

\$~22

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

+ **W.P.(C) 7812/2017**

INSPECTOR NEERAJ KUMAR

..... Petitioner

Through: Ms. Ankita Patnaik, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms. Abha Malhotra, Senior Counsel.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

%

04.12.2019

1. On 27th March, 2019 the following order was passed:

“1. In the present case the Petitioner has been deprived of the second MACP only because of an adverse entry in his PPAR for a period of five months between 1st April 2011 to 1st September 2011.

2. A copy of the PPAR has been enclosed as annexure 'P4' with the petition. It is seen that while it contains the remarks of the Reporting Officer and Reviewing Officer the column where the Accepting Officer ('AO') has to sign is left blank.

3. The explanation given for the AO not signing is that he got repatriated even before he could sign.

4. The consequence of the AO not signing the PPAR, according to the Respondents is that the PPAR which has signed by the Reporting Officer and the Reviewing Officer has to be accepted as such. This is, however, contested by counsel for the Petitioner. The correct legal position in this regard is not clear. Counsel for the Respondents seeks some time to clarify the position by filing a further affidavit on this aspect within four

weeks.

5. Another issue raised by counsel for the Petitioner is that the PPAR for the aforementioned period was initiated after the Petitioner had been relieved from the Unit in which he was serving during this period. According to the Petitioner, in terms of para 2.7 of the applicable instructions no such PPAR could have been initiated and that it was time barred. On this aspect also counsel for the Respondents states that she will seek instructions.

6. There are many other points raised by the Petitioner to assail the PPAR in question, those points are reserved to be argued by both counsel for the Petitioner and Respondents after clarity on the above two issues.

7. List on 15th May 2019.”

2. Today, the Court is informed that the Petitioner was deprived of the benefits of the 2nd financial upgradation under the MACP scheme not only because of the adverse entry in his Part Performance Appraisal Review (‘PPAR’) for the period of five months between 1st April, 2011 to 1st September, 2011, but also on account of the below bench mark grading of 4.64. The benchmark is 6. The fact however remains that the below bench mark grading was also in the PPAR of the same period.

3. Pursuant to the above order, an additional affidavit has been filed by the Respondents in which it is stated that the self-appraisal relating to the PPAR initiated in the case of the Petitioner for the aforementioned period was submitted by the Petitioner only on 11th July, 2012. This, however, contradicts what has been stated in the counter affidavit on behalf of the Respondents, where, in reply to Ground F, it is stated that the main cause of the delay of the PPAR for the aforementioned period was that “the PPAR

form filed up 1st time by the Petitioner was having a lot of cutting and overwriting by the Petitioner himself which could not be processed and same was returned back by DIG (G), i.e. Reviewing officer for filing it fresh.”

4. Although the Respondents are unable to give the precise date on which the self appraisal was initially submitted by the Petitioner and when it was returned to him by them for filing it afresh, it appears that the PPAR filed afresh is dated 11th July, 2012. The Reporting Officer gave his pen picture on 17th July, 2012 with an overall grade score of 4.64 and the Reviewing Officer agreed with the adverse remark on 20th July, 2012.

5. In the additional affidavit it is further stated that in terms of the APAR Procedures and Instructions, 2012, “where the Reporting Authority, the Reviewing Authority and the Accepting Authority have not seen the performance of a member of the service for at least three months during the period of which the report is to be written, an entry to that effect shall be made in Confidential Report for any such period by the Government.”

6. As far as the present case is concerned, Mr. A. K. Jain, IG, the Accepting Authority at the relevant time, demitted office as such on 2nd June, 2012 and was repatriated to his parent cadre in the IPS. A noting to this effect has been made by his Private Secretary (‘PS’) in the PPAR. Therefore, by the time the PPAR was even taken up for consideration, the Accepting Authority had already demitted office. Therefore, it was going to be impossible for this exercise to be completed as all the time schedules had already been exceeded.

7. The Court is unable to get a proper explanation from the Respondents as

regards the delay of over 10 months in letting the Petitioner know that his self appraisal had cuttings, and therefore, was required to be submitted afresh. The delay, therefore, appears to be on the side of the Respondents leading to a situation where it was not going to be possible to complete the PPAR, which, in turn, allowed the adverse remark and the below bench mark grading to remain. It is also the case of the Respondents that without the Accepting Authority's remarks, the PPAR remains incomplete.

8. At this stage, learned counsel for the Respondents sought to place reliance on a decision dated 18th March, 2019 of the High Court of Punjab and Haryana in C.W.P. 317/2019 (*Dr. Ashok Khemka v. State of Haryana*) where, in the facts of that case, the High Court had expunged the remarks of the Accepting Officer and restored the opinion and grading of the Reviewing Authority. However, in the present case, with the Accepting Authority not being in a position to append his remarks, the question would still arise whether the PPAR with only the remarks of the Reporting and Reviewing Authorities can be acted upon.

9. While the prescribed procedure for the maintenance of APARs does not envisage an Accepting Authority appending remarks after he has ceased to remain as such, in the peculiar facts of the present case where the delay cannot be attributed to the Petitioner, the Court considers it appropriate to direct that the Petitioner's PPAR for the aforementioned period together with his APARs for a period of 5 years preceding thereto and a period of 5 years succeeding thereto shall be placed now before the same Officer, Mr. A. K. Jain by 15th January, 2020. In order that no prejudice is caused to the Petitioner, the Court directs that Mr. Jain should give his remarks, after an

overall consideration of the performance of the Petitioner as reflected in the above APARs, positively by 31st January, 2020. The Petitioner will be informed of the remarks of Mr. Jain, the final decision regarding the aforementioned PPAR and also b provided a copy thereof by the Respondents positively by 14th February, 2020.

10. If, as a result of this exercise, the Petitioner is found eligible for grant of further promotions at par with his batch mates, then the Respondents will initiate that process as well and issue the necessary orders within a further period of 12 weeks thereafter. If on the other hand the Petitioner is aggrieved by the decision and remarks communicated to him, it will be open to him to seek appropriate remedies in accordance with law.

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

12. A copy of the order be given *dasti* under the signatures of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 04, 2019/pa