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

+ **W.P.(C) 13938/2019**

BABU LAL BISHNOIPetitioner

Through: Ms.Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr.Akash Vajpai, Adv. with

Mr.Nakul Kumar, Inspector, RPF.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

% **03.09.2024**

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner, who is serving as an Inspector in the Railway Protection Force (RPF), has approached this Court seeking quashing of the respondent's order dated 15.04.2019, vide which his prayer for up-gradation of his Annual Performance Assessment Report (APAR) for the year 2014-15 has been rejected. The petitioner also seeks directions to the respondents to upgrade the box grading of 'average' to 'good' in his APAR for the year 2014-15 and, reconsider his case for grant of benefits under the Modified Assured Career Progression Scheme (MACP) as per Rules.

2. The petitioner joined the RPF as a Sub-Inspector in the year 1996 and, was thereafter, promoted as an Inspector. It is claimed by the petitioner that during his career spanning over 28 years, he has always been graded as 'very good/outstanding' in his APARs except in the APAR for the year 2014-15 wherein despite the Reporting Officer grading him as 'good', he was downgraded to 'average' by the Reviewing Officer, which grading was then accepted both by the Deputy Inspector General (DIG) and the Inspector



General (IG). The APAR, we may note, was endorsed by four officers with the Accepting Officer being the final authority.

3. Being aggrieved by the downgrading in his impugned APAR, the petitioner submitted representations seeking up-gradation of his APAR. Based on his representations, comments were sought from his Reporting Officer, Reviewing Officer and the Additional Security Commissioner (ASC) who had also assessed the petitioner in the APAR. No comments could however be sought from the Accepting Officer, Shri S Harnanda, Chief Security Commissioner (CSC) as he had already superannuated by then. In their comments, the Reporting Officer and Reviewing Officer reiterated their respective grading of 'good' and 'average' but the ASC who was, as per the laid down hierarchy, the second senior most officer who had assessed the petitioner in his impugned APAR vide its letter dated 27.02.2019, recommended that his APAR be upgraded to 'good'.

4. The respondents however, instead of upgrading the APAR of the petitioner on the basis of the recommendation made by the ASC, placed the matter before the DG, who, vide the impugned order dated 15.04.2019 rejected the petitioner's representation for up-gradation of his APAR. The petitioner then submitted a representation to the DG praying for reconsideration of his decision and prayed that the recommendation made by the ASC for up-gradation of his APAR to 'good' be accepted. Since no response was received to this representation, the petitioner has approached this Court by way of the present petition.

5. In support of the petition, learned counsel for the petitioner submits that since the Accepting Officer, who was the senior most officer to have assess the petitioner in his impugned APAR had already superannuated, the



recommendations of the second senior most officer, the ASC for up-gradation of his APAR ought to have been accepted especially when they were in tune with the grading given by the Reporting Officer as well. She submits that when the comments of three out of the four officers who had endorsed the APAR were available, there was no requirement to seek comments of the DG, who was not at all aware of the petitioner's performance during the relevant period. Without prejudice to her aforesaid plea, she submits that the impugned order is a non-speaking order whereunder, the DG has rejected the petitioner's prayer for up-gradation in a most mechanical manner, without giving any reasons for not accepting the recommendations of the ASC, the senior most serving officer who had endorsed his impugned APAR. She contends that as a consequence of this downgraded APAR, the petitioner despite having an otherwise outstanding service record has also been deprived of the benefits under the MACP scheme. She, therefore, prays that the writ petition be allowed and the respondents be directed to upgrade the impugned APAR of the petitioner.

6. *Per contra*, learned counsel for the respondents seeks dismissal of the petition by urging that the recommendations made by the ASC, who was undoubtedly the second senior most officer to endorse the petitioner's impugned APAR, could not be treated as final. The recommendations of the ASC, he contends, were subject to the comments of the Accepting Officer. However, since the Accepting Officer had by then already superannuated from service, the matter was rightly placed before the DG, who did not agree with the recommendations for up-gradation made by the ASC. The DG, he submits had, after due consideration of the comments made by all the three Assessing Officers come to a conclusion that the petitioner's prayer for up-



gradation could not be accepted.

7. Having considered the submissions of learned counsel for the parties and perused the record, we are inclined to agree with the petitioner. From a perusal of the impugned APAR it emerges that the same four officers each having given their own grading wherein the Reporting Officer assessed the petitioner as 'good', the Reviewing Officer, the ASC and the CSC, all having graded him as 'average', we find that it is the admitted case of the parties that the second senior most officer to endorse the APAR i.e., the ASC had, after considering the petitioner's representation for up-gradation, recommended that his APAR be upgraded to 'good'. The respondents have given absolutely no explanation as to why when three of the four assessing officers were already available, the matter was still required to be placed before the DG, who, as rightly urged by the petitioner was not conversant with his performance during the period covered under the impugned APAR. The respondents have merely made a bald statement that since the final Accepting Officer i.e., the senior most officer in the four- tier hierarchy, had already superannuated, the matter was required to be placed before the next higher authority i.e., the DG. We find absolutely no basis for this course of action adopted by the respondents. In our considered view, when the second senior most Assessing Officer was available, and had recommended for up-gradation of the impugned APAR, his view ought to have been accepted.

8. Further, we find that, the impugned order vide which the petitioner's representation for up-gradation has been rejected is absolutely cryptic and does not give any reason as to why the DG did not agree with the recommendation made by the ASC, the second senior most officer, who had assessed the petitioner's impugned APAR. In our view, even if the DG was



not inclined to accept the recommendations made by the ASC for up-gradation of the APAR to 'good', which recommendations were in tune with the assessment made by the Reporting Officer, it was incumbent upon the DG to provide at least some reasons for not accepting their views. It appears that the DG has failed to appreciate that it is the Reporting Officer and the ASC, who along with the Reviewing Officer had the opportunity to watch the performance of the petitioner during the relevant period and, therefore, their views should be respected. The impugned order rejecting the petitioner's representation is, therefore, unsustainable.

9. For the aforesaid reasons, we are of the view that the writ petition deserves to be allowed. The same is, accordingly, allowed by quashing the respondent's decision rejecting the petitioner's prayer for up-gradation of his APAR by directing the respondents to re-consider the petitioner's representation for up-gradation of his impugned APAR on the basis of the recommendations made by the ASC, Sh. S. Mayank. The reconsideration of the petitioner's representation in terms of this order will be conducted within a period of six weeks. In case, the petitioner's APAR is upgraded, all consequential benefits including the benefits of Modified Assured Career Progression Scheme as per law will be released to him within a further period of eight weeks.

10. The writ petition is, accordingly, disposed of in the aforesaid terms

REKHA PALLI, J

SHALINDER KAUR, J

SEPTEMBER 3, 2024/kk