IN THE HIGH COURT OF MANIPUR

AT IMPHAL

W.P.(C) No. 1193 of 2018

1. Shri Sunil Kumar, Commandant-87 Bn, CRPF (IRLA-4040) age 50 years S/O late Sh. R.B. Prasad, H. No. 1, land Number 8, Bank colony, Ram Lakhan path, Gola Road, Danapur, Patna, Bihar, PIN- 801503, presently posted as Commandant of 87 Bn. CRPF, Jiribam, Distt- Jiribam, Manipur PIN-795116.

... Petitioner

-Versus -

1. Union of India represented through its Secretary (Ministry of Home Affairs) North Block, Government of India, New Delhi-110001

2. The Director General of Police, CRPF, CGO Complex, Lodhi Road, New Delhi-11003.

3. SDG, NEZ hqr, GC, CRPF campus, 09 mile p.o amerigog Guwahati, Assam 781023.

4. IGP(Pers), Directorate, CRPF, CGO Complex, Lodhi Road, New Delhi-110003.

5. The IGP, Manipur and Nagaland Sector, CRPF GC campus, Langjing, Imphal Manipur-795113.

6. DIGP(Range) Imphal, CRPF, GC campus, Langjing, Imphal Manipur-795113.

... Respondents

B E F O R E
HON'BLE MR. JUSTICE MV MURALIDARAN

For the Petitioner	::	Mr. M. Devananda, Adv.
For the respondents	::	Mr. S. Vijayanand Sharma, Adv.
Date of Hearing	::	29.01.2020.
Date of Judgment & Order	::	27.02.2020

JUDGMENT & ORDER

(CAV)

This writ petition has been filed by the petitioner to set aside the impugned rejection order dated 6.7.2018 passed by the second respondent, whereby downgrading APAR for the period 23.6.2016 to 31.03.2017 and to direct the respondents to consider the petitioner to his next promotion i.e., Commandant to DIG without taking the APAR for the period from 23.6.2016 to 31 3.2017.

[2]. The case of the petitioner is that he joined CRPF on 1.12.1994 as an Assistant Commandant and got all promotion on time. He was promoted to the rank of Commandant on 5.10.2009 and took the rank of Commandant on 3.11.2009 and posted to 195 Bn. The petitioner remained posted in 195 Bn. Dantewada Chattisgarh, 6th Bn. Katra J&K and 87 Bn. Jiribam Manipur during last three postings as Commandant. The further case of the petitioner is that as Commandant, his grading in APAR remained either "very good" or "outstanding" for last 9 years as under:

Sl.No.	*Year*	*APAR Grading*
1	2009 to 2010	Very Good
2	2010 to 2011	Very Good
3	2011 to 2012	Very Good
4	2012 to 2013	Outstanding
5	01/04/2013 to 31/03/2014	Outstanding
6	01/04/2014 to 31/03/2015	Outstanding
7	01/04/2015 to 31/03/2016	Outstanding
8	23/06/2016 to 31/03/2017	Good (below bench mark)
9	01/04/2017 to 31/03/2018	Very Good

[3]. According to the petitioner, the office has recorded his performance as 'Good' even when no communication/advisory/warning was issued to him by the reporting, reviewing/accepting authorities for the APAR period 2016-2017. Hence, the remarks recorded are not justified and commensurate with the performance.

[4]. The petitioner has given a brief resume of work done during the reporting period including detail of significant contribution made by him in the office through his work for APAR period 2016-2017 to the reporting authority and the reporting authority accepted the self appraisal of the petitioner. However, the reviewing authority has arbitrarily downgraded the numerical grading given by the reporting authority in all the attributes related to "work output", "personal attributes" and functional competency" without giving any cogent reasons, as there is no any adverse communication made between the petitioner and the reporting/reviewing authorities for the APAR period 2016-2017.

[5]. According to the petitioner, by virtue of the downgrading of numerical grading by the reporting authority and reviewing authority, the over all grade of the petitioner has been reduced from "outstanding" to "good" and the over all grading of "good" is below the benchmark and adverse for consideration for promotion. According to the petitioner, the reporting and reviewing authorities have written APAR without a high sense of responsibility, without due course and attention, without trust picture and the same is in violation of instructions of writing APAR with malafide intention. On 19.9.2017, the petitioner has given a representation to the second respondent through the third respondent and the same was rejected by the second respondent by the impugned order, which is challenged in this writ petition.

[6]. Resisting the writ petition, the respondents filed affidavit-in-opposition stating that the petitioner was rewarded with commendation disc and letters in past for his praiseworthy performance, but at the same time, he was issued an advisory remark by the second respondent for slack supervision on his part when he allowed Shri Anjan Kumar Jha, AC to act in a complacent and irresponsible manner. Though the acts of omission on his part called for a stern action, yet taking into account the length of service rendered by the petitioner and his future service prospects, a lenient view was taken and an advisory was issued to him on 31.1.2017. Hence, the department had never treated the petitioner with biased attitude.

[7]. It is stated that there were allegations against the petitioner and considering the length of service rendered by him, he was advised to be more careful in future vide letter dated 29.11.2017 by the ADG, J&K Zone. Further, during the period under report, the petitioner had not performed any special task and therefore, the assessment made during the period under report, is based on his performance. It is also stated that the petitioner was not found to be serious about his duties and responsibilities which is reflected in his poor administration and men-management. As per charter of duties, the Commandant level officer has to take interest to provide welfare of his men and their basic amenities. During the visit to Coys by reporting/reviewing officer, it was observed by IG, M&N that the

petitioner did not take any interest in the affairs and welfare of the personnel of his Unit.

[8]. It is further stated in the affidavit-in-opposition that it is the duty of every reporting/reviewing officer to make an objective assessment of his subordinate's work and qualities. As per S.O.No.4/2015, the reporting and reviewing officer who observes the work and conduct of the petitioner have graded him as "good" based on the work and conduct of the officer in that particular APAR period. The APAR is written on the basis of conduct of the petitioner during the period under report. After considering the work and conduct for whole period, his performance was assessed as "good" by the reporting/reviewing officer and appeal filed by the petitioner was dismissed by the DG, CRPF being the Appellate Authority by the impugned order. The petitioner's assessment has been correctly made as "good" on the basis of his performance during the period under report and not just on the basis of his grading awarded during the previous years. Therefore, there is no merit in this writ petition and the same is liable to be dismissed.

[9]. Assailing the impugned rejection order, the learned counsel for the petitioner submitted that the downgrading of numerical grading by the reporting/reviewing authorities as "good" from "outstanding" is without evidences and the overall grading of "good" is below the benchmark and adverse for consideration for promotion. He would submit that the

authorities have written the APAR for the period under report without a high sense of responsibility and also without due course and attention. While preparing APAR, the authorities have failed to follow the Standing Order No.4/2015.

[10]. Learned counsel further submitted that being aggrieved of the downgraded APAR from 23.06.2016 to 31.3.2017, the petitioner has filed appeal before the Director General, CRPF. However, the Appellate Authority without applying his mind dismissed the representation/appeal as devoid of merits on 6.7.2018 and it shows that all three authorities have written APAR with no application of mind. Stating that the grade "good" for the year under report is affecting the promotional avenue of the petitioner, the learned counsel for the petitioner prayed for allowing the writ petition. In support, the learned counsel also relied upon the following decisions:

(i) M.A.Rajasekhar v. State of Karnataka and another, reported in (1996) 10 SCC 369.

(ii)S.T.Ramesh v. State of Karnataka and another, reported in (2007) 9 SCC 436.

(iii)East Coast Railway and another v. Mahadev Appa Rao and others, reported in (2010) 7 SCC 678.

(iv)G.Vallikumari v. Andhra Education Society and others, reported in (2010) 2 SCC 497.

(v)W.P.(C) No.5288 of 2012, decided on 28.8.2012 on the file of the Delhi High court (Insp./GD Krishna Rajak v. Union of India and others).

[11]. Per contra, the learned counsel for the respondents submitted that APAR is written on the basis of the conduct of the petitioner during the period under report and also after considering the work done by the petitioner for the whole period. In fact the reporting officer has assessed the APAR for the period from 23.06.2016 to 31.03.2017 of the petitioner and graded him as "good" on basis of his work performance and the reviewing officer had reviewed the APAR of the petitioner and graded him as “good". Therefore, there is no violation in grading the petitioner as "good" for the period under report. After considering the relevant materials produced before the Appellate Authority, the Appellate Authority was also of the view that the grade "good" awarded by the reporting/reviewing authorities is correct and accordingly, rejected the appeal petition by the petitioner. Since the conclusion arrived at by the authorities are based on the performance of the petitioner, the learned counsel prayed for dismissal of the writ petition.

[12]. This Court considered the submissions made by the learned counsel for the parties and also perused the materials available on record.

[13]. In short, the submission of the petitioner is that with malafide intention, the authorities have recorded the grading of the petitioner for the period 23.06.2016 to 31.03.2017 as "good", which is the below bench mark and the said grading affects the promotion of the petitioner to the post of DIG from Commandant. Referring to the details of the numerical grading given in APAR 2016 by the reporting/reviewing authorities and the remarks, the learned counsel for the petitioner argued that the reporting/reviewing authorities have acted in an arbitrary manner and has exceeded their powers with respect to their duties for reviewing of the APAR.

[14]. At this stage, it would be appropriate to stated the APAR grading of the petitioner from 2009 to 2018, which reads as under:

Sl.No.	***Year***	***APAR Grading***
1	2009 to 2010	Very Good
2	2010 to 2011	Very Good
3	2011 to 2012	Very Good
4	2012 to 2013	Outstanding
5	01/04/2013 to 31/03/2014	Outstanding
6	01/04/2014 to 31/03/2015	Outstanding

7	01/04/2015 to 31/03/2016	Outstanding
8	23/06/2016 to 31/03/2017	Good (below bench mark)
9	01/04/2017 to 31/03/2018	Very Good

[15]. It can be seen from the above assessment that the petitioner was assessed as "very good" and "outstanding" for accomplishment of exceptional work/unforeseen tasks performed/for leadership qualities/for initiative by the reporting/reviewing authorities, but, at the same time, the petitioner was assessed "good" for the period 23.06.2016 to 31.03.2017, which is the below bench mark. The aforesaid assessment made by the authorities is impartial and no sufficient reasoning was given to arrive at such a conclusion. It is also seen from the records that before assessing grade "good", the petitioner was not issued with any notice by the reporting authority. Therefore, this Court is of the view that without any justifiable ground and without providing any opportunity, the grade "good" has been given by the authorities, which is in violation of the principles of natural justice.

[16]. According to the petitioner, he had co-ordinated and supervised the Manipur State Assembly Elections 2017 and his work was

appreciated by his Senior Officers. The said appreciation has not been denied by the respondents. The respondents in their affidavit-in-opposition stated that there are lot of complaints/allegations against the petitioner. But the same has not been proved by the respondents by producing cogent materials. In the absence of any material proof, it cannot be contended that there allegations against the petitioner, which were taken note of by the authorities while assessing the grade. On the other hand, as stated supra, except the grade for the period under report i.e., 2016-2017, the petitioner's grading in APAR remained either "very good" or "outstanding". Though the respondents contended that the reporting/reviewing authorities have recorded "good" grading in the APAR on the basis of the work and performance of the petitioner, as stated supra, with an intention to degrade the petitioner, the authorities have written so. Therefore, the assessment "good" for the year 2016-2017 is unjustified.

[17]. The reporting authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the petitioner during the period under report. However in the instant case, both the reporting/reviewing authorities have failed to act fairly in assessing the grade of the petitioner for the period under report.

[18]. In *M.A. Rajasekhar* (supra), the Hon'ble Supreme Court held:

> *"4. ... It is now settled law that the object of making adverse remarks is to assess the competence of an officer*

on merits and performance of an officer concerned so as to grade him in various categories as outstanding, very good, good, satisfactory and average, etc. The competent authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent. ....."

[19]. In *S.T. Ramesh* (supra), the Hon'ble Supreme Court held:

"40. The confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career. This Court has held that the performance appraisal through CRs should be used as a tool for human resource development and are not to be used as a fault-finding process but a developmental one. ...."

[20]. In the case on hand, except the period under report, the performance of the petitioner has been consistently of high quality. As stated above, the petitioner has been graded as "very good" and "outstanding" throughout his career, except the period from 23.06.2016 to 31.03.2017. Without taking into consideration of the performance of the petitioner and without application of mind, the reporting/reviewing authorities have given the grade for the period 23.06.2016 to 31.03.2017

as "good", which is the below bench mark to affect the promotion and therefore, the same needs to be reviewed by the authorities concerned.

[21]. In *East Coast Railway* (supra), the Hon'ble Supreme Court held:

> *"30. .. while application of mind to the material available to the competent authority is an essential prerequisite for the making of a valid order, that requirement should not be confused with the sufficient of such material to support any such order. ..... Sufficiency or otherwise of the material and so also its admissibility to support a decision the validity whereof is being judicially reviewed may even otherwise depend upon the facts and circumstances of each case. No hard-and-fast rule can be formulated in that regard nor do we propose to do so in this case."*

[22]. In *G. Vallikumari* (supra), the Hon'ble Supreme Court held:

> *"19. ..... The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognised facets of the rules of*

natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned."

[23]. In the present case, recording of grading "good" for the period under report is without any basis and is not justified. Further, the grading recorded by the reporting/reviewing authorities for the period from 23.06.2016 to 31.03 .2017 portrays a downbeat image of the petitioner's administrative/operational achievements during the aforesaid period as well as his profession acumen which he had earned by toiling hard all through the years of his unblemished service.

[24]. In *Insp./GD Krishna Rajak* (supra), the Division Bench of the Delhi High Court held as under:

"6. The dart board speaks it all. For all the Years in question, except the year 2007, the petitioner has been graded on the seven facets, mostly 'Very Good'; on some occasion 'Good' and on some occasion 'Outstanding'. The remarks for the year 2007 are a complete mismatch. The result is that for the years 1999, 2000, 2006 and 2008 the overall ACR grading of the petitioner is 'Good' and that for the years 1996, 1997, 1998, 2001, 2003, 2004, 2010 and 2011 the ACR grading is 'Very Good' and for the years 2002, 2005 and 2009 is 'Outstanding', for the year 2007 it is 'Average'.

7. Now, 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.

8. Let us illustrate one trait. The trait No.(iii) i.e., 'Power of Expression'. This is not a trait which is acquired and lost overnight. The dart board would reveal that for this trait the petitioner has been rated all throughout as 'Good', 'Very Good' or 'Outstanding', but for the year 2007 the officer has written that petitioner's power of expression is not effective.

9. There is obviously a problem, and the problem appears to be as disclosed by the petitioner; that the Commandant under whom he was working i.e., M.P. Singh was accepting lower quality of ration for troops and the petitioner being a member of the Tendering Opening/Condemnation Board had wanted samples to be obtained and in retaliation, the Commandant Shri M.P.Singh, made entries reflecting petitioner in a poor light.

10. We are pained to note that in the impugned memorandum dated February 09, 2012, the Competent

Authority has rejected the representation of the petitioner against the adverse grading awarded to the petitioner and the overall grading 'Average' for the year 2007, oblivious of the fact that a wrong against the petitioner stands stark in the ACR grading for the year 2007.

11. The dart, shot at the dart board, is bound to see the bull's eye i.e, the offending comments noted in the ACR grading of the petitioner because of their inherent strength and character to attract the dart to the board where the ACR gradings stand noted.

12. We allow the writ petition and strike down the ACR grading awarded to the petitioner for the year 2007, and since the Competent Authority has totally misapplied its mind, being of the opinion that no useful purpose would be served for the Competent Authority to be directed to reconsider the ACR grading for the year 2007, we declare that said year's ACR grading be excluded while considering the entitlement of the petitioner for promotion. Highlighting that at the DPC which met somewhere in the year 2008, the petitioner was superseded on account of the below benchmark ACR grading for the year 2007, we direct that a Review DPC be held and while considering

the ACR gradings of the petitioner, to exclude the ACR grading for the year 2007 and instead take into account the ACR grading of one year back. Needful be done within 12 weeks from today. Needless to state, if the petitioner is found fit for promotion, he be promoted with all consequential benefits of seniority, pay fixation etc. except back-wages being not paid, on the principle of petitioner not having shouldered the responsibility for the higher post; but all other benefits of notional promotion from a back-date which would include revised pay fixation would be given effect to."

[25]. Thus, in all the years since 2007-2008, the petitioner has been graded as either 'outstanding' or 'very good'. Downgrading the APAR in 2016-2017 to 'good' is malafide and arbitrary and the same is not in consonance with the aforesaid decision cited by the petitioner.

[26]. The system of APAR has two principal objectives viz., (i) improve the performance of subordinate in his present job and (ii) assess the potentialities of the subordinate and prepare him through appropriate feedback and guidance for future possible opportunities in service. As rightly argued by the learned counsel for the petitioner the basic philosophy underlying APAR is both the superiors and his subordinate should be necessarily aware of the ultimate goal of the orgnisation, which can be

achieved through the joint efforts of both of them. However, in the instant case, the 2016-2017 APAR grading assessed by the reporting/reviewing authorities solves no purpose.

[27]. Promotion has been held to be an essential element of service and it is expected every management to provide realistic opportunities to every officer for boosting their morale and rewarding them promotionally for their hard work.

[28]. The instructions as stated in APAR clearly spell out that the reporting authority and the reviewing authority should undertake the duty of filling out the report with clarity, high sense of responsibility and objectivity. It further states that the reporting authority should bear in mind that the objective of the assessment exercise is to develop an officer so that he can realise his true potential. It is not meant to be a battle but a developmental process, a cumulative effort, that ensures optimal outcomes. It further lays down that it should be the endeavour of each appraisal to present the true picture the performance, conduct, behavior and potential of the person being reported upon.

[29]. The various guidelines laid down by the DoPT from time to time, it becomes abundantly clear that neither the reporting authority nor the reviewing authority, indeed not even the accepting authority can adopt an erratic and a casual approach in evaluating the overall performance of an officer on the various parameters, on which he is required to be

assessed. The adverse grading in the APAR has given the petitioner constant and extreme stress because throughout his service the petitioner has maintained high standards of integrity, has worked with utmost dedication and devotion for the organization. In the instant case, it is clear that the reporting authority, reviewing authority as well as the appellate authority have not maintained the rule/instructions and procedure while writing APAR and also the grading "good" recorded by the authorities for the period in question is without application of mind and therefore, the same is liable to be excluded while considering for promotion.

[30]. In the result, the writ petition is allowed and the APAR grading "good" awarded to the petitioner for the period from 23.06.2016 to 31.03.2017 is set aside. Since the authorities have totally misapplied its mind, no useful purpose would be served in directing the authorities to reconsider the APAR grading referred to above, this Court directs that the said year's APAR grading be excluded while considering the entitlement of the petitioner for promotion and consider the case of the petitioner for his next promotion in accordance with the relevant rules. No costs.

JUDGE

FR/NFR

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