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

Date of Decision: 16.08.2021

+ **W.P.(C) 8435/2021**

NARENDER KUMAR RURIAPetitioner
Through Mr. Ankur Chhibber, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Jaswinder Singh with
Ms. Manpreet Kaur Bhasin,
Advs.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

The hearing has been conducted through video conferencing.

CM 26119/2021(Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 8435/2021

1. This petition has been filed by the petitioner challenging his Annual Performance Assessment Report (hereinafter referred to as the 'APAR') for the period 01.04.2012 to 31.03.2013 to the extent whereby the petitioner has been given adverse remarks by the

Reporting Officer/Initiating Officer, respondent no. 4 in the present writ petition.

2. The petitioner further challenges his Part Performance Assessment Report (hereinafter referred to as the 'PPAR') for the period 01.04.2013 to 11.10.2013 to the extent that the petitioner was numerically graded low. The petitioner also challenges the Orders dated 31.05.2016 and 18.11.2016 rejecting his representations against PPAR as also non-grant of MACP benefit. As a consequence, the petitioner prays for the grant of a second MACP benefit as also promotion to the rank of Second-in-Command with all consequential benefits.

3. It is the case of the petitioner that while being posted as an Adjutant at 68 Bn, Samba, Jammu & Kashmir, he initiated the case of removal of one Constable Gurnam Singh who had been convicted of a criminal offence in the year 1997 and was performing duties as a 'Granthi' at the Unit. This was not to the liking of respondent no. 4, who was the then Commandant of the battalion. The learned counsel for the Petitioner submits that because of this ill-will, the respondent no. 4, with a *mala fide* intent, downgraded the petitioner and made adverse observations in his APAR/PPAR for the period from 01.04.2011 to 31.03.2012; 01.04.2012 to 31.03.2013; and 01.04.2013 to 11.10.2013, on which date the petitioner was moved out to 29 Bn, Salbagan, Tripura. The learned counsel for the petitioner contends that but for this period, the petitioner has always been graded as 'outstanding' or 'very good'.

4. The learned counsel for the petitioner further contends that for the period 01.04.2011 to 31.03.2012, while the respondent no. 4 gave an overall grading of 3.8 out of 10 to the petitioner, the Reviewing Officer and the Accepting Officer gave an overall grading of 6.93 out of 10 to the petitioner. It was only in a status report dated 20.04.18 filed by the respondent no. 2 before the National Commission for Scheduled Castes (hereinafter referred to as the 'learned NCSC'), in a complaint filed by the petitioner, that the petitioner was informed that the adverse remarks against him have been wrongly communicated as neither the Reviewing Officer nor the Accepting Officer had agreed with the remarks of the Initiating Officer.

5. The learned counsel for the petitioner contends that for the period 01.04.2012 to 31.03.2013, the respondent no. 4 again, with a *mala fide* intent, gave overall grading of 3.82 out of 10 to the petitioner. The Reviewing Authority, however, graded the petitioner at 7.12 out of 10 and the Accepting Officer again agreed with the Reviewing Officer. The petitioner avers that though the above facts were similar to his APAR from 01.04.2011 to 31.03.2012, the representation of the petitioner against the same was rejected.

6. Insofar as the PPAR for the period 01.04.2013 to 11.10.2013 is concerned, the petitioner was again given an overall grading of only 3.67 out of 10 by the respondent no. 4, whereas the Reviewing Authority gave an overall grading of 6.49 out of 10 and the Accepting Authority gave an overall grading of 5.0 out of 10. The learned counsel for the petitioner submits that the overall grading was reduced

only because of the Director General's displeasure issued to the petitioner.

7. As far as the Director General's displeasure(s) are concerned, the learned counsel for the petitioner submits that the first displeasure was issued against him on 11.02.2013 without appreciating that the petitioner was not at fault. He submits that by a signal received by the petitioner on 03.03.2012, the petitioner was detailed as a Liaison Officer for DG, BSF-BGB level talks with effect from 11.03.2012 to 16.03.2012. On 06.03.2012, the petitioner was handed over the movement order to proceed for FHQ, New Delhi. When the petitioner was about to leave for the railway station, his movement order was taken back on the instructions of the respondent no. 4 without informing any reason for the same. The petitioner submits that since he was under stress due to the illness of his mother coupled with the arbitrary act of the respondent no. 4, he applied for five days leave and proceeded for New Delhi. Upon arriving, he reported at 'G' Dte FHQ on 07.03.2012 and was assured that his case of being 'absent without leave' will be taken care of. However, the petitioner was still awarded the Director General's displeasure by the Office Order dated 11.02.2013.

8. The learned counsel for the petitioner submits that the second displeasure was issued against the petitioner on 28.06.2013. He states that here again the petitioner was not at fault as, while being detailed as Team Captain of Jammu Ftr that took part in Inter-Frontier Shooting Camp, held in February, 2012, the petitioner had asked the

Adm NCO to collect certain liquor bottles from the Unit Canteen for the firing team and had taken it to Hazaribagh, being the venue of the Camp. On returning to the Unit, since the canteen NCO was proceeding on leave, he had asked the petitioner, being the Unit Adjutant and Canteen Officer, to clear off the pending bill. The petitioner had asked the Adm NCO, Sh. Brij Bhushan, to pay ₹10,863/- (Rupees ten thousand eight hundred sixty-three) to the Canteen NCO for the liquor drawn from the Unit Canteen as he was not carrying cash on that day. Thereafter, as the Adm NCO, Sh. Brij Bhushan got admitted to the Unit Hospital the very next day and the petitioner got busy with his routine job/duty, he forgot to pay back the amount to Sh. Brij Bhushan. On being reminded, the petitioner returned the money to him on 09.03.2012. He submits that therefore, no financial irregularities should be attributed to the petitioner in the said case.

9. The learned counsel for the petitioner submits that the adverse remarks given by the respondent no. 4 was not only *mala fide* but was also not preceded by any advice or warning issued to the petitioner. He submits that *mala fide* of the respondent no. 4 is apparent as the Reviewing Officer and the Accepting Authority have consistently upgraded the petitioner in spite of the adverse remarks by the respondent no. 4.

10. He further submits that the delay in submitting the PPAR for the period 01.04.2013 to 11.10.2013 has been wrongly attributed to the petitioner. The petitioner had in fact submitted the same in time,

however, was later informed that the same has been misplaced. The petitioner thereafter, on being asked, resubmitted the same.

11. Insofar as the Director General's displeasure is concerned, the learned counsel for the petitioner submits that even otherwise, the same could not have been considered for denying the second MACP or promotion to the petitioner, as the same is not to be treated as a punishment that can adversely affect the prospects of the service of the personnel concerned.

12. We have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same.

13. We have to be conscious of the fact that the scope of judicial review of APAR and disciplinary proceedings by the High Court in the exercise of its powers under Article 226 of the Constitution of India, 1950 is extremely limited. The Court does not act as a Court of Appeal against such assessment. Reference in this regard may be made to the judgment of the Supreme Court in *State of Orissa & Ors. v. Jugal Kishore Khatua*, 1997 SCC (L&S) 1768.

14. In the present case, the adverse remarks for the APAR for the period 01.04.2011 to 31.03.2012 need not detain us any further in light of the status report dated 24.08.2018 filed by the respondent no. 2 before the learned NCSC holding that there were no adverse remarks against the petitioner in the final assessment.

15. Insofar as the APAR for the period 01.04.2012 to 31.03.2013, though the Reviewing Officer took note of the petitioner having been

issued displeasure by the Director General in one case and the other case being pending for disposal, awarded him grading of 7.12 out of 10. The remarks of the Reviewing Authority are reproduced herein below:-

“I only partially agree with the pen picture by the IO to the extent that officer was issued ‘Displeasure’ by the DG and one case is pending for disposal. The assessment for work output, personal attributes and functional competency done by the IO is on a very lower side. Some of these attributes do not change in short span of one or two years.”

16. The Accepting Officer agreed with the Reviewing Officer. However, the petitioner is being denied the second MACP and promotion because of the Displeasure earned by him.

17. As far as the two displeasures are concerned, in the status report filed by the respondent no. 2 before the learned NCSC, it was noted that the case of the petitioner was reviewed by a Board of Officers, however, the Board was of the view that the case of the petitioner had been dealt with in a fair and transparent manner without any bias whatsoever and there was no scope of any intervention on the decision already taken by the Director General, Border Security Force. The Board also found no merit in the claim of the petitioner for MACP benefit and promotion because of the above. In fact, from the explanation given by the petitioner himself of the circumstances leading to the two Displeasures, we do not find any reason to interfere with the same. The petitioner admits to having proceeded on leave without sanction and also of not depositing the amount for canteen

liquor on his own. The relevant extract from the Status Report filed by the respondents before the NCSC is as under:-

"12. HQr DG BSF vide its letter dated 01.03.2018 submitted final action taken report to the commission. Brief of the issues brought out in the ATR are as under:

i) xxxxxx

ii) In case of two DG's displeasure issued to the officer, it was found that he has been provided sufficient opportunity to put up his defence. In both cases, the ADG(W/C) BSF had recommended disciplinary action against the officer but keeping his career prospect into consideration, a lenient view was taken by the DG BSF and issued his displeasure in both the cases. Thus, there is no scope of any intervention on the decision already taken by the DG BSF. (Show cause notice served to the officer for issuance of DG's displeasure may be perused).

Xxxxxx

vi) With regard to PPAR for the period from 01.04.2013 to 11.10.2013 after comprehensive review it was found that there is no ground to interfere and status quo be maintained.

v) With regard to submission by the officer to open the sealed cover of the DPC proceedings for promotion to the rank of 2IC held on 24.09.2012 it was found that on the date of DPC, two disciplinary cases were pending against the officer. On finalization of both the cases, the officer was awarded DG displeasure. In the light of instructions contained in DOP&T OM No.22011/4/91. Estt (A) dated 14.09.1992 and provisions contained in BSF Rules 59(1)(v) and Chapter XIVA, since the officer was not completely exonerated, hence, the sealed cover cannot be acted upon.

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13. Brief details of the case pertaining to grant of MACP, Promotion and Adverse remarks in the APAR for the year 2011-12 and PPAR for the year 2013-14 in respect of Shri Narendra Ruria, DC is as under:

a) Officer was considered for 2nd financial upgradation by the following DSC:

<i>DSC dated</i>	<i>Date of consideration</i>	<i>Findings of DSC</i>	<i>Remarks</i>
<i>03.05.2012</i>	<i>06.05.2012</i>	<i>Sealed cover case</i>	<i>Disc case pending against him</i>

04.04.2013	06.05.2013	Sealed cover case	Disciplinary case pending against him
04.09.2015	06.05.2014	UNFIT	Due to DG's displeasure dated 11.02.2013 and 28.06.2013
	06.05.2015	UNFIT	Due to adverse remarks in his PPAR for the period from 01.04.2013 to 11.10.2013
29.06.2016	06.05.2016	UNFIT	Due to adverse remarks recorded in the PPAR 2013-14

b) Officer was also considered for empanelment and eventual promotion to the rank of 2IC by the DPCs conducted as under:

DPC dated	Vacancy year	Finding of DPC	Remarks
24.09.2012	2012-13	Sealed cover case	Due to pending of ROE
23.12.2013	2013-14	UNFIT	Due to DG's displeasure dated 11.02.2013 and 28.06.2013
09.09.2014	2014-15	UNFIT	Due to DG's displeasure dated 11.02.2013 and 28.06.2013
30.09.2015	2015-16	UNFIT	Due to adverse remarks in APAR 2013-14

c) Details of adverse remarks endorsed in APAR for the year 2011-12 and PPAR 2013-14 and status of representation made by the officer are as under:

APARs	Adverse remarks	Representation, if any
APAR 2011-12	A smart medium statured officer. He is systematic	Officer submitted representation dated

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	and eloquent. The officer has traits of arrogance and tendency to bypass the chain of command. During the period, officer absented without leave from Bn HQ in utter and wilful defiance of lawful command of superior officer thus displaying highest degree of indiscipline and concern for personal interests. These qualities are highly unbecoming of an officer. Not recommended for staff appointment of sensitive nature.	30.07.2012 addressed to ADG (West). ADG (West) rejected his representation vide order no.392-95 dated 29 Oct. 2012. On the recommendation of Board of Officers, SDG (WC) Chandigarh vide their order dated 06.04.2018 has expunged the adverse remarks as endorsed in the APAR for 2011-12 in respect of Sh.Narendra Ruria, DC.
PPAR 2013-14 (01.04.13 to 11.10.13)	(a) The officer has mentioned nothing in self appraisal for the IO to comment upon, 'agree' or 'disagree'. <u>The officer was not given any assignment due to his repeated acts of misconduct and pendency of an inquiry against him. Delay in submission of PPAR reflects arrogance in the officer that is negative traits in an officer's personality.</u> (2) FPET Standard - Not done ARCF Standard- Not done (3) Integrity- Doubtful (4) <u>Officer was involved in misusing the funds of Jawans Mess (for which he was the custodian) and using for clearing his liquor dues. Awarded displeasure by the DG</u>	Officer submitted representation dated 28 Oct. 2015. The ADG (West) has rejected his representation being devoid of merit vide order No.692-96 dated 31.05.2015.

	BSF taking a lenient view. (5) A <u>slim, medium statured officer. He can use his expression of words to cover his misdeeds. The officer was awarded a Displeasure by the DG BSF for misusing funds of the Jawans mess and using it for payment of his liquor bills. Another SCOI was conducted and officer adviced by FTr HQ Jammu, to improve his conduct. Despite being issued DG's displeasure and Advise by the FTr HQ BSF Jammu, the officer did not show any improvement in his conduct. An arrogant and undisciplined officer.</u> (6) The details of DG Displeasure for misusing the funds of Jawans Mess indicates a serious flaw in the frame of mind. Was also issued Advisory by IG. Was not entrusted any other responsibility. I agree with the assessment/pen picture of CO of the Unit.	
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18. For the PPAR for the period 01.04.2013 to 11.10.2013, the status report states that the Board of Officers examined the issue again and recommended that there was no ground for interference. The

relevant extracts of the Status Report have been reproduced herein above. In fact, by an earlier order dated 31.05.2016, a similar representation of the petitioner had been rejected by the Competent Authority/respondent no. 2 observing that the ‘reasons/justifications given by the IO and the Accepting Authority appear to be more closer to the truth’.

19. As the case of the petitioner has been examined and re-examined on his representations, by the Competent Authority against whom no allegation of *mala fide* has been made, we do not see it to be a fit case to exercise our jurisdiction under Article 226 to interfere with the assessment of the petitioner by the Competent Authority.

20. Accordingly, we find no merit in the present petition, the same is dismissed. There shall be no order as to costs.

21. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

NAVIN CHAWLA, J

MANMOHAN, J

AUGUST 16, 2021

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