



2024:DHC:8876-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 13.11.2024***

+ W.P.(C) 12005/2019

ACHKAN ARVIND PRIYADARSHI MEENAPetitioner

Through: Mr.Ankur Chhibber and
Mr.Anshuman Mehrotra, Advs.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr.Rishabh Sahu, SPC with
Mr.Sameer Sharma, Adv.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (Oral)**

1. This petition has been filed by the petitioner challenging the adverse remarks made by the Reporting Officer and the Reviewing Officer in the petitioner's Annual Performance Appraisal Report (in short, 'APAR') for the year 2014-2015 as well as the Order dated 02.05.2019, whereby his representation against the said APAR was rejected.
2. It is the case of the petitioner that the petitioner joined the Border Security Force (in short, 'BSF') as an Assistant Commandant on 03.10.2011. After completion of his training, he was posted to the 142 Bn, Assam, and thereafter he was posted to 164 Bn, Dera Baba Nanak (DBN), Punjab, on 26.12.2013. He was granted the benefit of the Senior Time Scale (in short, 'STS') with effect from 03.10.2015, along with his batchmates. However, the name of the



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petitioner was not included in the final list of the officers who had been granted the STS benefit, and upon noticing the same, the Commandant, 164 BN, issued Signal dated 09.01.2017 to FTR HQ PB/FHQ (PERS DTE) seeking a clarification in this regard.

3. Instead of rectifying the exclusion of the petitioner, the respondents, *vide* Signal dated 02.08.2018, issued a recovery notice against the petitioner whereby it was observed that the name of the petitioner was not mentioned in the list of officers who were granted the STS but he was drawing basic pay with the STS due to erroneous fixation of pay and, therefore, recovery of the excess drawn pay and allowances shall be made against him.
4. The petitioner claims that aggrieved by the said recovery, he inquired about the reasons for the non-grant of the STS and was informed unofficially that his APAR for the year 2014-2015 had some adverse remarks. The petitioner claims that the adverse remarks in the said APAR were never communicated to the petitioner and he was not given an opportunity to represent/improve himself before the said adverse remarks were entered in his APAR. The petitioner claims that he downloaded the APAR for the year 2014-2015 for the first time only on 18.08.2018 from the IPP portal.
5. The representation dated 10.10.2018 of the petitioner was rejected *vide* Order dated 02.05.2019, stating that the adverse entries in the APAR for the year 2014-2015 were communicated to the petitioner on 14.07.2015 through the IPP portal and that the same was viewed/downloaded by the petitioner himself on 20.07.2015



through his personal ID on the IPP portal. It was also stated that the petitioner had failed to make a representation against the adverse entries at the relevant time. Aggrieved by this order, the petitioner has filed the present petition.

6. The learned counsel for the petitioner reiterates that the adverse remarks in the APAR for the year 2014–2015 were never communicated to the petitioner and he came to know about the same only on 18.08.2018 when he downloaded the said APAR for the first time. He submits that the respondents, in support of their plea that the adverse entries had been communicated to the petitioner, have placed reliance on a purported letter dated 10.07.2015, that was sent to the petitioner at the 164 Bn, which was then in Punjab. However, at the relevant time, the petitioner was undertaking a course at Indore and, therefore, he was never in knowledge of the said communication.
7. He further submits, by placing reliance on Clause 4.8 of the ‘APAR Procedure and Instructions-2012’ issued by the Directorate General, BSF, that it is mandatory for the respondents to communicate the adverse entries to the officer concerned after duly highlighting and underlining the same, and also to specify the nature of the remarks as to whether they are adverse or advisory. He submits that the said condition was not followed in the present case. He submits that even if the letter dated 10.07.2015 on which the respondents are placing reliance as a communication of the APAR to the petitioner is to be considered, the same does not meet the requirement of Paragraph 4.8 of the ‘APAR Procedure and



Instructions-2012' as it fails to highlight the remarks that are treated as adverse to the petitioner. The learned counsel for the petitioner also relies upon the instructions dated 02.07.2021, issued in this regard by the Directorate General, BSF, reiterating the above conditions.

8. The learned counsel for the petitioner further submits that prior to the recording of the adverse remarks, no advice had been issued by the Initiating Officer to the petitioner informing him of any deficiency in the discharge of his duties or seeking an improvement in the same from the petitioner. Placing reliance on the Judgments of this Court in *Sanjeev Dhundia vs. Union of India and Ors.*, 2020 SCC OnLine Del 1842, *Manudev Dahiya vs Union of India*, 2023 SCC OnLine Del 4164, and the Order dated 10.04.2019 passed in W.P.(C) 10486/2017 titled *Vidya Shankar Tiwari v. Union of India and Ors.*, he submits that in absence of any prior advisory issued to the petitioner, the adverse entries in the said APAR cannot be sustained and are liable to be set aside.
9. On the other hand, the learned counsel for the respondents submits that the petitioner was communicated the impugned APAR not only by way of the letter dated 10.07.2015 through his Unit, but also through the IPP portal from where he had downloaded the same on 20.07.2015. A certificate in this regard issued by the Headquarters Inspector General, BSF Jalandhar Cantt (Punjab) dated 15.03.2019 has been produced before this Court. The same is taken on record.
10. He submits that, therefore, the representation made by the



petitioner on 10.10.2018 against the impugned APAR was rightly rejected by the Competent Authority, *vide* Impugned Order dated 02.05.2019, as being barred by time.

11.Placing reliance on the Judgment of this Court in ***Anupam Kumar v. Director General, Border Security Force & Anr.***, 2021:DHC:1294-DB, he submits that the present petition challenging the impugned APAR is also liable to be dismissed on the ground of delay and laches.

12.He submits that in view of the adverse remarks in his APAR for the period April 2014 to March 2015, the concerned DPC rightly found the petitioner not to be eligible for the grant of STS.

13.We have considered the submissions made by the learned counsels of the parties.

14.At the outset, we would like to note the Pen Picture of the Reporting Officer for the period from 01.04.2014 to 31.03.2015, which has been considered as adverse to the petitioner. The same is reproduced hereunder:-

“A Smart young officer who has the ability to perform but needs constant guidance. He is yet to learn the nuances and understand the basic functioning of the organization. He lacks initiative and coaxed to perform. The officer is sympathetic and group minded but has a long way in performing well. I grade him 'Good' during this period” and awarded 5.52 marks.”

15. The Reviewing Officer, in the same APAR, gave the following Pen Picture for the petitioner:-

“A young officer who is still learning his profession. He is adaptive and intelligent” and



awarded 5.61 marks.”

16. As far as the numerical grading is concerned, it is the case of the respondents that the petitioner would have met the benchmark for the grant of STS.

17. It is, therefore, only to be considered whether the Pen Picture contains any adverse remarks of the Reporting Officer or the Reviewing Officer.

18. For considering a remark to be an adverse remark, the instructions issued on 02.07.2021, though post the period in question, may be relevant for throwing light on the same. The same are reproduced hereinunder:-

“3. Of late, it has been noticed while checking/scrutinizing the APARs of Group 'A' officer that due attention is not being paid in communication of the remarks of concerned officials and in some of the cases, remarks that are only the 'Statements of Fact' and not even advisory in nature, are communicated as adverse to the Individual concerned which not only causes unnecessary representations but also Impact career prospects of concerned Official adversely.

*4. It is reiterated that '**an adverse remark**' means a remark which indicates the defects or deficiencies in the quality of work or performance or conduct of an officer, but does not include any word or words in the nature of counsel or advice to the officer. Further, the remarks like; failure in courses, Pending disciplinary cases like GSFC, ROE, SCOI & COI and Award of displeasure, warning, caution and advice by various superior authority, recorded In the pen picture of APAR, are '**Statements of fact**' and sometime taken as adverse thereby adversely affecting career of individual. This may also come under 'Double Jeopardy'. Therefore, such*



remarks may not be construed as adverse remarks while communicating the same.”

19. The above instructions clearly state that any reference/remarks like an advice by the superior authority recorded in the Pen Picture of APAR are in the nature of ‘statements of fact’ and are sometimes taken as adverse, thereby adversely affecting the career of the individual; this may amount to double jeopardy and, therefore, such remarks may not be construed as adverse remarks while communicating the same. In case any reference/remarks are to be treated as adverse, Paragraph 2 of the said instructions further casts an obligation on the concerned authority to communicate the same in verbatim by duly underlining and specifying the nature of the remarks to the concerned officer.

20. In the ‘APAR Procedure and Instructions-2012’, the same was provided in Paragraph 4.8 thereof, in the following terms:

“4.8 Communication of Adverse/ Advisory Remarks. *If PARs contain any Adverse/Advisory remarks, it shall be ensured that Adverse/Advisory remarks are communicated to the official, duly highlighted and underlined, specifying the nature of remarks whether these are Adverse or Advisory instead of writing Adverse/Advisory, along with full APAR as per format given at Annexure-IV.”*

21. In the present case, the letter dated 10.07.2015, which is being treated as a communication of the adverse remarks to the petitioner, does not meet the requirement of the guidelines or the instructions referred to hereinabove inasmuch as the adverse remarks are neither reproduced in verbatim nor highlighted for the petitioner to understand



that these may be treated as adverse.

22. As far as the downloading of the APAR on the IPP portal is concerned, the same would also not meet the requirement of communication of an adverse remark to the petitioner.

23. Therefore, in the facts of the present case, applying the stringent rule of a timely representation to be made by the petitioner against the APAR was not justified, as the petitioner was never informed that the remarks made in the Pen Picture would be treated as adverse for his future career progression. It is only when the petitioner was denied the STS that the alleged adverse remarks made in the Pen Picture came to the notice of the petitioner and the petitioner immediately represented against the same.

24. The learned counsel for the petitioner has also rightly contended that before treating the remarks made in the Pen Picture as adverse to the petitioner, there should have been some written communication/advisory issued by the Reporting Officer to the petitioner. In *Sukhdeo v. Commissioner Amravati Division, Amravati & Anr.*, (1996) 5 SCC 103, the Supreme Court held that it would be salutary that the Controlling Officer before writing the adverse remarks would give prior sufficient opportunity 'in writing' by informing the Officer of the deficiency noticed for improvement, and it is only thereafter if the officer/employee does not improve, that it would be an obvious fact that would form a material basis in support of the adverse remarks.

25. In the present case, it is the assertion of the petitioner that no advice in writing was ever issued to him, and the respondents have



failed to produce before us any such written advice to the petitioner. In fact, the remarks made by the Reporting Officer and the Reviewing Officer appear merely as their informal opinion of the petitioner not working to the caliber which he can achieve and, therefore, cannot be treated as adverse to the petitioner. We may also make reference in this regard to the Judgment of this Court in *Vidya Shankar Tiwari* (supra).

26. In view of the above, we have no hesitation in setting aside the Impugned Order dated 02.05.2019 by which the representation of the petitioner against the alleged adverse remarks of his APAR for the year 2014-15 was rejected. We direct that the case of the petitioner be reconsidered by the DPC, and in case the petitioner is found fit and eligible for the grant of STS, the same be granted to him with retrospective effect from the date that the same was granted to his immediate junior who was so found fit and eligible for the same. The case of the petitioner for promotion shall also be considered if otherwise found eligible without treating the remarks in the Pen Picture of his APAR for the year 2014-15 as adverse to the petitioner. The petitioner shall be entitled to all consequential benefits as well.

27. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 13, 2024/sg/SJ

[Click here to check corrigendum, if any](#)