



2025:DHC:4-DB



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

Reserved on: 26.11.2024
Pronounced on: 07.01.2025

+ **W.P.(C) 6498/2023**

AJIT KUMAR

.....Petitioner

Through: Dr.S.S. Hooda, Adv.

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Mr.Bhagwan Swarup Shukla,
CGSC with Mr.Sarvan Kumar,
Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed by the petitioner praying for the setting aside of the Adverse Remarks and below Benchmark grading endorsed in his Annual Performance Appraisal Reports (in short, 'APAR') for the years 2021-22. The petitioner further prays for a *writ of mandamus* directing the respondents to upgrade his APAR for the years 2021-22 with all consequential benefits.

Case of the Petitioner:

2. As a brief background, it is the case of the petitioner that the petitioner joined the Border Security Force (in short, 'BSF') as Assistant Commandant (Direct Entry) on 02.07.1993. He was



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promoted to the rank of Commandant on 07.10.2016, and is due for promotion to the rank of Deputy Inspector General (in short, 'DIG'). He has an unblemished record in his entire 29 years of service.

3. The petitioner further submits that he has regularly been graded as 'Outstanding' and 'Very Good', as would be evident from the table given hereinbelow:

<i>S.No.</i>	<i>APAR year</i>	<i>Grading</i>
1.	2016-17	Outstanding
2.	2017-18	Very Good
3.	2018-19	Outstanding
4.	2019-20	Outstanding
5.	2020-21	Very Good

4. The petitioner is aggrieved of the fact that in his APAR for the period 2021-22, he has wrongly been graded 'Good' and has been given a numerical grading of only 5 and, the Reporting Officer has also endorsed adverse remarks in the Impugned APAR.

Submissions of the Learned Counsel for the Petitioner:

5. The learned counsel for the petitioner submits that taking into account the previous APAR grades of the petitioner, it is evident that the Impugned APAR has been written with a pre-determined mind and to condemn the petitioner in a vengeful manner, which completely defeats the very purpose of writing an APAR. In this regard, the learned counsel has drawn reference to paragraph 1.1 of the APAR Procedure and Instructions, which states that an APAR is written with the purpose of carrying out effective career



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planning and human resource development in the best interest of the employees as well as the Force.

6. On the merits of the adverse remarks, he submits that the Reporting Officer has placed undue emphasis on the Advice dated 31.01.2022 issued to the petitioner for allegedly being dressed in civilian clothes during the final rehearsals of the Annual Inspection at Quarter Guard, 194 Bn BSF, Gandhinagar. The learned counsel submits that the Annual Inspection of SHQ BSF, Gandhinagar was to be carried out by the IG, FTR HQ BSF, Gujarat on 31.01.2022 and 01.02.2022. During the informal round of Admn. Block on 21.01.2022, the DIG SHQ BSF Gandhinagar instructed all officers present, including the petitioner, that the final pre-inspection rehearsal would be carried out of the Admn. Block, SHQ BSF Gandhinagar on 30.01.2022 at 1600 hrs. The DIG also instructed that all officers shall remain present in civil dress and all SOs and ORs shall remain in uniform for the final pre-inspection rehearsal. It was only later that the DIG changed his decision and decided that the final pre-inspection rehearsal shall be conducted out of the Quarter Guard and that all officers shall also be present in uniform. This change in decision was, however, not communicated to the petitioner. Resultantly, the petitioner reached the Admn. Block, on 30.01.2022, in civil dress as per the original plan, where he got to know of the changed decision of the DIG. The petitioner rushed to the Quarter Guard in civil dress only due to paucity of time, however, the Advice dated 31.01.2022 was issued to him for



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coming in civil dress without an explanation being called from the petitioner. The learned counsel for the petitioner submits that this itself shows the prejudiced mind of the Reporting Officer.

7. He submits that instead of protesting against the Advice, the petitioner thought it fit to take it sportingly and did not raise any objection at that time. It is only when the said Advice was used as a basis for recording the adverse remarks in petitioner's APAR of 2021-22, that the petitioner preferred a representation dated 31.10.2022 against the same. In response to the representation, the respondent directed the petitioner to approach the appropriate authority to revoke the Advice.
8. The learned counsel for the petitioner further submits that the second basis for recording the adverse remarks against the petitioner is that a particular file remained with him for a period of 32 days. This was factually incorrect as the said file recording the Board proceedings was received in the Ops Branch, SHQ Gandhinagar, only on 18.11.2021. It was put up before the petitioner after 2-3 days as per the normal course. The petitioner, however, proceeded on earned leave of 26 days on 03.12.2021, which had been duly sanctioned to him. The file therefore, remained pending with the petitioner only for about 13 days and not 32 days as has been alleged. The pendency of file for 13 days, which was not an unusual or abnormal period, would not warrant an adverse remark to be made against the petitioner. He submits that between 11.11.2021 to 01.12.2021, the DIG was not present at SHQ BSF, and during the said period, the SHQ, BSF



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Gandhinagar was given responsibility for conducting the BSF Raising Day. The petitioner being the senior most officer at the SHQ, was occupied in the same and could not go through the Board proceedings for the aforesaid *bona fide* and genuine reasons. Once the petitioner proceeded on leave, the said file should have been processed by the officer who took charge of Commandant (Ops), BSF while the petitioner was on leave. It was the said officer who should have followed up to take any action on the Board proceedings file for the further period of 19 days, however, no action was taken against the officer for the delay caused by him, and instead, the petitioner was made the scapegoat by attributing the entire delay on the petitioner.

9. The learned counsel for the petitioner submits that the adverse remarks have also been made against the petitioner for his availing the leave for six times during the year. He submits that the leave was duly sanctioned and therefore, availing of the leave could not have been a ground to record adverse remarks against the petitioner. He further submits that the leave applications of the petitioner were also rejected by the DIG on 3 occasions, therefore, the DIG could have denied leave to the petitioner on other occasions as well, if he felt that the leave was not justified.
10. As far as the night halts and border visits are concerned, he submits that in terms of the directions issued by FHQ BSF *vide* letter dated 14.12.2021, there is no mandate of any night halt to be made by the Commandant/Staff Officers of the SHQ/FTR HQs. In fact, the direction clearly mentions as to which



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supervisory officers need to make night halts. He submits that therefore, both, the grading as also the adverse remarks, are totally unjustified and actuated by malice and without appreciation of the factual position prevailing at that time.

Submissions of the Learned Counsel for the Respondent:

11. On the other hand, the learned counsel for the respondents submits that this Court would not interfere with the APAR unless it finds that it is contrary to the guidelines or the rules or is actuated by malice. He submits that the APAR is written by the Officers who have seen the petitioner's work and unless the petitioner shows malice or some glaring mistake in the same, this Court should not interfere with the same.
12. He further submits that in the present case, an Advisory Letter dated 31.01.2022 was issued to the petitioner by the DIG, SHQ, BSF Gandhinagar for not wearing his ceremonial uniform, which was essentially decided and directed by the DIG to be worn during the final rehearsals held on the said day. He submits that the petitioner being the Commandant (Ops), cannot plead ignorance of such directions, and by his appearing in civilian dress, clearly breached not only a lawful order but also the discipline of the Force.
13. He submits that the petitioner was also served with an Advisory Letter dated 11.02.2022, regarding a lapse on his part for keeping a vital Board proceeding file pending with him for 32 days which was received from 56 Bn BSF *vide* letter dated 14.11.2021. He



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should have dealt with the said file before proceeding on leave, however, did not do so. This also shows a casual attitude of the petitioner towards his work.

14. The learned counsel for the respondents submits that the adverse remarks and the grading given to the petitioner by the Initiating Officer and endorsed by the Reviewing Officer, have been made after closely observing the work of the petitioner. The Reviewing Officer found no reason to change it and as per his assessment, the grading was true and reasonable. He submits that this itself shows that the plea of the petitioner has no legs to stand on.
15. Regarding the issue of the petitioner taking repeated leaves, the learned counsel for the respondents submits that the petitioner, during the relevant period of 2021-22, has taken the following leave:-

<i>Srl.No</i>	<i>Days and type of leave</i>
1.	01 day Earned Leave (EL)
2.	02 days Casual leave (CL)
3.	05 days CL
4.	05 days EL
5.	26 days EL
6.	15 days Commuted Leave

16. He submits that though the leave had been sanctioned, this again shows the casual attitude of the petitioner towards his work.
17. Similarly, in spite of the DIG directing the petitioner, who was the Commandant (Ops), to make sufficient Border visits so as to familiarize himself with the Border Deployment/situation/issues for the betterment of overall supervision of operational activities of Units under his command, the petitioner failed to make



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adequate border visits, again showing his casual attitude towards the work and lawful orders. He submits that the Reporting Officer therefore, rightly recorded his observations in the APAR of the petitioner for the relevant order.

18. He submits that the petition is without merit and deserves to be dismissed.

Analysis & Findings:

19. We have considered the submissions made by the learned counsels for the parties.
20. At the outset, we would remind ourselves of the limited jurisdiction that we exercise in testing the APAR. It is only in very limited circumstances that the APAR can be interfered with by this Court in exercise of its powers under Article 226 of the Constitution of India. These are mainly where the APAR grading is found to be in violation of some rules or guidelines, actuated by malice, or being unfounded and arbitrary. Reference in this regard may be made to the judgment of this Court in ***Manudev Dahiya v. Union of India***, 2023 SCC OnLine Del 4164, wherein the Court has held as under:-

“33. While the importance of writing APAR for the serving officer is extremely important for the career progression yet, as a general principle which needs no reiteration, it is only the administrative authority which has the expertise to determine whether a candidate is fit or not for a particular post and the court has no expertise. Assessment of performance and recording of APAR/ACR of an employee is the job of the administrative authority of the



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particular employee and once the ACR is recorded by the superior authority in accordance with the procedure, a court of law is not required ordinarily to sit over like an appellate authority. The Supreme Court in Swapan Kumar Pal v. Achintya Kumar Nayak [Swapan Kumar Pal v. Achintya Kumar Nayak, (2008) 1 SCC 379] observed that the power of judicial review of the decision of Administrative Tribunal is very limited. While exercising the power of judicial review, the courts must limit their role and interfere only if any legal error has been committed in the decision-making process. It cannot enter into the merits of the decision. Furthermore, while exercising the power of judicial review, the courts should not sit as an appellate authority and must remain confined to see whether the decision has been made in accordance with the settled principles of law.”

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21. In the present case, the petitioner has been given a grading ‘5’ in his subject APAR, both by the Reporting/Initiating Officer as also by the Reviewing Officer, towards various attributes. They are reproduced hereinbelow:-



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SNo.	गुण Attributes	रिपोर्टिंग अधिकारी Reporting Authority	पुनरीक्षण अधिकारी Reviewing Authority	पुनरीक्षण अधिकारी के हस्ताक्षर Initial of Reviewing Authority
1	सुनियोजित कार्य की उपलब्धि इसमें विभिन्न स्तरों के प्रशिक्षण कोर्स शामिल हैं / Accomplishment of planned work including training courses for various ranks and procurement through GeM*	5	5	
2	काम कार्य की गुणवत्ता और प्रभाव, परीक्षण, जांच-पड़ताल इत्यादि श्रेणी में / Quality of output and effectiveness in work like supervising, inquiries, investigation.	5	5	
3	काम को की तह तक जाना और कार्य क्षमता (हवा विश्लेषक सेंसर हैं, प्रसार में जाता है और जगह तबिल नियंत्रण करता है।) / Thoroughness and efficiency of work (has analytical mind, goes into details and prompt in disposal)	5	5	
4	असामान्य / अकार्यक्षम रूप से दिए गए कार्य की उपलब्धि / Accomplishment of exceptional work / unforeseen tasks performed	5	5	
कुल अंक = x TOTAL SCORE = x		20	20	
औसत अंक = $x/4=y$ AVERAGE SCORE $=x/4=y$		5	5	
अधिमानित औसत = $y*0.4=A$ WEIGHTAGE AVERAGE- $y*0.4=A$		2	2	

* Targets/Objectives/Goals with regard to procurement planned and actually made through GeM portal is to be considered while assessing work output of officers who handles procurement.

7. व्यक्तिगत गुणों का मूल्यांकन, ग्रेड 1-10 के स्केल पर किया जाए। इस खंड को 30% अधिमान दिया जाएगा।

Assessment of Personal Attributes, Grades should be assigned on a scale of 1-10. Weightage to this Section will be - 30%.

SNo.	गुण Attributes	रिपोर्टिंग अधिकारी Reporting Authority	पुनरीक्षण अधिकारी Reviewing Authority	पुनरीक्षण अधिकारी के हस्ताक्षर Initial of Reviewing Authority
1	कार्य के प्रति रवैया / Attitude to work	5	5	
2	जिम्मेदारी की भावना / Sense of responsibility	5	5	
3	अनुशासन की अनुपालना / Maintenance of discipline	5	5	
4	संवाद कौशल / Communication skills	5	5	
5	नेतृत्व के गुण / Leadership qualities	5	5	
6	टीम भावना से काम करने की क्षमता / Capacity to work in team spirit	5	5	
7	निर्धारित समय में काम करने की क्षमता / Capacity to work in time limit	5	5	
8	आपसी संबंध / Inter personal relations	5	5	
9	चाल-ढाल / Appearance and bearing	5	5	
कुल अंक = x TOTAL SCORE = x		45	45	
औसत अंक = $x/9=y$ AVERAGE SCORE $=x/9=y$		5	5	
अधिमानित औसत = $y*0.3=B$ WEIGHTAGE AVERAGE- $y*0.3=B$		1.5	1.5	

8. कार्य क्षमता का मूल्यांकन, ग्रेड 1-10 के स्केल पर दिए जाएं। इस खंड को 30% अधिमान दिया जाएगा।

Assessment of Functional Competency, Grades should be assigned on a scale of 1-10 Weightage to this Section will be - 30%.

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S.No.	गुण Attributes	रिपोर्टिंग अधिकारी Reporting Authority	पुनरीक्षण अधिकारी Reviewing Authority	पुनरीक्षण अधिकारी के हस्ताक्षर Initial of Reviewing Authority
1	नियमों / विनियमों / प्रक्रियाओं को सही तरीके से लागू करने की जानकारी / Knowledge of Rules / Regulations / Procedures in the area of function/including procurement through GEM and ability to apply them correctly.	5	5	
2	रणनीतिक योजना क्षमता / Strategic planning ability	5	5	
3	निर्णय लेने की क्षमता / Decision making ability	5	5	
4	समन्वय क्षमता / Coordination ability	5	5	
5	अधीनस्थों को प्रेरणा देने और उन्हें टीम के काम में कार्य करने के लिए तैयार करने की क्षमता / Ability to motivate and develop subordinates / work in a team	5	5	
6	जवानों के कल्याण और उनका मूल्यांकन करने की क्षमता / Interest in welfare of Troops and appraising ability	5	5	
	कुल अंक - x TOTAL SCORE - x	30	30	
	औसत अंक - x/6-y AVERAGE SCORE -x/6-y	5	5	
	अंशमानित औसत - y*0.3-C WEIGHTAGE AVERAGE- y*0.3=C	1.5	1.5	

22. The Pen Picture given by the Reporting/Initiating Officer gives reasons as to why the petitioner has been graded as only 'Good', in the following words:-

A tall built Officer possess good professional knowledge. He was unyielding, adamant and obstinate in nature. During the period under report, duties performed by him as Commandant (Ops) was not up to the mark and rank. He has shown his lack of interest in training/sports activities at BSF Campus Gandhinagar for the year 2021-2022 organized by Ptr HQ BSF Gujarat even operational matters. Being Commandant (Ops), his border visit was inadequate. One important Ops related documents was kept pending by him for approximate 32 days without justified reason in his table which indicate his irresponsibleness. In a nutshell, he has not taken interest in his assigned duties. He has availed leave six times. Inspite of continuous counselling and issuing written advices to him to improve his performance, he has not taken the same in right spirit. Hence, his performance during the period under report has been assessed as "Good".

23. As would be evident from the above, the petitioner was issued an Advisory dated 31.01.2022 for reporting for the rehearsal at the Quarter Guard in a civilian dress. The plea of the petitioner that DIG changed his instructions at a later stage, which was not communicated to the petitioner, does not inspire much confidence. The petitioner did not protest against the Advisory until the adverse remarks were recorded in the APAR and the protest appears to be only as an after-thought, by a representation



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dated 31.10.2022. We find force in the submission of the learned counsel for the respondents that being a senior officer, the petitioner has to set an example for his juniors and persons under his command. If he himself displays a casual attitude and appears for a rehearsal in a civilian dress rather than in Uniform, it is bound to set a wrong example for personnel under his command, and adversely reflect on the authority of the DIG, the petitioner's superior.

24. As far as the retention of the file of the Board proceedings is concerned, though the petitioner has asserted that he went on leave with effect from 03.12.2021, he admits that the file remained with him for 13 days. The learned counsel for the respondents has explained that this was an important file and even this period of delay should not have occurred at the end of the petitioner. Even otherwise, if the petitioner was proceeding on leave, he should have ensured that the Board proceedings file is cleared before he proceeds on leave. He cannot pass the buck to the officer who relieved him while he was on leave. This again shows a casual attitude of the petitioner towards his work and consequently, no fault can be found in the pen picture recorded by the Reporting/Initiating Officer in his APAR.
25. Merely because the petitioner's APAR for the previous year graded him as 'Outstanding' and 'Very Good' cannot mean that for the relevant year, based on his performance, he cannot be graded as 'Good'. Writing an APAR is an annual exercise and depends on the performance of the officer in that particular



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year/period. It cannot be disbelieved or branded as arbitrary only because of the officer's prior grading.

26. Though the leave of the petitioner was sanctioned, and it is also the case of the petitioner that the petitioner was not obliged to make the visits to the Border or make night halts at the border, being exempted from the same, in our view, the assessment of the Reporting/Initiating Officer and the Reviewing Officer that these showed his lack of interest or attributes demanded from a Commandant (Ops), cannot be faulted.
27. For the abovesaid reasons, we find no merit in the present petition. The same is accordingly dismissed.

NAVIN CHAWLA, J.

SHALINDER KAUR, J.

JANUARY 07, 2025
RN/as

Click here to check corrigendum, if any