

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24836-2025 (O&M)

Roshan Sharma ... Petitioner

VS.

Union of India & Ors. ... Respondents

1.	Judgment reserved on	19.11.2025
2.	Judgment pronounced on	23.01.2026
3.	Judgment uploaded on	23.01.2026
4.	Whether operative or full judgment	Full
5.	Delay in pronouncement of full judgment and reasons, if any	NA

CORAM: HON’BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Ravi Kant Sharma, Advocate and
Mr. Himanshu Sharma, Advocate for the petitioner

Mr. Narender Kumar Vashisht, Sr.Panel Counsel, UOI

Sandeep Moudgil, J.

(1). The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India, *inter alia*, for issuing a writ of mandamus directing the respondents to expunge the adverse remarks and grading given to the petitioner in the Annual Performance Assessment Report (APAR) for the tenure 1st April, 2022 to 31st March, 2023 (Annexure P11) and for quashing the order dated 29.02.2024 (Annexure P19) passed by the respondents rejecting the petitioner’s representation. The petitioner has further prayed for a direction to convene a review DPC for the purpose of re-considering the petitioner’s case for promotion to the post of Commandant from the date his immediate juniors were promoted along with consequential benefits.

(2). Learned counsel for the petitioner submits that the petitioner, who is presently working as Second-in-Commandant (2IC) with the ITBP, Panchkula, has been denied promotion as Second-in-Command Officer to

Commandant in ITBP Police Force, solely on the basis of the APAR for 2022-23 wherein he has been graded 3.5 (“Average”), which is contrary to his otherwise consistent “Excellent/Outstanding/Very Good” record from 2019-20 to 2024-25 and his 37 years of unblemished service with medals, commendations and UN Mission tenure, thereby rendering this solitary aberrant entry ex facie arbitrary.

(3). It is asserted that the representation of the petitioner has been dismissed without assigning any reason that because of repeated complaints sent by the petitioner against his seniors (Annexures P7, P8 & P8A) to the DG regarding constant threat of adverse APAR for spoiling his career, the adverse report has been used as a weapon to ruin his career where IG Ishwar Singh Duhan took out his irritation by recording adverse APAR against the petitioner for the period 2022-23 only on the ground that the petitioner availed six months’ leave which is wrong and against the record.

(4). It is contended that the said IG lowered his APAR to ‘average’ by giving his comments that the petitioner is obese and does not maintain good health whereas the reporting officer has certified his health as ‘Shape-1’ and as such, there is no contemporaneous medical record of underperformance or misconduct by the petitioner during 01.04.2022 to 31.03.2023 and in fact, he was entrusted with additional charge of Commandant. He then submits that while making adverse remarks, specific instances from where such inferences were drawn must be mentioned and also conveyed to the concerned officer which has not been done in the present case. Reliance is placed on **Sukhdeo v. Commissioner, Amravati Division (1996) 5 SCC 103**, to contend that before

recording adverse remarks it is salutary to give prior written intimation of deficiencies.

(5). Mr. Ravi Kant Sharma, Advocate assisted by Mr. Himanshu Sharma, Advocate vehemently argued that the petitioner has consistently demonstrated exemplary service throughout his career, as is evident from his APARs prior to and after the year 2022-23, which have all along been reflected 'Excellent' and 'Outstanding' overall Grading for the past many years (Annexures P-13 to P-17) and thus, it is beyond comprehension as to how there can be sudden fall in the petitioner's performance for the year 2022-2023 only in numerical grading of merely 3.5 only without issuing any displeasure or warning or Show-Cause notice by the accepting Authority which smacks of vindictiveness and mala fides, and suggests of a deliberate attempt to undermine the Petitioner's otherwise meritorious career.

(6). Further, it is pleaded that the respondents have applied the benchmark of "5" mechanically to exclude the petitioner from DPC consideration, without first examining or correcting the legality of the tainted APAR, even though his immediate junior has been promoted and the petitioner is otherwise next in line of seniority list which is discriminatory inasmuch as in a disciplined force rank is the sole honour carried into retirement. In these circumstances, it is urged that given the petitioner's impending retirement in August 2026 and the irreparable prejudice of having to serve under his junior, the adverse APAR for 2022-23 needs to be expunged.

(7). Reply dated 14.11.2025 has been filed by Sunil Kandpal, Commandant/HOO at BTC, ITBPF, Bhanu, Panchkula wherein it has been averred that BTC is a premier basic training institution, manned by officers

duly empanelled as instructors, and in view of his request, the petitioner was posted at BTC on 01.02.2022 on permanent compassionate transfer from 45 Battalion, however, his later request for short-term attachment to TPT Battalion/Western Command was examined and declined on 17.08.2023 (Annexure R-10) on the ground that he had already been moved from an Extreme Hard Area to a Soft Area on compassionate grounds after only about 23 months.

(8). It is submitted that all the trainers including the petitioner, were directed to prepare and deliver lectures, whereafter the Board proceedings (Annexure R-13) objectively recommended Training Allowance for three AC/GD officers and made no recommendation in favour of the petitioner, which is fully consistent with Org. Branch Dte Gen I.O.N. dated 05.02.2021 stipulating that Training Allowance is not payable to non-instructor panelists. He submits that the petitioner having been posted to BTC as a non-panel officer purely on compassionate grounds was not entitled for such allowance and as such, the generalized allegations in about bias, conspiracy and victimisation in matters of APAR, Training Allowance and other administrative decisions are vague.

(9). Learned counsel for the respondents further urged that during the reporting period 01.04.2022 to 31.03.2023 the petitioner remained posted at BTC, Bhanu and his APAR was initiated by the Reporting Officer, Shri Vikrant Thapliyal, Commandant, BTC, who awarded a numerical grading of 5.32 with specific remarks regarding his turnout, conduct and performance, which grading and remarks were thereafter independently considered and recorded at the Reviewing and Accepting levels under the tiered APAR system prescribed

for such officers. The petitioner availed substantial leave during the same period i.e. 28 days earned leave, 41 days commuted/medical leave and 22 days casual leave and the overall appraisal was a composite evaluation of multiple factors such as duty performance, instructional effectiveness, discipline, leadership and availability and since APAR represents a fair, multi-level assessment in line with the applicable performance appraisal framework, it does not suffer from arbitrariness or mala fides.

(10). Further it is maintained that the APAR for the period 2022-23 was duly disclosed to the petitioner on the e-SPARROW portal on 21.08.2023 and was acknowledged and thereafter only, the petitioner submitted his detailed representation on 30.08.2023 (Annexure P-18), however, the same was rejected by the competent authority finding no merit for expunction of the grading or remarks in tune with the principles of natural justice. He then argued that once the first representation has been rejected, no successive representation or appeal was impermissible in view of DoP&T OM dated 14.05.2009 (Annexure P-25), read with MHA UO dated 02.09.2014 (Annexure R-17), which categorically provides that no second or subsequent representation/appeal lies against APAR entries. Further, the petitioner did not fall within the zone of assessment for that year 2025, however, for vacancy year 2026, he was considered by the DPC convened on 20.06.2025 (Annexure R-20) along with other Second-in-Command (GD), but was assessed as “UNFIT” because the prescribed benchmark requires “Very Good” in at least three out of the last five APARs with no adverse remarks in any of those five, as per MHA and DoP&T instructions dated 23.07.2009 (Annexure R-22) provides that in awarding a numerical grade, the reporting and reviewing authorities should rate the officer

against a larger population of his/her peers that may be currently working under them.

(11). Heard learned counsel for the parties and gone through the record.

(12). It is an undisputed fact that for several years prior to and even subsequent to 2022-23, the petitioner's APARs have carried high gradings i.e. "Excellent", "Outstanding" or "Very Good" as can be seen from the APARs appended as Annexures P-13 to P-17. The record shows that during the very period in question, the petitioner was entrusted with additional charge of Commandant and his own Reporting Officer had certified his medical category as "Shape-1", even though the Accepting Officer has, inter alia, commented on his alleged obesity and poor health though such aspersions are not supported with specific instances of lapses whether in training, supervision, discipline or integrity.

(13). The Supreme Court in **Sukhdeo v. Commissioner, Amravati Division (1996) 5 SCC 103** has categorically observed that a controlling officer, before recording adverse remarks, should give prior written opportunity by informing the officer of the deficiencies noticed, and that vague remarks without necessary particulars, especially when career prospects are in jeopardy, are inconsistent with law. Following **Sukhdeo**, the Delhi High Court in **WP(C) No.5288/2012 titled as Insp./GD Krishna Rajak versus UOI & Ors.** decided on 28.08.2012 has reiterated that an officer making remarks "must eschew making vague remarks" and must bestow careful attention to collect correct and truthful information with particulars when adverse remarks are contemplated. The relevant portion of the said judgment reads as under:-

“6. The dart board speaks it all. For all the years in question, except the year 2007, the petitioner has been graded on the seven facets, mostly ‘Very Good’; on some occasion ‘Good’ and on some occasion ‘Outstanding’. The remarks for the year 2007 are a complete mismatch. The result is that for the years 1999, 2000, 2006 and 2008 the overall ACR grading of the petitioner is ‘Good’ and that for the years 1996, 1997, 1998, 2001, 2003, 2004, 2010 and 2011 the ACR grading is ‘Very Good’ and for the years 2002, 2005 and 2009 is ‘Outstanding’, for the year 2007 it is ‘Average’.

7. Now, it is not possible that for 11 years a person is either ‘Very Good’ or ‘Outstanding’ and then for one year he drops to ‘Average’ and then regains ‘Very Good’ and ‘Outstanding’ in the next three years.

8. Let us illustrate one trait. The trait No.(iii) i.e. ‘Power of Expression’. This is not a trait which is acquired and lost overnight. The dart board would reveal that for this trait the petitioner has been rated all throughout as ‘Good’, ‘Very Good’ or ‘Outstanding’, but for the year 2007 the officer has written that petitioner’s power of expression is not effective.

9. There is obviously a problem, and the problem appears to be as disclosed by the petitioner; that the Commandant under whom he was working i.e. M.P.Singh was accepting lower quality of ration for troops and the petitioner being a member of the Tendering Opening/Condemnation Board had wanted samples to be obtained and in retaliation, the Commandant Shri M.P.Singh, made entries reflecting petitioner in a poor light.

10. We are pained to note that in the impugned memorandum dated February 09, 2012, the Competent Authority has rejected the representation of the petitioner against the adverse grading awarded to the petitioner and the overall grading ‘Average’ for the year 2007, oblivious of the fact that a wrong against the petitioner stands stark in the ACR grading for the year 2007.

11. The dart, shot at the dart board, is bound to see the bull's eye i.e. the offending comments noted in the ACR grading of the petitioner because of their inherent strength and character to attract the dart to the board where the ACR gradings stand noted.

12. We allow the writ petition and strike down the ACR grading awarded to the petitioner for the year 2007, and since the Competent Authority has totally misapplied its mind, being of the opinion that no useful purpose would be served for the Competent Authority to be directed to reconsider the ACR grading for the year 2007, we declare that said year's ACR grading be excluded while considering the entitlement of the petitioner for promotion. Highlighting that at the DPC which met somewhere in the year 2008, the petitioner was superseded on account of the below benchmark ACR grading for the year 2007, we direct that a Review DPC be held and while considering the ACR gradings of the petitioner, to exclude the ACR grading for the year 2007 and instead take into account the ACR grading of one year back. Needful be done within 12 weeks from today. Needless to state, if the petitioner is found fit for promotion, he be promoted with all consequential benefits of seniority, pay fixation etc. except back-wages being not paid, on the principle of petitioner not having shouldered the responsibility for the higher post; but all other benefits of notional promotion from a back-date which would include revised pay fixation would be given effect to."

(14). The Delhi High Court dealt with somewhat identical case in **Manudev Dahiya versus UOI 2023 SCC OnLine Del 4164**, wherein an ITBP officer with consistently "Very Good/Outstanding" APARs was, for a short, isolated period of a few months, suddenly given an overall numerical grading of "0", even though he was entrusted with important responsibilities during that very period and there was no contemporaneous record of serious dereliction or insubordination. The Delhi High Court found this abrupt, stand-alone

downgrading, in stark contrast with the officer's otherwise strong record, to be "perplexing", arbitrary and tainted by bias, particularly in the context of complaints made by the officer against his superior which had evidently induced hostility in the APAR writing process. The Court noted that the incidents relied upon were either vague, not serious enough or even outside the relevant APAR period, and therefore lacked objective nexus. On that reasoning, the Court expunged the adverse remarks and the "zero" grading.

(15). In **Union of India & Ors. v. G.R. Meghwal, AIR 2022 SC 4661: 2022 SCC OnLine SC 966**, the Supreme Court upheld the principle that a single below-benchmark ACR, inconsistent with an officer's otherwise "Very Good" record and recorded without fair opportunity, cannot be allowed to depress his promotion prospects and may be ignored for that purpose. The respondent there had ACRs of "Very Good" for 2005-06 and 2006-07, but for 2007-08 the same reporting and reviewing authorities suddenly graded him only "Good", which was below the benchmark for SAG and became the sole reason for denying him upgradation.

(16). It may be true that the APAR might have been communicated on e-SPARROW and that the petitioner did file a representation which was processed under DoP&T OM dated 14.05.2009 but mere existence of a representational mechanism does not cure an appraisal that is substantively arbitrary or tainted. Any entry in an ACR/APAR which has a bearing on promotion prospects, even if not formally described as "adverse", must be communicated and must be open to challenge, because otherwise it offends the principles of natural justice and fair treatment to public servants.

(17). The corollary is that once such an entry is challenged, the scrutiny cannot be confined to procedural formalities but must extend to whether the grading is objectively justified where the narrative in the APAR and the officer's overall record do not align with the downgraded box-grading. Where the box grading and pen-picture by higher authorities were at variance with the reporting officer's assessment and with the factual record, lack of objectivity and biasness cannot be ruled out.

(18). On the promotion aspect, the respondents rely on a benchmark of "Very Good" in at least three of the last five APARs with no adverse remarks, as per DoP&T and MHA instructions dated 23.07.2009, and assert that the petitioner was found "UNFIT" by the DPC for vacancy year 2026 because his 2022-23 APAR broke the chain. That argument, however, assumes the legality of the very APAR that is under challenge. Once it is found that the APAR for 2022-23 is vitiated by non-adherence to safeguards laid down in *Sukhdeo (supra)* and by lack of objective support in the contemporaneous record, it cannot, in fairness, be treated as valid input for benchmark-based DPC assessment. It is trite that an unfairly recorded grading cannot be allowed to depress an officer's promotion prospects. Moreover, Articles 14 and 16 of the Constitution require that similarly placed officers be treated alike and to permit one tainted APAR to eclipse decades of meritorious service and allow juniors to overtake him in rank in a uniformed force would amount to hostile discrimination, particularly when the rank carries an honour that endures post-retirement.

(19). One significant facet of the case is that the petitioner has not confined himself to a bare challenge to the numerical grading, but has consistently cast specific and contemporaneous allegations of bias and vindictiveness against the Accepting Authority, and has linked those allegations

directly to the adverse APAR, thus, making it unsafe to allow that APAR to stand or to be used as the decisive basis for denying promotion.

(20). In view of the above discussion, the writ petition is allowed. The adverse remarks and overall grading of 3.5 in the petitioner’s APAR for the period 01.04.2022 to 31.03.2023 (Annexure P-11) are hereby expunged, and the said APAR shall not be taken into account for any purpose of promotion or career progression. Consequently, the order dated 29.02.2024 (Annexure P-19) rejecting the petitioner’s representation is also set aside. The respondents are directed to convene a review DPC, within a period of one month, to re-consider the petitioner’s case for promotion against the relevant vacancy year, by ignoring the expunged APAR or by treating his APAR for 2022-23 at least at par with his immediately preceding and succeeding gradings for the limited purpose of benchmark evaluation, and, if found fit, to grant him promotion with all consequential benefits, including seniority and arrears of pay, from the date his immediate junior was promoted, with interest @ 6% p.a from the date of accrual to the date of it’s actual realisation.

(21). Ordered accordingly.

23.01.2026
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?	:	Yes/No
2. Whether reportable?	:	Yes/No