

\$~Suppl.-29

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

+ **W.P.(C) 351/2021 & CM APPL.911/2021**

ASHWANI KUMAR MISHRA Petitioner
Through **Mr.Javed Ahmed, Advocate.**

versus

UNION OF INDIA AND ORS Respondents
Through **Mr.Ajay Gupta, Advocate.**

% Date of Decision: 25th January, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed to expunge the adverse remarks recorded in the petitioner's Annual Performance Assessment Report (hereinafter referred to as 'APAR') and to challenge the order dated 08th May, 2020 passed by respondent no.4 on the ground that it had been passed without jurisdiction. Petitioner has also sought a direction to respondent no.2 to issue the petitioner's Non Initiation Certificate [NIC] for the period commencing 01st April, 2016 to 17th December, 2017.
2. On 11th January, 2021, learned counsel for the petitioner had stated that he was not pressing prayers (b) and (c) of the writ petition i.e. to expunge the adverse remarks recorded in the petitioner's APAR as well as to challenge the order dated 08th May, 2020. However, today, learned

counsel for the petitioner states that he may be allowed to re-agitate the said prayers.

3. Mr. Javed Ahmed, learned counsel for the petitioner contends that the reviewing authority- Mr. Ashish Batra, had added adverse remarks for the period 20th December, 2016 to 31st March, 2017 without jurisdiction as the petitioner belonged to CRPF. He states that on 29th December, 2017, the reviewing authority- Mr. Ashish Batra had erroneously recorded in petitioner's APAR that the petitioner had been prematurely repatriated to his parental department on account of adverse remarks. He points out that the petitioner had already been repatriated in normal course without assigning any reason. He further states that the petitioner had sent a representation to respondent no.2 to expunge the adverse remarks however, the same was illegally sent to Mr. Ashish Batra, who had no jurisdiction to decide the same.

4. He submits that as per the OM dated 21st May, 1965, a separate secret note should have been recorded and followed up. In support of his contention, he relies upon Note (a) at page 81 of the paper book.

5. Having heard learned counsel for the parties, this Court is of the view that learned counsel for petitioner having given up prayers (b) and (c) of the writ petition cannot re-agitate them. It is settled law that questions outside the preview of the notice issued at the time of admitting the appeal cannot be entertained at a later stage. [See: ***Spring Meadows Hospital vs. Harjol Ahluwalia, (1998) 4 SCC 39***].

6. Further having perused the paper book, this Court finds that Mr. Ashish Batra, IPS, IG (Ops) Jharkhand, Ranchi, was the reviewing authority of the petitioner, as during the relevant period, the petitioner had

joined Jharkhand Police on deputation. Consequently, this Court is of the view that for the aforesaid period no officer of CRPF could have been the reviewing authority of the petitioner.

7. Accordingly, this Court is of the opinion that not only respondent no.4 was legally entitled but he had the exclusive jurisdiction to decide the petitioner's representation dated 08th May, 2020. The relevant portion of the order dated 08th May, 2020 passed by respondent no.4 is reproduced hereinbelow:-

“.....He has been motivated time and again orally to improve his modus operandi, to take initiative for conducting operation against naxals however no improvement had been found in his work performance. He has wrongly and in factually claimed. For the tenure commencing from 20.12.2016 to 31.03.2017 no special achievement has been obtained. On account of his failure to take initiative, six incidents had been occurred by the Maoist PLFI, JJMP and JPC like militant groups. Time and again the senior officers of police head quarter Jharkhand, Ranchi visited District Chatra and motivated him to improve his functioning however no particular efforts was made by him in this direction.

In the aforesaid circumstances the recorded grading in the APAR of Mr. Ashwani Kumar Mishra then Police Superintendent (Operation Chatra) has been found proper and proportionate by reviewing his performance during the relevant period. No valid reason has been assigned by the applicant in order to improve his remarks or grading recorded in the APAR of the relevant period. Hence Received APAR is being returned. The same also has been endorsed by director general and police inspector general Jharkhand Ranchi.”

(emphasis supplied)

8. Further as the reviewing authority –Mr.Ashish Batra had recorded the adverse remarks in petitioner's APAR for the period 20th December, 2016 to 31st March, 2017 in accordance with law, there is no question of the petitioner being issued Non Initiation Certificate for the period

commencing 01st April, 2016 to 17th December, 2017.

9. This Court is also of the view that Note (a) at page no.81 of the paper book, relied upon by learned counsel for the petitioner, outlines the procedure which has to be followed if the reviewing authority has doubt with regard to integrity of the officer concerned. In the present case, remark of the reviewing authority pertains to 'Efficiency' and not 'Integrity' of the petitioner. Consequently, the procedure relied upon by the petitioner in the said Note is irrelevant.

10. Accordingly, the present writ petition being bereft of merits is dismissed along with pending application.

JANUARY 25, 2021
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MANMOHAN, J

ASHA MENON, J

