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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 09.09.2024***

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W.P.(C) 2575/2021

SHAKTI SINGH THAKUR

.....Petitioner

Through:

Mr. Ankur Chibber, Mr. Pranjal Marwah, Mr. Nikunj Arora, Mr. Anshuman Mehrotra, Mr. Amrit Kaul, Ms. Muskan Dutta & Mr. Arjun Panwar, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through:

Ms. Richa Dhawan, Mr. Anuj Chaturvedi, Ms. Harshita Maheshwari, Advs. with Mr. Janak Raj, Inspector & Mr. Sandeep Bhardwaj, Head Constable.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****J U D G M E N T****SHALINDER KAUR, J (ORAL)**

1. The petitioner, who is presently working as a Second-in-Command (2-IC) in the Sashastra Seema Bal (SSB) has approached this Court under Article 226 of the Constitution of India, seeking the following reliefs:

“a) Issue a writ of certiorari for quashing the orders dated 19.07.2017 and 29.12.2020 whereby the representations of the Petitioner to upgrade the grading and to expunge the adverse remarks for the relevant period i.e 01.06.2015 to 31.03.2016 were rejected; and

b) Issue a writ of certiorari for quashing of the APAR for the period



*between 01.06.2015 to 31.03.2016 to the extent of the adverse remarks and numerical grading given by the accepting authority; and
c) Issue a writ of mandamus directing the Respondents to upgrade the grading of the Petitioner to outstanding as awarded by the Reporting and Reviewing officers and to expunge the adverse remarks for the relevant period i.e 01.06.2015 to 31.03.2016 and to grant all consequential benefits in light of expunged remarks and revised grading; and in light of such revised grading consider the Petitioner for grant of NFSG w.e.f. 01.01.2020, and if found fit grant the same to the Petitioner along with all due arrears and consequential benefits”*

2. At the outset, we may refer to the factual background of the case, as emanating from the record, by noting that the petitioner joined the SSB as an Assistant Commandant (AC) on 22.10.2007 and was in May, 2014, posted to 52nd Battalion, Chhattisgarh, where he was, on 06.06.2014, promoted as a Deputy Commandant (DC). On 08.12.2016, the petitioner received a copy of his APAR for the period between 01.06.2015 to 31.03.2016, wherein he had been graded as ‘Good’ by the Accepting Authority with a box grading of ‘5.5’. However, in the very same APAR, he had been graded as ‘Outstanding’, both by his Reporting Officer and the Reviewing Officer, who had given him a box grading of ‘8.0’.

3. Dissatisfied with this downgrading from ‘Outstanding’ to ‘Good’ by his Accepting Authority as also the remarks endorsed by him, which the petitioner claimed pertained to an inspection of the Battalion conducted in July, 2016, the petitioner submitted a representation to the respondents dated 30.01.2017. The representation was however rejected vide the order dated 19.07.2017 on the ground that once the Accepting Authority had entered his remarks on the APAR, he became *functus officio* in relation to the said APAR and therefore, any representation against the entries in the APAR could be decided only by an authority superior to the Accepting Authority.



4. The petitioner accordingly submitted a representation dated 26.12.2017 to the Director General of the SSB (DG)/ respondent no.2 and also sought a personal interview with him to express his grievances. This request of the petitioner was acceded to and he was informed that he could appear before the DG on his visit to the Unit. In pursuance thereto, the petitioner upon his visit to Delhi, appeared before DG and besides submitting a representation dated 03.05.2018, presented his case in person.

5. At this stage, while his representation before the DG was pending consideration, the petitioner was granted the local rank and assumed charge as a 2-IC. Subsequent thereto, a Departmental Promotion Committee (DPC) was convened in December 2019 to consider the petitioner along with his batch mates for regular promotion to the post of 2-IC. After he was promoted as a 2-IC on 07.02.2020, the petitioner realized that the benefits of Non-Functional Selection Grade (NFSG), which had been granted to his batchmates w.e.f. 01.01.2020 had not been extended to him. It is then that he learnt that the benefits of NFSG had been denied to him on account of the adverse remarks and the grading of 'Good' endorsed by the Accepting Authority in his impugned APAR for the period between 01.06.2015 to 31.03.2016.

6. Being aggrieved, the petitioner submitted a representation to the DG on 20.10.2020, which has been rejected vide the impugned order dated 29.12.2020, leading to filing of the present petition.

7. In support of the petition, learned counsel for the petitioner submits that apart from the impugned APAR, wherein he has been downgraded by the Accepting Authority to 'Good', the petitioner had always been graded as



‘Very Good’ or ‘Outstanding’. He submits that though the petitioner was graded as “Outstanding” by both his Reporting and Reviewing Officers, the Accepting Authority has, without providing any justifiable reasons, simply downgraded the petitioner and awarded him a box grading of ‘5.5’ by endorsing adverse remarks. This downgrading, as per the noting of the Accepting Authority itself, was on the basis of an inspection of the Battalion conducted in July, 2016.

8. This inspection, the petitioner contends, was admittedly conducted beyond the period of assessment and therefore, as per the OM dated 13.02.2017 issued by the respondent no. 1, could not form part of the APAR. The Accepting Authority, however, in utter disregard of the mandate under the OM to assess the officer solely on the basis of his performance during the period under report, had not only downgraded the petitioner from ‘Outstanding’ to ‘Good’ but also endorsed the following adverse remarks in his impugned APAR.

“very casual and not aware about anything happening in the Bn. He should be more alert and involved in the working of organization”.

9. This assessment made by the Accepting Authority on the basis of an inspection conducted after the period covered under the impugned APAR, he contends, clearly shows that the petitioner has been downgraded in a most casual manner, without even considering the guidelines issued in the respondent no. 1’s OM dated 13.02.2017. He, therefore, submits that the assessment by the Accepting Authority, including the box grading and the remarks in the pen picture, are liable to be set aside on this ground alone. He, therefore, prays that the writ petition be allowed.



10. *Per contra*, Ms. Richa Dhawan, learned Counsel for the respondents, while defending the impugned orders, submits that the petitioner's claim that he has been wrongly assessed by the Accepting Authority is devoid of any merit. She contends that in order to maintain objectivity in writing of the APAR, the assessment of an individual is based upon a three-tier system where every officer endorsing the APAR is required to make his own assessment. However, it is the endorsement made by the senior most officer in the hierarchy, which has to be given precedence. The endorsement made by the Accepting Authority in the impugned APAR was based on his personal assessment of the petitioner at the time of inspection conducted by him in July, 2016 and therefore, cannot be said to be arbitrary. Contrary to what has been pleaded by the petitioner, the Accepting Authority has provided detailed reason for downgrading the petitioner. She, therefore, prays that the writ petition be dismissed.

11. Having considered the submissions of the learned counsel for the parties and perused the record, we may begin by noting that in the impugned APAR, the Reporting Officer had opined that the petitioner's overall performance was 'Outstanding' and awarded him a box grading of '8' by observing as under:

"a well disciplined and obedient officer who has always worked for the betterment of unit and SSB. He is a very good badminton player. He is professionally sound as per his rank and length of his service. His attitude towards weaker section is sympathetic and positive".

12. Though the Reviewing Officer agreed in totality with the aforesaid observations made by the Reporting Officer, the Accepting Authority lowered the box grading from 8 to 5.5 by observing "*officer is over*



estimated by both the Reporting and Reviewing Officers. During inspection of the Bn, I found this officer very casual and not aware about anything happening in the Bn. He should be more alert and involved in the working of organization”.

13. Before us, it has been urged by the petitioner that the adverse remarks endorsed by the Accepting Authority, based on which he has been downgraded are premised solely on the purported observations made by the Accepting Authority during the inspection in July, 2016, which was admittedly beyond the period of reporting. This averment, we may note, has not at all been denied by the respondents, who have sought to contend that even if the observations pertain to a period beyond the assessment period, the same cannot be ignored as they truly reflect the views of the Accepting Authority, which ought to be given precedence. Thus, what emerges is that the short question which arises for our consideration in the present case is whether the remarks endorsed by the Reporting Authorities in an APAR, based solely only on an incident beyond the period of reporting, can be sustained.

14. Having given our thoughtful consideration to the rival submissions of the parties, we are of the view that the answer to this question lies in the OM issued by the respondent no. 1 itself. We may, therefore, refer to the following extract from paragraph 4(i) of the OM, which reads as under:-

“4. In the light of the above, following points may be taken into consideration while writing APARs.

*(i) An APAR should be written with due care **after assessing the performance of the officer reported upon during the period under report.** The report should be based on objective assessment of the work quality of the officer. The officer recording the remarks must realize the importance of entries.*



made by him and write them with greatest possible care. Needless to mention that slightest negligence on the part of the Reporting Officer may lead to grave injustice to the officer reported upon as it may have the effect of adverse bearing on the promotional prospect of an officer.”

(Emphasis supplied)

15. From a perusal of the aforesaid, what clearly emerges is that the Reporting Authorities are required to assess the performance of an officer only during the period under report. In the present case, when it is the common case of the parties that the adverse remarks endorsed by the Accepting Authority are based on an inspection conducted in July, 2016, it is evident that the same are violative of paragraph 4(i) of the OM. Even otherwise, we are inclined to agree with the petitioner that the assessment for a particular year must be based on the performance of the employee in that particular year. Incidents, which are beyond the period covered under the APAR cannot be a ground to either downgrade or upgrade an employee.

16. We, therefore, have no other option except to set aside the impugned remarks endorsed by the Accepting Authority. Since the Accepting Authority has downgraded the box grading of ‘8’ awarded the Reporting and Reviewing Officers to ‘5.5’ on the basis of these remarks itself, the said grading is also required to be quashed.

17. The writ petition is accordingly allowed by setting aside the entire assessment made by the Accepting Authority, making it clear that we are not interfering with the assessment made by the Reporting Officer and the Reviewing Officer in the petitioner’s APAR for the period between 01.06.2015 to 31.03.2016. Further, the respondents are directed to re-consider the petitioner’s claim for grant of NFSG from 01.01.2020,



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within twelve weeks, by ignoring the assessment of the Accepting Authority in his APAR for the period between 01.06.2015 to 31.03.2016. All consequential benefits accruing in favour of the petitioner in terms of this order, will be released to him within four weeks thereafter.

**(SHALINDER KAUR)
JUDGE**

**(REKHA PALLI)
JUDGE**

SEPTEMBER 9, 2024/sds/fk