



WEB COPY



W.P.No.20478 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2024

Pronounced on : 27.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.20478 of 2022 and
WMP.No.19620 of 2022

S.Selvakumar

... Petitioner

Vs.

- 1.The Director General,
CISF Head Quarters,
No.13, CGO Complex,
Lodhi Road, New Delhi 110 003
- 2.The Addl. Director General,
Airport Sector – CISF Head Quarters,
CISF Complex, Bye Pass Road,
Mahipalpur, New Delhi 110 037
- 3.The Inspector General,
Air Port Sector-II,
CISF South West Head Quarters,
Krishik Bhavan,
Bettahalasur, North Bangaluru,
Karnataka 562 157
- 4.The Deputy Inspector General/Airport Sector,
CISF Head Quarters, South Zone,
'D' Block, First Floor,
Rajaji Bavan, Besant Nagar,
Chennai 600 090
- 5.The Commandant,
CISF Unit ASG Hyderabad,
Mamidipalli Road,
Shamsabad, Begumpet,



W.P.No.20478 of 2022

Hyderabad 500 016
6.The Deputy Commandant,
CISF Unit ASG Visakhapatnam,
Visakhapatnam Airport,
Visakhapatnam 530 009

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records culminating in the petitioner S.Selvakumar's (CISF Constable/GD No.34470222) – Annual Performance Assessment Report (APAR) of the year 2019, as confirmed by the sixth respondent vide his order ref.no.E-30012/CISF/ASG (V)/DOC/APAR/2020-868, dated 13.06.2020, quash the same and direct the respondents to review the petitioner S.Selvakumar's CISF Constable / GD No.344702220-Annual Performance Assessment Report (APAR) of the year 2019, by awarding higher numerical grading and by certifying the petitioner's service record as 'Outstanding' or Good.

For Petitioner : Mr.B.Harikrishnan

For Respondents : Mr.S.Diwakar,
Central Government Senior Panel Counsel



W.P.No.20478 of 2022

WEB COPY

ORDER

This writ petition has been filed challenging the order passed by the sixth respondent dated 13.06.2020 thereby confirmed the Annual Performance Assessment Report of the year 2019.

2. The petitioner was enrolled as Member of Central Industrial Security Force (hereinafter called as 'CISF') on 28.04.2003. After several transfers, finally the petitioner was transferred to the Vth Reserve Battalion Gaziabad, Uttar Pradesh. During the year 2019, he was posted at Vishakapatnam Airport. As per the existing rules, the employees has to be intimated about the grade of Annual Performance Assessment Report (hereinafter called as 'APAR') which is in the scale of 1 to 10. Since the superior officer failed to inform about the grade of APAR for the year 2019, the petitioner requested for APAR grade documents for the year 2019. The report of the year 2019 is as follows:

(i) As against Part -1 - Personal Data, as against Column 10 Punishment awarded during the period under review, the Reporting Officer had remarked that "U/R-36, dated 16.10.2019, penalty of reduction in pay by one stage



W.P.No.20478 of 2022

from 36,400 to 35,300 was imposed upon me for allegedly sleeping while on duty";

(ii) On the capabilities listed in Part-II- Assessment of the Reporting Officer 1. Assessment of work output, personal attributes and functional capacity listed out as (i) to (x), both the Reporting Officer as also the Reviewing Officer, had awarded the numerical grading of 3.8 in the scale of 1 to 10;

(iii) In Part-II-2 Training: it was remarked that "training on Aviation Security and Behavior detention course to be imparted";

(iv) In Part-11-3 State of Health (SHAPE Category to be mentioned), it was remarked as "Shape -1";

(v) In Part-11-4, Integrity, it was remarked that my integrity is "beyond doubt"

(vi) In Part 11-5-General Remarks/Special Qualities, it was remarked that "brave, handsome, often not.

The Reporting Officer had given an overall numerical grading of 3.8 in the Scale of 1 to 10 in Part II (1) of the APAR.

In Part III of the APAR- Remarks of the Reviewing Officer,

(a) as against Column 2 - is the Reviewing Officer satisfied that the Reporting Officer has made his/her report



W.P.No.20478 of 2022

WEB COPY

with due care and attention, the Reviewing Officer had endorsed, "yes";

(b) as against the Column 3 - Remarks of the Reviewing Officer to indicate specifically the difference, if any, with the assessment made by the Reporting Officer, and the reason there of, the Reviewing Officer has endorsed "I do agree";

(c) As against Column 4 - If the Official reported upon is a member of the SC/ST, please indicate specifically whether the attitude of the Reporting Officer in assessing the performance of the SC/ST has been fair & just, the Reviewing Officer has remarked, "Fair & Just".

The Reviewing Officer had thus awarded an overall numerical grading of 3.8 in the Scale of 1 to 10 given in Part-II.

2.1 Overall grade was awarded as 3.8 in the scale of 1 to 10 in Part II (1) of the APAR. It was also reviewed and awarded 3.8 grade in Part II. Therefore, the petitioner submitted representation as against the adverse remarks of his APAR grade for the year 2019 on 23.02.2020 to the Reviewing Authority by way of appeal. However, by a letter dated



W.P.No.20478 of 2022

WEB COPY

13.06.2020, the petitioner was informed that his appeal was examined by the Headquarters, Chennai and it was rejected by an order dated 12.06.2020 as having no merits.

3. *Mr.B.Harikrishnan*, the learned counsel appearing for the petitioner would submit that as per the Rules, appeal should be disposed of within a period of 30 days from the date of receipt of the appeal. That apart, the order dated 12.06.2020 was not even communicated to the petitioner. By the communication dated 13.06.2020, the petitioner was informed about the order passed by the appellate authority and also stated the reasons for rejection of his appeal. He further submitted that the Reviewing Officer should exercise positive and independent view on the report of the Reporting Officer under different detailed headings in the form of the report as well as on general assessment. However, the Reviewing Officer failed to exercise positive and independent judgment. Further, the Reporting Officer and the Reviewing Officer should ensure that no employee is adversely affected by prejudicial reports recorded without proper consideration. As per the standard instructions and



W.P.No.20478 of 2022

guidelines, it is imperative that every Government Servant should know what his defects so that he could try to rectify them.

3.1 In support of his contention, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Division Bench of the Hon'ble Delhi High Court rendered in ***WP(C).No.2673 of 2016*** dated 18.07.2023, wherein it is held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Further, the APAR's for the previous periods were given and suddenly for the next year, dropping the grade with no apparent reasons which establishes bias on the part of the Reporting Officer. He also relied upon the judgment of the Hon'ble Division Bench of this Court rendered in ***WA.No.1476 of 2022*** dated 01.08.2022, in which it is held that the reasons assigned by the Revisional Authority to give further directions to initiate the disciplinary proceedings afresh. Though in a given case the Revisional Authority can exercise its power, in the facts of the case, when the disciplinary



W.P.No.20478 of 2022

authority as well as the appellate authority both had thought that the explanation offered by the delinquent was satisfactory to restrict imposition of punishment to minor punishment, while exercising revisional jurisdiction, that too in the revision application filed by the delinquent, giving direction to initiate disciplinary proceedings afresh for imposition of major penalty was too harsh the decision of the revisional authority.

4. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

5. On perusal of the counter filed by the respondents, revealed that APAR for the year 2019 of the petitioner was assigned by the Reporting Officer based on the annual performance of the petitioner and graded as average i.e. 3.8/10 points. It was accepted by the Reviewing Officer. In fact, it was duly acknowledged by the petitioner on 14.02.2020 and he submitted representation to the Reviewing Officer. Since there was no Commandant posted at Airport Security Group,



W.P.No.20478 of 2022

Hyderabad at that time, the report submitted by the petitioner was considered and rejected by the Deputy Inspector General, Airport Security Group, Chennai being devoid of merits. There is no provision for second appeal as against the grade of APAR. Therefore, the representation submitted by the petitioner was rejected and the same was informed to the petitioner on 10.10.2021. There is no provision for second appeal as submitted by the petitioner dated 15.07.2020 addressed to the Inspector General/Airport Sector-II Headquarters, Bangalore. Therefore, it was returned to the petitioner by the communication dated 18.07.2020.

6. That apart, the scope of interference under Article 226 of Constitution of India in the matters of awarding grade in APAR is very limited and it is possible only in the case where malafides are attributed to reporting/reviewing officer or in cases where the extraneous material was considered which is not within the knowledge of the petitioner or adverse remarks that are not put to notice of the employee concerned are taken into consideration and thereby, if the employee's grade is reduced,



W.P.No.20478 of 2022

there will be some scope of interference by this court. It is not the case of the petitioner that malafidely his APAR was graded and some of the materials which are not within the knowledge of the petitioner was considered while awarding grade in APAR for the year 2019 of the petitioner. Therefore, the judgments cited by the learned counsel appearing for the petitioner are not applicable to the case on hand.

7. In view of the above, this Court finds no infirmity or illegality in the impugned order passed by the sixth respondent dated 13.06.2020. As such, this writ petition is devoid of merits and liable to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

27.09.2024

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
lok



W.P.No.20478 of 2022

WEB COPY

To

1. The Director General,
CISF Head Quarters,
No.13, CGO Complex,
Lodhi Road, New Delhi 110 003
2. The Addl. Director General,
Airport Sector – CISF Head Quarters,
CISF Complex, Bye Pass Road,
Mahipalpur, New Delhi 110 037
3. The Inspector General,
Air Port Sector-II,
CISF South West Head Quarters,
Krishik Bhavan,
Bettahalasur, North Bangaluru,
Karnataka 562 157
4. The Deputy Inspector General/Airport Sector,
CISF Head Quarters, South Zone,
'D' Block, First Floor,
Rajaji Bavan, Besant Nagar,
Chennai 600 090
5. The Commandant,
CISF Unit ASG Hyderabad,
Mamidipalli Road,
Shamsabad, Begumpet,
Hyderabad 500 016
6. The Deputy Commandant,
CISF Unit ASG Visakhapatnam,
Visakhapatnam Airport,
Visakhapatnam 530 009



WEB COPY



W.P.No.20478 of 2022

G.K.ILANTHIRAIYAN, J.

lok

W.P.No.20478 of 2022

27.09.2024