

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.238 of 2022
In
Civil Writ Jurisdiction Case No.6610 of 2020

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Prawesh Singh Son of Late Nagdev Singh resident of Village- Munaria, P.O. and P.S.- Basaura District- Palamu (Jharkhand) PIN- 822118 Presently residing at Mohallah- Tilak Nagar Colony, Road no. 01, Rukunpura, P.S.- Rupaspur, Distt.- Patna (Bihar)

... .. Appellant/s

Versus

1. The Union of India through the Principal Secretary, Department of Home, Govt. of India
2. The Director- General, Border Security Force, CGO Complex, Block no.- 10, Lodhi Road, New Delhi
3. The Special Director- General, BSF (Eastern Command) Head Quarter- 20/1 Gurusaday Road, Kolkata- 700019
4. The Inspector General, Border Security Force, Frontier HQ, Sheelbagan, Tripura
5. The Deputy Inspector General, Sector H.Q. Udaipur B.S.F. Tripura
6. The Commandant 48 Bn. BSF, Painthee P.O.- Saruba, District- Samba, State J and K,- 184129
7. The Commandant 48 Bn. BSF, Maharanichehra Udaipur, Tripura
8. The Commandant 184 Bn. BSF, Maltaram P.O.- Serkawan District- Lunglei, State- Mizoram- 796701

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shashi Nath Jha
For the Respondent/s	:	Mr. Additional Solicitor General
For the Union of India	:	Mr. Dr. Krishna Nandan Singh, Sr. Advocate
		Mr. Kumar Priya Ranjan, CGC
		Ms. Nirmala Singh, Advocate
		Mr. Vibhuti Kumar, Advocate
		Mr. Sandeep Kumar, Advocate
		Mr. Devansh Shankar Singh, JC to ASG
		Mr. Amarjeet, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)



Date : 08-12-2023

The present appeal has been preferred challenging the order and judgment dated 03.03.2022 passed by the learned Single Judge in CWJC No. 6610 of 2020 by which taking into account the fact that the appellant has not questioned the validity of the order/decision dated 05.06.2016; he is not entitled to the relief sought for and accordingly the writ petition was dismissed.

2. The facts of the case is/are as follows:

3. The appellant is serving with the Border Security Force (henceforth for short, 'the BSF') and at the relevant time was as an Assistant Commandant. He was further due for his promotion to the post of Deputy Commandant.

4. His **Part Performance Assessment Report** (henceforth for short, 'the **PPAR**') for the period 15th November, 2014 to 31st March, 2015 was initiated by the **48 Bn BSF HQ, Tripura** (where the appellant was posted). The **Commandant, 48 Bn BSF** being the Reporting/Initiating authority endorsed the following remarks:

“ The officer seems to be sober but discharged his duties satisfactory. He has not displayed requisite quality and standard of commitment/works. He works in



*methodical way takes own decision without consulting his superior. Has professionally knowledge in good way. However, he has effectively dominated his AOR on the border. But officer need to bear he can perform better way. Performance reviewed good. I graded him “**Good Officer**”.*

5. It was reviewed by the then **DIG, SHQBSF, Udaipur (Tripura)** as the Reviewing Authority and agreed with the Reporting/Initiating Authority which was further accepted by the **IG, Ftr HQ BSF, Tripura** as an Accepting Authority.

6. Later, taking note of the aforesaid observation, the Superior Officers issued notice to him on 22.11.2015 asking him to reply as to why the good remarks given by the Reporting/Initiating Authority shall not be treated as an adverse remarks against him. The appellant submitted his explanation on 11.01.2016 which was turned down on 02.06.2016 by the Special DG BSF (Eastern Command), Kolkata.

7. The second representation before the Principal Secretary, Department of Home, Government of India, New Delhi also came to be rejected on 07.10.2016.

8. Thereafter, the writ petition was filed for



quashing of the Annual/Part Performance Assessment Report dated 30.04.2015 stating that the respondent no. 6 (Reporting/Assessing Authority) without proper evaluation of his performance recorded adverse comment thus stalling his next promotion to the post of Deputy Commandant. It seems subsequently, the appellant came to be promoted as Deputy Commandant on 27.05.2020.

9. The 'PPAR' dated 30.04.2015 dates back to the year 2015-16. The appellant chose to file writ petition in the year 2020 and after he was promoted to the post of Deputy Commandant. Though the grading was 'good', there were comments made by the Reporting Officer, which was deprecatory of his conduct and work. Hence though graded 'good' the adverse comments were communicated to him and despite his objection entries in the ACR were treated as adverse. Further, he failed to challenge the orders by which promotion to the post of Deputy Commandant was denied to him/ the orders passed rejecting his representation, as narrated above.

10. The writ Court took up the matter on 03.03.2022 and having gone through the facts of the case and noticed that the order/decision dated 02.06.2016 (wrongly



recorded as 05.06.2016) having not been challenged, the petitioner is not entitled to any relief sought for in the present petition till the said order is not set aside.

11. The relevant observation of the learned Single Judge need to be incorporated here-in-below:

“Petitioner while working as Assistant Commandant, Annual Performance Assessment report for the year 2014-2015 was written on 30th April, 2015. Under column no.10 of the APAR dated 30th April, 2015, certain issues were taken note of by superiors to the extent that petitioner’s work in methodical way taken own decision without consulting his superiors, even though professionally, petitioners knowledge was good. Taking note of aforesaid observation, superior officer issued a notice as to why these good remarks shall not be treated as adverse remarks on 22.11.2015. Petitioner had submitted his explanation on 11.01.2016 and it was turned down on 05.06.2016. The petitioner’s grievance is that, though APAR is good for the year 2014 and 2015, the same shall be taken into consideration for the purpose of promotion to the post of Deputy Commandant as on 28.06.2018 and 23.06.2019 is good. However, the petitioner



suffered an order on 05.06.2016 in respect of APAR for the year 2014-2015, converting the good remarks to that of adverse remarks and petitioner has not questioned the validity of such adverse report dated 05.06.2016. The official respondent/promoting authority to the post of Deputy Commandant has taken note of the decision dated 05.06.2016 while rejecting the petitioner's claim for promotion to the post of Deputy Commandant on 28.06.2018 and 23.06.2019. In the light of these facts and circumstances and the fact that the petitioner has not questioned the validity of the order/decision dated 05.06.2016, the petitioner is not entitled to the relief sought in the present petition as long as order dated 05.06.2016 is not set aside.

Accordingly, writ petition stands dismissed."

12. Aggrieved, the present appeal.

13. We have heard learned counsel for the appellant as also the respondents. We have also perused the report submitted by the Reporting/Initiating Authority who had incorporated the remarks after the appellant submitted his representation against the adverse remarks recorded in 'the APAR'. The same has been part of the respondents' counter



affidavit as Annexure-H dated 25.04.2016 and the relevant part is incorporated here-in-below:

“Going back to ACR writing, if an employee is to be given “Very Good” grading. Then all the sentences in the pen-picture will invariably carry the word ‘very good’. But in the case of APAR/PPAR both the “grey areas” and “good performances” needs to be included in the pen-picture. As we all know Human Resource Development is a constant “appraisal for change and improvement” for the employee.

In compliance to BSF APAR Procedure and Instruction-2012. Chapter IV, para 4,9 where it is stated that; “it is necessary that every Govt servant should know what his defects are and how could he remove them.”

Accordingly, I used the phrase “He has not displayed requisite quality and standard of commitment/works” and “but officer need to bear he can perform in better ways”, these sentences are not adverse remarks but the areas which I wanted to apprise him for improvement. Further I also wrote He “has professional knowledge in good ways”, “he effectively dominated his AOR on the border”, then finally I graded him “Good Officer” and



the marks I awarded him was “05.87”.

My comment on the representation submitted by Shri Prawesh Singh, Asstt Comdt are neither contrary for casual, but appraisal of his performances during the given period.

Once again I would like to state that, the words and sentences I used in the pen-picture writing were without any prejudiced or mala-fide intention.

Hence, it is kindly requested to take the pen-picture initiated by me, in the positive tone as mandated by the DoPT in the APAR pen-picture writing.

Submitted please.”

14. This Court is in complete agreement with the observation made by learned Single Judge. When the appellant failed to challenge the orders by which the promotion was denied to him, no relief can be granted to him.

15. Further, for proper appreciation, we have also looked into the report submitted by the Reporting/Initiating Authority dated 25.04.2016 in which he has clearly stated that the said entry is/are made only to let the employee know his performance which were ‘appreciated’ as well as the area where he ‘needs’ to put more efforts as desired by the superiors and others and that is why at the end, he had graded



the appellant as a ‘Good Officer’ and also awarded 5.87 marks which according to him was neither contrary nor casual but a perusal of his performances during the period.

16. So far as the appeal is concerned, as observed above, the writ Court rightly held that in absence of challenge to the order dated 02.06.2016 (wrongly typed as 05.06.2016), no relief can be extended to the appellant. The challenge to the A/PPAR dated 30.04.2015 is also grossly delayed.

17. The appeal is devoid of merit and is accordingly dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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AFR/NAFR	
CAV DATE	N/A
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