



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

Judgment reserved on: 12.09.2024
Judgment pronounced on: 25.09.2024

+ W.P.(C) 9744/2022

CHANDRA BHUSHANPetitioner

Through: Ms. Saahila Lamba, Adv.

versus

UNION OF INDIA & ORS.Respondents

Through: Ms. Priyanka Das, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. The petitioner, who is serving as a Deputy Inspector General (DIG) in the Central Reserve Police Force (CRPF), has approached this Court under Article 226 of the Constitution of India seeking the following reliefs:-

“(i) Issue a writ of certiorari quashing orders dated 19.07.2021 and 14.09.2021 issued by the respondents rejecting the representation made by petitioner in respect of his Annual Performance Assessment Reports (APAR) for the periods from 31.10.2019 to 31.03.2020 and 01.04.2020 to 10.09.2020;

(ii) Issue a writ of mandamus directing the respondents to expunge the adverse remarks contained in APARs of the petitioner for the periods from 31.10.2019 and 31.03.2020 and 01.04.2020 to 10.09.2020 and upgrade the grading in APAR of the petitioner for the period from 31.10.2019 to 31.03.2020 to ‘Very Good’

(iii) Pass any such other orders as it may deem fit to this Hon’ble Court in the facts and circumstances of the case.”



2. The factual background of the case, as emanating from the record, is that the petitioner joined the CRPF as an Assistant Commandant (AC) on 03.07.1989 and has since been promoted to the rank of DIG.

3. The petitioner, as an AC, was posted at Group Centre, CRPF, Hiranagar, Jammu when on 30.09.2020, the Reporting Officer initiated his APAR for the period from 31.10.2019 to 31.03.2020, assigning a grading of 'Good' along with recording adverse remarks in the pen picture. These remarks were subsequently endorsed by the Reviewing Officer and no comments were made by the Accepting Authority in the said APAR as the petitioner did not serve for 90 days under his command. After the reporting period was over qua the APAR for the period from 31.10.2019 to 31.03.2020, an advisory was issued to the petitioner on 18.07.2020 which was followed by another advisory dated 23.07.2020. The latter advisory was duly replied to by the petitioner on 27.07.2020.

4. Thereafter, the petitioner viewed his APAR for 31.10.2019 to 31.03.2020 through online mode on 02.12.2020 and being aggrieved, he made a representation on 07.12.2020, requesting for expunction of the adverse remarks and upgradation of the grading for the said APAR period. The respondents vide order dated 19.07.2021 decided the said representation and expunged the advisory dated 18.07.2020 being beyond the assessment period of the said APAR, however, they made no changes to the grading of 'Good' or the adverse remarks, stating that the Competent Authority had found that the overall grading of 'Good' awarded to him was based on his assessment during that period and therefore, required no interference.



5. Subsequently, the same Reporting Officer, who had assessed the APAR of the petitioner for the period between 31.10.2019 to 31.03.2020 (*hereinafter as first impugned APAR*), once again included adverse remarks by referring to the advisory dated 18.07.2020 in his following APAR pertaining to the period from 01.04.2020 to 10.09.2020 (*hereinafter as second impugned APAR*), although the grading was marked as 'Very Good'. This assessment was similarly approved by the same Reviewing Officer, who had previously agreed with the recordings of the Reporting Officer in the petitioner's first impugned APAR. The same Accepting Authority concurred with the grading given to the petitioner for this period. Dissatisfied, petitioner made another representation on 08.04.2021, seeking expunction of the adverse remarks in the second impugned APAR. The respondents, however, vide order dated 14.09.2021 rejected this representation of the petitioner as well.

6. Being unsettled, the petitioner had sought his legal recourse by filing a writ petition, W.P.(C) No. 9410/2022 before this Court, which was, vide order dated 03.06.2022, permitted to be withdrawn with liberty to file afresh. Consequently, the present petition came to be filed.

7. Ms. Saahila Lamba, learned counsel for the petitioner, in support of the submissions made in the writ petition, contended that the petitioner since his joining the CRPF, has been working diligently and to the best of his abilities, without there being any adverse remarks ever endorsed and has consistently received the gradings of 'Very Good' / 'Outstanding' in his APARs, except for the impugned periods.

8. She submitted that there is a stark contradiction in the appraisal made



by the Reporting Officer in Part - III of the APARs, wherein not only has the Reporting Officer agreed with the self-appraisal made by the petitioner in his APARs but also opined that his behaviour towards his subordinates and female colleagues was good / cordial or that there were no complaints. Having agreed with the same, there was no occasion for the Reporting Officer to have made adverse remarks in the pen picture by observing that the petitioner was required to improve his interpersonal skills, relationships, etc or was highly resistant or that he used to react negatively upon receiving a task, which remarks were in complete variance with each other.

9. Learned counsel contended that in both the impugned APARs, a reference has been made to an advisory dated 18.07.2020, which she claimed was never issued to the petitioner, even otherwise had been issued beyond the assessment period of the petitioner's first APAR for period 31.10.2019 to 31.03.2020 and therefore, it could not have been a basis for downgrading the petitioner in the said APAR or for making any adverse remarks. Moreover, in response to the subsequent advisory dated 23.07.2020 issued to the petitioner, he had filed a reply on 27.07.2020. She had contended that once the advisory was suitably replied to and no action was taken against the petitioner by the higher officials pursuant to the said advisory, it was impermissible for the Reporting Officer to have made adverse remarks in the petitioner's impugned APARs.

10. Further, she submitted that once in response to the petitioner's representation dated 07.12.2020, the advisory dated 18.07.2020 itself had been expunged by the respondents, which alone formed the basis for the adverse remarks in both the APARs, the adverse remarks in the pen picture



of both the impugned APARs were also required to be expunged.

11. Learned counsel drew our attention to the Office Memorandum (OM) dated 05.06.1981 issued by the Department of Personnel and Training (DoPT), Government of India, and submitted that no warnings were ever given to the petitioner in order to enable him to improve upon his behaviour which has been reported to be inappropriate. She, therefore, contended that the Reporting Officer could not have resorted to recording of the adverse remarks in the APARs, without any warnings/displeasure having been conveyed to the petitioner.

12. She further submitted that respondents have blatantly ignored the mandate of OM dated 02.03.1968 issued by Ministry of Home Affairs (MHA), as the Reporting Officer had failed to mention any of the efforts made in guiding the petitioner to rectify his purported demeanour. Relying upon another OM dated 20.05.1972, she contended that it prescribes for reference to be made to specific incidents while making the adverse remarks. However, there was no reference to any incident and instead, a reference had been made to a non-existing advisory given to the petitioner.

13. Taking the issue further, learned counsel pointed out that while the petitioner was posted in Hiranagar, in two more APARs of the petitioner for periods 01.04.2019 to 09.08.2019 and 26.10.2020 to 31.03.2021, he was graded as 'Very Good' and 'Outstanding', respectively. Further, in his previous APARs for 2017-2018 and 2018-2019, he had been similarly graded as 'Outstanding' / 'Very Good' and it is only in the impugned APARs that he had been given adverse remarks and downgraded to 'Good' in the first impugned APAR. Finally, she submitted, even the representation



of the petitioner dated 08.04.2021 had been rejected by the respondents by passing an absolutely non-speaking order.

14. *Per contra*, Ms. Priyanka Das, learned counsel for the respondents sought dismissal of the petition at the threshold and urged that the petition should not be entertained as despite regular warnings, the petitioner had failed to make the desired behavioural changes, as per the requirement of the particular post held by him. Moreover, the remarks and the gradings endorsed in the APAR for the impugned periods had been made after noticing the persistent and indisciplined behaviour of the petitioner. Further, the *unbiased* and *bonafide* appraisal of the petitioner by the Reporting Officer was confirmed by the Reviewing Officer and Accepting Authority. The higher officials had independently recorded the remarks, which are consistent with the evaluations made by the Reporting Officer, only confirms that the APARs were correctly recorded. Therefore, the Competent Authority, deciding the petitioner's representations, did not find any sufficient ground to alter the remarks in the APARs or to change the grading recorded in the APAR for the relevant period.

15. Learned counsel contended that it is immaterial that the past record of the petitioner was either 'Outstanding' or 'Very Good' as there is no obligation on the authorities to consider the past performance of an Officer while recording the APAR for a particular period. The petitioner, she contended, was given ample opportunities at reformations despite which he failed to pay any heed to the regular warnings and failed to correct his style of functioning as well as of communication with his officers and subordinates. Therefore, after assessing the performance of the petitioner in



the entire period till April, 2020, an advisory was issued to the petitioner by the then Inspector General, CRPF.

16. Learned counsel further urged that the advisory dated 18.07.2020 had been expunged vide order dated 19.07.2021 issued by then DIG, CRPF only because it was found that the said advisory was outside the period of the first APAR report but since the overall grading of 'Good' awarded to the petitioner to him was based on the assessment of his performance during the period from 30.10.2019 to 31.03.2020, the same could not be faulted with.

17. It was then submitted that the petitioner was subsequently graded 'Very Good' for the period w.e.f. 01.04.2020 to 10.09.2020 after due assessment of his work output, personal attributes, functional competence, etc., however, he had made certain objectionable comments in the signal dated 18.07.2020 issued by him. Consequently, an advisory, recording his unacceptable behaviour, was issued to him by the Reporting Officer on 18.07.2020. She submitted that another advisory dated 23.07.2020 was issued to the petitioner by the Additional Director General, J&K zone, CRPF with respect to the tone and tenor of the manner in which he had drafted the signal dated 18.07.2020, nonetheless, taking a lenient view, the petitioner was advised to be careful in future while undertaking official correspondence with his higher authorities.

18. The entire range of circumstances, the learned counsel submitted, thus suggest that the petitioner has been accurately assessed by the respondents based on his performance and relevant attributes.

ANALYSIS AND CONCLUSION

19. Having considered the submissions of the learned counsel for the



parties and perused the record, it can be seen from the above narration that the controversy at hand pertains to the adverse remarks in the petitioner's APARs for the periods w.e.f. 31.10.2019 to 31.03.2020 and 01.04.2020 to 10.09.2020 and the grading of 'Good' in the first impugned APAR.

20. Proceeding to deal with the merits of the contentions made by the learned counsel for the parties, we may first reproduce the recordings by the Reporting Officer in Part-III (Appraisal) in the petitioner's first impugned APAR i.e., for the period 31.10.2019 to 31.03.2020, recorded on 30.09.2020, which read as under:

"Part-III (Appraisal)"
(To be filled in by the Reporting Officer)

<i>1. Do you agree with the resume of work as Indicated by the officer and in particular regarding the special achievements, if any, mentioned by the officer? If not, indicate briefly the reasons for disagreement and the extent of disagreement.</i>	Agreed
<i>2. Integrity</i>	Beyond doubt
<i>3. Welfare (Please comment on the officer's concern for the welfare of his subordinates and his achievement in this field.)</i>	Nothing substantial
<i>4. Ability to detect and expose malpractices of subordinates.</i>	Capable
<i>5(d) Attitude towards Scheduled Caste/ Scheduled Tribe/ Weaker Sections of Society (Applicable in case of officers dealing with the development and protection of Scheduled Caste and/ or Scheduled Tribes and Weaker Sections of society). Please comment on his/her understanding of the problems of Scheduled Castes/ Scheduled Tribes/</i>	No complaints



<i>Weaker Sections and willingness to deal with them.</i>	
<i>5([k] Attitude towards women (Including women officers and personnel of the force).</i>	No complaints
<i>6. State of Health</i>	SHAPE-1
<i>7. Training (Here comment on the officer's ability to plan and organize the training of his subordinates. Specific area of training required by officer towards his capacity building.)</i>	Not much effort during this period"

21. We may also note the remarks endorsed in the pen picture by the Reporting Officer, who had awarded the box grading of 5.1 in Part-V and an overall grading of 'Good' in Part-VII in the petitioner's first impugned APAR, the same read as under:

"PART-V

PEN-PICTURE OF THE OFFICER REPORTED UPON BY THE REPORTING OFFICER

:-
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"Officer needs to improve his interpersonal skills, relationships, ability to communicate and his style of working. For this he was given an advisory dated 18.07.2020 in which it was observed that his communication habits were inappropriate, offensive, harsh and disrespectful. Whenever a task was given to him he would react negatively and was highly resistant and had to be coaxed into doing the work. He was advised to correct the above two aspects of his functioning. During the period under report he is graded as 'Good"

(emphasis supplied)

22. Evidently, the above remarks and grading of the Reporting Officer were agreed to by the Reviewing Officer on 22.10.2020. Further, the Accepting Authority on 06.11.2020, made no comments on the performance as the petitioner had not served for 90 days and above under his command. However, what emerges from the analysis of this APAR for the period w.e.f.



31.10.2019 to 31.03.2020 is that the pen picture endorsement by the Reporting Officer was premised solely upon the advisory dated 18.07.2020. The petitioner is, therefore, correct in urging that the said advisory being beyond the period of reckoning of assessment could not have been relied upon by the Reporting Officer while recording his APAR. We find merit in this plea of the petitioner as we are of the considered opinion that any advisory issued after 31.03.2020 could not be taken into account while recording the petitioner's APAR for the period ending on 31.03.2020. The same having been issued on 18.07.2020 could have been considered only for the subsequent APAR reporting, if required. Needless to say, even otherwise, the said advisory was expunged by MHA on 19.07.2021.

23. It is further relevant to note that the remarks made in Part III of the aforesaid APAR were extremely vague as the Reporting Officer has failed to precisely report about the attitude of the petitioner towards Scheduled Caste/Scheduled Tribe/weaker section of the society and women. Instead of reporting about his inter-personal skills and ability to communicate effectively with the aforesaid section of the society, he had inexplicitly remarked '*no complaints*' which in no manner specify about any difference in his abilities to deal with the aforesaid sections of the society.

24. We may further highlight that the relevant period of APAR was even otherwise for a short duration wherein the Reporting Officer had assessed the performance of the petitioner as 'Good' with remarks that officer needs to improve his inter-personal skills, relationships, ability to communicate and his style of working. However, barely after 5 months, the same Reporting Officer while assessing the performance of the petitioner for the



period w.e.f. 01.04.2020 to 10.09.2020 graded the petitioner as 'Very Good' with remarks that petitioner had good concern about welfare of his subordinates and maintains cordial relations with them. Thus, if the petitioner's performance, including his communication skills and relationship with his subordinates, was unsatisfactory till 31.03.2020, it is difficult to comprehend as to how it could have suddenly improved from 01.04.2020, especially when a representation against the advisory dated 18.07.2020 for his behaviour was pending to be considered.

25. We may also note that it is a well established position that an APAR of a subordinate is recorded on the basis of the objective parameters noted in the Rules/Regulations issued by the DoPT from time to time. The superior officer is entrusted with the duty to record an APAR fairly and dispassionately, founded upon the facts and circumstances rather on a mere suspicion. The assessment should, thus, include the positive and negative traits of the subordinate personnel. However, the manner in which the Reporting Officer has recorded his inputs in Part-III of the APAR about the assessment of the petitioner conveys his casual approach in evaluating the performance of the petitioner, least realising that it would tarnish the reputation of the petitioner and jeopardise his career.

26. Having considered the above, we find that such inconsistencies in the APAR creates a reasonable doubt that perhaps both the Reporting Officer and Reviewing Officer were not even aware of the implications of the inconsistent entries in the APAR. We are, therefore, of the view that this first impugned APAR, on this ground, is liable to be set aside.

27. We may now advert to the second impugned APAR to appreciate the



submissions of the parties. It will, therefore, be apposite to reproduce the remarks by the Reviewing Officer in Part-III (Appraisal) in the petitioner's APAR for the period 01.04.2020 to 10.09.2020, recorded on 23.03.2021, which are as under:

"Part-III (Appraisal)"

(To be filled in by the Reporting Officer)

1. Do you agree with the resume of work as Indicated by the officer and in particular regarding the special achievements, if any, mentioned by the officer? If not, indicate briefly the reasons for disagreement and the extent of disagreement.	Agreed
2. Integrity	Beyond doubt
3. Welfare (Please comment on the officer's concern for the welfare of his subordinates and his achievement in this field.)	Good
4. Ability to detect and expose malpractices of subordinates.	Capable
5(d) Attitude towards Scheduled Caste/ Scheduled Tribe/ Weaker Sections of Society (Applicable in case of officers dealing with the development and protection of Scheduled Caste and/ or Scheduled Tribes and Weaker Sections of society). Please comment on his/her understanding of the problems of Scheduled Castes/ Scheduled Tribes/ Weaker Sections and willingness to deal with them.	Cordial
5([k) Attitude towards women (Including women officers and personnel of the force).	Cordial
6. State of Health	SHAPE-1
7. Training (Here comment on the officer's ability to plan and organize the training of his subordinates. Specific area of training required by officer towards his capacity	"Not much effort during this period."



building.)

28. Relevantly, we may also note the remarks endorsed in the pen picture by the Reporting Officer, who had awarded the box grading of 6 in Part-V and an overall grading of 'Very Good' in Part-VII in the petitioner's APAR for the period 01.04.2020 to 10.09.2020, the same read as under:

"PART-V
PEN-PICTURE OF THE OFFICER REPORTED UPON BY THE
REPORTING OFFICER

.
. .

Officer needs to improve his interpersonal skills, relationships, ability to communicate and his style of working. For this he was given an advisory dated 18.07.2020 in which it was observed that his communication habits were inappropriate, offensive, harsh and disrespectful. Whenever a task was given to him he would react negatively and was highly resistant and had to be coaxed into doing the work. He was advised to correct the above two aspects of his functioning, in the previous APAR. He still has to show improvement."

29. From a bare perusal of the aforesaid endorsement in the APAR, it emerges that the Reporting Officer has opined that the petitioner reflects good concern for the welfare of his subordinates and he is cordial towards Schedule Caste/ Schedule Tribe/ weaker section of the society/ and women. However, in the pen picture, the Reporting Officer has endorsed the remarks that the petitioner needed to improve his inter-personal skills, relationship, ability to communicate and his style of working, which was absolutely in variance with his remarks as mentioned in Part-III of this APAR as well as the numerical grading of '6' with respect to 'inter-personal relations' and 'communication skills'.

30. Moreover, the assessment of the performance of the petitioner given



by the Reporting Officer was agreed to by the Reviewing Officer for the aforesaid APAR and was further concurred by the Accepting Authority in March, 2021.

31. While seeking expunction of adverse remarks in this APAR, the learned counsel has drawn our attention to the pen picture appearing in Part-V of the APAR and vociferously urged that once the advisory dated 18.07.2020 had been expunged by the Competent Authority, the same could not have been made the basis for endorsing remarks about the performance of the petitioner in the said pen picture.

32. In order to appreciate the said plea of the petitioner, we may refer to paragraph 4 of the order no. R.XIII.22/2020-DA-13(APAR) dated 19.07.2021 issued by MHA, which reads as under:-

“4. AND WHEREAS, in the instant case, since DG, CRPF was Accepting Authority for the APAR of the Officer for the said period, the representation of the officer was sent to MHA. The representation of the officer was examined/considered by the Competent Authority in MHA and after considering all aspects, the Competent Authority in MHA has approved expunction of the advisory dated 18.07.2020, which is adverse in nature and outside the period of report. The Competent Authority, has also observed that the overall grading ‘Good’ awarded to the officer by Reporting officer and Reviewing Officer based on the assessment of the officer during the period under report is not to be interfered with.”

33. It emanates from the aforementioned extract of the MHA’s order that the MHA had specifically approved the expunction of advisory dated 18.07.2020, which it had found not only to be adverse in nature but also outside the period of the APAR report of 31.10.2019 to 31.03.2020. Meaning thereby, the advisory dated 18.07.2020 ceased to exist, having been expunged by the MHA on 19.07.2021. The petitioner is, in our view,



correct in urging that the said advisory could not have been the basis for recording the adverse remarks in the pen picture of the second impugned APAR also.

34. Upon perusal of both the impugned APARs, we are constrained to observe that the Reporting Officer, Reviewing Officer and Accepting Authority had endorsed the impugned APARs in the most casual manner, being completely oblivious of the purpose and sanctity of recording APARs. The pen picture as endorsed by the Reporting Officer in the first APAR for the period from 31.10.2019 to 31.03.2020 was reiterated in verbatim in the second impugned APAR for the period 01.04.2020 to 10.09.2020. Ironically, in Part-III of the first impugned APAR, the Reporting Officer had endorsed inexplicit remarks, not being in consonance with the pen picture in Part-V. Similar is the position in the second impugned APAR wherein even though the positive remarks were endorsed in Part-III, at variance thereto, adverse remarks were recorded in pen picture. Even though, the numerical and overall gradings of the petitioner had considerably improved and he has been upgraded from 'Good' to 'Very Good'. However, adverse remarks made in the second impugned APAR remained and that too being exactly the same as had been endorsed in the first impugned APAR.

35. For the aforementioned reasons, the second impugned APAR is also liable to be set aside. We, therefore, allow the petition by quashing the APARs for the period from 31.10.2019 to 31.03.2020 and from 01.04.2020 to 10.09.2020 as also the impugned order 14.09.2021. The effect of this order will therefore be that the impugned APARs will not be taken into account for any purpose whatsoever.



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36. With above observations, the writ petition is disposed of.

(SHALINDER KAUR)
JUDGE

(REKHA PALLI)
JUDGE

SEPTEMBER 25, 2024
KM/SU