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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6965/2015

S. BHASKARAN

..... Petitioner

Through: Mr. Arun Srivastava, Advocate.

versus

UNION OF INDIA & ANR.

..... Respondent

Through: Mrs. Bharathi Raju, CGSC for R-1
and 2.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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16.12.2019

1. The Petitioner has prayed by way of this writ petition to quash his APAR for the period 05.05.2011 to 04.10.2011 and a direction to Respondents to hold Review DPC to consider case of his promotion to the post of A.C. (Min).

2. Brief facts of the case are that the Petitioner is at present working as Inspector (Min.) in 106th Battalion BSF. He had joined service on 11th September, 1979 and he remained posted at different places during his service career. On 5th May, 2011 Petitioner joined duty at Air Base, Ranchi under Reporting Officer Sh. Joseph Kerketta, the Assistant Commandant. On 8th June, 2011 the Reporting Officer Sh. Joseph Kerketta went on leave for 19 days till 29th June, 2011. On 3rd July, 2011 Petitioner availed leave of

19 days till 21.07.2011. From 5th August, 201, Petitioner attended Office Basic Management Service Course No.12 and Advance Management Service Course No.11 with EL (total 52 days) from 5th August, 2011 till 26th September, 2011. On 4th October, 2011 Petitioner was asked to return to 7th Battalion BSF and on 5th October, 2011, before leaving for 7th Battalion BSF Petitioner had submitted his duly filled APAR to Mr. Joseph Kerketta, AC and accordingly reported to his present unit.

3. However, on 13th March, 2013 the Petitioner was again asked to submit a fresh self appraisal for the period 5th May, 2011 till 4th October, 2011 which was duly filled by the Petitioner. During his 67 days tenure under Mr. Joseph Kerketta, the Petitioner noticed various malpractices of his immediate superior and made direct complaints to D.G. BSF on 22nd July, 2011, 25th July, 2011 and 27th September, 2011. Since, Petitioner had worked under Mr. Joseph Kerketta only for 67 days, so the said Reporting Officer was not competent to initiate APAR of the Petitioner for the period from 5th May, 2011 to 4th October, 2011. However, the said Assistant Commandant kept the APAR pending with a view to take revenge from the Petitioner.

4. In the first week of March, 2013 Petitioner's name was being considered for promotion. On 16th March, 2013 i.e. after a lapse of about one year and six months, Mr. Joseph Kerketta made adverse entries and downgraded the APAR of the Petitioner for the period from 5th May, 2011 to 4th October, 2011 from 'Very Good' to 'Good' on the ground that the Petitioner was in habit of writing directly to the Headquarters bypassing the channel and he

tends to manipulate facts and figures.

5. The Petitioner wrote to D.G, BSF on 21st March, 2013 requesting that since the Petitioner had not completed 90 days under Mr. Joseph Kerketta, hence he was not competent to initiate his APAR for the said period and he also referred to various complaints made by him. Petitioner submitted that only a Non-Initiation Certificate (NIC) should have been issued by Mr. Joseph Kerketta. However, representation of the Petitioner was ignored and on 8th August, 2013 adverse remarks of the Reporting Officer were accepted by the Reviewing Officer, Sh. S.K. Sood, IG, BSF without applying his wisdom.

6. On 21st January, 2014 the Petitioner wrote about non-receipt of copy of APAR to the higher authorities. On 4th February, 2012 Petitioner was supplied with the APAR for the period 2011-12. On 5th February, 2012 Petitioner made representation to IG, BSF against the adverse remarks and another representation dated 10th March, 2014 against below bench mark. On 25th April, 2014 Sh. P.C. Sharma, IG, BSF, who was junior to Sh. S.K. Sood, the Reviewing Authority rejected the representation of the Petitioner in limine. On 7th May, 2014 the Petitioner made representation to D.G. BSF for reviewing and upgrading his APAR for the period 5th May, 2011 till 4th October, 2011 but no response was received.

7. In the meantime, on 27th November, 2014 colleagues of the Petitioner were promoted as Assistant Commandants whereas name of the Petitioner was not considered by DG-BSF. All the other Annual Performance Reports

of Petitioner are 'Very Good' except the impugned APAR. The main challenges raised by the Petitioner are that he had not worked for 3 months (90 days) under the Reporting Officer Sh. Joseph Kerketta; the Reporting Officer has taken revenge by down grading him as Petitioner had made complaints against the Reporting Officer which earned him DG's Displeasure; the appeal was decided by a non-speaking order and many Inspectors below him were promoted while the Petitioner was ignored.

8. Notice was issued. Detailed counter affidavit was filed by the Respondents on 8th December, 2015. It is mentioned that while considering the promotion to the rank of Inspector (Ministerial) for the vacancy year 2011, the Petitioner was not considered by the DPC due to non-fulfillment of eligibility criteria, i.e. not qualified the mandatory courses and placed in Low Medical Category.

9. Aggrieved by the decision of the DPC, the Petitioner filed W.P. (C) No.10668/2009 before this Court. As per the interim direction of this Court, medical category of the Petitioner was reviewed and he was upgraded on SHAPE -1 on 28th December, 2010. The writ petition was disposed of with directions that if the Petitioner clears the next level foundation course, then he should be given a notional promotion from the retrospective date when the next person junior to him was promoted.

10. Accordingly, the Petitioner was detailed for next foundation course and on successful qualification of the said course, Review DPC was conducted and accordingly, he was promoted to the rank of Inspector retrospectively

with effect from 11th May, 2004.

11. The Petitioner underwent Advance Management Service Course from 12th September, 2011 to 24th September, 2011. As part of his duty he reported at Air Base, Ranchi on 1st May, 2011 vide signal dated 25th March, 2011.

12. Mr. Joseph Kerketta, Assistant Commandant was the then Base Commander of Air Base, Ranchi, who initiated PPAR of the Petitioner for the period 5th May, 2011 to 4th October, 2011. The casual leave is not to be termed as recognized leave in accordance with Rule 11 of Leave Rules and as per instructions contained in para 2.36 of BSF APAR Procedure & Instructions-2012. Leave taken or absence due to temporary duty/attachment/training course for short term duration need to be treated as relevant for the purpose of calculation of period of three months for writing of entries in APAR and as such PPAR for the period from 5th May, 2011 to 4th October, 2011 initiated by Sh. Joseph Kerketta, A.C. in respect of the Petitioner was in order.

13. Although as per the Petitioner, he had submitted his PPAR for the said period at Air Base, Ranchi for initiation but as per Sh. Joseph Kerketta, AC the Petitioner did not submit his PPAR form for the said period while proceeding to 7th Battalion BSF on detachment. Hence, his PPAR was not initiated till 2013 and the Petitioner was directed to submit his self appraisal for initiation of PPAR and on receipt of PPAR, Sh. Joseph Kerketta, AC, the then Base Commander was to give his report for the said period.

14. The representation against the adverse remarks was rejected by the Competent Authority. Petitioner was warned/advised on two earlier occasions for leveling false allegation against a BSF doctor and on receipt of the said warning, he again asked clarification of the said warning. Commandant 130th Battalion BSF advised the Petitioner to refrain from indulging in writing such applications and to improve knowledge of language. The Petitioner expressed regret for the said action/omission.

15. While considering DPC for promotion from the rank of Inspector (Min.) to Assistant Commandant (Min.) during the vacancy year 2013-14 on 14th March, 2013, the name of the Petitioner was also considered but the DPC adjudged him unfit for promotion due to inconsistent records, i.e. adverse remarks endorsed in his ACR for the year 2008-09. A Review DPC was held on 15th July, 2013 for the vacancy year 2012-13 for considering promotion of the Petitioner with effect from 1st April, 2012. The Review DPC also adjudged him unfit for promotion due to inconsistent record of service, i.e. adverse remarks endorsed in ACR for the year 2008-09.

16. The Petitioner then requested to expunge the adverse remarks endorsed in PPAR for the period from 5th May, 2011 to 4th October, 2011 and issuance of NIC for the said period. This representation was rejected by the Competent Authority after due consideration. In 2014-15 in a DPC held on 3rd April, 2014, the Petitioner was assessed unfit due to adverse remarks in his ACR for the year 2008-09 and in PPAR for the year 2011-12.

17. Again a DPC held on 20th March, 2015 for the posts in the year 2015-16, in which the Petitioner was considered but declared unfit due to adverse remarks endorsed in PPAR for the period from 5th May, 2011 to 4th October, 2011. The request of the Petitioner for expunging the adverse remarks in the PPAR for the period from 5th May, 2011 to 4th October, 2011 was considered by the appropriate authority and rejected.

18. It has been submitted by Respondents that the claim by the Petitioner that he had physically worked under Sh. Joseph Kerketta, AC at Air Base Ranchi only for 67 days is incorrect. The Petitioner joined Air Base Ranchi on 1st May, 2011 and returned to 7th Battalion BSF on 5th October, 2011. Out of these 158 days, the Petitioner underwent Office Basic Management Service Force from 8th August, 2011 to 3rd September, 2011 and Advanced Management Service Force from 12th September, 2011 to 24th September, 2011 and he availed six days Earned Leave from 5th September, 2011 to 10th September, 2011.

19. As per the rules, Casual Leave is not a recognized form of leave and is not subject to any rules made by Government of India and an official on Casual Leave is not treated as absent from duty. Hence, after excluding the period spent on Courses and Earned Leave, the Petitioner had served under Sh. Joseph Kerketta, A.C for a period of more than three months and Sh. Joseph Kerketta was competent to initiate the PPAR for the period from 1st May, 2011 to 4th October, 2011.

20. It is also submitted that although Petitioner reported at Air Base Ranchi

on 1st May, 2011 but he submitted his PPAR from 5th May, 2011 with ulterior motives, which proves that he was in the habit of manipulating facts. The self-appraisal was submitted by the Petitioner on 13th March, 2013. The Reporting Officer had assessed the Petitioner based on his actual performance during the period in question. The Petitioner was even earlier issued warning letters for leveling false allegations against BSF Officials in 2009. He was graded 'Good' after due consideration by IG, Sh. S.K. Sood. All his representations were duly replied to and disposed of as per rules. The Petitioner had submitted his PPAR from the period 1st May, 2011 to 4th October, 2011 in the year 2013 and by that time DIG, TC&S, Hazaribagh was promoted to the rank of I.G. Hence, Sh. S.K. Sood had reviewed and accepted the PPAR in his capacity of DIG on mentioning the rank the Officer was holding at the time of reviewing and accepting and Sh. P.C. Sharma being Inspector General was very much competent to consider the representation regarding PPAR of Inspectors, being superior officer.

21. The Petitioner has filed rejoinder to the counter affidavit. On 7th September, 2017 the following order was passed by this Court:

“Counsel for the petitioner submits that the Reporting Officer against whom the petitioner has made complaints and who had recorded the ACR dated 16th March, 2013 was found guilty for embezzlement on the basis of the complaints made by the petitioner. He has been retired from service with ‘*DG Displeasure*’.

Learned counsel for the respondents would obtain instructions on the said aspect. We will also give an opportunity to the respondent to file an affidavit explaining their stand or the response on the question of complaints made by the petitioner

against the Reporting Officer. The said affidavit would be filed within a period of four weeks. Response to the affidavit may be filed within two weeks, thereafter.

Re-list on 13th December, 2017.

A copy of the order be given dasti for the parties, under the signatures of the Court Master.”

22. Accordingly an affidavit was filed by the Respondents on 24th November, 2017. The Petitioner was given a chance to file counter affidavit to the said affidavit but no such affidavit was filed by Petitioner.

23. On 24th April, 2019 an order was passed by this Court and in response thereto the Petitioner has handed the Court a tabulation regarding his leaves. Respondent has also submitted details of leaves availed by the Petitioner alongwith course periods. A short tabulation is as under:

“1. INSPR (MIN) S BHASKARAN (PETITIONER)

Period of stay at Air Base Ranchi

Particulars	Date	Total Days
Reported at Air Base Ranchi from 113 Bn BSF	01.05.2011(FN)	158 days
Departed from Air Base Ranchi to 07 Bn BSF	05.10.2011(AN)	

Course/Earned/Casual leave

Particulars	From	To	No. of Days

Office Basic Management Service Course	08.08.2011	03.09.2011	27 days
06 Days E/Leave	05.09.2011	10.09.2011	06 days
Advance Management Service Course	12.09.2011	24.09.2011	18 days

Casual Leave

Particulars	From	To	No. of Days
Casual leave	09.06.2011	26.06.2011	18 days

24. Written submissions were also filed by both the sides. We have heard arguments. We are of the considered view that as far as the period for which the Petitioner has worked under the Reporting Officer, Sh. Joseph Kerketta, A.C., it is relevant to note the following:

- i) Reporting at Air Base Ranchi: 1st May, 2011
- ii) Departed from Air Base Ranchi to 7th Battalion BSF: 5th October, 2011
- iii) Total period at Air Base, Ranchi: **158 days.**
- iv) Petitioner attended Office Basic Management Service Course from 8th August, 2011 to 3rd September, 2011: **(-) 27 days**
- v) Earned Leave from 05.09.2011 to 10.09.2011: **(-) 6 days**
- vi) Petitioner attended Advanced Management Service Course from 12th September, 2011 to 24th September, 2011: **(-) 13 days.**

25. It clearly shows that the Petitioner had worked under Sh. Joseph

Kerketta, A.C. for 112 days [158 – 46 (27+6+13)]. The case of the Petitioner is that he was on Casual Leave from 3rd July, 2011 to 21st July, 2011, i.e. 19 days, so, this Casual Leave should also be excluded from the total number of days to work out the period for which he had worked under Sh. Joseph Kerketta, A.C. The Petitioner has failed to produce any rule on record which allows exclusion of period of Casual Leave from the period which is to be shown as working under the Reporting Officer.

26. On the other hand, case of Respondents is that as per the rules, Casual Leave is not a recognized form of leave and is not subject to any rules made by Government of India and an official on Casual Leave is not treated as absent from duty. Hence, the contention of the Petitioner that he had worked under Sh. Joseph Kerketta, A.C. for less than 90 days during the period from 1st May, 2011 to 5th October, 2011 is unfounded, baseless and vague and this plea is rejected.

27. The next contention of the Petitioner is that Sh. Joseph Kerketta had a grudge against him as he had made complaints against him during the relevant period and due to which Sh. Joseph Kerketta, A.C. had earned 'Displeasure' of the D.G. BSF. In the additional affidavit filed on behalf of Respondents, it is mentioned that based upon the complaint dated 5th October, 2015 made by the Petitioner against Sh. Joseph Kerketta regarding false claim of transfer TA, a Staff Court of Enquiry followed by Record of Evidence was conducted by Department and Sh. Joseph Kerketta was found blameworthy for claiming transfer TA with discrepancies in supporting documents and, hence, D.G.'s Displeasure was issued on 31st August, 2017.

28. It has been clarified that this Displeasure has nothing to do with the remarks endorsed in the PPAR of the Petitioner as the said endorsement was done in the year 2013 whereas the complaint was made by the Petitioner in the year 2015. This complaint was made after two years from the date when adverse remarks were endorsed by Sh. Joseph Kerketta.

29. It is stated that the Petitioner is habitual in making false complaints and accusations by bypassing the prescribed channel of correspondence. Petitioner had also made two complaints dated 19th February, 2016 and 25th February, 2016 against Sh. Joseph Kerketta, A.C. regarding irregularities in purchase and misuse of Government transport while he was Commander BSF at Air Base Ranchi. Both these complaints were enquired but could not be substantiated. Hence, the Petitioner was issued advice of IG to desist from levelling baseless allegations against superior officer. All other complaints made by the Petitioner were examined and found false and baseless. However, the complaint dated 5th October, 2015 was found to be partially true. In view of the above, the second allegation of the Petitioner that he was downgraded by Sh. Joseph Kerketta because he had made complaints against him is again without any basis and the same is thus rejected.

30. The third ground taken by the Petitioner is that the Accepting Authority and Reviewing Authority of PPAR were same and the order passed in appeal is a non-speaking order passed by an Officer junior to the Reviewing Authority. The Petitioner has mentioned in his brief synopsis that Sh. S.K.

Sood had acted both as the Reviewing Authority and the Accepting Authority of the PPAR, which is against the principles of natural justice and against the OM dated 23rd July, 2009. It has been further submitted that the order dated 25th April, 2014 is a non-speaking order and passed by an Officer who was not the Competent Authority being below the rank of Accepting Authority as Sh. S.K. Sood was Inspector General whereas Sh. P.C. Sharma who decided the appeal vide order dated 25th April, 2014 was also an Inspector General.

31. In the written synopsis submitted on behalf of the Respondents it is clarified that the Air Base Ranchi is placed directly under the control of TC&S Hazaribagh and Sh. P.C. Sharma, IG BSF, TC&S, who was also the Accepting Authority was very much competent to Review and accept the APARs and also to consider and reject the representations of Government servants serving under this command. Sh. S. K. Sood in the capacity of DIG BSF had reviewed the PPAR of the Petitioner for the alleged period because the Petitioner had submitted his PPAR for the alleged period pertaining to the year 2011 in the year 2013 by which time DIG TC&S Hazaribagh was promoted to the rank of IG and Sh. S. K. Sood, IG had graded the Petitioner as 'Good' after carefully considering the performance of the Petitioner for the said period.

32. The contention of the Petitioner that Sh. S.K. Sood had acted both as Reviewing Authority and Accepting Authority has no basis. The confusion which the Petitioner had tried to create regarding Accepting Authority, Sh. S.K. Sood, IG and Sh. P.C. Sharma, who decided his appeal against adverse

remarks, being also as an IG stands clear in view of the period for which the PPAR was written and the dates on which the Officers were acting in their relative capacities of the DIG/IG.

33. In view of the above, there is nothing in the grounds raised by the Petitioner which entitles him to the relief claimed, i.e. for quashing and setting aside the impugned PPAR for the period 5th May, 2011 to 4th October, 2011 and as a consequence to pass directions to Respondents to hold a Review DPC and consider the case of Petitioner for promotion.

34. The writ petition is dismissed.

S. MURALIDHAR, J

TALWANT SINGH, J

DECEMBER 16, 2019

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