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

+ **W.P.(C) 9175/2017**

DR. UMESH SIKARWAR Petitioner
Through: Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Nirvikar Verma, Advocate

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **13.11.2019**

1. The Petitioner, who is a Medical Officer in the Central Reserve Police Force ('CRPF'), has filed this petition seeking to quash orders dated 13th March, 2017 and 29th March, 2016 whereby his representation dated 22nd August, 2016 seeking expunction of the adverse remarks and the grading of 'Below Good' from his Annual Performance Appraisal Report ('APAR') for the period 21st August, 2011 to 31st March, 2012 was rejected by the Respondents.

2. Since as a result of the above adverse remarks and below benchmark grading the Petitioner was not considered fit for promotion as Senior Medical Officer from 23rd March, 2014 by the Departmental Promotion Committee ('DPC'), consequential relief prayed for is that a review DPC should be held after such expunction of adverse remarks and below benchmark grading, and, if found fit, the Petitioner be granted promotion

from the date his juniors stood promoted.

3. The facts in brief are that the Petitioner joined the CRPF as Medical Officer ('MO') on 23rd March, 2010 after completion of his MBBS. He was graded 'Very Good' for the period 29th May, 2010 to 31st March, 2011 when he was posted with the 170th Battalion in Bijapur. Again, for the succeeding period i.e. 1st April, 2011 to 20th August, 2011 he was graded 'Very Good' in his APAR.

4. According to the Petitioner in August, 2011 one Mr. Rakesh Rao (Respondent No. 4) came to be posted as Commandant in place of the previous Commandant. The Petitioner alleges that Respondent No. 4 on various occasions directed the Petitioner to commit illegal acts which he resisted. It appears that the Petitioner filed a complaint dated 4th July, 2012 against Respondent No. 4 and in retaliation Respondent No. 4, being the Initiating Officer (IO), made certain adverse entries in the Petitioner's APAR and gave him a 'below good' grading for the relevant period i.e. 21st August, 2011 to 31st March, 2012. The Petitioner states that despite the above adverse entry the Reviewing Officer ('RO') graded the Petitioner as 'Good' and the Senior Reviewing Officer ('SRO') graded him as 'Very Good'. The final grading for the period in question was therefore 'Very Good'.

5. According to the Petitioner, since the ultimate grading in the APAR was 'Very Good', there was no occasion for the Petitioner at that stage to make any representation. The Petitioner was transferred out of the 170th Battalion

and posted to the 16th Battalion at Mathura in August, 2012. The Petitioner was on leave for the period 1st April, 2012 to 6th August, 2012. Thereafter for the period 10th August, 2012 to 20th November, 2012 he was again graded as ‘Very Good’. It is submitted that since then the Petitioner’s grading has always remained as ‘Very Good’.

6. In a tabular column for the period 29th May, 2010 to 31st March, 2015 the Petitioner has depicted his various grading both by the Initiating Officer (‘IO’) and the Accepting Authority as under:

Sl. No.	Period	Initiated by	Grading	Accepting Authority
1.	29.05.2010- 31.03.2011	Mr. Mathews A. John	V. Good	V. Good
2.	1.04.2011- 20.08.2011	Mr. Mathews A. John	V. Good	V. Good
3.	21.08.2011-31.03.2012	Mr. Rakesh Rao	Below Good	V. Good
4.	01.04.2012-06.08.2012	Not Initiated		
5.	10.08.2012- 20.11.2012	Mr. K. L. Lamba	V. Good	
6.	21.11.2012- 31.03.2013	Mr. R. G. Verma	V. Good	V. Good
7.	01.04.2013-09.09.2013	Mr. R. G. Verma	V. Good	V. Good
8.	10.09.2013- 31.03.2014	Mr. S. N. Habib	V. Good	V. Good
9.	20.10.2014- 31.03.2015	Brajesh Pratap Singh	V. Good	V. Good

7. The Petitioner’s case for promotion to the rank of Senior Medical Officer (‘SMO’) was taken up in 2014. However, in the list of officers promoted as SMOs published on 7th December, 2015 by the Respondents, the Petitioner’s name did not figure. When the Petitioner sought reasons he was only

informed that there were adverse remarks by the IO in his APAR for the relevant period. The said adverse remarks read as under:

“So far his medical profession and hospital management is concerned, his performance meets requirement. But he is always scared of going to coys visit because of risk factors on account of naxal menace in Bijapur (GC). During the period under report, he could not dare moving out with troops for ops duty even once despite lot of persuasion and motivation. At times, he has shown disobedience of orders and cowardice. He needs attitudinal improvement towards his responsibilities as MO of the Force. His over all work and conduct during the period under report remained 'Below Good'.”

8. Aggrieved by his not being promoted as SMO along with his batchmates, the Petitioner submitted a representation dated 27th January, 2016 to the Director General ('DG'), CRPF. This was returned on 3rd February, 2016 since it was not in accordance with Standing Order No. 4/2015. The Petitioner then sought an interview with the DG and made a representation on 21st February, 2016 requesting expunction of the adverse remarks as well as the 'Below Good' grading by the IO in his APAR. By a letter dated 29th March, 2016 the representation was rejected in view of Standing Order No. 4/2005 on the ground that the representation was time barred.

9. The Petitioner then submitted a further representation to the Home Secretary in the Ministry of Home Affairs which was in turn forwarded to the office of the DIGP, CRPF, J&K and thereafter to the IGP, Chhattisgarh Sector, CRPF. This was rejected on 13th March, 2017.

10. This Court has heard the submissions of Mr. Ankur Chhibber, learned

counsel for the Petitioner and Mr. Nirvikar Verma, senior panel counsel for the Respondents.

11. The Court has been shown the entries in the APAR. While the aforementioned adverse entry was indeed made by the IO, the remarks by the RO read:

“The MO is professionally ‘Good’ and operationally or moving to coys in the interiors. He hesitates.”

12. When the matter travelled up to the SRO his remarks were:

“A Very good & professionally sound Medical Officer with particular emphasis on prevention and control of diseases. His clinical acumen and timely treatment and evacuation of patients is very good.”

13. Mr. Chhibber has drawn attention to the entries in the records that show that the Petitioner regularly attended to the patients even in the field. Be that as it may, the Court observes that the overall performance of the Petitioner MO in the period between 2010 and 2015, barring this short period of eight months between 20th August, 2011 to 31st March, 2012, has been consistently graded as ‘Very Good’. Even the adverse remarks regarding the Petitioner hesitating are not borne out from the documents placed on record by the Petitioner which have been referred to hereinbefore. Although the IO and the APAR purportedly attached two documents about advisories given to the Petitioner, those advisories have in fact not been placed on record even by the Respondents. On his part, it is the case of the Petitioner that he

never received any memo, much less any warning or advisory during the aforementioned period.

14. In the circumstances, the Court is of the view that the below benchmark grading of 'Below Good' and the adverse entry by the IO ought not to be allowed to remain in the Petitioner's APAR for the aforementioned period. It must be recalled that barring this short period the Petitioner's performance has been consistently above the benchmark with no adverse entries. On a similar issue this Court in its order dated 10th April, 2019 in W.P.(C) No. 10486/2017 (*Vidya Shankar Tiwari vs. Union of India*) had this to observe:

“12. The admitted position is that there is no previous warning issued to the Petitioner in writing seeking his explanation for his unsatisfactory work. This is contrary to the legal position explained by the Supreme Court in *State of U.P v. Yamuna Shanker Misra* (1997)4 SCC 7 and *Sukhdeo v. Commissioner Amravati Division, Amravati* (1996)5 SCC 103.

13. The question regarding expunction of adverse entries in an APAR, when it is the only one in a series of years has been discussed with this Court in its judgment in *Inspector G.D Krishna Rajak v. Union of India* 2012 SCCOnline Del 4454. It was observed in that case that “it is not possible that for 11 years a person is either 'Very Good' or 'Outstanding' and then for one year he drops to 'Average' and then regains 'Very Good' and 'Outstanding' in the next three years.” Similarly, in the present case barring 2013-14 in a series of years from 2011-12 and up to 2016-17 the Petitioner's grading is either 'Very Good' or 'Outstanding'.”

15. The facts of the present case are more or less similar.

16. Learned counsel for the Respondent drew attention to an Office

Memorandum dated 11th April, 2007 issued by the DoPT laying down guidelines for the DPC and drew attention to a judgment of the Supreme Court in *Union of India vs. S. K. Goel (2007) 14 SCC 641* recognising that the DPC enjoys full discretion to devise its methods and procedures for an objective assessment of the suitability and merit of a candidate.

17. While as a general proposition the above legal position is unexceptionable, in the present case the Court has only been called upon to examine whether the said adverse remarks at the below benchmark grading in the Petitioner's APAR for the aforementioned limited period of eight months were justified. In other words, the Court is not examining the decision of the DPC not to promote the Petitioner as SMO at the relevant point in time.

18. Needless to say, as a result of the expunction of the adverse remarks and the below benchmark grading, the overall grading given by the SRO for period between 20th August, 2011 to 31st March, 2012 will be the grading that will be taken into account by the review DPC for the period in question as a result of the present judgment.

19. For the aforementioned reasons, while ordering the expunction of the adverse remarks in the Petitioner's APAR for the aforementioned period and the below benchmark grading, the Court directs the review

DPC to be convened to consider the case of the Petitioners for promotion as SMO from the date that his juniors were so promoted and if found suitable to be given the notional promotion from that date without any monetary benefits but with all other benefits. The notional pay be fixed from the date of the Petitioner's promotion on par with that of his juniors if the Petitioner is found fit for such promotion by the DPC. The above exercise be completed within a period of twelve weeks from today.

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

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

S.MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 13, 2019

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