 19 parameters which form the assessment of the Petitioner’s work during the year in question. It is contended by learned counsel for the Respondent that on the specific parameter of leadership skills, the Petitioner did not score high when compared to the other parameters. In other words, it

was sought to be contended that the Petitioner's lack of leadership skills was reflected in the marks given to him and this is what was considered and commented upon by the Reviewing Officer.

14. The Court is unable to agree with the above analysis of the APAR. As the Court sees it, after giving the remarks against the 19 parameters, the Reporting Officer i.e. the DIG, who actually oversees the work of the Petitioner throughout the year, gave a 'pen picture' where he specifically adverted to the leadership qualities of the Petitioner in positive terms. In particular, the Court notes that the Reporting Officer spoke about the Petitioner's command and control over the troops being 'very good' and also that he ensured "domination of the border" and looked after the 'welfare of troops'. If indeed the Reporting officer felt that the Petitioner's leadership qualities were not up to the mark, he would have not given the above pen picture. The DIG is the officer actually watching the performance of the Petitioner at close quarters. The Reviewing Officer, who has had no occasion to actually see the work of the Petitioner during the year in question, has gone only by the solitary incident referred to hereinbefore to justify the adverse remarks. This is contrary to the policy of the BSF extracted hereinbefore.

15. For the aforementioned reasons, the Court is unable to concur with the view of the Reviewing Authority that the Petitioner's APAR for the year in question i.e. 2015-16 ought to be downgraded. Consequently, the said adverse remark is directed to be expunged from the APAR of the Petitioner for 2015-16. Consequently, the order dated 23rd February, 2017 of the DIG

rejecting the representation of the Petitioner, the communication dated 12th April, 2017, communicating the displeasure of the DG and the further order dated 5th October, 2017 rejecting the Petitioner's legal notice are hereby set aside.

16. The consequential orders on the above basis including considering the Petitioner for further promotions will be issued within a period of eight weeks from today. The Petitioner will not be entitled to any arrears of pay in the promotional post. It is clarified that if any other person in the meanwhile has been promoted to the post of Commandant, that will not be affected by virtue of this order. However, the seniority of the Petitioner in the post to which he will be promoted would be appropriately fixed to reflect the seniority in the cadre of Commandant vis-a-vis his contemporaries as it was at the time of the downgrading of the Petitioner's APAR for 2015-16.

17. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 09, 2019

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