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

Date of Decision:- 28.08.2024

\+ W.P.(C) 2317/2020
RAVI BALINA .....Petitioner
Through: Mr. Tapas Das, Adv.

versus

UNION OF INDIA AND ORS. .....Respondents
Through: Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Ranjeev Khatana, Mr. Maulik Khurrana, Mr. Varun Pratap Singh, Advs. with Mr. S.K. Mishra, Mr. Ram Niwas and Mr. Shyam Singh Negi from BRO.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MS. JUSTICE SHALINDER KAUR

REKHA PALLI, J(ORAL)

1. The petitioner has approached this Court assailing the order dated 09.03.2018 passed by the respondents, vide which his name has been excluded from the list of Superintending Engineers, who were granted the benefit of Non-Functional Financial Upgradation [NFFU]. The petitioner also assails the communication dated 11.12.2019 vide which he was informed that he had been assessed as 'unfit' by the Departmental Screening Committee (DSC) for grant of NFFU on account of adverse remarks endorsed both by his Reporting Officer and Reviewing Officer in his Annual Performance Assessment Report [APAR] for the period between 01.04.2010 to 13.11.2010.
2. The petitioner joined the Border Roads Organization (BRO) as an

Assistant Executive Engineer (Civil) in 1992 and, was, thereafter promoted as an Executive Engineer on 01.08.2000 and as a Superintending Engineer on 26.08.2011. It is the petitioner's claim that on 09.03.2018 when his batchmates were granted NFFU in the SAG Scale w.e.f. 01.04.2015, he was denied the said benefit. The petitioner, therefore, submitted a representation and was informed vide letter dated 11.12.2019 that he had been assessed as 'Unfit' by the DSC due to the following adverse remarks endorsed by his Reporting Officer and his Reviewing Officer in his Annual Performance Assessment Report (APAR) for the period between 01.04.2010 to 13.11.2010:-

Reporting Officer	*Matured officer who is having adequate technical knowledge and professional capabilities. However he did not perform to the expectations exhibiting his poor sense of responsibility, attitude to work and discipline, thus poor leadership qualities. He lacks courage in accepting his faults and even to ack correspondence. Due to his non performing attitude he has been assessed as unfit and prematurely got posted from RTC.*
Reviewing Officer	*I agree with initiating officer's views of Mr.B.Ravi is not good in performance on the ground. He makes excuses of one or other kind. He is a non performer, though he has knowledge.*

3. Learned counsel for the petitioner submits that even though, the said APAR was communicated to the petitioner on 31.01.2011, he did not

make any representation against the same, since he had been graded as 'very good', both by his Reporting Officer as also by his Reviewing Officer and was, therefore, meeting the benchmark required for promotion. However, he has now been informed that despite meeting the benchmark, he has been assessed as 'Unfit' by the DSC on account of the adverse remarks in the said APAR. He contends that the DSC has failed to appreciate that the adverse remarks were inconsistent with the grading of 'very good' awarded to him in the said APAR and, therefore, ought to have ignored being contrary to the grading. In the alternative, the very APAR ought to have been disregarded on the ground of inconsistency itself. He, therefore, prays that the impugned orders along with the APAR for the period from 01.04.2010 to 13.11.2010 be set aside and the respondents be directed to re-consider the petitioner's case for NFFU w.e.f. 01.04.2015 by ignoring the said APAR.

4. Learned counsel for the respondents while not disputing the aforesaid factual position submits that the petitioner's plea that he has been graded as very good in the APAR is liable to be rejected. He submits that as per the Department of Personnel and Training's (DoPT) OM dated 23.07.2009, the grading of '6' awarded to the petitioner both by his Reporting Officer and Reviewing Officer has to be treated as 'good' and not 'very good' as claimed by the petitioner. He, therefore, contends that when the petitioner has been downgraded to 'good' in the said APAR, it cannot be said that there is any inconsistency in the impugned APAR on account of the adverse remarks. Furthermore, the petitioner despite being communicated the

said APAR, had chosen not to make any representation against the same and, therefore, cannot now be permitted to urge that the said APAR should be ignored or set aside.

5. Further, by placing reliance on the decisions of the Apex Court in ***"Union of India vs. S.K. Goel,* 2007 (14) SCC 641** and ***"Anil Katiyar vs. Union of India, 1997 (1) SCC 280,*** he submits that the DSC was not bound by the overall grading given in the APAR and was entitled to make its own assessment regarding the petitioner's fitness for grant of NFFU. In the present case, once the DSC after considering the APAR in its entirety has come to a conclusion that the petitioner was 'unfit' for grant of NFFU, no interference is called for with the said recommendations of the DSC. He, therefore, prays that the writ petition be dismissed.

6. Having considered the submissions of the learned counsel for the parties and perused the record, we find that the foremost question which needs to be determined is as to whether the grading awarded to the petitioner in the impugned APAR was to be treated as 'very good' or 'good'. While the petitioner has urged that the grading of '6' is a 'very good' grading, learned counsel for the respondents has urged that a grading of '6' is a 'good' grading and not a 'very good' grading, for which purpose, he has relied on Annexure-I to the DoPT's OM dated 23.07.2009. In order to appreciate this rival contentions of the parties, it would be apposite to note the relevant extracts of the OM, which read as under:

> *"(iv) APARs graded **between 6 and short of 8** will be rated as 'very good' and will be given a score of 7.*

(v) APARs graded between 4 and 6 short of 6 will be rated as 'good' and given a score of 5."

(emphasis supplied)

7. From a bare perusal of the aforesaid guidelines issued by the DoPT, it is evident that APARs graded between '6' and short of '8' are to be rated as 'very good' and the APARs graded between '4' and short of '6' are to be treated as 'good'. In the present case, it is an admitted position that the petitioner has been awarded the grading of '6' and not anything short of '6', his grading has to be necessarily treated as 'very good'. There is, therefore, no merit in the respondent's plea that the grading of the petitioner has to be treated as 'good' and not 'very good' as claimed by the petitioner.
8. In the light of this position when it is evident that the grading of '6' awarded to the petitioner in the aforesaid APAR has to be treated as 'very good', we may now deal with his plea that the adverse remarks endorsed in the APAR are inconsistent with the grading awarded to him. Having given our thoughtful consideration to this plea of the petitioner, we find that he is correct in urging that the grading and the pen picture remarks in his aforesaid APAR for the period between 01.04.2010 to 13.11.2010, are absolutely inconsistent. The petitioner is, therefore, correct in urging that his Reporting and Reviewing Officers have endorsed the APAR without appreciating the fact that there was an inconsistency in the recording of the APAR. We are, therefore, of the view that the APAR is liable to be set aside on the ground of inconsistency itself. It was the duty of the petitioner's Reporting Officers to ensure that the remarks and grading awarded to

him are in consonance with each other.

9. We have also considered the decisions in ***S.K. Goel (supra)*** and ***Anil Katiyar (supra)*** relied upon by the respondents but find that the same are not applicable to the facts of the present case. In both these cases the Apex Court had reiterated that the DSC or the Departmental Promotion Committee (DPC) is not bound to accept the overall grading given in the APAR of an employee and can always make an independent assessment of the entries made in the APAR to assess the employee's fitness for promotion/NFFU. The issue in the present case is, however, not regarding the power of the DSC to make an independent assessment regarding the APAR, but as to whether an APAR, which contains such blatant inconsistencies can be said to be valid. In our considered view, such inconsistencies in the APAR creates a reasonable doubt regarding the manner in which the same been recorded and shows that both the Reporting Officer and the Reviewing Officer were perhaps not even aware of the implication of the inconsistent entries in the APAR. We, therefore, have no other option but to set aside the APAR on the ground of inconsistency itself.

10. Having come to the conclusion that the APAR is liable to be set aside, we would have in normal circumstances remanded the APAR back to the petitioner's Reporting and Reviewing Officers to re-consider the grading and remarks in the APAR so as to ensure that the same are consistent with each other. However, taking into account that 14 years have already been elapsed since the APAR in question was endorsed, both the Reporting and the Reviewing Officer stand superannuated,

the APAR cannot be remanded back to them at this belated stage.

11. We, accordingly, set aside the aforesaid Annual Performance Assessment Report (APAR) of the petitioner for the period between 01.04.2010 to 13.11.2010 as also the impugned order dated 11.12.2019. We further direct the respondents to re-consider the petitioner's case for grant of NFFU w.e.f. 01.04.2015 by ignoring the said APAR and instead taking into account his earlier APAR as per the Rules. The said exercise be completed within a period of twelve weeks and in case, the petitioner is found 'fit' for grant of NFFU, all consequential benefits be paid to him within twelve weeks thereafter.

12. The writ petition is, accordingly, disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

AUGUST 28, 2024
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