



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

Judgment Reserved on: 23.07.2024
Judgment Pronounced on: 02.08.2024

+ W.P.(C) 13646/2022, CM APPL. 57207/2023—(interim direction)

MANOJ DHYANI

.....Petitioner

Through: Mr. Sandeep Sharma and Ms. Konika
Mitra, Advs. along with petitioner.

versus

UNION OF INDIA AND OTHERS

.....Respondents

Through: Mr. Vivekanand Mishra, SPC with
Mr. Vinod Tiwari, 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, presently working as a Deputy Inspector General of Police (in short "DIG") in the Central Reserve Police Force (in short 'CRPF'), seeks quashing of adverse remarks/grading in his Annual Performance Appraisal Report (in short 'APAR') for the period between 20.05.2020 and 31.03.2021. The petitioner also seeks quashing of the order dated 09.06.2022, whereby his representation against the adverse remarks/grading in the aforesaid APAR has been rejected. Consequently, the petitioner seeks a direction for the respondents to upgrade his aforesaid APAR from "Good" to "Outstanding", with all consequential benefits.

2. The facts relevant for adjudication of the present petition, as emerging from the record, are that the petitioner joined the CRPF as an Assistant Commandant on



04.07.1989. In the year 1995, he was promoted to the rank of Deputy Commandant following which he was promoted as Second-in-Command on 14.06.2002. The petitioner was, thereafter, promoted as Commandant on 27.05.2005. Finally, he was promoted as DIG on 17.08.2019. During his long tenure of 35 years with the CRPF, he has served in various parts of Punjab, Jharkhand (Naxalite area), Chhattisgarh and Jammu & Kashmir and his Battalion was twice adjudged as the Best Operational Battalion. In all his APARs, except the impugned APAR, the petitioner has always been adjudged as “Outstanding” or “Very Good”.

3. From September, 2018 to August, 2021, the petitioner, in his capacity as DIG, Recruitment, Directorate General, CRPF, worked in close co-ordination with the Ministry of Home Affairs (in short “MHA”), Staff Selection Commission (in short “SSC”) as well as other Central Armed Police Forces. The respondent no. 3 took over charge as Inspector General (IG) (Estt.) in June, 2020 and the reporting period of the petitioner to the respondent no. 3 was about nine months. For the first six months till December, 2020, no issue regarding the petitioner’s performance was ever raised by the respondent no. 3, however from end of December, 2020 to March, 2021 i.e. in a span of three months, the respondent no. 3 started seeking explanations from him by issuing advisories on non-professional issues, which the petitioner claims was with an intent to downgrade his APAR.

4. It is the petitioner’s claim that though he performed his duties most diligently, the respondent no. 3 during this short interval, issued various advisories to him on innocuous grounds. The first advisory was issued on the petitioner on 28.12.2020 on the ground that the petitioner, instead of asking the IG (Medical) Dte to propose board members for conducting walk-in-interviews, as was orally directed to him by the respondent no. 3, had re-submitted the file before respondent no. 3 seeking his approval of the note. This was followed by another advisory dated 19.01.2021 vide which the respondent no.3 sought an explanation



from the petitioner regarding certain directions from the Director General (DG), CRPF, on the matter of some compassionate appointments.

5. The respondent no.3 then issued another advisory on 12.02.2021 whereby it was pointed out that the Skill Test Report sought from the petitioner had been delayed. Further, it was alleged that the petitioner was not aware of important instructions and that his attitude towards official work was not appropriate. Again, another advisory was issued on 11.03.2021 with reference to the petitioner's reply dated 29.01.2021. In these circumstances, the petitioner submitted a representation dated 15.03.2021 against all the advisories issued to him by inter-alia submitting that he had been performing his duties with the utmost dedication and sincerity. He, therefore, requested the respondent no.3 not to issue him advisories on trivial issues and not to approach the Recruitment Branch with a negative attitude.

6. However, on the same day itself i.e., 15.03.2021, the petitioner was issued yet another advisory by the respondent no. 3. The petitioner then re-submitted his representation dated 15.03.2021 against the advisory dated 28.12.2020, explaining the position in a chronological manner wherein he also pointed out that the said advisory had been issued without following the established norms. At this stage, the petitioner also submitted a representation dated 25.03.2021 to the Special DG (Works), against the advisory dated 19.01.2021 issued by the respondent no. 3 with a grievance that these wholly uncalled for advisories issued by respondent no. 3 were damaging his reputation and credibility with his integrity also being questioned, even though the queries of respondent no. 3 could have been easily resolved through discussion.

7. The representation dated 15.03.2021 was, however, rejected by respondent no.3 on 30.03.2021 on the ground that no representation was maintainable against the advice of a senior; it may be noted that while respondent no. 3 was issuing repeated advisories on him, the petitioner received an appreciation certificate from



the SSC on 31.03.2021 for filling 6000 vacancies of Constable (GD) without any lapse or complaint.

8. It is the further case of the petitioner that the respondent no. 3, acting with a malafide intention, initiated a Court of Inquiry (in short "COI") on 04.05.2021 and nominated himself as the Presiding Officer thereof. This inquiry was set up to examine the facts regarding attribution of the leakage of the question paper of UPSSC, Lucknow, by M/s Nysa Communication Pvt. Ltd. Upon learning of the convening of the COI, the petitioner submitted a letter dated 25.05.2021 to the Special DG (Works) with a request that the Presiding Officer be changed. The respondent no. 3, upon learning of the petitioner's request to change him as the Presiding Officer, malafidely appended a secret note in his APAR, referring to this very COI ordered in the Recruitment Branch. It is the petitioner's claim that this wholly uncalled for secret note was the basis of spoiling his impugned APAR, wherein he was not only downgraded to 'Good' but also adverse remarks by way of the secret note were also included in the impugned APAR. Being aggrieved by these adverse remarks and downgrading of his APAR, the petitioner submitted a representation dated 06.12.2021 to the respondent no. 2.

9. This COI which had been initiated by respondent no. 3 was ultimately held by a different Presiding Officer, and vide its order dated 18.11.2021, gave a clean chit to the petitioner as also the Recruitment Branch. Based on this report given by the COI, the petitioner's representation dated 06.12.2021 was partially accepted and an order dated 04.05.2022 was issued clarifying that the integrity of the petitioner for the period between 20.05.2020 and 31.03.2021 was "Beyond Doubt". However, despite the petitioner being given a clean chit in terms of the order of the COI as well as the removal of the 'secret note' appended with the APAR, the petitioner's APAR was not upgraded from "Good".

10. Being aggrieved, the petitioner made yet another representation on 20.05.2022, requesting for a review and upgradation of his APAR on the basis of



the respondent's own order dated 04.05.2022. It was, however, rejected on 09.06.2022, compelling him to approach this Court by way of the present petition under Article 226 of the Constitution of India. While the present petition was pending, the respondents convened the Departmental Promotion Committee (DPC) for considering the petitioner and other eligible candidates for promotion to the post of IG (GD) vide order dated 30.01.2024. The petitioner was, however, not found fit for promotion which the petitioner contends is only on account of the impugned APAR.

11. A common counter-affidavit has been filed on behalf of the respondents denying all the allegations of bias and arbitrariness. The respondents have, therefore, sought dismissal of the writ petition.

Submissions of petitioner

12. Learned counsel for the petitioner submits that the impugned APAR is erroneous and is liable to be quashed as it is apparent that the respondent no.3 acted in a biased manner against the petitioner, which is evident from the various advisories issued by the respondent no.3 on trivial issues within a short span of three months. However, strangely not even a single advisory was issued between 31.03.2021 to May 2021 and thereafter, making it clear that the respondent no.3 was trying to tarnish the image of the petitioner by issuing him advisories during the period covered by the APAR so that he could downgrade him in his APAR.

13. Learned counsel contends that the respondent no. 3 had started unduly interfering with the working of the petitioner as is evident from the fact that when the petitioner issued an advisory to one of his juniors, the same was quashed by the respondent no.3 on 31.05.2021 without any justifiable reason. The learned counsel further submits that the respondents had failed to appreciate that the alleged adverse remarks in his APAR were endorsed only on the basis of the initiation of the COI against him, however, the said COI had cleared the petitioner vide its order dated 18.11.2021 and therefore the remarks should have been



expunged. In this regard, he places reliance on *State of UP vs Yamuna Shankar Mishra & Anr, (1997) 4 SCC 7*.

14. The learned counsel draws our attention to the standing order No.04/2015, and submits that the impugned APAR having been written with a vindictive attitude was also violative of the standing order which emphasizes the twin objectives of writing an APAR to improve the performance of the subordinate in his present job and to assess the potentialities of the subordinate in a fair manner. To fortify his submission that the impugned APAR ignores both these objectives and has clearly been written only with an attempt to damage the petitioner's career, the learned counsel places reliance on *Shri Tarsem Kumar vs Union of India & Ors, 2014 SCC OnLine Del 1899*.

15. Finally, the learned counsel submits that the APAR gradings of the petitioner have always been "Outstanding" or "Very Good", except for the period 2020-2021, which has been impugned. The petitioner's APARs for the subsequent years i.e. 2021-2022 and 2022-2023 have been "Outstanding" as well, which clearly reflects that the respondent no. 3 has deliberately downgraded his APAR to "Good". To strengthen his plea, the learned counsel places reliance on a decision of this Court in *Sanjeev Dhundia vs Union of India, 2020 SCC OnLine Del 1842*.

16. As a result of the impugned APAR, the petitioner has not been considered for promotion as an IG, causing him immense prejudice despite his 35 years long blemishless and dedicated service to the nation. He, therefore, prays that the impugned APAR be set aside.

Submissions of respondents

17. In response to the submissions of the petitioner, learned counsel for the respondents contends that the APAR of the petitioner for the period between 20.05.2020 and 31.03.2021 was assessed as "Good" by the Reporting Officer with adverse remarks endorsed in Part-III and Part-V. The column dealing with



integrity was left blank by the Reporting Officer with a “secret note” attached by him. The Reviewing Officer agreed with the remark “Good” endorsed by the Reporting Officer and endorsed adverse remarks in Part-VI. The Accepting Authority, however, did not make any assessment as the petitioner had not served for more than the mandatory period of 90 days under his command.

18. The learned counsel for the respondents submits that all gradings have been given upon due appreciation of the actual performance shown by the petitioner, assessment of quality of work output, personal attributes and his functional competence during the period under the impugned APAR. The assessment qua all the twenty-two parameters was taken into consideration while evaluating the performance of the petitioner, which indicates that the recording of the remarks was truthful as in various columns, the petitioner’s performance has been assessed as “Good”.

19. He contends that depending upon the assessment qua all the parameters, there could always be a fall in the grading of an officer’s APAR, moreso, if an adverse remark is found in any column. He, therefore, contends that the case of the petitioner was dispassionately considered by the respondents and there is no bias involved.

20. The learned counsel submits that the petitioner’s grading as “Good” in the APAR is not only on the basis of the ‘secret note’ but also based on consideration of his performance qua other parameters as well. Specifically, around 10 advisories/ explanation letters were issued to the petitioner as he ignored the orders of his superior/ respondent no.3 and did not improve upon his work and therefore, the decision in *Sanjeev Dhundia (supra)*, wherein no advisory was issued to the employee before downgrading his APAR, is not applicable. Moreso, instead of tendering explanation to the advisories, the petitioner indulged in submitting representations. He therefore, contends that the assessment of the



petitioner was made equitably & fairly and prays that the writ petition be dismissed.

Analysis and conclusion

21. We have carefully considered the submissions addressed on behalf of the parties and perused the record submitted before us.

22. At the outset, we may point out that ordinarily, this Court would not exercise its discretionary jurisdiction under Article 226 of the Constitution of India to interfere with the recording of APAR of an official/officer by its superior unless there is doubt about the impartiality and fair assessment by the superior officer while assessing the performance of the official/officer and recording remarks about the performance.

23. In the present case, the main grievance of the petitioner is that the respondent no. 3 has maliciously downgraded his APAR with a view to tarnish his reputation and jeopardize his career, thus we are of the view that the discretionary jurisdiction exercised by this Court under Article 226 of the Constitution of India is warranted in the given facts and circumstances of the case.

24. We may begin by noting that as per the settled legal position, while assessing the performance of a subordinate, the superior must be careful to evaluate the information gathered about him and due diligence must be exercised in writing an APAR. The 'Remarks' endorsed in the APAR are crucial to evaluate/assess and formulate an opinion on the performance of a subordinate and, therefore, the recording of remarks require fair and unbiased reporting, as it may otherwise jeopardize his career advancement. Reference may be made to ***State of U.P. vs. Yamuna Shanker Mishra (Supra)*** wherein, the Hon'ble Supreme Court emphasized on the purpose of recording confidential reports by observing as under:-

"7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a excellence..... servant public to Improve The officer



entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge notoriety and may be within his knowledge. Before forming an opinion to be adverse, reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgement, conduct, behaviour, integrity or conduct/corrupt proclivity. If despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion."

25. Again, in **State Bank of India vs. Kashinath Kher, (1996) 8 SCC 762**, the importance of an APAR in career progression and promotion was considered by the Hon'ble Supreme Court and it was held as under :-

"The object of writing the confidential report is twofold, i.e., to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in Delhi Transport Corpn. case pointed out the pitfalls and insidious effects on service due to lack of objectives by the controlling officer. Confidential and character reports should, therefore, be written by superior officers higher above the cadres. The officer should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by a superior officer of high rank. Who are such high rank officers is for the appellants to decide. The appellants have to



prescribe the officer competent to write the confidentials. There should be another higher officer in rank above the officer who has written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedure would be fair and reasonable. The reports thus written would form the basis for consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust."

26. In this regard, reference may also be made to ***Shri Tarsem Kumar vs. Union of India and Others (Supra)*** wherein a Coordinate Bench emphasized on the 'objective assessment' and observed as under:-

"19. The writing of confidential report, as we can find from the instructions attached with the Annual Appraisal Report is serious business, any casual or cavalier approach on the part of the designated officers can jeopardise the service career of the 'assessed officer'. Promotion has been held to be an essential element of service and it is expected of every management to provide realistic opportunities to every officer for boosting their morale and rewarding them promotionally for their hard work. The substantive growth in capacities to discharge work of greater responsibility has to be determined on the basis of past performance, else there will be no motivation to do better or even to maintain standards. It leads to despondency and drudgery at work. The instructions as laid down in the Annual Appraisal Report Criterion, clearly spell out that the Reporting Officer and the Reviewing Officer should undertake the duty of filling out the Annual Appraisal Report with clarity, high sense of responsibility and objectivity. It further states that the Reporting Officer should bear in mind that the objective of the assessment exercise is to develop an officer so that he/she can realise his/her true potential. It is not meant to be a battle but a developmental process, a cumulative effort that ensures optimal outcomes. It further lays down that it should be the endeavour of each appraisal to present the truest picture of the appraisee apropos his/her performance, conduct, behaviour and potential

20. In the teeth of these instructions, and various guidelines laid down by the DoPT from time to time, it becomes abundantly clear that neither the Reporting Officer nor the Reviewing Officer, indeed not even the Accepting Officer, can adopt an erratic and a casual approach in evaluating the overall performance of an officer on the various parameters, on which he is required to be assessed. The Reviewing Officer too cannot abdicate his responsibility by just putting a stamp of approval on the remarks given by the Reporting Officer. Simultaneously, he cannot record his disagreement with the report of the Reporting Officer without spelling out the reasons for his disagreement. The position of the Accepting Officer is no different"



27. Having noted the legal position regarding the principles to be followed for writing an APAR, we may now turn to the facts of the present case. Since, we find that the parties are *ad idem* about the “Very Good” / “Outstanding” gradings awarded to the petitioner by his Reporting Officers and Reviewing/Accepting Officer during his entire service career, we may note the petitioner’s APAR gradings for the years 2013-14 onwards. The same read as under:

<u>S. No.</u>	<u>Period</u>	<u>Grading</u>
1.	2013-14	Outstanding
2.	2014-15	Outstanding
3.	2015-16	Outstanding
4.	2016-17	Very Good
5.	2017-18	Very Good
6.	2018-19	Very Good
7.	2019-20	Very Good
8.	2020-21	Good
9.	2021-22	Outstanding
10.	2022-23	Outstanding

28. What clearly emerges from the aforesaid chart is that the petitioner’s APAR record, in all his APAR’s except for the year 2020-21, was assessed as ‘Outstanding’ and ‘Very Good’. The pen picture of the remarks endorsed by the Reporting Officer in the impugned period is ‘*A good officer. Needs to improve his professional knowledge and adherence to the instructions of his seniors*’ which remarks were accepted by the Reviewing Officer. No doubt, the respondent no.3 as the petitioner’s Reporting Officer was entitled to give remarks and a consequential grading which may be at variance with his earlier gradings, the question, however, is whether the remarks and the downgrading by the Reporting



Officer / respondent no.3, in the present case was fair and objective and based on the actual performance of the petitioner.

29. The learned counsel for the petitioner vehemently urges that since June, 2020 when the respondent no. 3 took over as his Reporting Officer, there was no issue for the initial 6 months but suddenly during the period between end of December, 2020 to March 2021, the respondent no. 3 started seeking explanations and issuing advisories to the petitioner with an intention to downgrade his APAR. Moreso, even the impugned APAR was for the period till 31.03.2021, a COI was ordered in May 2021 based on which a secret note was put up by the respondent no.3 on 23.06.2021, which was clearly beyond the reporting period i.e. w.e.f. 01.04.2020 to 31.03.2021 and could have been considered only for the next reporting year i.e. 2021-2022, however, the respondent no.3 relied on the same by adding a secret note to negatively comment on the petitioner's integrity. Further, the COI, based on which this note creating a cloud on his integrity was attached, also ultimately gave a clean chit to him. He thus, contends that the very attempt by the respondent no.3 to try to cast a shadow of doubt on the petitioner's integrity, in itself shows the bias and vindictiveness of the respondent no.3 towards him.

30. On the contrary, learned counsel for the respondents, by emphasizing on advisories issued to the petitioner by the respondent no. 3, urges that the assessment qua different parameters in the APARs was based on the petitioner's omission/commission of the issues as mentioned in the said advisories. Further, he urges that even though there being various lapses on the part of the petitioner called for stringent action, a lenient view was taken considering the length of his service by issuing him advisories reminding him of his responsibilities as a senior officer of the force. The case of the petitioner was dispassionately considered by the respondents and no 'Bias' on the part of respondent no.3 was found to be existing.



31. The question before this Court, therefore, is as to whether assessment in the impugned APAR can be said to be a result of bias on the part of the respondent no.3 as urged by the petitioner. We may now, therefore, refer to some relevant decisions of the Hon'ble Supreme Court and of this Court, dealing with situations where bias was alleged.

32. In this regard, we may also refer to the observations made by Hon'ble Supreme Court in **A. K. Kraipak and Others vs. Union of India and Others, (1969) 2 SCC 262:-**

"The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

33. Before we proceed to deal with the rival submissions of the parties, we may remind ourselves that to determine whether an administrative action like recording of the petitioner's APAR in the present case is vitiated by bias, the Court has to consider whether there was a reasonable likelihood of bias as against a mere apprehension of bias. It is not as if the aggrieved party is required to prove bias beyond reasonable doubt, but he is surely required to demonstrate a reasonable likelihood of bias. Reference may also be made to the following observations of a Coordinate Bench of this Court in **S. K. Sharma vs. UOI and Ors., 2015 SCC OnLine 13399**, as contained in paragraph no.14 of its decision. The same read as under:-

"14. As in all cases where bias is alleged, the issue which the court has to address itself is as to whether there was likelihood of bias. The party alleging bias is not under an onus to prove bias; rather it is the danger or likelihood of bias of the public official concerned, in the circumstances of a given case. In one of the most celebrated cases, R v Bow Street Metropolitan Stipendiary Magistrate & Ors, Ex parte Pinochet Ugarte (No 2) [1999] 2 WLR 272 ["the Pinochet case"] discussed those tests. There, the House of Lords set aside its earlier decision when it was disclosed (after delivery of judgment), in the



earlier appeal, that Lord Hoffmann, (one of the members of the Appellate Committee who heard the appeal), had some link with Amnesty International. That body was an intervener in the appeal; the judge was an unpaid director of the Amnesty International Charity Ltd ("AICL"), a W.P.(C)8886/2011 Page 9 charity wholly controlled by Amnesty International. The House of Lords held that the relationship between Lord Hoffmann and Amnesty International through his directorship in AICL, led to his automatic disqualification from sitting on the hearing of the said appeal without the need to investigate whether there was a likelihood or suspicion of bias in the circumstances of that case. The Supreme Court in *Badrinath (supra)* and *D.C. Agarwal* and the other cases previously cited vividly summarized the applicable test in these cases- it is not one of proven bias; rather it is proof of reasonable likelihood of bias."

34. Reference may also be made to *Manudev Dahiya vs. Union of India & Ors.*, 2023 SCC OnLine Del 4164, wherein the Coordinate Bench held as under:-

"72. In *Sanjeev Dhundia vs. Union of India & Ors.* W.P.(C) 3533/2020 decided on 21.12.2020 by the Division Bench of this Court, similar allegations of bias while recording the adverse remarks were taken. It was found that the APARs for the previous period were good and suddenly for one year i.e., 2018-19, the grading was dropped with no apparent reason which established the bias on the part of the Reporting Officer. It was further observed that when no written advisories were issued to the petitioner to perform his performance, it cannot be concluded that the petitioner continued with unsatisfactory performance despite caution and opportunity to improve to substantiate adverse remarks given to him.

73. In *Sanjay Doval vs. Union of India* 2019 SCC OnLine Del 11500, the Division Bench of this Court observed that the petitioner was found to be having unblemished track record for over 22 years with an adverse entry being limited only to the impugned period of eight months between 01.04.2011 and 27.12.2011. The future promotion was withheld only on account of adverse remarks for the short period of DPC. The adverse remarks were found to be unjustified in the given circumstances and it was held that the adverse remarks were not justified and were expunged and the Review DPC was directed to be constituted."

35. Thus, what emerges is that the question as to whether there was a real element of bias or malafide is to be construed by a Court from the facts and circumstances of a given case. Bias cannot be proved as a matter of fact and, therefore, the test would be as to whether a reasonable person would infer a real likelihood of bias from the facts of a particular case.



36. It is seen from the record that the petitioner, who has an unblemished career of over 35 years, constantly maintained a good record prior and subsequent to the adverse remarks, which were limited to the period from June, 2020 to May, 2021. Indubitably, the performance of an officer, may be at variance due to different postings or other circumstances from one year to another, however, it is imperative that the said difference should not occur on account of mere bias or change of the Reporting Officer. The Reporting Officer is expected to assess the performance of a subordinate fairly and not whimsically.

37. In the present case, nothing has been brought to the notice of this Court to show that there was any instance of an advisory or warning issued to the petitioner in his long service of 35 years in the CRPF, except for the advisories issued by the respondent no.3 in a short period of 3 months. Interestingly, despite the petitioner continuing to work under the same Reporting Officer/ respondent no.3 even in April - May, 2021, no advisory whatsoever was issued to him during this period. This, perhaps, as contended by the petitioner, was for the reason that the respondent no.3 was well aware that any advisory issued after 31.03.2021 could not be taken into account while recording the petitioner's APAR for the period ending on 31.03.2021. If the petitioner's performance, including his communication skills and knowledge of rules, was unsatisfactory till 31.03.2021 so as to warrant a steep fall in his APAR, we fail to appreciate how it could have suddenly improved from 01.04.2021 itself. The respondents have given no answer to this query of ours. Coeval to the shortcomings, the manner of issuing the advisories and their substance, thus, reflect that the Reporting Officer was intentionally trying to find faults in the working of the petitioner as the service profile of the petitioner as reflected from the record was otherwise impeccable.

38. Further, we find from the record that the integrity of the petitioner for the period from 20.05.2020 to 31.03.2021 has now been certified as 'beyond doubt' as per the instructions contained in paragraph 12 of the Standing Order-04/2015



dated 22.06.2015 and the DoPT OM No. 21011/27/2015-Establishment (A-II) dated 11.02.2016. The respondents have also admitted that the integrity of the petitioner was never doubted but the column in his APAR was left blank by the respondent no.3 on account of a COI pending against him, which inquiry itself was initiated after the period of the impugned APAR. Despite that, a secret note on the integrity of the petitioner was attached by respondent no.3, which further strengthens the likelihood of bias on the part of respondent no.3. The petitioner is correct in urging that even if the pendency of the COI could be taken into consideration, the same having been initiated in May, 2021, cognizance thereof could be taken only in the subsequent reporting year, if needed. It is further relevant to note the action of the respondent no.3 in nominating himself as the Presiding Officer of the said COI and it was only after the petitioner made a representation that the Presiding Officer was changed to Inspector General, Ajay Kumar Yadav.

39. The very fact that after the COI gave its opinion that the petitioner was not blameworthy, the respondent nos. 1 and 2 removed the secret note initiated by the respondent no.3 regarding the petitioner's integrity which has now been certified as 'Beyond Doubt', also compels us to accept the petitioner's plea that the respondent no.3 was biased and wanted to somehow spoil his APAR. The likelihood of bias on the part of the respondent no.3 in recording the impugned APAR is therefore writ large. In fact, we are unable to comprehend as to why in view of these glaring facts, respondent nos. 1 and 2 while removing the secret note penned by respondent no.3 qua the petitioner's integrity and certifying the same as 'Beyond Doubt' did not do full justice to him by setting aside the APAR itself.

40. In view of the above, we have no hesitation in holding that there was lack of objectivity on the part of respondent no.3 and the bias on his part cannot be ruled out. The petitioner's impugned APAR for the period of 2020-2021 can therefore not be sustained and is accordingly quashed. The consequential order



dated 09.06.2022 rejecting the petitioner's representation against the impugned APAR is also quashed.

41. Having arrived at the conclusion that the impugned APAR is liable to be set aside, what next? In normal circumstances, we would have remanded the matter back to the petitioner's Reviewing Officer and the Accepting Officer of the petitioner for 2020-21 to record his APAR afresh and then reconsider his case for promotion to the post of IG(GD); however, since it is the common case of the parties that during the period of the impugned APAR, the petitioner had not served under the Accepting Officer for the mandatory period of 90 days, even if we were to remit the APAR back to the respondents, the same would have to be endorsed by the Reviewing Officer alone, which in the facts of the present case, would not be fair to the petitioner. In these peculiar facts, we direct the respondents to reconsider the petitioner's case for promotion to the post of IG by ignoring the impugned APAR, which is being quashed. The said consideration for promotion to the rank of IG would be granted to the petitioner from the due date and if found fit, he will be entitled to all consequential benefits except actual arrears. Exercise in terms of this order be held within 12 weeks.

42. The writ petition, along with the pending application, is allowed in the aforesaid terms.

(SHALINDER KAUR)
JUDGE

(REKHA PALLI)
JUDGE

AUGUST 02, 2024
ss/SU