



2024:DHC:9975-DB



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

Reserved on: 13.12.2024
Pronounced on: 24.12.2024

+ **W.P.(C) 13219/2019**

PRAKHAR TRIVEDI

.....Petitioner

Through: **Mr. Ankur Chhibber, Mr. Nikunj Arora & Mr. Anushman Mehrotra, Advs.**

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: **Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Adv.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India, *inter-alia*, praying as under:-

“(i) Issue a writ of certiorari for quashing of orders dated 18.03.2019 whereby the Representation dated 15.01.2019 and for quashing of order dated 04.10.2018 and 28.08.2019 whereby the representations dated 09.04.2018 and 06.08.2019 respectively of the petitioner to upgrade the grading and to expunge the adverse remarks for the relevant period was rejected; and

(ii) Issue a writ of certiorari for quashing of the PPAR for the period between 01.04.2016 to 31.08.2016 to the extent of the adverse remarks given to the petitioner and for quashing the order dated 23.02.2018 whereby adverse findings were communicated to the petitioner; and

(iii) Issue a writ of mandamus directing the respondents to upgrade the grading and to expunge the adverse remarks



for the relevant period i.e. 01.04.2016 to 31.08.2016 and to hold a review DPC to consider the petitioner for promotion to the rank of DIG and if found fit to grant all consequential benefits.”

2. The facts relevant for adjudication of the present petition, as emerging from the record, are that the petitioner joined the Border Security Force (“BSF”) on 26.07.1993 as an Assistant Commandant. Upon completing his basic training, he was posted to the 4th Battalion, Amritsar. Due to his hard work and dedication towards his duty, and on the basis of his profile, the petitioner was promoted to the rank of the Deputy Commandant on 07.10.1998. Thereafter, on 03.06.2005, he earned his next promotion to the rank of Second-in-Command, which was followed by another promotion to the rank of Commandant on 01.10.2010. Consequently, he was posted to the 20th Battalion in Bikaner, Rajasthan.

3. In November, 2015, while being posted to the 170th Battalion, Jalpaiguri, Raninagar, West Bengal, *vide* a Signal dated 27.07.2016, the petitioner was directed to relocate his Unit to the Punjab Frontier for International Border duty by 31.08.2016. However, the Unit submitted a representation *vide* Signal dated 08.08.2016, requesting the Competent Authority to reconsider its decision to direct the Unit to move to Punjab Frontier, as the Unit had just moved to its present location.

4. Instead of appreciating the said communication, the Inspector General (“IG”) issued a Signal dated 09.08.2016 stating that the petitioner, by marking his representation directly to FHQ (Ops Dte) by passing the Sector HQ and Ftr. HQ, which is the laid down procedure,



has acted in gross violation of good order and discipline.

5. The petitioner replied to the above Signal on 11.08.2016, giving an explanation why the representation dated 08.08.2016 had been simultaneously addressed to SDG (WC), Ftr. HQ NB and SHQ Jalpaiguri.

6. It is the case of the petitioner that his reply was not considered, however, an advice was issued *vide* the letter dated 27.08.2016.

7. Further, during the said period, despite the service of the petitioner being good and there being no other communication to this effect, his Annual Performance Appraisal Report (“APAR”) for the period from 01.04.2016 to 31.08.2016 (“the relevant period”) was downgraded, and adverse remarks were endorsed by the Reviewing Officer. *Vide* letter dated 23.02.2018, he was communicated the advisory/adverse remarks. The petitioner claims that he had always been graded as ‘Good’, ‘Very Good’ or ‘Outstanding’ both before and after the aforesaid relevant period.

8. In order to voice his grievance, the petitioner made a representation dated 09.04.2018 to the Director General (“DG”), BSF, requesting an upgradation of his Grading and for an expunction of the advisory/adverse remarks endorsed in the Impugned APAR. His representation was rejected *vide* the Order dated 04.10.2018. Being aggrieved, the petitioner unsuccessfully sought an interview with the DG. Upon not being allocated time to meet with the DG, he made a fresh representation dated 06.08.2019. However, the said representation was dismissed on 28.08.2019, stating that there is no provision for submitting a second representation against the



advisory/adverse remarks in the APAR after the Competent Authority has duly decided the first representation.

9. Aggrieved of the above, the petitioner has filed the present petition.

Submissions on behalf of the petitioner

10. Mr. Ankur Chhibber, the learned counsel for the petitioner, while supporting the contents of the petition submitted that the Impugned APAR is erroneous and liable to be quashed. While drawing our attention to Paragraph 3.9 of the APAR Procedure and Instructions, 2012 issued by the DG, BSF, he submitted that the Pen Picture endorsed by the Initiating /Reporting and the Reviewing Officers should assign reasons for awarding 'lower than average' marks. Further, the officers should ensure that the marks awarded to an individual, as well as the Grading by the Initiating/ Reporting and Reviewing Officers are in consonance and consistent with each other and not glaringly incompatible.

11. He submitted that the Reviewing Officer, contrary to the remarks given by the Initiating Officer, arbitrarily downgraded the Box Grading of the petitioner from 6.2 to 5, without sufficient cause. Moreover, no reference was made to any specific incident regarding the adverse remarks as endorsed by the Reviewing Officer in the Pen Picture. He contended that the Reviewing Officer acted against the settled principle of law, which requires that a superior officer must refrain from making vague remarks, which could jeopardize the career of a subordinate officer.

12. Referring to Paragraph 6.2.1(f) of the Guidelines on



Departmental Promotion Committee issued by the Department of Personnel and Training's Office Memorandum ("OM") dated 10.04.1989, Mr. Chhibber, submitted that from the said guidelines it is clear that though while considering the assessment rendered by a superior officer, the Departmental Promotion Committee ("DPC") is required to consider the remarks of the Reviewing Officer or Accepting Officer if they overrule the remarks endorsed by the Reporting Officer, as the superior officer is believed to have arrived to a different assessment after due application of mind, the objective assessment is the fulcrum on which the assessment is to be reported. He further submitted that it is incumbent upon the superior officer to share the shortcomings of the subordinate officer with him, so as to give him/her an opportunity to improve upon his/her shortcomings. To the contrary, a vague observation has been made by the Reviewing Authority in the Impugned APAR, stating that the petitioner had no control over his subordinates, without mentioning any specific instance or incident.

13. He contended that the respondents' averment that the petitioner violated the channel of correspondence by issuing the Signal dated 08.08.2016 is incorrect and misleading. The Signal was addressed to the Competent Authority, and any lapse indicated was a mere procedural error, which could have been rectified by the respondents by forwarding it to the appropriate authority for response and action. The petitioner's action was not an attempt to breach discipline or good conduct and he had immediately clarified this in his reply. Therefore, the Advice issued on 27.08.2016 was arbitrary on the part of the



respondents.

14. Finally, the learned counsel submitted that the APAR Gradings of the petitioner have always been 'Good', 'Very Good', or 'Outstanding', except for the period from 01.04.2016 to 31.08.2016, which has been impugned. Rather, during this period, the DG, Central Reserve Police Force had issued a Commendation Certificate to the petitioner on 15.06.2016 and DG, BSF had also issued a similar Commendation Certificate on 29.06.2016 to him.

15. He, therefore, prayed that the Impugned APAR be quashed to the extent that it contains adverse remarks and the Grading of the petitioner's APAR be upgraded. Further, he prayed for a direction to hold a review DPC to consider the petitioner for promotion to the rank of Deputy Inspector General ("DIG"). To strengthen his plea, he placed reliance on the Judgment of *Achkan Arvind Priyadarshi Meena v. Union of India and Others*, 2024 SCC OnLine Del 8035.

Submissions on behalf of the respondents

16. In response to the submissions of the petitioner, Mr. Vikram Jetly, the learned counsel for the respondents contended that the performance of the petitioner was assessed by the Reviewing Officer based on his actual performance and the advisory remarks endorsed in the Impugned APAR are objective and fair.

17. He submitted that the petitioner, being the Commandant of the 170th Battalion, BSF was directed *vide* the Signal dated 27.07.2016, to move from its present location at Jalpaiguri to the Punjab Frontier. However, the petitioner while projecting problems regarding the movement of the troops to the Punjab Frontier directly approached



FHQ, BSF (Ops. Dte.) *vide* the Signal dated 08.08.2016, thereby violating the channel of correspondence and bypassing the established procedure. Consequently, the Competent Authority took a serious view regarding such an act of the petitioner and demanded an explanation from him. His reply was found unsatisfactory by the IG and thus, the Competent Authority issued an Advice to the petitioner on 27.08.2016, instructing him to refrain from such acts and to maintain Force discipline.

18. He submitted that in this background, the remarks of the Reviewing Officer endorsed in the Pen Picture of the Impugned APAR are not vague, instead, the said remarks were endorsed to enhance the petitioner's leadership qualities and to ensure better command, control and discipline in the Unit under his command. Further, the petitioner has been advised to strive for improvement.

19. While drawing our attention to the Guidelines as stipulated in Ministry of Home Affairs' ("MHA") OM No. 51/4/64-Estt(A) dated 21.06.1965, he submitted that it is the duty of the Reviewing Officer to report about any shortcoming in the performance, attitude or overall personality of an officer while endorsing his APAR. Further, the Cabinet Secretariat *vide* the OM No. 51/5/72-Estts.(A) dated 20.05.1972 manifests that the Reviewing Officer has to personally know the subordinate officer and based on his independent judgment, report upon the work and conduct of the officer. He submitted that in the present case, the remarks of the Reviewing Officer are within the parameters of the aforementioned OMs and that the petitioner has been, accordingly, advised so as to make him a more efficient member



of the Force by helping him overcome his shortcomings.

20. He submitted that the Reviewing Officer is not required to endorse similar / identical remarks, as recorded by the Initiating Officer. The Reviewing Officer, therefore, had made his independent remarks regarding the performance of the petitioner and thus, no interference by this Court is warranted in the present case.

21. To conclude, the learned counsel submitted that only for the reason that the previous APARs of the petitioner had been 'Good', 'Very Good' or 'Outstanding', it cannot be a justifiable reason to establish that his Impugned APAR has not been properly recorded. He, therefore, contended that the performance of the petitioner was assessed equitably and fairly by the Reviewing Officer and, therefore, prayed that the present writ petition be dismissed.

Analysis and Conclusion

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

23. At the outset, we may note the Pen Picture and the Box Grading endorsed by the Initiating Officer and the Reviewing Officer in the Impugned APAR. The same read as under:-

Initiating Officer's:-

11. रिपोर्टिंग अधिकारी के द्वारा पेन पिक्चर अधिकारी के संपूर्ण गुणों पर टिप्पणी करें जिसमें उसकी खूबियाँ और कमियाँ शामिल हैं। (तकरीबन 100 शब्दों में)-

*PEN PICUTRE of the officer reported upon by Reporting Officer.
(Please comment (in about 100 words on the overall qualities of the officer including areas of strengths and lesser strengths).*

An Intelligent and Smart officer with adequate professional knowledge. He takes required initiatives for smooth functioning of Unit and the welfare of his under commands.



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12. कुल मिलाकर ग्रेड (1-10 अंक के आधार पर)=

Overall grade (on a score of 1-10) (A+B+C)=

6.2

Reviewing Officer's :-

1. रिपोर्ट लिखने वाले अधिकारी के पेन पिक्चर पर टिप्पणी (पुनरीक्षण अधिकारी द्वारा भरा जाए)

Remarks on the pen picture reflected by the reporting officer (to be filled by reviewing authority)

Besides what the initiating officer has recorded. Mr. Trivedi has to enhance his leadership qualities and ensure better command, control and discipline of his under command. There is scope for improvement professionally and he should strive for it.

3. 1-10 के स्केल पर कुल मिलाकर ग्रेड

Overall grade on a scale of 1-10 (A1+ B1 + C1)

5.0 (Five)

24. What clearly emerges from the Pen Pictures of the Initiating and Reviewing Officers is that while on one hand, the Reviewing Officer accepts and concurs with the remarks of the Initiating Officer, on the other hand, goes on to endorse remarks that are diametrically opposite thereto. The Initiating Officer has stated that the petitioner has adequate professional knowledge and takes the required initiative for the smooth functioning of the Unit and the welfare of his under-commands and gives the Box Grading of the petitioner as '6.2', conversely, the endorsement made by the Reviewing Officer is that the petitioner is required to enhance his leadership qualities and ensure better command, control and discipline of his subordinates and that there is scope for improvement professionally. The Box Grading recorded by the Reviewing Officer is '5'.

25. The Reviewing Officer has failed to record any specific



instance wherein he found that the petitioner did not have control and discipline over his Unit.

26. The learned counsel for the respondents had vehemently argued before us that since the petitioner had failed to comply with the directions issued on 27.07.2016, that is, to move his Unit from Jalpaiguri to the Punjab Frontier and instead he had directly approached the Headquarters without following the proper channel of correspondence, thus, leading to a violation of good conduct and discipline in the Force, therefore, the Reviewing Officer keeping in mind such conduct of the petitioner had downgraded his APAR, we are afraid that we do not find merit in the submissions of the learned counsel for the respondents. One of the important issues raised by the petitioner in his Signal dated 08.08.2016 was that while his Unit has been asked to move to Indo-Pak International Border, the place of deployment has not been mentioned. We are also surprised to note that the Pen Picture endorsed by the Reviewing Officer, does not mention that the petitioner was downgraded for not following the proper channel of correspondence, while making an important communication to the Headquarter, which amounted to indiscipline.

27. At this stage, it would be relevant to note that Paragraph 3.9 of the APAR Procedure and Instructions, 2012, provides as under:-

“3.9 Part-VI Pen Picture of the Officer. It should be the endeavor of each Initiating Officer to present the truest possible picture of the appraisee in regard to his performance, conduct behaviour and potential, keeping in mind the distinction between what is fact and what is opinion. It is also obligatory on the part of the Initiating Officers to make a clear and honest assessment of the officer's overall qualities and achievements confining to the appraisee's



performance during the period of report only. Incidents and happenings outside the period of report should not influence the appraisers. There should be definite correlation between the pen picture of the officer and the marks allotted to him in various attributes. The pen picture should not be sketchy and too brief, rather it should amply describe the qualities and short comings of an officer so that one could be able to make out the personality, potential, character, attitude, intelligence, industry, aptitude, etc from the same. Reference to specific incidents may be made, if at all only by way of illustration to support adverse comments of a general nature, e.g inefficiency, dilatoriness, lack of initiative or judgement, etc. The pen picture should include the following:-

- (i) Reasons for awarding lower than average marks by the Initiating/ Reporting and Reviewing officer.*
- (ii) Any outstanding qualities and achievements or significant weakness.*
- (iii) Reasons for saying that he has reached his 'ceiling' or 'limit'."*

28. From the aforementioned provision, what emerges is that the Pen Picture of an officer must present a detailed, fact-based description of the performance, conduct, and potential, correlating directly with the marks awarded. Any adverse comments, mentioning inefficiency or lack of initiative, should be supported by referring to specific incidents and confined strictly to the reporting period. The assessment should neither be sketchy nor influenced by incidents outside the relevant period.

29. Further, it would be apposite to refer to the decision of this Court in ***Achkan Arvind*** (supra), on which the petitioner has heavily relied, to highlight the submission about the nature of 'an adverse remark'. The relevant extract of which is as under:

"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 herein under:-

"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.”

30. Having noted the above, the Pen Picture endorsed by the Reviewing Officer is not only vague but also contrary to the stated guidelines. It nowhere demonstrates the application of mind by the Reviewing Officer while endorsing the Pen Picture. The Reviewing Officer has not made any attempt to counsel or advise the petitioner by mentioning an appropriate way to correct himself for the future. Additionally, 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 31 years. It is an admitted position that the petitioner had been maintaining ‘Good’/‘Outstanding’ APARs, prior to and after the Impugned APAR.

31. We are afraid that the endorsement made by the Accepting Officer is also ambiguous and without any substantive basis, as he has merely endorsed ‘I generally agree’ and such an endorsement is ‘inappreciable’.

32. In view of the above, we have no hesitation to hold that there was a lack of objectivity on the part of the Reviewing Officer, who appears to have endorsed an informal opinion about the petitioner without endorsing any reasons for the same. The circumstances relied upon by the respondents for endorsing the Impugned APAR, to the effect that the petitioner misconducted himself by not following the proper channel of addressing his communication with his superior, does not find any mention in the Pen Picture. Therefore, such an argument appears to be an afterthought on the part of the respondents



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to justify the Impugned APAR.

33. The petitioner's Impugned APAR for the period from 01.04.2016 to 31.08.2016 can, therefore, not be sustained and is, accordingly, quashed. The consequential Order dated 04.10.2018, rejecting the petitioner's representation against the Impugned APAR, is also quashed.

34. We direct that the case of the petitioner be considered afresh by the DPC for promotion to the post of DIG, by disregarding the Impugned APAR, which has been quashed. The said consideration for promotion to the rank of DIG would be made by the DPC within a period of 12 weeks from today. If found fit, the petitioner will be entitled to all the consequential benefits from the due date, except arrears of pay.

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

SHALINDER KAUR, J

NAVIN CHAWLA, J

DECEMBER 24, 2024/ss/sk