



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

% ***Judgment reserved on: 12.09.2024***
Judgment pronounced on: 24.09.2024

+ W.P.(C) 8908/2022

MRITUNJAY KUMARPetitioner

Through: Mr. Nikhil Bhardwaj, Adv.

versus

UNION OF INDIA AND ORSRespondents

Through: Mr. Kavindra Gill, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. The petitioner, who is serving as a Second in Command (2-I/C) in Central Reserve Police Force (CRPF), has approached this Court under Article 226 of the Constitution of India seeking the following reliefs:-

“i) Issue a Writ of Certiorari for quashing the impugned order dated 22.07.2020 and 03.09.2021, vide which petitioner’s representation against the expunction of adverse remarks from petitioner’s APAR for the period of 01.04.2018 to 29.10.2018 and his request for up gradation of his downgraded APAR for the period of 01.04.2018 to 29.10.2018 from the level of good was rejected and;

ii) Writ of Mandamus directing the respondents to expunge the adverse remarks in petitioner’s APAR for the period of 01.04.2018 to 29.10.2018 and;

iii) Writ of Mandamus directing the respondents to upgrade Petitioner’s APAR for the period of 01.04.2018 to 29.10.2018 from Good to Very Good”

2. The relevant facts pertaining to the present petition are that the



petitioner joined the CRPF as an Assistant Commandant (AC) on 08.10.2005 through direct recruitment and was promoted to the rank of Deputy Commandant (DC) in August 2012. The controversy at hand developed when the petitioner was posted to 22nd Battalion (Bn.), Hazaribagh, Jharkhand on 01.09.2016, under the command of respondent no. 4 i.e. Mr. Vishnu Gautam who, as per the petitioner, put undue pressure on him to commit illegal activities, such as planting weapons on the persons apprehended/arrested during the normal course in order to falsely frame them as Naxalites. This, he claimed, was with an intention to improve the Commandant's standing with his superiors and to gain their favours.

3. However, as the petitioner did not succumb to this undue pressure, the respondent no. 4 threatened to ruin his career by tarnishing his APAR and by issuing baseless warnings, if he does not cooperate in the said illegal activities. Being faced with this predicament, the petitioner from February, 2018 till 2019, had complained against the ill-treatment and biased attitude of the Commandant, which was solely on the basis of refusal of the petitioner in participating in the said illegal activities/practices.

4. Unsettled by this position, the petitioner filed two complaints, both dated 20.07.2018 against the said Commandant, who was also his Reporting Officer, to the Director General (DG) and the Deputy Inspector General (DIG), CRPF, highlighting the threats made by the respondent no. 4 in deliberately spoiling petitioner's APAR, for which he did not receive any response from the authorities.

5. In October, 2018, the petitioner was promoted to the rank of 2-I/C and has since been serving his duties in the said rank. Thereafter, vide letter



dated 07.06.2019, the petitioner was communicated his impugned APAR wherein he was graded 'Good' for the period from 01.04.2018 to 29.10.2018 which also contained adverse remarks by the Commandant/Reporting Officer.

6. In these circumstances, the petitioner made a representation dated 28.07.2019 against the adverse remarks and downgrading in the said APAR by the Reporting Officer/respondent no. 4 to the Special DG, CRPF, which downgrading, he claimed, was on the account of vindictive behavior of the respondent no. 4. The aforesaid representation was rejected vide the impugned order dated 22.07.2020 and his further request for personal audience with respect to the aforesaid representation was also rejected vide another impugned order dated 03.09.2021, thus, leading to filing of the present petition.

7. Mr. Nikhil Bhardwaj, the learned counsel for the petitioner submitted that the respondent no. 4 had been vindictive towards the petitioner since the time he was commissioned under him, which is apparent from the fact that the petitioner was abruptly transferred to the 134th Bn., CRPF on 01.11.2016, despite his recent posting to the 22nd Bn on 01.09.2016 by the order of Special DG, CRPF. This transfer, he claimed, was influenced by respondent no. 4's intent to replace the petitioner with someone more favorable to him. However, the said transfer was stayed upon the petitioner's representation in this regard. Nonetheless, the respondent no. 4's hostility towards the petitioner only grew after this incident. He also pointed out the alleged favoritism exhibited by the respondent no. 4 by granting leaves to the other officers while making the petitioner work even on holidays. He



further stated that the petitioner was burdened with the majority of the assignments, only with the intention of harassing him.

8. Learned counsel submitted that in these circumstances, the adverse remarks in his impugned APAR go to show the *malafide* intention of respondent no. 4, as from 2010 to 2021, the petitioner was consistently graded as 'Very Good' or 'Outstanding', and had been acknowledged for his exceptional performance, receiving numerous commendations and rewards, which indicated his obedience, discipline, and duty performance, except for impugned period of seven months, when he was graded as 'Good'. This, he submitted, was an erroneous down gradation without providing any justifiable reason and was solely attributable to a personal grudge held by respondent no. 4, stemming from earlier incidents between 2016 and 2018, when the petitioner was under his command at 22nd Bn.

9. He further submitted that the petitioner worked only for 75 days, out of 212 days of reporting period w.e.f. 01.04.2018 to 29.10.2018 under the direct supervision of Reporting and Reviewing Officers. Therefore, the respondent no. 4 could not have endorsed the APAR of the petitioner without his having fulfilled the mandatory requirement of serving under the Reporting Officer for a period of 90 days.

10. Learned counsel pointed out that the respondent no. 4, in a devious manner, issued 5 advisories to the petitioner within a brief time period for which the impugned APAR was being recorded, with a purpose to downgrade him. No opportunity was provided to the petitioner to address and give explanations for his performance, therefore, the grading and the adverse remarks entered in his APAR are also contrary to the CRPF's



Standing Order no. 04/2015. He submitted that APARs should be based on facts and should serve a developmental purpose rather than as a fault-finding tool. Reliance for which was placed on *U.P. vs Yamuna Shanker Misra:* (1997) 4 SCC 7 and *Sukhdeo vs. Commissioner Amravati Division, Amravati:* (1996) 5 SCC 103.

11. Mr. Bhardwaj vehemently submitted that respondent no. 4 was vindictive in downgrading the petitioner, which is evident from the manner in which the impugned APAR has been recorded by him. He drew our attention to the Part 3 of the said APAR and urged that the Reporting Officer provided a positive appraisal of the petitioner's work and interpersonal skills. However, contradictory remarks were included in the pen-picture in Part 5 and low numerical gradings were recorded in Part 4. This inconsistency between the positive assessment in Part 3 and the negative evaluations in Part 4 and 5 undermines the recording of the APAR, rendering it unsustainable in the eyes of law. Moreso, the allegations of misbehavior, including unauthorized recording and misuse of official documents, as mentioned in the pen picture by the respondent no. 4 in the said APAR, are unsubstantiated and not corroborated by any evidence.

12. He contended that there was a blatant non-application of mind in writing the APAR, as both the Reviewing Officer and the Accepting Authority, apart from concurring with the grading given by the Reporting Officer, did not provide sufficient reasoning or findings while also being in agreement with the pen picture of the Reporting Officer. Moreso, the Accepting Authority has not even bothered to see the relevant period for which the APAR was recorded as he has incorrectly mentioned the period at



two places while recording the petitioner's assessment.

13. The learned counsel drew our attention to the noting made by the Reviewing Officer in Part 6 of the APAR and submitted that the observations made by him are incomprehensive. Further, the manner in which the assessment has been recorded in the impugned APAR, clearly indicates that apart from being inconsistent, all the three officers have not been diligent while recording their remarks in the said APAR.

14. Concluding his submissions, the learned counsel urged that while deciding the representation of the petitioner, the respondents failed to consider that the impugned APAR was the only instance wherein he was downgraded with an adverse remark being endorsed, otherwise, the petitioner has maintained a long untarnished service record. For this he placed reliance on the decision in *Insp/GD Krishna Rajak vs. Union of India* 2012 SCC Online Del 4454.

15. To contravene the aforementioned submissions, Mr. Kavindra Gill, the learned counsel for the respondents urged that the remarks and the final grading of 'Good' in the petitioner's APAR were recorded by the concerned authority following a thorough evaluation of his performance, conduct, character and capabilities during the impugned period, therefore, the previous APAR record of the petitioner was not relevant for writing the APAR for the said period.

16. Further, he contended that on multiple occasions, the petitioner received numerous advisory letters from the Reporting Officer addressing various misconducts. The Reviewing Officer and the Accepting Authority had examined the remarks and grading and had consistently rated the



petitioner as 'Good', aligning with the remarks in the pen-picture as recorded by the Reporting Officer. Therefore, the assertion by the petitioner that adverse remarks were included in the impugned APAR without any justification is baseless.

17. The learned counsel submitted that the petitioner has without any basis, alleged serious negative bias on the part of his Reporting Officer. This was merely an attempt by the petitioner to deflect from his own indiscipline, which was noted in the pen-picture remarks in his APAR. Moreso, instead of accepting the advisories constructively, the petitioner used them to defend his actions by submitting false and fabricated complaints against the Reporting Officer, alleging corruption and a lack of support.

18. The learned counsel submitted that the Reporting Officer has impartially recorded remarks in Part 3 of the APAR format, providing a clear and accurate assessment of the petitioner's work and conduct. Similarly, the pen-picture remarks in Part 5 and the final grading of 'Good' for the period from 01.04.2018 to 29.10.2018, were based on a careful and thorough evaluations of the petitioner's performance and capabilities, which were conducted through the appropriate channels, aimed to highlight the areas for improvement in the petitioner's performance. Therefore, the petitioner's submission in this regard cannot be accepted.

19. Finally, the learned counsel urged that the petitioner's representation dated 28.07.2019, seeking to expunge the adverse remarks and to upgrade him was rejected after a comprehensive review of all the relevant factors by the Competent Authority. Furthermore, he contended that the petitioner was under the command of the respondent no. 4 for more than 90 days and at the



best, the claim for deducting the leave period for 48 days may be accepted. However, the petitioner's claim that the period of 89 days during which he was posted under the Ad-hoc commandant is required to be excluded, is incorrect. The learned counsel submitted that this was a temporary posting as the petitioner remained under the overall strength of his parent unit i.e., 22nd Bn, CRPF, thus, his APAR for the said period had to be recorded by the respondent no. 4.

ANALYSIS AND CONCLUSION

20. We have carefully considered the submissions addressed on behalf of the parties and perused the record submitted before us.

21. As it emerges from the aforesaid conspectus of facts, the controversy in the present case pertains to the downgrading of petitioner's APAR for the impugned period. The main grievance of the petitioner is that respondent no. 4 was biased and his APAR was written in the most negligent and casual manner, thereby affecting his career progression.

22. At the outset, we may proceed to deal with the submission of the learned counsel for the petitioner relating to the procedural defect in recording of the impugned APAR that as the petitioner was not commissioned under the respondent no. 4 for a period of three months, he lacked the authority to record his APAR.

23. To appreciate this plea, we may refer to the Standing Order No. 04/2015 dated 22.06.2015 issued by Ministry of Home Affairs, which provides the procedure for writing of APARs and is reproduced as under:

"3.1 In accordance with the existing instructions, the Reporting and Reviewing Officers are required to have at least 3 months" experience of supervising the work and conduct of the Government servant reported upon to record their assessment in the APAR. Where the



Officer reported upon has taken Earned Leave for a period of more than 15 days, the total period spent on leave can be deducted from the total period spent on any post, for purpose of computing the period of 3 months which is relevant for writing entries in the APAR. Leave taken for short duration need not be treated as relevant for the purpose.”

24. From the aforementioned, what emanates is that an incumbent is required to have worked under a Reporting/Reviewing Officer for at least 3 months, so that his work and conduct are supervised for assessment. It further provides for deduction of earned leave for a period of more than 15 days at a stretch from the total period spent by such an incumbent for the purpose of computing the period of three months, which is relevant for writing entries in the APAR. The above provision has not been disputed by the respondents and, therefore, they have fairly admitted that the period of having availed earned leave of 48 days is liable to be deducted from the total period of 212 days. We find force in the submission of the respondents that the period of 89 days, for which the petitioner was on a temporary posting at Shri Amarnath Ji Yatra duty, 2018 but remained on the strength of 22nd Bn, could not be deducted from the remaining 164 days as during this period his assessment could be conducted only by the Commandant of 22nd Bn under which he was commissioned. The petitioner, thus, was under the charge of the respondent no. 4 for a period of more than 90 days, when he was stationed at the 22nd Bn.

25. Now coming to the petitioner's plea that the APAR has been written with a vindictive attitude, we may begin by noting the settled legal position that while evaluating the performance of an employee, the Reporting Officer must exercise *due diligence* as the remarks endorsed in the APAR are



crucial to assess and formulate an opinion on the performance of his subordinate. Furthermore, it is required that the recording of the remarks should be done in the utmost objective and unbiased manner.

26. For appreciating the legal position regarding the procedure to be followed while recording confidential reports by the superiors, we may refer to *State of UP vs Yamuna Shankar Mishra & Anr. (supra)*, wherein the Hon'ble Supreme Court observed 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."

27. It may also be apposite to note the observations of a Coordinate



Bench in '*Insp./GD Krishna Rajak vs. Union of India & Ors.*' (*supra*) the relevant extracts whereof read 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."

28. In view of the aforesaid dictum of law, it is clear that the recording of remarks in APAR should not be vindictive or with a motive to downgrade the subordinate, which may cause serious repercussions in the career advancement of such a subordinate. Moreover, the grading of a member of the Force, in the midst of consistent 'Very Good'/ 'Outstanding' gradings, cannot, without any justifiable reason, drop down to 'Good' in a short duration with the officer again being awarded higher gradings immediately in the subsequent APARs.

29. Having noted the legal position, we may now revert to the facts of the present case. The respondents have not disputed that the petitioner has been awarded 'Very Good' / 'Outstanding' gradings by his superior authorities in all his APARs from 2010 to 2021, except for the impugned period. The very fact that the learned counsel for the petitioner had urged that the petitioner was also awarded the grading of 'Very Good' and also 'Outstanding' except for the impugned period w.e.f. 01.04.2018 to 29.10.2018, for which he had been downgraded to 'Good', is in itself a ground to set aside the impugned



APAR.

30. The respondents have not been able to provide any cogent reason for downgrading of the petitioner in the impugned APAR, which APAR was for a brief period, when otherwise the pattern of grading awarded to him was consistently 'Very Good' / 'Outstanding'. No doubt, the respondent no. 4, being petitioner's Reporting Officer, was entitled to give adverse remarks and a grading which may be at variance with his earlier gradings, but such an assessment cannot be whimsical. It was, therefore, the responsibility of the respondent no.4 to find out the reasons for any decline in the petitioner's performance and to record the reasons so that fairness and objectivity were maintained while assessing his actual performance. Unfortunately, the respondent no. 4 has taken no care to assess objectively and assign reasons for such downgrading.

31. The learned counsel for the petitioner vehemently urged that the assessment by the respondent no.4/Reporting Officer not only lacked objectivity but also exhibited bias against the petitioner as respondent no.4's intention was all along to downgrade the petitioner's APAR. He drew our attention to the complaint dated 20.07.2018 made to the DG, CRPF wherein the petitioner had stated that the respondent no. 4 already had a pre-conceived negative notion about him. He, thus, contended that the very attempt by respondent no. 4 to try and persuade the petitioner to carry out illegal activities at his behest and the resistance shown by the petitioner in doing them, in itself, showed vindictiveness of respondent no. 4 towards him. To the contrary, learned counsel for the respondents had urged that the claims of the petitioner are baseless and made on a false premise.



32. To appreciate this plea of the petitioner that the assessment in the impugned APAR was a result of the bias on the part of the respondent no.4, we may refer to the recent decision of this Court in ***Manoj Dhyani vs. Union of India and Others*** 2024 SCC Online Del 5233, wherein this Court while dealing with a situation where bias was alleged, considered the question with respect to reasonable likelihood of bias as against a mere apprehension. The relevant extracts of the decision as contained in paragraph nos.32 to 34 read as under:-

*“32. In this regard, we may also refer to the observations made by Hon’ble Supreme Court in **A. K. Kraipak and Others vs. Union of India and Others, (1969) 2 SCC 262:-***

“The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct.”

*33. Before we proceed to deal with the rival submissions of the parties, we may remind ourselves that to determine whether an administrative action like recording of the petitioner’s APAR in the present case is vitiated by bias, the Court has to consider whether there was a reasonable likelihood of bias as against a mere apprehension of bias. It is not as if the aggrieved party is required to prove bias beyond reasonable doubt, but he is surely required to demonstrate a reasonable likelihood of bias. Reference may also be made to the following observations of a Coordinate Bench of this Court in **S. K. Sharma vs. UOI and Ors., 2015 SCC OnLine 13399**, as contained in paragraph no.14 of its decision. The same read as under:-*

“14. As in all cases where bias is alleged, the issue which the court has to address itself is as to whether there was likelihood of bias. The party alleging bias is not under an onus to prove bias; rather it is the danger or likelihood of bias of the public official concerned, in the circumstances of a given case. In one of the most



*celebrate cases, R v Bow Street Metropolitan Stipendiary Magistrate & Ors, Ex parte Pinochet Ugarte (No 2) [1999] 2 WLR 272 ["the Pinochet case"] discussed those tests. There, the House of Lords set aside its earlier decision when it was disclosed (after delivery of judgment), in the earlier appeal, that Lord Hoffmann, (one of the members of the Appellate Committee who heard the appeal), had some link with Amnesty International. That body was an intervener in the appeal; the judge was an unpaid director of the Amnesty International Charity Ltd ("AICL"), a W.P.(C)8886/2011 Page 9 charity wholly controlled by Amnesty International. The House of Lords held that the relationship between Lord Hoffmann and Amnesty International through his directorship in AICL, led to his automatic disqualification from sitting on the hearing of the said appeal without the need to investigate whether there was a likelihood or suspicion of bias in the circumstances of that case. The Supreme Court in *Badrinath (supra)* and *D.C. Agarwal* and the other cases previously cited vividly summarized the applicable test in these cases- it is not one of proven bias; rather it is proof of reasonable likelihood of bias."*

34. Reference may also be made to ***Manudev Dahiya vs. Union of India & Ors., 2023 SCC OnLine Del 4164***, wherein the Coordinate Bench held as under:-

"72. In Sanjeev Dhundia vs. Union of India & Ors. W.P.(C) 3533/2020 decided on 21.12.2020 by the Division Bench of this Court, similar allegations of bias while recording the adverse remarks were taken. It was found that the APARs for the previous period were good and suddenly for one year i.e., 2018-19, the grading was dropped with no apparent reason which established the bias on the part of the Reporting Officer. It was further observed that when no written advisories were issued to the petitioner to perform his performance, it cannot be concluded that the petitioner continued with unsatisfactory performance despite caution and opportunity to improve to substantiate adverse remarks given to him.

73. In Sanjay Doval vs. Union of India 2019 SCC OnLine Del 11500, the Division Bench of this Court observed that the petitioner was found to be having unblemished track record for over 22 years with an



adverse entry being limited only to the impugned period of eight months between 01.04.2011 and 27.12.2011. The future promotion was withheld only on account of adverse remarks for the short period of DPC. The adverse remarks were found to be unjustified in the given circumstances and it was held that the adverse remarks were not justified and were expunged and the Review DPC was directed to be constituted.”

33. What emerges from the aforesaid is that in a case where bias is alleged, the Court, upon appreciation of the factual position, has to determine as to whether there was a real likelihood of bias or a mere perception of the individual in alleging bias.

34. In the present case, it is noticed from the various advisories issued to the petitioner between the period 15.04.2018 to 21.06.2018, the responses thereto by the petitioner, placed before this Court, along with the fact that out of total reporting period of 212 days from 01.04.2018 to 29.10.2018, the petitioner was on leave for 48 days and for about 89 days petitioner was posted on a temporary duty. The petitioner worked directly under the supervision of respondent no. 4 for 164 days. It is seen that every advisory issued to the petitioner by the respondent no. 4 during this brief period was duly responded to by the petitioner. Further, in the complaint made by the petitioner on 20.07.2018, he had complained of many instances of vindictiveness against the respondent no. 4, a few of which as mentioned by the petitioner in the said complaint are reproduced as under:

- “i. That on 01.09.2016 petitioner was posted with 22nd Battalion CRPF whose Commandant was Mr Vishnu Gautam.*
- ii. That after joining 22nd battalion CRPF petitioner was given charge as both Adjutant and Deputy Commandant.*
- iii. That immediately after posting with 22nd battalion CRPF, its Commandant Mr Vishnu Gautam told the petitioner that he has received negative feedback about petitioner from his batchmates. It is*



submitted that the same shows that from the very beginning Mr Vishnu Gautam was against the petitioner and did not want him in 22nd Battalion CRPF.

iv. That on 01.11.2016 in suspicious circumstances petitioner was abruptly transferred from 22nd battalion CRPF to 134th Battalion CRPF. Despite the fact that petitioner has been transferred only on 01.09.2016 to 22nd Battalion CRPF on the order of special D G. It is submitted that same was done at the behest of Mr Vishu Gautam who wanted to bring his own man at the place of petitioner.

v. Thereafter against the abrupt transfer to 134th Battalion CRPF petitioner made his representations to superior authorities. Pursuant to that his transfer to 134th Battalion CRPF was stayed. That staying of transfer enraged the Commandant Mr Vishnu Gautam, it is submitted that since then he started harboring ill will towards the petitioner.”

... ..
“xviii. That despite pendency of work, Ministerial personnel of the unit were sent on leave by Commandant Mr Vishnu Gautam. The biased nature of Commandant Mr Vishnu Gautam could be seen from the fact that everybody was sent on leave/station leave except petitioner, who was even made to work on Sundays and holidays The fact could be verified from the attendance register of the petitioner.”

... ..
“xxiii. That on 07/08.12.2017 an encounter with Naxalites took place at Ulhara village Jharkhand, under the supervision and command of petitioner. The operation was successfully executed. Despite the recommendation from higher authorities for gallantry award to petitioner and his team, same was deliberately put in cold box by Commandant Mr Vishnu Gautam.”

... ..
“xxviii. That when the superior authority started asking questions from Commandant Mr Vishnu Gautam in response to the complaints made by the petitioner against him, then one day he got irritated and in presence of Assistant Commandant Mr Prafull Madeshikar stated “because of the dogs officers like Mritunjay and Vibhuti my reputation and units atmosphere is getting degraded”. It was submitted by the petitioner vide letter/complaint dated 20.07.2018 that the same fact can be verified from Mr Prafull Madeshikar.”

35. By relying on these, the petitioner stated in his complaint dated 20.07.2018 that advisories and warnings were being deliberately issued by respondent no. 4 so as to spoil petitioner’s APAR. In these circumstances,



we are of the view that once the petitioner had categorically made allegations of bias against the respondent no. 4 and conveyed the same to the DG and the DIG, CRPF through written complaints, both dated 20.07.2018, which were much prior to the recording of his impugned APAR, propriety demanded that the respondent no. 4 should have refrained from recording the petitioner's APAR, specifically when the APAR was being recorded for 7 months only. Furthermore, we find that even the representation made by the petitioner on 28.07.2019 was decided in a mechanical manner by the superior authority without inquiring about the alleged bias on the part of the respondent no. 4 against the petitioner in the relevant period of APAR.

36. Now, we may refer to the remarks endorsed by the Reporting & Reviewing Officers and the Accepting Authority in the petitioner's impugned APAR for the period 01.04.2018 to 29.10.2018, which read as under:

"Part-3

To be filled by reporting officer

<i>1. Do you agree with the resume of work as indicated by the officer and in particular regarding the special achievement, if any, mentioned by the officer? If not, indicate briefly the reasons for disagreement and the extent of disagreement?</i>	<i>I agree.</i>
<i>2. Integrity</i>	<i>Beyond doubt.</i>
<i>3. Welfare</i>	<i>Always ready and remains active for welfare of juniors.</i>
<i>4. Ability to detect and expose malpractices of subordinates.</i>	<i>Expert in detecting malpractices of subordinates.</i>
<i>5. Attitude to work schedule caste/schedule tribe/weaker section of society.</i>	<i>Sensitive and positive towards schedule caste/ schedule tribe/weaker section of society.</i>
<i>6. Attitude towards women.</i>	<i>Have respect towards women.</i>
<i>7. Training.</i>	<i>Officer takes keen interest in planning and</i>



	organizing training for subordinates.
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Part-4
Assessment of work output

	Reporting authority	Reviewing authority	Initial of reviewing authority
Accomplishment of planned work/work allotted as per subject allotted.	6	6	
Quality of output	6	6	
Analytical ability	6	6	
Accomplishment of exceptional work/unforeseen task performed	5	5	
Knowledge of sphere of work	6	6	
Ability to enhance operation performance	6	6	
Total score	35/6	35/6	
Average score	5.83	5.83	
Weightage 40% = Y x 0.4	2.33	2.33	

Assessment of personal attributes

	Reporting authority	Reviewing authority	Initial of reviewing authority
Attitude to work	6	6	
Sense of responsibility	5	5	
Communication skills	3	3	
Leadership qualities	6	6	
Capacity to work in team spirit	2.5	2.5	
Aptitude and potential	6	6	
Courage-physical and moral	4	4	
Total score	47/10	47/10	
Average score	4.7	4.7	
Weightage 30%	1.41	1.41	

Assessment of functional competency

	Reporting authority	Reviewing authority	Initial of reviewing authority
Knowledge of rules/regulations/procedures in the area of function and	6	6	



<i>ability to apply them correctly.</i>			
<i>Strategic planning ability</i>	6	6	
<i>Decision making ability</i>	6	6	
<i>Coordination ability</i>	4	4	
<i>Ability to motivate and develop subordinates</i>	4	4	
<i>Initiatives</i>	4	4	
<i>Total score</i>	30/6	30/6	
<i>Average score</i>	5	5	
<i>Weightage 30%</i>	1.5	1.5	

Part-5

Pen-picture - Pen picture of the officer reported upon my reporting officer.

Though he has good knowledge of his work, but on certain occasions behaviour of officer with his subordinates and colleagues is bad, indecent and is of groupism. Officer has habit of taking photos of official documents, making videos, recording conversation of personnel and superiors over phone and putting same on whatsapp. By not following proper channels officer has habit of filing false complaints to superiors and in other department too. On certain occasions officer have been seen under extreme mental stress. Pursuant to which officer's has complaining nature.

Grading on a score of 1-10 =5.24

Part-6

To be filled by reviewing officer

<i>Length of service under the reviewing officer.</i>	01.04.2018 to 29.10.2018.
<i>Do you agree with the assessment of reporting officer? In case of disagreement, please specify reason there for. Is there anything which you wish to modify or add?</i>	Yes I agree.
<i>Do you agree with the objective assessment made by reporting officer in respect of work output, personal attributes and functional competency (if not, please record in your own assessment column)</i>	Near
<i>In case of disagreement of grading given by reporting officer, please indicate grading assessed by the reviewing officer</i>	5.24.



Remarks of the reviewing authority on the pen picture reflected by the reporting officer:

I agree with the pen picture given by the Reporting officer. During the reporting period conduct and behaviour of the reported officer was 'good'.

Part 7

**Grading to be awarded according to the total marks in given in part 4 (i)(ii) & (iii).
Grading by reviewing officer = Good.**

(Period from 01.04.2017 to 31.03.2018)

Part 8

Marks and grading of accepting authority :

"I agree with the overall grading of Good given by the reporting officer Mr Vishnu Gautam and Review Officer for the period of 01.04.2018 to 23.02.2019."

Overall grade (on a scale of 1-10) I agree. 5.24 - Good.

37. From an analysis of the aforesaid extracts of the impugned APAR, it is clear from the recordings in Part 3, that the Reporting Officer had agreed with the self-appraisal of the petitioner and had opined that his integrity was beyond doubt. The Reporting Officer assessed him as always being ready and remaining active for welfare of the juniors, with an expertise in detecting malpractices of subordinates and found his attitude to be sensitive towards Scheduled Caste/weaker section of the society and also as being respectful towards women. Moreover, he opined that the petitioner had been taking keen interest in planning and organizing the trainings for the subordinates. However, the numerical gradings and pen picture remarks as noted above run contrary to the aforesaid observations.

38. In contrast to his recording of positive behaviour of the petitioner with other personnel, the numerical grading of '3' with respect to the 'communication skills' of the petitioner is simply inconsistent. The same is the position with the remarks in the pen picture, wherein it has been noted



that on certain occasions the behaviour of the petitioner with his subordinates and colleagues was bad, indecent and he was indulging in groupism. Furthermore, without reference to any material whatsoever, the Reporting Officer also observed that the petitioner was in habit of taking photos of official documents, making videos, etc., and circulating the same on WhatsApp.

39. In the light of this factual position emerging from the endorsements made in the APAR itself, we are of the opinion that the petitioner is correct in urging that his box grading and pen picture remarks in the APAR for the period between 01.04.2018 to 29.10.2018 were absolutely at variance with the recording made by the Reporting Officer in Part 3 of the APAR. It was indeed the duty of the Reporting Officer to ensure that all the remarks endorsed in the APAR and the grading awarded to petitioner are in consonance with each other. From the fact that absolutely inconsistent grading and remarks have been endorsed by respondent no.4 in the impugned APAR, it is evident that the said APAR has been recorded without due application of mind.

40. The petitioner has also contended that the Reviewing Officer and Accepting Authority had endorsed the APAR without appreciating that there were major discrepancies in the recording of the petitioner's APAR by the Reporting Officer/respondent no. 4. In fact, their approach while making the assessment appears to be most casual and negligent. In part 6 of APAR, the Reviewing Officer was required to report, whether he supported the objective assessment by the Reporting Officer about the petitioner, however, he has merely remarked the same as 'Near', which is completely unclear and



meaningless. Interestingly, the approach of Accepting Authority is also no better and is ambiguous as he himself is not sure about the correct period for which he was assessing the performance of the petitioner. He, at one place, has endorsed the relevant period of assessment as '01.04.2018 to 23.02.2019', while on the very same page, he mentions the period under report as '01.04.2017 to 31.03.2018', thereby clearly indicating that he too had adopted a most casual approach.

41. When seen in totality, including the petitioner's APARs for the period prior to and after recording of the impugned APARs, the plea of bias on the part of respondent no. 4 cannot be brushed aside as being a mere figment of the petitioner's imagination. In our considered view, from the factual matrix as noted hereinabove, it is clear that the petitioner had a reasonable apprehension of bias.

42. It is further relevant to note that except for the inconsistent grading and adverse remarks in the impugned APAR for a short period i.e. from 01.04.2018 to 29.10.2018, the petitioner has, in his unblemished career since 2010, constantly maintained consistent gradings in his APARs. It also emerges that apart from the five advisories issued to the petitioner between March to June, 2018, nothing has been brought to the notice of this Court, to show that any advisory/warning was ever issued to the petitioner in his 19 years of service in the CRPF. We, therefore, find merit in the plea of the petitioner that the said advisories and impugned APAR were at least not impartial, if not, ill motivated and were issued with an intention to downgrade the petitioner.

43. In view of the gamut of circumstances noted hereinabove, we have



no hesitation in holding that there was a lack of objectivity on the part of respondent no. 4 while recording the impugned APAR and bias on his part cannot be ruled out. The assessment of the Reviewing Officer and the Accepting Authority which were based solely on the remarks endorsed by respondent no.4/the Reporting Officer, can, therefore, not be sustained. The impugned APAR, in its entirety, is liable to be set aside on the ground of bias as well as inconsistency. Accordingly, the writ petition is allowed and the impugned orders dated 22.07.2020 and 03.09.2021 are set aside. Consequently, the petitioner's impugned APAR for the period 01.04.2018 to 29.10.2018 is quashed by making it clear that the respondents shall not rely upon the said APAR for any kind of assessment related to the petitioner in future also.

44. In terms of the above observations, the petition stands disposed of.

(SHALINDER KAUR)
JUDGE

(REKHA PALLI)
JUDGE

SEPTEMBER 24, 2024
KM/ss