



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

Date of decision: 05.09.2024

+ W.P.(C) 9080/2019

KRISHNA KUMAR SINGH

.....Petitioner

Through: Mr.Ankur Chhibber & Mr.Nikunj
Arora, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Kushagra Kumar,
Mr.Abhinav Bhardwaj and
Ms.Pratishtha Chauhan, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

REKHA PALLI, J (ORAL)

1. The petitioner, who is serving as a Second-in-Command [2-I/C] in the Border Security Force (BSF), has approached this Court assailing the orders dated 02.06.2016 and 04.06.2018, vide which his representation for expunction of remarks endorsed by his Reporting Officer in the pen picture of his Annual Performance Assessment Report (APAR) for the period of 01.04.2014 to 31.03.2015 has been rejected by the Director General, BSF.
2. The brief factual matrix, as emerging from the record, is that the petitioner was enrolled in the BSF as a Sub-Inspector (SI) on 27.07.1995. Thereafter, he was, upon qualifying a competitive examination and rendering his technical resignation from the post of SI, appointed as an Assistant Commandant (AC) on 10.04.1997. Based on his service record, the petitioner was thereafter promoted as a Deputy Commandant (DC) on



07.01.2004 and then as a Second-in-Command (2-I/C) on 19.10.2012.

3. The petitioner was, between the period of 20.06.2013 to 02.02.2015, posted at the 5th Bn, Dantiwada, Gujarat where Mr I.H. Khan was the Commandant and consequently his Reporting Officer. During this period, he was examined as a witness in two Court of Inquiries which were held to investigate into incidents pertaining to Mr. I.H. Khan, his Reporting Officer. As the petitioner apprehended that on account of his having appeared as a witness in the Court of Inquiries, wherein Mr. I.H. Khan was likely to be found blameworthy and that he may not be assessed fairly by him, he submitted an application dated 30.04.2015, to his Reviewing Officer, with a request that instead of Mr. I.H. Khan initiating his APAR, the same may be initiated by the Reviewing Officer himself. The said request was, however, rejected on 06.05.2015.

4. When the petitioner's APAR for the period between 01.04.2014 to 31.03.2015 was endorsed, his fears came true as his Initiating Officer while awarding him a box grading of 5.6, endorsed adverse remarks in the pen picture. The Reviewing Officer, however, agreed only partially with the pen picture reflected and categorically opined that he did not agree with the advisory remarks endorsed by the Reporting Officer. Further, he also observed that the petitioner was a very good officer and awarded him a box grading of 6.15. He, however, observed that the petitioner had been advised by the Inspector General (IG), Gujarat Frontier for his casual attitude towards land acquisition cases of the unit. When the APAR was placed before the Accepting Officer, he agreed with the remarks of the Reviewing Officer and also graded the petitioner at 6.15.



5. As the advisory remarks by the Reporting Officer were adverse, the petitioner was communicated the same on 07.09.2015. Being aggrieved, the petitioner submitted a representation which has been rejected under the impugned order, leading to the filing to the present petition.

6. In support of the petition, learned counsel for the petitioner has made three submissions; The first and foremost being that once the Reviewing Officer categorically observed that he did not agree with the advisory remarks given by the Reporting Officer and also simultaneously upgraded the petitioner's box grading from 5.6 to 6.15 in the APAR, which grading of 6.15 was accepted by the Accepting Officer, the adverse remarks of the Reporting Officer ought to have been treated as having been superseded by the remarks of the Reviewing Officer, as reiterated by the Accepting Officer. In support of this plea, he places reliance on paragraph no.2.29 of the instructions issued by the respondents for recording of the APARs, which provide for a three-tier mechanism for recording of APARs.

7. He further submits that the petitioner had, even before the recording of the APAR itself, made a representation to his Reviewing Officer with a prayer that his Reporting Officer, Mr. I.H. Khan, not be permitted to record his APAR as he had already appeared as a witness in one of the Court of Inquiries in which the Reporting Officer was likely to be found blameworthy and therefore was likely to be biased against him. The Reviewing Officer, however, rejected the petitioner's request on the ground that there was no such provision for the Reviewing Officer to initiate the APAR. He contends that when the bias on the part of the Reporting Officer was apparent, the adverse remarks endorsed by him ought to be set aside on the ground of bias



itself.

8. Finally, he submits that the adverse remarks given by the Reporting Officer having been endorsed without any warning or memo to the petitioner are liable to be set aside on this ground as well. He, therefore, prays that the impugned adverse remarks be expunged and the respondents be directed to re-consider the petitioner's case for grant of Non-Functional Selection Grade (NFSG) w.e.f. 01.07.2015 at par with his batchmates by ignoring the aforesaid adverse remarks.

9. On the other hand, learned counsel for the respondents seek dismissal of the writ petition and contend that even though the Reviewing Officer had opined that he was not in agreeance with the advisory remarks endorsed by the Reporting Officer, he had partially agreed with the pen picture and therefore, it may not be correct to say that the remarks of the Reporting Officer are deemed to have been expunged by the remarks endorsed by the Reviewing Officer. Further, he contends that an advisory has already been issued to the petitioner by the Inspector General (IG) and, therefore, his plea that the adverse remarks had been endorsed in his APAR without any warning or memo is also incorrect.

10. Finally, he submits that though the petitioner was a witness in the Court of Inquiries in which his Reporting Officer was likely to be found blameworthy, his request for initiation of his APAR by the Reviewing Officer could not be accepted, being against the laid down procedure for recording of the APARs. Further, the box grading of 5.6 awarded by the Reporting Officer is a grading of 'Very Good', clearly showing that the petitioner's plea of his Reporting Officer being biased against him was



misplaced. He, therefore, prays that the writ petition be dismissed.

11. Having considered the submissions of learned counsel for the parties and perused the record, we may first deal with the petitioner's plea that once he had made a statement against the Reporting Officer in a Court of Inquiry, he had a reasonable apprehension that the Reporting Officer would be biased against him. Despite his having made a specific representation in this regard to the Reviewing Officer before recording of the APAR itself, his plea was rejected by simply stating that as per the laid down procedure, the Reviewing Officer could not initiate his APAR.

12. We may now note the remarks endorsed by the petitioner's Reporting Officer who had awarded a box grading of 5.6 in the petitioner's APAR, the same read as under:-

"Short statured, medium built and well turned out officer whose professional knowledge is just adequate. He has performed duties of Second-in-Commandant of the Unit and taken fair interest in his job. He is required to improve his casual attitude and adamant behaviour towards senior. He has forwarded false information to Higher HQ and when he was asked to explain reasons for the same, he has not bothered to reply to the undersigned inspite of reminder"

13. The remarks of the Reviewing Officer and the Accepting Officer, who had both upgraded the box grading in the APAR from 5.6 to 6.15, may also be referred to and the same read as under:-

"I partially agree with the pen picture reflected by R.O. He is humble and pays respect to the seniors. I don't agree with the advisory remarks of the R.O. Overall he is a very good officer. He has been advised by IG Guj. Ftr. For his casual attitude towards Land Acquisition cases of the unit also."

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“I agree with the remarks of Reviewing Authority. This officer was issued IG Advice for not seriously pursuing LA cases. He is graded as Very good.”

14. In our considered view, in a situation like the present, when there is a justifiable ground for apprehension in the mind of the petitioner regarding the bias on the part of his Reporting Officer, the respondents should have taken corrective action so as to avoid a situation like the present where the Reporting Officer not only endorsed adverse remarks in the petitioner's APAR but also awarded him a grading of 5.6, which grading was upgraded by the Reviewing Officer to 6.15 and was reiterated by the Accepting Officer. In the light of this factual situation, we would have set aside the APAR on the ground of bias on the part of the Reporting Officer itself, but are refraining from doing so, as we find that the impugned adverse remarks endorsed by the Reporting Officer were not agreed with either by the Reviewing Officer or by the Accepting Officer, who as noted hereinabove, upgraded the petitioner to 'Very Good', by specifically opining that they did not agree with the advisory remarks endorsed by the Reporting Officer.

15. Further, we are of the view that when the Reviewing Officer as also the Accepting Officer had categorically opined that they did not agree with the adverse remarks endorsed by the Reporting Officer, the said adverse remarks ought to be automatically treated as having been expunged by the Reviewing Officer itself. When an APAR of an employee is assessed by three Officers, it is the assessment of the senior most Officer in the hierarchy which prevails and has to be treated as the final assessment *qua* the APAR.

16. We are, therefore, of the considered opinion that the impugned



adverse remarks endorsed by the petitioner's Reporting Officer, as communicated to him on 07.09.2015, stood expunged by the Reviewing Officer and could not be taken into consideration for any purpose. In the light of our aforesaid conclusion that the impugned adverse remarks endorsed by the Reporting Officer stood expunged, we do not deem it necessary to deal with the petitioner's third plea regarding the non-issuance of any warning or memo to him by the Reporting Officer.

17. For the aforesaid reasons, the writ petition is, allowed by holding that the adverse remarks endorsed by the Reporting Officer will be treated as expunged from the said APAR. Consequently, we direct the respondents to re-consider the petitioner's case for grant of NFSG w.e.f. 01.07.2015 and grant him all consequential benefits, in case, he is found fit for the same. The re-consideration of the petitioner's claim for grant of NFSG in terms of this order will be completed within a period of eight weeks and consequential benefits, if any, will be paid to him within six weeks thereafter.

18. The writ petition is, accordingly, allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 5, 2024

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