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**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.**

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**CWP-26658-2016 (O&M).
Date of Decision: 28.01.2025.**

NAVINDER KUMAR

... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Arihant Jain, Advocate and
Mr. Kanish Jindal, Advocate,
for the petitioner.

Mr. R.S. Longia, Advocate,
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenging the adverse remarks recorded in the Annual/Part Performance Assessment Report (APAR) for the year commencing from 01.04.2014 to 31.03.2015, communicated vide letter dated 08.07.2015 (Annexure P-2), the petitioner has filed the present writ petition. A further prayer has been made for promoting the petitioner

2 Learned counsel for the petitioner has argued that the petitioner joined Border Security Force as a Clerk on 23.03.2011 and that based on the performance of the petitioner, he was graded as "Very Good" (2011-12; 2012-13; and 2013-14) in the APARs. He submits that during the Annual/Part

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Performance Report (APAR) for the period from 01.04.2014 to 31.03.2015, the Reporting Officer graded the petitioner as "Very Good" and recorded as under:-

"A royal, loyal, sincere hard worker HC (Min) who is keen in discharging the responsibility, complete devotion to duty regardless of personal cost. He has enough strength of will to keep himself imperturbable under moderate stress. He is loyal and obedient to authority. He keeps cordial relations amongst the staff and goodwill towards others. I grade him "VERY GOOD".

The overall Grade on a score of 1 to 10 was 6.52. The Reviewing Authority, however, passed the following remarks:-

"I partly disagree with remarks of 10. Individual needs to improve on his professional knowledge & its application to work."

The overall Grade on a scale of 1 to 10 was thus reduced to 5.12. Thereafter, the Accepting Authority vide order dated 06.07.2015 has given an opinion about the petitioner which reads thus: -

"He needs to improve in his drafting as well as his lackadaisical approach. Overall grade (on a score of 1-10): 4.5"

It is submitted by the counsel for the petitioner that upon receipt of the communication dated 08.07.2015 about the adverse remarks having been recorded, the petitioner submitted a representation to the Commandant,

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200 Bn. BSF for expunction of the adverse remarks in the Annual/Part Performance Report for the year 2014-15. He contends that the Commandant, 200 Bn BSF thereafter rejected his representation vide order dated 01.12.2015. He submits that the adverse remarks dated 02.07.2015 and the opinion dated 06.07.2015 given by the reviewing and accepting authority as also the subsequent order dated 01.12.2015 are challenged before this Court. Learned counsel appearing for the petitioner has argued that the reviewing and the accepting authority had not conveyed any complaints with respect to the work and conduct of the petitioner at any time prior to recording of an adverse remarks in his ACR, hence, the same is liable to be expunged. A reference is placed by him on the judgment of the Hon'ble Supreme Court in the matter of **M.A. Rajsekhar Vs. The State of Karnataka, reported as 1996 (4) SCT 212**. The operative part thereof reads thus:-

“5. It was found that his integrity was not doubted and his work also in all those respects was found to be satisfactory. Under those circumstances, the remark that he "does not act dispassionately when faced with dilemma" must be pointed out with reference to specific instances in which he did not perform that duty satisfactorily so that he would have an opportunity to correct himself of the mistake. He should be given an opportunity in the cases where he did not work objectively or satisfactorily. Admittedly, no such opportunity was given. Even when he acted in dilemma and lacked objectivity, in such circumstances, he must be guided by the authority as to the manner in which he acted upon. Since this exercise has been

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done by the respondents, it would be obvious that the above adverse remark was not consistent with law.”

Reliance is also placed on the judgment of the Hon’ble Supreme Court in the matter of **Amar Kant Choudhary Vs. State of Bihar and others, reported as 1984 AIR (Supreme Court) 531.** The operative part thereof reads thus:-

“9. Before concluding we wish to state that the Central Government and the State Governments should now examine whether the present system of maintenance of confidential rolls should be continued. Under the present system, entries are first made in the confidential roll of an officer behind his back and then he is given an opportunity to make a representation against any entry that may have been made against him by communicating the adverse entry after considerable delay. Any representation made by him would be considered by a higher authority or the State Government or the Central Government, as the case may be, some years later, as it has happened in this case, by which time any evidence that may be there to show that the entries made were baseless may have vanished. The predicament in which the officer against whom adverse remarks are made is then placed can easily be visualised. Even the authority which has got to pass orders on the representation of the officer will find it difficult to deal with the matter satisfactorily after a long interval of time. In the meanwhile the officer concerned would have missed many opportunities which would have advanced his prospects in the service. In order to avoid such a contingency, the Government may consider the introduction of a system in which the officer who has to make entries in the confidential roll may be required to record his remarks in the

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presence of the officer against whom remarks are proposed to be made after giving him an opportunity to explain any circumstance that may appear to be against him with the right to make representation to higher authorities against any adverse remarks. This course may obviate many times totally baseless remarks being made in the confidential roll and would minimise the unnecessary suffering to which the officer concerned will be exposed. Another system which may be introduced is to ask the officer who records the confidential remarks to serve a copy of such remarks on the officer concerned before the confidential roll is submitted to the higher authorities so that his representation against the remarks may also reach the higher authority shortly after the confidential roll is received. This would curtail the delay in taking action on the representation. Suspensions, adverse remarks in confidential rolls and frequent transfers from one place to another are ordered or made many a time without justification and without giving a reasonable opportunity to the officer concerned and such actions surely result in the demoralisation of the services. Courts can give very little relief in such cases. The Executive itself should, therefore, devise effective means to mitigate the hardship caused to the officers who are subjected to such treatment. These questions require to be examined afresh in the light of the experience gained in recent years and solutions should be found to eliminate as far as possible complaints against misuse of these powers by official superiors who may not be well disposed towards the officer against whom such action is taken. It is needless to state that a non-disgruntled bureaucracy adds to the efficiency of administration.”

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Referring to the above, counsel for the petitioner reiterates his submissions that the respondents authorities had never conveyed any complaint/warning to petitioner about his work and conduct, hence, the adverse comments so recorded in the ACR of the petitioner for the period under challenge are liable to be expunged in view of the authoritative pronouncements of the Hon'ble Supreme Court in the matters of M.A. Rajsekhar and Amar Kant Choudhary (supra). He further submits that the adverse remarks for the subsequent financial year were expunged and that in view of the work and conduct of the petitioner, he ought to be considered for further promotion.

Learned counsel for the respondents, on the other hand, however, contends that the present writ petition deserves dismissal. It is submitted that the Commandant specifically recorded in the order dated 01.12.2015 that he personally monitored the performance of the petitioner and felt that the petitioner needs a lot of improvement and hence, the representation of the petitioner was rightly rejected being devoid of any merits. It is further submitted that the contention of the petitioner that no erstwhile warning was issued to the petitioner against the defects/deficiencies, if any, in his work and conduct are misconceived.

Learned counsel for the respondents draws attention of this Court to the averments as contained in para No.4 of the reply filed by way of counter affidavit submitted on behalf of the respondents by Brig Maninder

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Deep Singh son of Late Shri Man Singh, Deputy Inspector General, Sector Headquarter, Border Security Force, Rajouri which is extracted as under: -

“4. That, the contents of para-4 are admitted being matter of records. However, it is to mention here that during the period under report from 01/04/2014 to 31/03/2015, performance of the petitioner was adjudged by the Reviewing Officer as well as by the Accepting Authority and he was graded as per his actual performance. The record available in the unit reveals that during the period under report from 01/04/2014 to 31/03/2015, the petitioner was advised in writing at three occasions and was issued a Show Cause Notice in order to improve his conduct/performance, as per below mentioned detail: -

- (i) No.Stn/Advice/200/14/790-92 dated 07/11/2014 - for not attending weapon cleaning parade.*
- (ii) No.Stn/Advice/200/14/879-81 dated 17/11/2014- for casual attitude towards work.*
- (iii) No.Stn/Advice/200/14/679 dated 01/12/2014 for not doing proper work on IPP.*
- (iv) No.Stn/Show Cause Notice/200/14/816 dated 10/11/2014.*

The copies of advices/Show Cause Notice issued to the petitioner vide 200 Bn BSF letter dated 07/11/2014, 17/11/2014, 01/12/2014 and 10/11/2014 are annexed herewith and marked as Annexure R-1, R-2, R-3 & R-4 respectively.”

Relying on the same, it is submitted that as many as 04 different advisories/show cause notices had been served upon the petitioner pointing

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out towards his casual attitude and lackadaisical approach in execution of the works assigned to him, hence, it is not a case where there was no forewarning extended to the petitioner. Since no improvement had been shown by the petitioner in his work and conduct, hence, the remarks have been rightly recorded. It is contended that all these warnings/communications/show cause notices pertaining to the work and conduct of the petitioner in the year which was under assessment had been communicated to him. He submits that while filing the replication, the issuance of the aforesaid advisories/warnings/show cause notices has not been disputed by the petitioner.

Learned counsel for the respondents refers to the additional affidavit dated 21.05.2018 submitted on behalf of the respondents by Dinesh Pal Singh, Deputy Inspector General, Sector Headquarter, Border Security Force, Rajouri, wherein it has been recorded that the petitioner was in the consideration zone for promotion from the post of Head Constable (Ministerial) to the rank of ASI (Ministerial) for the vacancy for the year 2017-18 and the record of the petitioner was considered by the DPC and on assessment of the entire record, he was found unfit by the DPC for being promoted due to inconsistent record of service. He contends that the right of the petitioner was only to be considered for promotion and once the DPC has duly taken note of the case of the petitioner for being promoted further and having found him not fit for being promoted, a further direction for grant of promotion could not have been issued.

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I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

The foundation of the present case has been built solely on the ground that at no point of time, prior to the recording of the adverse remarks in the annual/part performance report of the petitioner, the petitioner was ever afforded any forewarning/show cause notice to improve his work and conduct and that the adverse comment were recorded all of a sudden.

On a consideration of the judgments relied upon by the counsel for the petitioner with the facts of the present case, it is evident that as many as 04 forewarnings/show causes notices were issued to the petitioner about his work and conduct. The said instances are clearcut examples of forewarning being issued by the appropriate authority to the petitioner to improve his work and conduct. The comments so recorded by the reviewing authority as well as the accepting authority are seemingly in consonance with the warnings that had been issued to him. Moreover, the appellate Authority while examining the representation submitted by the petitioner has specifically recorded in its order dated 01.12.2015, that it had personally supervised and observed the work and conduct of the petitioner who is in the clerical cadre and found that the petitioner was lacking in his work. Hence, there has been analytical appraisal as well as evaluation before adverse remarks were recorded in the APAR and therefore, it cannot be said that the judgments of the Hon'ble Supreme Court would come to the rescue of the petitioner rather, the position in law as expounded in the aforesaid judgments

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of the Hon'ble Supreme Court rules against the petitioner since the four instance of show cause notice/forewarning/advisories clearly dispel the recording of the comments in the APAR as a sudden act on the part of the reviewing/accepting authorities.

Adverting to the claim that the petitioner was entitled to promotion in terms of the order passed is concerned, the reading of the said order shows that it was not an order directing promotion of the petitioner and rather, it was an order only expunging the adverse remarks recorded in the subsequent year i.e. 2015-16. The same was thus not an order issuing any directions by the competent Authority to promote the petitioner to the rank of ASI (Ministerial). Hence, the prayer is misplaced. In any case, as per the law relied upon by the respondent and in reference to the prayer for promotion, the petitioner was only entitled to be considered by the DPC for further promotion to the post of ASI (Ministerial) which such consideration has been duly done. The petitioner, however, failed to secure the benchmark as prescribed in the promotion rules to be eligible and to be entitled for being promoted to the next higher post.

Further, the position in law is well settled that the High Court in exercise of its power of judicial review does not supplant its own opinion for that of the reviewing/accepting authorities who had the advantage of clearly observing and supervising the work and conduct of its employees. Hence, the remarks recorded by the such authorities which are in control of the work and conduct of the petitioner would not ordinarily be wrong unless there are

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compelling circumstances which reflect that the recording of such adverse remarks is not well founded or has been so done with mischief/malice or on account of any arbitrary action so as to penalise the employee.

I find that none of the said circumstances exist in the present case. Hence, I find that there are no intervening circumstances as would justify the judicial review of the order dated 01.12.2015 passed by the appellate authority as well as the earlier orders recording adverse remarks dated 02.07.2015 recorded by the reviewing authority as well as order dated 06.07.2015 by the accepting authority. The present petition is accordingly dismissed.

Pending misc. application(s), if any, shall also stand(s) disposed of accordingly.

January 28, 2025.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No