

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
30

+ **W.P.(C) 12022/2018**
SURINDER PRASAD Petitioner
Through: Mr Nishit Kush, Advocate.

versus

UNION OF INDIA & ANR. Respondents
Through: Ms Abha Malhotra and Mr Abhishek
Kamal, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
14.01.2020

%
Dr. S. Muralidhar, J.:

1. A Commandant in the Central Reserve Police Force ('CRPF') has filed this petition questioning an order dated 22nd August, 2018, passed by the Appellate Authority, only partially expunging the adverse remarks in the Annual Performance Appraisal Report ('APAR') for the year 2016-17, but maintaining the overall grading as 'good' for the period from 1st April to 11th December, 2016 ('Year 2016-17').

2. The facts in brief are that the Petitioner was posted as Group Centre Bantlab, CRPF, Jammu since 29th April, 2015. The grading in his APAR for the years 2012-13 onwards was as under:

“2012-13— Very good

2013-14—Outstanding

2014-15—Very Good

2015-16—Outstanding”

3. It is stated that during the years 2013-14 and 2014-15, the Petitioner commanded the 179th BN at Sopore, Jammu & Kashmir, which was adjudged best operation BN of J&K zone for continuously for two years.

4. The APAR in question is for the period 1st April to 11th December, 2016. While the Reporting Officer as well as the Reviewing Officer graded the Petitioner ‘outstanding’ and ‘very good’ respectively, the Accepting Authority (‘AA’) disagreed. The remarks given by the AA in the pen picture reads thus:

“Even the reviewing officer has been generous in his assessment. The officer under question shies away from taking responsibility and lacks initiative for which he was advised to shoulder greater responsibility. Allegations were made regarding excessive drinking and corruption which is under enquiry. The officer is graded as Good.”

5. The Petitioner then represented to the Directorate General (‘DG’), CRPF, who was the Appellate Authority. By an order dated 22nd August, 2018, communicated to the Petitioner on 13th October, 2018, the DG expunged the following adverse remarks in the pen picture i.e. “allegations were made regarding excessive drinking and corruption which is under enquiry”. However, the DG refused to expunge the other adverse entry, namely, “the officer under question shies away from taking responsibility and lacks initiative for which he was advised to shoulder greater responsibility”. Further, the DG refused to interfere with the grading of ‘good’ recorded by

the AA in the APAR.

6. A further representation sent by the Petitioner on 31st December, 2017, was disposed of by the impugned order dated 13th October, 2018, and declined to interfere with the grading recorded by the AA.

7. This Court has heard the submissions of learned counsel for the parties. The Court has also perused the counter affidavit filed by the Respondents.

8. While it is true that one portion of the adverse entries in the APAR for the period in question made by the AA stands expunged by the Appellate Authority, the other adverse entry namely that the officer in question shies away from taking responsibility and he lacks initiative, has not been expunged.

9. When it was inquired from the learned counsel for the Respondents whether any memo had been issued during this period to the Petitioner about his being reluctant to shoulder the responsibility, and lacking initiative, the answer was in the negative. It must be noticed here that the advisory given by the Respondents on 20th February 2017, was on account of the Petitioner not paying attention to the maintenance issues in the group centre and the non-maintenance of the parade ground and road signs. In other words, no memo as such was issued to the Petitioner about his lacking initiative or unwilling to show or being unwilling to shoulder responsibility.

10. The legal position in this regard has been explained in several decisions of this Court expunging adverse remarks. In *S. Ramachandra Raju v. State*

of Orissa 1994 Supp (3) SCC 424, the Supreme Court observed:

“...It is needless to emphasise 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 is bound to lose his credibility in the eyes of his subordinates and fail to command respect and work from them. The constitutional and statutory safeguards given to the government employees largely became responsible to display callousness and disregard of the discharge of their duties and make it impossible to the superior or controlling officers to extract legitimate work from them. The writing of the confidential is contributing to make the subordinates work at least to some extent. Therefore, writing the confidential reports objectively and constructively and communication thereof at the earliest would pave way for amends by erring subordinate officer or to improve the efficiency in service....”

11. In *Sukhdeo v. Commissioner Amravati Division, Amravati (1996) 5 SCC 103* the legal position was explained as under:

“6. It is settled law that when the Government resorts to compulsorily retire a Government servant, the entire record of service, particularly, in the last period of service is required to be closely scrutinised and the power would be reasonably exercised. In *State Bank of India Etc. v. Kashinath Kher and Ors. Etc (1996) II LLJ 654 SC*, this Court has held that the controlling officer while writing confidential and character roll report, should be a superior officer higher above the cadres of the officer whose confidential reports are written. Such officer should show objectivity, impartiality and fair assessment without any prejudice whatsoever with highest sense of

responsibility to inculcate in the officer's devotion to duty, honesty and integrity so as to improve excellence of the individual officer, lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. In that case it was pointed out that confidential reports written and submitted by the officer of the same cadre and adopted without any independent scrutiny and assessment by the committee was held to be illegal. In this case, the power exercised is illegal and it is not expected of from that high responsible officer who made the remarks. When an officer makes the remarks he must eschew of making vague remarks causing jeopardy to the service of the subordinate officer. He must bestow careful attention to collect all correct and truthful information and give necessary particulars when he seeks to make adverse remarks against the subordinate officer whose career prospect and service were in jeopardy. In this case, the controlling officer has not used due diligence in making remarks. It would be salutary that the controlling officer before writing adverse remarks would give prior sufficient opportunity in writing by informing him of the deficiency he noticed for improvement. In spite of the opportunity given if the officer/employee does not improve then it would be an obvious fact and would form material basis in support of the adverse remarks. It should also be mentioned that he had given prior opportunity in waiting for improvement and yet was not availed of so that it would form part of the record. The power exercised by the controlling officer is per se illegal. The tribunal has not considered this aspect of the matter in dismissing the petition. The appellant is entitled to reinstatement with all consequential benefits. The appeal is accordingly allowed with exemplary costs quantified at Rs. 10,000 recoverable by the State from the officer who made the remarks.”

12. As regards the instant case, it is seen that the Petitioner’s gradings in his APARs since 2013-14 have been consistent: Either outstanding or very good. In this context, the observations of this Court in *Inspector GD Krishna Rajak v. Union of India 2012 SCC Online*

Del 4454 are relevant:

“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.”

13. In the present case, therefore, the Court has no hesitation in holding that the retention of the aforementioned adverse remarks in the APAR of the Petitioner for the period in question is unjustified. A direction is accordingly issued to expunge the said adverse remarks.

14. The maintaining of the grading of the Petitioner as ‘good’ for the period in question was only with reference to the adverse remarks of the AA which now stand expunged. In that view of the matter, the Respondents are directed to treat the grading of the Petitioner for the period in question as ‘very good’ i.e. without any downgrading from the previous year.

15. The Respondents will now convene a Review DPC not later than eight weeks from today to consider the case of the Petitioner for promotion by treating his grading for the period from 1st April, 2016 to 11th December, 2016 as ‘very good’ and to communicate to the Petitioner the said decision thereon within a further period of four weeks. The Petitioner would be entitled to notional promotion and fixation of pay from the date of the DPC in which his juniors were so promoted, without being entitled to any arrears/back-wages. If, for some reasons, the decision is adverse to the Petitioner, it will be open to the Petitioner to seek appropriate remedy in accordance with law.

16. The petition is allowed in the above terms. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 14, 2020

rd

