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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 11.07.2024***

+ W.P.(C) 9955/2020

PAVAN SINGH RAWAT

.....Petitioner

Through: Ms. Sahila Lamba, Advocate.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Vikrant N. Goyal and
Mr. Vivek Nilesh Goyal, Advocates.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****J U D G M E N T****REKHA PALLI, J (ORAL)**

1. The petitioner has approached this Court under Article 226 of the Constitution of India seeking the following relief:-

“Issue a writ of mandamus directing the respondents to upgrade ‘Good’ grading awarded to petitioner in his Annual Performance Appraisal Reports (APAR) for the years 2017-2018, 2018-2019 and 2019-2020 and consequently grant first financial upgradation under Modified Assured Career Progression Scheme to petitioner with effect from 24.09.2020 with all consequential benefits”

2. At the outset, the brief factual matrix of the matter as emerging from the record may be noted. The petitioner on 24.09.2010 joined the Border Security Force (in short “BSF”) as an Assistant Sub-Inspector/Dental Technician. While he was returning from his native village in Uttarakhand



during Emergency Leave to join his place of posting at Composite Hospital, BSF Camp, Jalandhar, Punjab, on 20.04.2014 he met with a serious accident. As a result of which, the lower part of his body was seriously affected rendering him immobile. Thereafter, the Medical Board constituted by the respondents themselves declared the petitioner a paraplegic and his disability was assessed at 100%. However, despite the 100% disability from which the petitioner was suffering, he continued to diligently serve the BSF and was always awarded 'Very Good' grading in his APARs till 2016-17.

3. We may note that in the petitioner's APAR for the year 2016-17, his Reporting Officer had specifically observed that he was hardworking, sincere and a professionally sound subordinate officer. Similar remarks were endorsed in his APARs for the years 2014-15 and 2015-16 as well, wherein also he was described as being a very efficient ASI with very good knowledge of computer and IT and was accordingly graded as 'Very Good'. However, after the petitioner was transferred to Composite Hospital, Tekanpur, Gwalior, Madhya Pradesh in July, 2017, it appears that due to his physical condition wherein, he had to perform his duties on a wheelchair, his reporting officer was of the impression that since he needed a wheelchair and assistance, he should be rated only as 'Good' and, consequently, he was downgraded to 'Good' in his APAR for the year 2017-18 with the following remarks:-

"A young and sober 'SO' who tries to perform duties assigned to him. However, due to his physical limitations, he is not able to work independently and needs an assistant. I grade him a 'Good' dental Technician."

4. The Reviewing Officer and the Accepting Officer simply agreed with



the aforesaid remarks given by the Reporting Officer. Further, the same Reporting Officer, while assessing the petitioner for year 2018-19 again graded him as 'Good' by once again observing that he was a paraplegic. The said remarks read as under:-

"ASI/DT Pawan Rawat works as dental technician. He is a paraplegic case and is on wheel chair and needs regular physiotherapy. He takes interest in his work and performs duties assigned to him satisfactorily. I grade him 'GOOD'."

5. Similar, remarks were again endorsed by the same Reporting Officer in the petitioner's APAR for the year 2019-20 and the same read as under:-

"During the period reported upon, the 'SO' worked as Dental Technician in the dental Lab of CH. He fabricated dentures however he is a paraplegic case and is on wheel chair and needs assistance in his day to day work as well as physiotherapy. I grade him 'GOOD'."

6. While the petitioner was diligently serving as Composite Hospital, Takenpur, the Medical Board which examined him on 05.12.2019 came to the conclusion that taking into account the traumatic paraplegia with bladder and bowel involvement due to fracture of D2 – D3 with complete transection of spinal cord with 100% disability, the petitioner was permanently unfit for further retention in the BSF. However, upon his request the petitioner was retained for a further period of one year and was ultimately discharged from service w.e.f. 01.01.2021.

7. Before the petitioner was discharged from service, he was informed about his aforesaid three APARs where he had been degraded from 'Very Good' to 'Good'. Consequently, the petitioner was informed that since out of his last five APARs which were required to be considered for grant of



benefit under the MACP scheme, he was graded as very good in only two of his APARs as against the requirement of three 'Very Good' APARs, he therefore, could not be granted MACP. Though, the petitioner made representations against the aforesaid APARs, the same were rejected by a non speaking order on 17.12.2020 i.e. about two weeks before he was discharged from service.

8. Being aggrieved, the petitioner has approached this Court by way of the present writ petition.

9. Ms. Sahila Lamba, learned counsel for the petitioner submits that the grading of 'Good' awarded to the petitioner in the impugned three APARs are wholly unsustainable as his Reporting Officer, despite noticing the fact that the petitioner, irrespective of his disability, was working diligently, had graded him as 'Good' only because he was a paraplegic, who was working on a wheelchair. She contends that the petitioner has been downgraded only because he was suffering from 100% disability and not because of any shortcoming in his performance which is evident from the fact that there is no comment/observation in any of the three APARs that his performance had dipped in any manner.

10. She further submits that the petitioner was never issued any warning letter or a show cause notice to suggest that due to his performance, he was likely to be downgraded. She therefore, prays that the impugned APARs be quashed and taking into account that the petitioner has already been discharged from service, the respondents be directed to consider his case for the grant of Modified Assured Career Progression (MACP) Scheme on the basis of his earlier five APARs.

11. *Per contra*, Mr. Vikrant N. Goyal, learned counsel for the respondents



submits that once it is an admitted position that the petitioner was suffering from 100% disability, the Reporting Officer cannot be faulted for recording in his APAR that he was a paraplegic or that he was using a wheelchair which position, he submits is a matter of record. He further submits that even though on account of his disability, the petitioner deserved to be discharged in 2019 itself when the Medical Board had given its opinion that the petitioner was permanently unfit to be retained in service, the respondents retained him in service for a further period of one year so that he could be granted pension as per the rules. The impugned APARs, he contends, are a true reflection of the petitioner's performance at the relevant period of time and merely because the petitioner was assessed as 'Very Good' in the earlier APARs would not imply that his performance could not change in the subsequent years. He, therefore, prays that the writ petition be dismissed.

12. Having considered the submissions of the learned counsel for the parties and having perused the record, we are constrained to begin by expressing our anguish for the manner in which the petitioner's APARs have been recorded by the Reporting Officer and subsequently approved by his Reviewing and Accepting Officers. The respondents, despite being well aware that the petitioner in spite of 100% disability was continuing to sincerely perform the work assigned to him, were clearly swayed by the fact that he was using a wheelchair and needed assistance. In our considered view, this approach of the petitioner's Reporting Officer as also the Reviewing and Accepting Officers was not at all in consonance with the duty cast upon them under the Rights of Persons with Disabilities Act, 2016 to encourage persons suffering from disabilities.



13. No doubt every reporting officer is expected to assess an employee on the basis of his actual performance, this however, does not imply that an employee like the petitioner who was suffering from disability should be downgraded only because he was working on a wheelchair. In this regard, it may be pertinent to note that a Coordinate Bench of this Court in its decision dated 21.12.2020 in W.P. (C) No. 3533/2020 titled as *Sanjeev Dhundia vs Union of India* observed that the “*main focus of the Reporting Officer should be developmental, rather than judgemental*”. Furthermore, the Apex Court in *State of U.P. vs Yamuna Shanker Mishra and Another (1997) 4 SCC 7*, emphasised that the superior officers should write the confidential reports of employees in a fair, objective and dispassionate manner. In the present case, the comments made by the petitioner’s Reporting Officer can by no stretch of imagination be said to be dispassionate as they clearly show that he was influenced by the fact of the petitioner being a paraplegic.

14. In the light of the aforesaid, we are of the view that the impugned APARs are wholly unsustainable and are liable to be quashed. We, accordingly, quash all the three APARs of the petitioner for the years i.e. 2017-2018, 2018-2019 and 2019-2020. Ordinarily, we would have remanded the matter back to the respondents for re-assessing the petitioner qua these three APARs. However, taking into account that the present case is one of extreme hardship, where the petitioner is 100% disabled and already stands discharged from service, and was always reported to be a hardworking, sincere and professionally sound subordinate officer, we are of the view that it will be in the interest of justice that instead of the matter being remanded back to the respondents for reassessing the petitioner qua these three APARs, his case for grant of MACP be considered by the



respondents by taking into account his earlier five APARs.

15. The writ petition is accordingly allowed by quashing the petitioner's APARs for the years 2017-18, 2018-19, and 2019-2020 and directing the respondents to consider the case of the petitioner for grant of MACP by taking into account his earlier five APARs. This exercise will be carried out by the respondents within a period of 12 weeks from today. All consequential benefits in terms thereof be granted to the petitioner within four weeks thereafter.

16. However, we make clear that this order shall not be treated as a precedent as we have passed this order bearing in mind the peculiar facts of this case.

17. Accordingly, the writ petition is disposed of in light of the aforesaid terms.

REKHA PALLI, J

SHALINDER KAUR, J

JULY 11, 2024

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