



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

% **Reserved on: May 17, 2023**

Pronounced on: July 20, 2023

+ **W.P.(C) 13964/2021**

AKSHAYA KUMAR PARIDA Petitioner

Through: **Ms. Saahila Lamba, Advocate**

Versus

UNION OF INDIA & ORS. Respondents

Through: **Ms. Pratima N. Lakra, CGSC with
Mr. Hemendra Singh, DC (Law), BSF**

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been filed by the petitioner seeking issuance of a writ of certiorari for quashing of Signal DTO No.121240 whereby the Departmental Screening Committee (DSC) found the petitioner ineligible due to below benchmark in the APAR for the year 2016-17. In addition, quashing of letter dated 03.11.2020, whereby petitioner's application seeking grant of Third Financial Upgradation under the MACP Scheme has been returned by the competent authority citing below benchmark for the year 2016-17, is also sought.

2. In the present petition, it is averred by the petitioner that he had joined



the services of the Border Security Force (BSF) in the year 1988 and completed 30 years of service in the year 2018. Petitioner has claimed that Department of Personnel and Training (DoPT), Ministry of Personnel, Public Grievance and Pensions, Government of India issued an OM dated 19.05.2019 whereby it was notified that on completion of 10, 20 and 30 years' of service respectively, employees shall be entitled to financial upgradations. According to aforesaid OM, for considering the promotion of an employee, Annual Performance Assessment Reports (APARs) for the last five years had to be taken into consideration.

3. The petitioner has claimed that his Third Financial Upgradation under the MACP Scheme was due in the year 2018. He made a representation dated 05.08.2020 to the Commandant 94th Bn BSF, i.e. the Unit where he was posted, for grant of MACP. Petitioner was informed that in the Departmental Screening Committee held on 01.06.2021, he was found ineligible for grant of Third Financial Upgradation under the MACP Scheme on account of below benchmark in his APAR for the year 2016-17.

4. According to petitioner, his APARs for five years from 2013 to 2018 were graded as under:-

Sr. No.	Year of APAR	Mark awarded to petitioner	Grading awarded to petitioner
1.	2013-2014	6.2	Very Good
2.	2014-2015	6.6	Very Good
3.	2015-2016	6.29	Very Good
4.	2016-2017	5.2	Good
5.	2017-2018		Very Good



5. Petitioner has averred that vide Signal dated 25.04.2019, DG, BSF notified as under:-

“...an officer may be graded as Very Good if in the opinion of the Selection Committee, his overall service record reflects that the officer has done highly meritorious work and possess the attributes and these characteristics are reflected in at least 3 of the 5 ACRs. Further in the opinion of the Selection Committee the PCR/APR/ACR under consideration of the Committee should reflect that the officer performance is generally Good during the period. There should be no adverse entry in any of the ACRs under consideration of the Selection Committee. In view of above the provisions of ACR/APR not required as Very Good and only 3 APAR out of 5 ACR/APAR required Very Good and remaining 2 are generally Good.”

6. Thereafter, FHQ, BSF reiterated the prescription contained in Signal No.00133-155 that an Officer may be graded ‘Very Good’ if in the opinion of the Selection Committee his overall service record reflects that the officer has done highly meritorious work and possesses attributes and these characteristics are reflected in at least three out of the five ACRs.

7. Pursuant to the aforesaid Signal dated 25.04.2019, the petitioner submitted another representation dated 22.08.2020 pleading that out of five APARs, his four APARs were graded ‘Very Good’ and only one APAR was graded “Good” and also since there is no adverse entry against him, he is eligible for financial upgradation.

8. In response to the aforesaid representation, respondents vide letter dated 03.11.2020 returned the application of petitioner regarding grant of



MACP inter alia with the following remarks:-

“a) Application of individual should be addressed to SHQ BSF Kishanganj instead of Commandant 04 Bn BSF.

b) Copy of FHQ signal No.R/3146 dated 25/04/2010 which attached with his application is not legible.

c) A Departmental Screening Committee held at SHQ BSF Kishanganj to assess suitability for grant of MACP to Comn personnel has not recommended for grant of 3rd MACP to ASI(RO) Akshya Kumar Parida due to below mark in the APAR for the year 2016-17.

d) As per Para 17 of annexure-I GOI, Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training) Officer Memorandum No. 15034/3/2015-Estt(D) dated 28th October 2019 received vide FHQ BSF (Pers Dte & Confd Dte) New Delhi L/No.38/11(35)/Policy-Oebs/BSF/PT-VI/33931-34231 dated 25 October 2019 the benchmark for the APARs for the year 2016-17 and thereafter shall be ‘Very Good’.

9. Thereafter, petitioner submitted another representation to DIG, SHQ requesting for grant of Third Financial Upgradation under the MACP Scheme for having four ‘Very Good’ gradings and no adverse entry in his APARs but the petitioner claims to have received no response thereto. Yet again, petitioner made another representation dated 28.06.2021 to Inspector General, FHQ which has also remained unanswered.

10. Learned counsel appearing on behalf of petitioner submitted before this Court that respondents have utterly failed to respond to petitioner’s two representations dated 20.11.2020 addressed to the DIG and 28.06.2021 addressed to the IG, therefore, he has approached this Court seeking a writ of mandamus directing the respondents to grant Third Financial Upgradation



under the MACP Scheme w.e.f. November, 2018.

11. Learned counsel for petitioner has agitated that vide Signal dated 25.04.2019, the benchmark for all posts for grant of financial upgradation was made 'Very Good' and an officer would have met benchmark of 'Very Good' if he had at least three 'Very Good' grading and other two not below 'Good' out of last five APARs. Apparently, the petitioner was having four 'Very Good' to his credit, so he meets the eligibility criteria for grant of Third Financial Upgradation under the MACP Scheme. However, respondents acting in an arbitrary manner have not granted it to the petitioner.

12. In response to the contentions raised by the petitioner, learned Central Government Standing Counsel (CGSC) appearing on behalf of respondents submitted that vide OM dated 19.05.2009, MACP Scheme has been introduced by the DoPT for grant of Third Financial Upgradation on completion of 10, 20 and 30 years of regular service subject to fulfilment of requisite eligibility. Vide another OM dated 27.09.2016, the prescribed benchmark for grant of financial upgradation under the MACP Scheme was enhanced from 'Good' to 'Very Good' which was effective from 25.07.2016. The APAR of petitioner for the year 2016-17 was graded as 'Good'.

13. It was further submitted by learned CGSC that petitioner completed 30 years of regular service on 15.11.2018 and as per the then applicable rules, his last five APARs commencing from 2013 till 2018 were considered by the Departmental Screening Committee (DSC). Since out of five APARs, petitioner was graded 'Good' in one APAR, i.e. for the year 2016-17, the



DSC did not recommend Third Financial Upgradation due to below benchmark.

14. Learned CGSC further submitted that the criteria for evaluation of APARs was revised and notified vide Signal dated 25.04.2019 and vide another Signal No.00133-155, based upon which petitioner is claiming his Third Financial Upgradation under the MACP Scheme.

15. It was also submitted by learned CGSC that for grant of benefit of upgradation under MACP Scheme, all APARs of petitioner are required to be graded 'Very Good'. Further submitted that BSF, Head Quarter vide Signal dated 25.04.2019 has clarified as under:-

“the definition of 'Very Good' benchmark has been prescribed vide MHA DO dated 08 Feb 1991 which is reproduced as follows - An Officer may be graded as 'Very Good' if in the opinion of the Selection Committee his overall service record reflects that the Officer has done highly meritorious work and possesses positive attributes and these characteristic are reflected in at least 3 of the last 5 ACRs. Further in the opinion of the Selection Committee, the remaining ACRs under consideration of the Committee should reflect that the Officers performance is generally Good during the period of report There should be no adverse entry in any of the ACRs under consideration of the Selection committee.”

16. Learned CGSC submitted that pursuant to Notification of OM dated 22.10.2019, wherein it is stated that all the five ACRs/APARs must be “Very Good” and no APAR should be below the mark “Very Good”, all the previous OMs stand superseded. Lastly, learned CGSC submitted that there is no merit in the present petition and it accordingly deserves to be



dismissed.

17. In rebuttal, learned counsel for petitioner submitted that respondents have denied petitioner the benefit of Third Financial Upgradation w.e.f. 25.07.2016 on the ground that the benchmark for the last five APARs had to be 'Very Good'. However, the Signal dated 25.04.2019 and Signal No.00133-155 issued by the BSF clearly prescribes that an officer would have met benchmark of 'Very Good' if he had at least three 'Very Good' grading and other two not below 'Good' out of last five APARs.

18. Learned counsel for petitioner emphatically submitted that respondents have relied upon the fact that from 25.07.2016, the benchmark of APARs was made 'Very Good' and since petitioner had been graded 'Good' in the year 2016-17 he is not eligible for grant of same. This is contrary to respondents afore-noted two Signals dated 25.04.2019 and No.00133-155, and therefore, the present petition deserves to be allowed.

19. After careful consideration of rival contention urged by both the sides and upon going through the material placed on record, this Court finds that there is no dispute to the proposition that in terms of Office Memorandum No.35034/3/2008-Estt(D) dated 19.05.2009, the bench mark for grant of financial upgradation was "Good". However, subsequently vide Office memorandum dated 27.09.2016, the prescribed benchmark for all levels for grant of financial up-gradation under the MACP Scheme was enhanced from 'Good' to 'Very Good'. The DSC constituted by the respondents assembled in January, 2019 and on 01.06.2021 declared the petitioner ineligible due to below bench mark in the year 2016-17.

20. At this juncture, it is relevant to note the contents of Signal dated



25.04.2019, which read as under:-

"IN LIEU OF MSG FORM

FROM:- HQ DG BSF

DTO-24

TO:- FTR HQ MEGH

U/C

INFO:- HQ SPL DG BSF (EC BP WC) ALL FTR QRS/
SECTOR HGRS. NO. R/3146

FROM PERS DTE-STAFF SEC(.) GRANT OF MACP IN COMPLETION OF 10/20 AND 30 YEARS(.) REF YOUR SIGNAL NO. A/4471 OF 10 APR 2019(.) CLARIFICATION OF THE SUBJECT (ITEI) ABOVE CIRCULATED VIDE OUR SIGNAL NO. R/3125 OF 2017 MAY BE READ AS PER REVISED GUIDELINES ISSUED BY THE MHA VIDE THEIR UO DATED 06/08 FEB 1991 COMMA AN OFFICER MAY BE GRADED AS VERY GOOD IF THE OPINION OF THE SELECTION COMMITTEE. HIS OVERALL SERVICE RECORD REFLECTS THAT THE OFFICER HAS DONE HIGHLY MERITORIOUS WORK AND POSSES THE ATTRIBUTES AND THESE CHARACTERISTIC ARE REFLECTED IN AT LEAST 30F THE 5 ACPS (.) FURTHER IN THE OPINION OF THE SELECTION COMMITTEE THE PCR/APR/ACR UNDER CONSIDERATION OF THE COMMITTEE SHOULD REFLECT THAT THE OFFICERS PERFORMANCE IS GENERALLY GOOD DURING THE PERIOD. THERE SOULD BE NO ADVERSE ENTRY IN ANY OF THE ACRS UNDER CONSIDERATION OF THE SELECTION COMMITTEE IN VIEW OF ABOVE THE PROVISIONS OF ACR/ADR NOT REQUIRED AS VERY GOOD AND ONLY 3 APPLICATION OUT OF 5 APR/ACR REQUIRED VERY GOOD AND REMAINING 2 ARE GENERALLY GOOD. IN THIS REGARD FHQ (PERS DTE (CONFD) BF VIG SEC) SIG NO. P/3175 OF 23 OCT 2008 REFERS (.)

21. Relevantly, respondents have not been able to establish before this



Court as to why in the DSC assembled in January, 2019 and on 01.06.2021 the Signal dated 25.04.2019 and another Signal No.00133-155, stipulating that an Officer may be graded 'Very Good' if in the opinion of the Selection Committee his overall service record reflects that the officer has done highly meritorious work and possesses attributes and these characteristics are reflected in at least three out of the five ACRs, have not been considered. It is not the case of respondents that by virtue of Signal dated 25.04.2019 and Signal No.00133-155 no promotions have been made. Moreover, under these Signal dated 25.04.2019 and Signal No.00133-155, the petitioner is required to have three Very Good grading out of Five ACRs, whereas petitioner has four Very Good to his credit. Also, there are no adverse entries or remarks against him.

22. During the course of hearing, it was pointed out by learned CGSC that petitioner is placed in Low Medical Category w.e.f. 2008 and is attached with SHQ BSF Kolkata since 14.05.2010 and he has been performing only light sitting duties.

23. Be that as it may, it has already been held in a catena of decisions that object of grant of MACP is to provide relief against stagnation. Hence, in our considered opinion, denial of third MACP to petitioner is arbitrary and thus, Signal DTO No.121240 and letter dated 03.11.2020 issued by the respondents, whereby petitioner's application seeking grant of Third Financial Upgradation under the MACP Scheme has been returned by the competent authority citing below benchmark for the year 2016-17, are hereby set aside.

24. The respondents are accordingly directed to issue necessary orders



granting benefit of Third Financial Upgradation under the MACP Scheme from the year 2018 i.e. when it actually became due to him and grant consequential benefit within four weeks.

25. With directions as aforesaid, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 20, 2023

r