



2025:DHC:2583-DB



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

Reserved on: 10.03.2025

Pronounced on: 16.04.2025

+ **W.P.(C) 8414/2020**

HC/GD HARPAL SINGH

.....Petitioner

Through: Maj. Siyaram (Retd), Advocate

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms.Avshreya Pratap Singh
Rudy, SPC with Ms.Usha
Jammal, Ms.Harshita
Chaturvedi, Mr.Siddhant Nagar,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed by the petitioner challenging the adverse remarks and the grading in his Annual/Part Performance Appraisal Report (for short, 'APAR') for the year 2018-19 as also the punishments of severe reprimand dated 23.07.2018 and 31.07.2018 awarded to him.

CASE OF THE PETITIONER:

2. It is the case of the petitioner that the petitioner joined the Border Security Force (for short, 'BSF') on 16.09.1989, and has earned his due promotions up to the rank of Head Constable due to his



dedication towards duty and professional efficiency. On various occasions, he has also been awarded with cash rewards and medals.

3. The petitioner claims that on 08.05.2018, he came to know that ASIs (General Duty) are also supposed to perform their duty at ACP in the night. He enquired about the same from ASI (GD) Nand Kishor Rai, who got annoyed with the petitioner for asking the same and started filing false complaints against the petitioner. The petitioner submitted an application requesting for an interview with the Coy. Cmdr., however, to no avail.

4. On 03.06.2018, when the petitioner was on night duty at Khajedia Post at the border, he requested the Coy. Cmdr. SI Avinash Kumar Singh regarding his application but he got annoyed and warned him that he shall get his excellent record of service spoilt. The petitioner made a complaint regarding this even to the Bn. Cmdr. on 04.06.2018, however, again to no avail.

5. On 04.06.2018, at about 1825 hrs, the petitioner was suddenly detailed for ACP patrolling duty at the Border Post located 2 kms. away. He changed his dress, collected arms and ammunition and food, and reached in time by fast marching on foot at 1900 hrs, where he performed his duty excellently.

6. On 23.07.2018, the petitioner was awarded punishment of severe reprimand on a false allegation of laughing at the time of grass-cutting point made by SI Chhuttan Shukla, with Const. Suraj Kumar and Const. Yogesh Kumar becoming witnesses under duress.

7. The petitioner was awarded another punishment of severe reprimand on 31.07.2018 for taking food with him without



appreciating that his duty had been changed suddenly and he had only 25 mins to reach the Border Post after changing his dress, collecting arms and ammunition and food, and then marching to the Post.

8. The petitioner submitted representations/appeals against the above punishments, however, again to no avail. Instead in the Impugned APAR for the period 2018-19, the following adverse remarks along with an overall grading of '2' were given to him by the Reporting/Initiating Officer, SI Purushottam Kumar, on 20.04.2019:

"Despite being one of the senior most HC of the Coy, his conduct and behaviour towards senior comdr and troops is not satisfactory. He also does not obey Senior Cmdrs order and command. His sense of Responsibility is very poor. His Respect for Cmdrs is also dissatisfactory. Overall his Performance during the period is quite unimpressive."

9. In concurrence to the same, the following remarks along with an overall grading of '2.2' were given to the petitioner by the Reviewing Authority, AC Rajeev Pegu, on 07.06.2019:

"I agree with the remarks of RA. HC Harpal Singh indiscipline, arrogant & unworthy of trust."

10. In concurrence of the above opinion/remarks, an overall grading of '2.5' was given to the petitioner by the Accepting Authority, Shri Alok Bhushan, on 11.06.2019:

"I agree with the remarks of the I.O. & R.O. He is arrogant, undisciplined and he argues and does not obey the orders of his seniors. He has been counselled but he pays no heed to any suggestions."



11. The petitioner submitted a representation against the Impugned APAR, and thereafter, filed an application under RTI Act, 2005, seeking certain information relating to award of punishments as well as the Impugned APAR, and also sent legal notices to the respondents, however, again to no avail, leading to the filing of the present writ.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:

12. The learned counsel for the petitioner submits that not only are the punishments of severe reprimand awarded to the petitioner out of malice, false and concocted, but even the Impugned APAR could not have been written by SI Purshottam Kumar on 20.04.2019 as he had joined and taken over the charge of 12-Platoon Cmdr. only in March 2019 and, therefore, had not completed the mandatory period of three months prior to assessing an officer. He submits that resultantly, there was a violation of Rule 5(4) of the All India Services (Performance Appraisal Reports) Rules, 2007.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS:

13. On the other hand, it is the case of the respondents that the petitioner has consistently been graded as an 'Average' and 'Below-Average' Constable since 1990 to 1992, 1994 to 2001, and 2007 to 2009, and that there have also been certain adverse remarks made against him in 1991 and 1992. He was awarded punishment of severe reprimand and 14 days' pay fine on 13.01.2012 by the Commandant 64th Bn., BSF. The learned counsel for the respondents submits that



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the petitioner is habitual of defying the instructions of superior officers and arguing on each and every issue.

14. She submits that ASI Nand Kishor Rai had made a complaint against the petitioner of him coming for the roll-call in bathroom slippers, bringing his cot outside the barrack to sleep, and when being asked about this, replying arrogantly that no one dared to question him on this in the past. He also used to address his superiors in an ungentlemanly manner. A Show-Cause Notice dated 14.06.2018 was, therefore, issued to the petitioner. The petitioner in reply made allegations against ASI Nand Kishor Rai, *vide* the representations dated 09.07.2018 and 23.07.2018. A discreet inquiry was ordered into the same, *vide* the Order dated 27.07.2018, however, the Inquiry Officer found it to be false and fabricated. He was even counseled by the Commandant 63rd Bn., BSF, however, he continued with his arrogant ways. In fact, his wife was also called and asked to counsel him in presence of an Adjutant and three female senior officers. This also did not bring about any change in the behaviour of the petitioner.

15. On 04.06.2018, the petitioner brought dinner in a tiffin box to ACP-No.04, which is against the directions of Frontier HQ BSF Gujarat, as every person is supposed to have dinner in the BOP itself. On being questioned by Insp. Abhinash Kumar Singh, Offg. Coy. Cmdr. on the same, he replied rudely. A detailed report of this incident was submitted to the HQ 63rd Bn., BSF by the Offg. Coy. Cmdr., as the petitioner, in spite of warning, had continued with this habit. A disciplinary action was accordingly initiated against the petitioner on 31.07.2018, on charges under Section 20(c) of the Border Security



Force Act, 1968 for using insubordinate language to his superior officer, and under Section 22 (e) of the BSF Act, 1968 for neglecting to obey general orders. The statement of the witnesses was recorded, and the petitioner had been granted an opportunity to cross-examine them. He was found '*Guilty*' of both the charges and was visited with the punishment of severe reprimand.

16. On 11.07.2018, while detailed for grass de-weeding duty on the border fencing, the petitioner argued with ASI/GD Chhuttan Shukla, 'E' Coy. and, while other persons kept on working, he sat down with his legs spread in front on the road and kept laughing loudly and derisively at ASI/GD Chhuttan Shukla. The Offg. Coy. Comdr. made a report dated 13.07.2018 of this incident, and on basis of the same, disciplinary action was initiated against the petitioner on charges under Section 40 of the BSF Act, 1968. Five witnesses were examined and the petitioner was given an opportunity to cross-examine them. The petitioner cross-examined only Insp. Abhinash Kumar Singh, and declined to cross-examine the others. He was found '*Guilty*' of the charge and was visited with the punishment of severe reprimand.

17. The respondents had also adverted to the incident of 24.07.2018 stating that when the petitioner was leaving for 'D' Coy. on being transferred, he refused to shake hands with Insp. Vikhodi Rhetso. He also created uproar asking for casual leave and spoke rudely to his Coy. Comdr., AC Rajeev Pegu.

18. The learned counsel for the respondents further submitted that the representation of the petitioner against the adverse remarks and grading in his APAR for the year 2018-19, was disposed of by the



Competent Authority on 24.09.2018 and 16.04.2019. His further representation against the same was rejected by the Order dated 30.07.2019 passed by the FTR, HQ, BSF, Gujarat. Further, the legal notice served by the respondent was also returned and so was the RTI application filed by the petitioner.

19. The learned counsel for the respondent submits that, therefore, the present petition is devoid of any merit and is liable to be dismissed.

ANALYSIS AND FINDINGS:

20. We have considered the submissions made by the learned counsels for the parties.

21. We shall first deal with the punishments awarded to the petitioner and his challenge thereto. It need not be reiterated that the jurisdiction of the Court to interfere in the same in exercise of its jurisdiction under Article 226 of the Constitution of India is rather limited, and interference can be made only where the Court finds that there was a procedural lapse in the same, or breach of natural justice, or it is a case of no evidence, or that the penalty is totally disproportionate to the charge established in the inquiry.

22. Testing on the above parameters, apart from contending that the complaints against the petitioner were made by ASI Nand Kishor Rai out of malice, neither any procedural infirmity in the inquiry proceedings nor any other legal or factual challenge has been made by the petitioner against the punishments awarded. In absence of any such challenge and having considered the reasons submitted by the respondents for visiting the petitioner with the punishments of severe



reprimand, we are of the opinion that no case warranting an interference of this Court with the punishments awarded to the petitioner, has been made out by the petitioner. For an Armed Force like BSF, discipline is paramount and disrespect towards superior officers and non-compliance with general instructions is liable to attract punishment as awarded to the petitioner.

23. We, therefore, find no merit in the present petition insofar as his challenge to the Impugned Orders of punishment is concerned.

24. As far as the challenge of the petitioner to the adverse remarks and grading in his APAR for the year 2018-19 is concerned, we find that the same is backed by verifiable material in form of repeated complaints against the conduct of the petitioner.

25. In *Manudev Dahiya vs. Union of India*, 2023 SCC OnLine Del 4164, this Court explained the limited jurisdiction of the High Court while adjudicating on a challenge to an adverse remark in an APAR, 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 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.”

26. In the present case, though the petitioner has claimed that his APARs for the previous years have been ‘Very Good’ and he has earned his promotions in time and has also been awarded cash rewards as also Letters of Appreciation, each year is a separate assessment unit for which the officer is to be assessed by the Initiating Officer, the Reviewing Officer, and the Accepting Officer.

27. In the present case, apart from the fact that the respondents have stated that the APARs of the petitioner even in previous years have been ‘Average’ or ‘Below Average’, even otherwise, it is the conduct and performance of the petitioner in the relevant year that had to be considered.

28. Taking the overall conduct and performance of the petitioner for the relevant year, that is, 2018-19, it cannot be said that the adverse remarks and the adverse grading granted to the petitioner in the Impugned APAR are arbitrary or not supported by material. It also reflects a consistent view of the Initiating Officer, the Reviewing Officer, as also the Accepting Officer. Representation of the petitioner has also been considered by the Competent Authority, and rejected.



On facts, therefore, no case of interference with the same is made out by the petitioner.

29. As far as the submission of the learned counsel for the petitioner that SI Purushottam Kumar had taken over the charge of 12-Platoon Cmdr. in March 2019 and, therefore, was not competent to record his APAR, the respondents in their counter affidavit have stated that SI Purushottam Kumar joined 'D' Coy. in November 2016 and not in March 2019, as alleged by the petitioner; and that the petitioner was transferred to 'D' Coy. from 'E' Coy. in July 2018 and, therefore, SI Purushottam Kumar was competent to record his APAR. The petitioner has not contradicted the above stand of the respondents in his rejoinder. Therefore, there was no procedural error committed by the respondents in recording the Impugned APAR of the petitioner.

30. The challenge of the petitioner to the adverse remarks and the grading in his Impugned APAR for the period 2018-19 is, therefore, without merit and is rejected.

31. For the reasons stated hereinabove, we do not find any merit in the present petition. The same is accordingly dismissed.

32. There shall be no orders as to costs.

NAVIN CHAWLA, J

MANOJ JAIN, J

APRIL 16, 2025/SG/IK

Click here to check corrigendum, if any