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

Date of decision: 25.09.2024

+ **W.P.(C) 8090/2018**

AMIT KUMAR GUPTA

.....Petitioner

Through: Mr.Shailendra Singh,
Mr.Abhuday Dhasmana, Advs.
along with petitioner in person.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Ms.Anjana Gosain, Ms.Nippun
Sharma, Mr.Devesh
Khanagwal, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner praying for the following reliefs:

“(i) Issue a writ of certiorari for quashing order dated 01.08.2014 whereby the representation of the petitioner dated 19.05.2014 for the revision of the overall numerical grading and for expunging the adverse remark given in his APAR for the year 2012-13 was rejected;

(ii) Issue a writ of certiorari for quashing order dated 23.12.2014 whereby the representation of the petitioner addressed to MHA against the entries and grading given in his APAR for the year 2012-13 was rejected;

(iii) Issue a writ of certiorari for quashing of



order dated 28.03.2018 whereby the representation of the petitioner dated 01.12.2017 requesting to expunge the remarks and the upgrade the APAR for the year 2012-13 and 2013-14 was rejected;
(iv) Issue a writ of mandamus directing the respondents to expunge the adverse remarks and enhance the overall grading initiated by the initiating officer for the period 2012-13 and 2013-14.”

2. The petitioner is aggrieved of his APAR grading for the years 2012-13 and 2013-14. The petitioner alleges *mala fide* against the respondent no. 4.
3. The learned counsel for the petitioner submits that the petitioner joined the ITBP in the year 2005. He was promoted to the post of Deputy Commandant (T) Ops in May 2010.
4. On 17.07.2012, while he was posted on the said post, he found certain irregularities in the telecom store. He reported the same *vide* a Memo dated 17.07.2012. Later, he found that the store had been opened at the instructions of the respondent no.4, which he reported *vide* a Memo dated 19.07.2012 to the Commandant (Vigilance). The learned counsel for the petitioner submits that being aggrieved of the same, the respondent no. 4 downgraded the performance of the petitioner for the assessment years 2012-13 and 2013-14.
5. Placing reliance on the judgments of this Court in ***S.K.Sharma, v. Union of India & Ors.***, 2015 SCC OnLine Del 13399 and ***Manoj Dhyani v. Union of India & Ors.***, 2024 SCC OnLine Del 5233, the learned counsel for the petitioner submits that for judging whether the recording of the APAR is vitiated by bias, the Court has to consider



whether there was a reasonable likelihood of bias against a mere apprehension of bias. The aggrieved party is not required to prove bias beyond reasonable doubt. It is only the reasonable likelihood of bias that needs to be shown.

6. He submits that the sequence of events gives rise to a reasonable apprehension of bias having influenced the recording of the APAR by the respondent no. 4. He submits that in the present case, the petitioner having made a complaint against the respondent no.4 to the Commandant (Vigilance), the respondent no.4 downgraded the petitioner in the APAR by making adverse comments on his performance. He submits that, in fact, for the subsequent years, the grading of the petitioner in the APAR was again upgraded and the petitioner received a recommendation letter for the said period. He submits that an officer who was otherwise not performing well would not undergo such a vital change only in the following year. He submits that this itself shows that the APAR was vitiated by bias and was liable to be expunged/re-written.

7. On the other hand, the learned counsel for the respondents submits that merely because the petitioner had made a complaint regarding some deficiencies in the store and later complained to the Commandant (Vigilance), it would not give rise to any apprehension of bias. She submits that the Vigilance Department inquired into the complaint of the petitioner and initiated action against some of the officers, however, no action was initiated against the respondent no.4. She submits that, therefore, there was no reasonable likelihood of any bias having affected the recording of the APAR for the relevant period.

8. She submits, by referring to the APAR for the other period, that the petitioner has almost consistently been graded at the same scale, that



is, at the level of “good”, except on a few occasions.

9. She submits that the recommendation letters issued to the petitioner post the relevant period would not be material for adjudication of the present petition.

10. She further submits that in the present case, the respondent no. 4 was only an Initiating Officer. The remarks given by him were duly considered by the Reviewing Officer and also by the Accepting Officer. The Reviewing Officer, in fact, gave his own remarks on the performance of the petitioner, which were also the same as given by the respondent no. 4. She submits that in the present case, no allegation of bias is made by the petitioner against the Reviewing Officer.

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

12. In *Manoj Dhyani* (supra), this Court considered the principles that would be applicable while judging a claim of bias having affected the recording of the APAR. This Court held as under:

“23. We may begin by noting that as per the settled legal position, while assessing the performance of a subordinate, the superior must be careful to evaluate the information gathered about him and due diligence must be exercised in writing an APAR. The ‘Remarks’ endorsed in the APAR are crucial to evaluate/assess and formulate an opinion on the performance of a subordinate and, therefore, the recording of remarks require fair and unbiased reporting, as it may otherwise jeopardize his career advancement. Reference may be made to State of U.P. vs. Yamuna Shanker Mishra (Supra) wherein, the Hon’ble Supreme Court emphasized on the purpose of recording confidential reports by observing as under:-



"7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a excellence..... servant public to Improve The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge notoriety and may be within his knowledge. Before forming an opinion to be adverse, reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgement, conduct, behaviour, integrity or conduct/corrupt proclivity. If despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion."



24. Again, in *State Bank of India vs. Kashinath Kher*, (1996) 8 SCC 762, the importance of an APAR in career progression and promotion was considered by the Honble Supreme Court and it was held as under:-

"The object of writing the confidential report is twofold, i.e., to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. This Court in Delhi Transport Corpn. case pointed out the pitfalls and insidious effects on service due to lack of objectives by the controlling officer. Confidential and character reports should, therefore, be written by superior officers higher above the cadres. The officer should show objectivity, impartiality and fair assessment without any prejudices whatsoever with the highest sense of responsibility alone to inculcate devotion to duty, honesty and integrity to improve excellence of the individual officer. Lest the officers get demoralised which would be deleterious to the efficacy and efficiency of public service. Therefore, they should be written by a superior officer of high rank. Who are such high rank officers is for the appellants to decide. The appellants have to prescribe the officer competent to write the confidentials. There should be another higher officer in rank above the officer who has written confidential report to review such report. The appointing authority or any equivalent officer would be competent to approve the confidential reports or character rolls. This procedure would be fair and reasonable. The reports thus written would form the basis for consideration for promotion. The procedure presently adopted is clearly illegal, unfair and unjust."

13. In the present case, the gradings of the petitioner for some of



the years, have been culled out by the respondents in their counter affidavit, which are as under:

“E. That the contents of Ground E are wrong and hence denied. On the scrutiny of his APARs gradings prior to 2012-13 he has only been awarded gradings of Good & Very Good. It is also submitted that he has never been awarded ‘Excellent’ APAR gradings. However, his APAR gradings prior to 2012-13 are appended below:-

- | | | |
|------|--|------------------|
| i) | <u>2005-06:-</u> | |
| | 22/08/05 to 30/09/05 | NIC |
| | 01/10/05 to 31/03/06 | Very Good |
| ii) | <u>2006-07:-</u> | |
| | 01/04/06 to 24/08/06 | Very Good |
| | (APAR upgraded from <u>“Average to Very Good”</u>) | |
| | 07/07/06 to 22/02/07 | Very Good |
| | 23/02/07 to 31/03/07 | NIC |
| iii) | <u>2007-08:-</u> | |
| | 01/04/07 to 10/07/07 | NIC |
| | 10/07/07 to 08/01/08 | Good |
| | 09/01/08 to 31/03/08 | NIC |
| iv) | <u>2008-09:-</u> | |
| | 01/04/08 to 15/07/08 | Very Good |
| | 16/07/08 to 31/03/09 | Good |
| v) | <u>2009-10:-</u> | Good |
| vi) | <u>2010-11:-</u> | |
| | 01/04/10 to 25/05/10 | NIC |
| | 26/05/10 to 31/03/11 | 7 (Very Good) |
| vii) | <u>2011-12:-</u> | |
| | 01/04/11 to 04/01/12 | 6.74 (Very Good) |
| | 05/01/12 to 31/03/12 | NIC |

It is also pertinent to mention here that the performance of the officer has been judged by the Reporting/Reviewing authorities based on the assessment of work output, personal attribute and functional competency of the officer for the particular assessment period.”

14. A reading of the above would show that for the years 2005-06 and 2006-07, 2007-08, 2009-10 and 2011-12, the grading of the



petitioner was varying between ‘good’ and ‘very good’.

15. In the APAR of 2012-13, the Reviewing Officer also, while agreeing with the remarks of the Initiating Officer, that is, the respondent no. 4, observed as under:

“I fully agree with the assessment made by the Reporting office in Part-iv of APAR. I have closely observed the functioning of the officer and found him very casual in immaturities. He was also advised by me issuing memo, but the officer did not show any improvement.”

16. Similarly, for APAR of 2013-14, the Reviewing Officer again, while agreeing with the respondent no. 4, observed as under on the performance of the petitioner:

“I have observed his work closely. His approach towards work is causal and he lacks initiative for which appropriate warning has been issued to him.”

17. There are no allegations of bias against the Reviewing Officer or the Accepting Officer, who accepted the remarks of the respondent no. 4 and the Reviewing Officer for both the periods.

18. Applying, therefore, the ratio of the judgment in **Manoj Dhyani** (supra), we do not find the petitioner to have made out a case of even a reasonable likelihood of bias having affected the recording of his APAR.

19. In reaching the above conclusion, we have also considered the nature of the complaint that the petitioner made against the respondent no.4 on 19.07.2012.

20. In a summary, it was the complaint of the petitioner that in the



inspection of the store on 17.07.2012, he found certain items missing, which, on the asking from the Store-in-Charge and Storekeeper, he was told that these deficiencies will be made up by the supplier later even though all codal formalities like sanction, line committee, stock entries, bill process, etc., had already been completed earlier. In the complaint to the Commandant (Vigilance) dated 19.07.2012, he complained that the store was later opened in the night and the Store-in-Charge tried to keep certain items in the storeroom without getting prior permission. The petitioner claimed that he was later told that the Store-in-Charge had opened the store at the orders of the respondent no.4 for the visit of the Director General. Pertinently, he does not try to implicate the respondent no.4 in the misdeed.

21. As stated by the learned counsel for the respondents, the complaint of the petitioner was also inquired into by the Vigilance, however, while recommending action against others, no action was recommended or initiated against the respondent no. 4.

22. The learned counsel for the petitioner has also stated that the respondent no.4 was biased against the petitioner because the petitioner in May-June had prayed for grant of leave to attend to his father who was suffering from Cancer and required immediate attention. The respondent no.4, however, denied the request for leave to the petitioner and rather compelled him to join the Mountaineering Course in MSI, Auli and issued a Movement Order against him, on 25.05.2012. The petitioner was constrained to approach the DIG (ITBP) for sanction of leave, which was then sanctioned. The petitioner states that this would have certainly annoyed the respondent



no. 4.

23. The petitioner also states that in another incident, the petitioner had orally conveyed to the respondent no.4 that the firm that is involved in the tender of telephone cables had earlier supplied the cables which were not genuine. However, to his surprise, the petitioner was threatened that his career will be spoiled and as a consequence, the petitioner was also issued a Memo asking to submit the reasons for delaying the tender process.

24. The above submissions are countered by the learned counsel for the respondents, asserting that the petitioner was promoted to the rank of Deputy Commandant on the condition that he would qualify the pre-promotional mandatory course at the earliest opportunity. He was detailed for a pre-promotional mandatory course to be conducted at the Mountaineering & Skiing Institute, Auli, with effect from 28.05.2012, and was issued Movement Orders on 25.05.2012, 05.06.2012, and 12.06.2012, but he did not report to the Institute at Auli and instead preferred to proceed on a 20 days leave w.e.f. 14.06.2012 to 03.07.2012. He was also issued a Memo dated 13.06.2012.

25. As far as the allegation of the petitioner against the firm supplying cables is concerned, the same was also found to be baseless as the then DIG (Intelligence), who was detailed to negotiate with the firm, had asked the petitioner to submit reasons for the delay in technical evaluations. By then, since the petitioner had submitted the representation leveling allegations against the respondent no.4, the



respondent no.4 himself recommended that he be not kept under his command.

26. From the above submissions, it is apparent that as far as the denial of leave is concerned, the petitioner had been promoted on the condition that he would undergo a pre-promotional course at the first available opportunity. In fact, for his refusal to go for the pre-promotional course, his case was referred to the Personnel Department of the ITBP for further examination, as would be evident from the Memo dated 13.06.2012, which is re-produced hereinbelow:

“Shri Amit Gupta, DC(T) (Ops) has met DG in his grievances cell today and requested for sanction of 20 days E.L. D.G. desired that 20 days E.L. may be sanctioned to him. Mr.Gupta is fully aware that his Pre-promotional course has commenced w.e.f. 28th May, 2012 which is going on and he was allowed promotion by the DPC on the condition that at the first earlier opportunity he will clear the pre-promotional course. This time again he is missing the opportunity to under go the pre-promotional course and he is aware of the consequences. His case regarding pre-promotional course may be referred to Pers Branch for further examination.”

27. The above, certainly, cannot give reasons for alleging or even apprehending bias against the respondent no. 4.

28. As far as the allegation with respect to the firm supplying cables is concerned, again, the respondents have pointed out that in fact, Memo was issued to the petitioner for delaying the evaluation process of the Tender. Therefore, again, no merit is found in the submission of the learned counsel for the petitioner alleging bias against the



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respondent no. 4 on this count.

29. In view of the above discussion, we do not find any merit in the present petition. The same is accordingly dismissed. There shall be no orders as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

SEPTEMBER 25, 2024

RN/as