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

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+ **W.P.(C) 774/2017**

BIJENDRA SINGH BHATI Petitioner
Through: Mr Anuj Aggarwal and Mr Saurabh
Ahuja, Advocates.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr Ripu Daman Bhardwaj, CGSC for
UOI.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
25.03.2019

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1. The Petitioner, who is at present a Deputy Commandant with the Central Reserve Police Force ('CRPF') is aggrieved by the downgrading of his Annual Performance Assessment Report ('APAR') for the period 1st April, 2011 to 22nd September, 2011 and prays for upgrading of APAR for the said periods with all consequential benefits. He questions the office order dated 28th July, 2016 passed by the Director General ('DG'), CRPF rejecting the Petitioner's representation against the above downgrading. He also questions the notification dated 20th October, 2016 to the extent it failed to promote the Petitioner to the post of Commandant – 2IC.

2. The Petitioner joined the CRPF as Assistant Commandant (AC) on 9th January, 2003. He subsequently got promoted in due course to the post of

Deputy Commandant (DC) and at the time of the present petition, was posted with the 194 Battalion. For the period 7th July, 2010 to 31st March, 2011, he was given the grading 'below good' both by his Reporting Officer as well as his Reviewing Officer. The Petitioner submitted his first representation against the said downgrading which was disposed of by the Competent Authority, namely, the IGRAF by an order dated 24th November, 2011.

3. For the period 1st April, 2011 to 22nd September, 2011, the Petitioner received the APAR on 20th May, 2013. He was given a 15 days period to make a representation. This APAR awarded marks which corresponded to 'good' but the grading was awarded 'below good' by the Reporting Officer as well as by the Reviewing Officer.

4. In the APAR with effect from 1st April, 2012 to 31st March, 2013, the marks scored by the Petitioner were 7.54 out of 10. The Petitioner was awarded 'very good' both by the Reporting Officer as well as by the Reviewing Officer. The pen and picture of the Reviewing Officer portrayed the Petitioner as "a very disciplined, experienced and hard-working officer and his performance is 'very good'".

5. The Petitioner on 2nd June, 2013 represented to the DG, CRPF (Respondent No.2) against the APAR grading period from 7th July, 2010 to 31st March, 2011 and 1st April, 2011 to 22nd September, 2012. The representations were returned to the Commandant with the Petitioner being permitted first to make a representation to the Head of the Department i.e. IGP RAF through proper channel.

6. For the period 18th July, 2014 to 6th November, 2014, the Petitioner was graded 'outstanding'. The Petitioner gave a reminder presentation dated 22nd September, 2015 against the APAR grading for the period 1st April, 2011 to 22nd September, 2011. Meanwhile, even for the period 1st April, 2015 to 24th October, 2015, the Petitioner was graded 'outstanding'.

7. On 10th June, 2016, the Petitioner wrote to the Respondent No.2 to dispose of his representation. On 29th June, 2016, he wrote to the Commandant in that regard and to the Additional DG, HQ on 15th July, 2016.

8. The Respondent No.2 passed the impugned order dated 20th September, 2016 stating that he found no reasons to interfere with the reviewing marks recorded in the APAR for the period 1st April to 22nd September, 2011, the overall grading was recorded as 'good' in the APAR. However, as regards the 'below good' grading for the period 7th July, 2010 to 31st March, 2011, it was directed to be upgraded to 'good'.

9. In response to the present petition, a counter affidavit has been filed by the Respondents stating that during 2010-11 he was given two advisories, two warnings and three explanations were demanded of the Petitioner. It is submitted that in the circumstances the downgrading to 'below good' was justified.

10. In the rejoinder, it is pointed out by the Petitioner that in the APAR, there was no specific notings or advisories/warnings and, therefore, they

could not be relied upon. It is pointed out that for the period 7th July, 2010 to 31st March, 2011, the APAR was upgraded from ‘below good’ to ‘good’ by the impugned order dated 28th September, 2016. Therefore, the remarks in the counter affidavit were uncalled for. It is pointed out that after the said order, the scope of the petition was confined to the remarks for the period 1st April, 2011 to 2nd September, 2011 which continued to be ‘below good’.

11. The Petitioner pointed out that the Reporting Officer had given the total of 5.26 marks for this period in the APAR and this corresponded to ‘good’. However, the Reporting Officer erroneously graded the Petitioner as ‘below good’. Despite the Reviewing Officer noticing the error and instead of correcting the grading to “good”, he slashed the marks given to the Petitioner by almost 50% in order to justify the erroneous grading of ‘below good’. It is submitted that the Reporting Officer did not record any specific reasons for reducing the marks.

12. This Court has heard the submissions of learned counsel for the parties. The preparation and maintenance of the APAR are governed by the Standing Order No.56/2001 dated 18th October, 2001 issued by the Directorate General, CRPF. *Inter alia*, it is stated therein as under:

“1.2 The system of Confidential Reports has two principal objectives and the Reporting Officer should have a very clear perception of these objectives. The first and foremost is to improve the performance of the subordinate in his present job. The second objective is to assess the potentialities of the subordinate and prepare and through appropriate feedback and guidance for future possible opportunities in service. To a great extent, the second objective is dependent on the achievement of the first.

...

6.14. In order to enable the reviewing authority to discharge his responsibility properly, it has now been decided that where a reviewing officer is not sufficiently acquainted with the work of the officer reported upon so as to be able to form an independent opinion of his own, it should be the responsibility of the reviewing officer to verify the correctness of the remarks of the initiating officer, after making such inquiries as he may consider necessary. Wherever needed and feasible, he should also give hearing to the person reported upon before recording his remarks.

6.15. It is also observed that the assessment of an officer made by the reporting officer for a particular year grossly varies from the assessment made during the previous years. It is found that an officer, who had been consistently graded 'Very Good', has all of a sudden, become 'Average' or vice versa. While it is possible that there may be minor variations in performance levels, it cannot be assumed that there will be a sudden down fall or rise in the overall performance of an officer."

13. In the present case, the Respondents have not disputed the assertion of the Petitioner that the total marks given by the Reporting Officer for the aforementioned period in the Petitioner's APAR is 5.26 which in fact corresponds to 'good'. It also seems corroborated by the Reviewing Officer, where he noted in the APAR inter alia as under:

"I partially agree with the grading awarded by IO. IO has awarded the marks of "good" grading but due to oversight furnished as "below good". I grade the officer as "Below Good".

14. It is strange that despite noting that the Reporting Officer had wrongly recorded the grade as 'below good' due to 'oversight', the Reviewing

Officer did not rectify this error and instead went about slashing the marks given to the Petitioner without affording any reasons. Going by the Standing Instructions referred to hereinbefore, this was unacceptable and illogical.

15. The second undisputed fact is that even by the impugned order dated 28th September, 2016, the grading of the APAR with effect from 7th July, 2010 to 31st March, 2011 has been restored to 'good'. Therefore, the advisories, warnings etc. purportedly given to the Petitioner during this period and referred to in the counter affidavit by the Respondents justifying the downgrading is to no avail. The very same Reporting Officer who gave those advisories and warnings gave marks in the APAR that corresponded to 'good'.

16. Thirdly, it is undisputed that for the subsequent four periods, in the APAR of the Petitioner, the gradings are as follows:

S.No.	Period of writing APAR	Grading
1.	01.04.2012 to 31.03.2013	Very good
2.	01.04.2013 to 31.03.2014	Outstanding
3.	18.07.2014 to 06.11.2014	Outstanding
4.	01.04.2015 to 24.10.2015	Outstanding

17. These factors do not appear to have been borne in mind by the Respondent No.2 while rejecting the Petitioner's representation. The objection that the Petitioner appears to have is that he had a good track record throughout for the period in question when he was downgraded to 'below good'. The Reporting Officer who had the best occasion to observe the working of the Petitioner gave marks totalling to 5.26, which corresponds to 'good'. It was only due to an oversight that the grade was

given as 'below good'. In these circumstances, there appears to be no justification for the Reviewing Officer not to have corrected the error. The retention of the downgrading of the Petitioner in the circumstances as 'below good' is arbitrary and unjustified.

18. For all of the aforementioned reasons, the petition is allowed and the impugned order dated 28th July 2016 passed by the Respondent No.2 to the extent that it rejects the Petitioner's request for upgradation APAR for the period from 1st April, 2011 to 22nd September, 2011 as 'good' is hereby set aside.

19. A direction is issued to the Respondents to upgrade the APAR of the Petitioner for the aforementioned period 1st April, 2011 to 22nd September, 2011 to 'good' and extend to him all consequential benefits both monetary as well as seniority within eight weeks from today. Correspondingly, the impugned notification dated 20th October, 2016, which failed to promote the Petitioner to the post of Commandant (2-IC) is set aside to that limited extent that the Respondents are directed to consider the case of the Petitioner for promotion and pass consequential orders in that regard within a period of 12 weeks from today.

20. The writ petition is allowed in the above terms. No costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 25, 2019/rd