

(2020) 10 DEL CK 0040

In the Delhi High Court

Case No : Civil Writ Petition No. 7474 Of 2020

Asitav Mohanty

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 08-10-2020

Acts Referred:

Citation : (2020) 10 DEL CK 0040

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Dr. Surender Singh Hooda, Aditya Hooda, Sunieta Ojha

Final Decision : Disposed Of

Judgement

Rajiv Sahai Endlaw, J

1. The petitioner, holding the rank of Deputy Inspector General (DIG) in the respondents Border Security Force (BSF), has filed this petition (i) seeking mandamus to the respondents BSF to expunge the adverse remarks in the petitioner's Annual Performance Appraisal Report (APAR) for the year 2017-18 and to upgrade the petitioner's APAR for the year 2017-18 to 'Outstanding'; and, (ii) impugning the order dated 18th May, 2020 of the Ministry of Home Affairs (MHA) rejecting the representation of the petitioner against the impugned APAR, for the reason of having been preferred beyond the prescribed time.

2. It is the case of the petitioner, (i) that he has served the respondents BSF for 34 years and at least since the year 2013, has been graded as 'outstanding' or 'very good'; (ii) that prior thereto also, the APARs of the petitioner have been 'outstanding'/'very good' and there is nothing adverse in the earlier APARs also; (iii) that the impugned APAR was received by him in his office on 22nd April, 2019, but for the reason of his being on field duty, it was not communicated to him immediately and immediately on learning of the same, he represented thereagainst on 17th May, 2019 to the Director General of the respondents BSF; (iv) However in response to the aforesaid representation, the petitioner was

advised on 24th May, 2019 that the representation had to be made to the MHA; (v) the petitioner, on 12th June, 2019 represented to the Home Secretary, Ministry of Home Affairs, Government of India; and, (vi) that the said representation has been rejected vide impugned order dated 18th May, 2020 only for the reason of having been preferred after 52 days instead of within 15 days as prescribed and the reason given by the petitioner for delay to be not satisfactory.

3. The counsel for the respondents BSF appears on advance notice.

4. Having perused the petition, we have proposed to the counsels that we dispose of this writ petition by condoning the delay on the part of the petitioner in making the representation and by directing the representation of the petitioner to be considered on merits.

5. We have, however enquired from the counsel for the petitioner, whether on account of the delay, any rights have accrued to anyone i.e. whether any junior of the petitioner has in the interregnum been promoted, in supersession of the petitioner.

6. The counsel for the petitioner states that the next promotion of the petitioner is not due till the year 2021 or 2022 and none other will be affected, if consequent to condonation of delay, the representation is granted/allowed.

7. We are of the view that the authorities of the respondents BSF are best suited to consider the representation on merits and/or to appraise the performance of the petitioner for the year 2017-18 and the question of this Court getting into the same will arise only once the channels available under the system, of review/representation, are exhausted.

8. Though undoubtedly there was delay in preferring the representation but we are satisfied that the petitioner had enough reasons for the delay and the case does not call for any stringent view to be taken on the aspect of delay, especially when no rights have accrued in favour of any other personnel, in supersession of the petitioner, on account of the said delay even if were to be attributable to the petitioner.

9. The counsel for the petitioner states that the writ petition may be treated as the representation of the petitioner against the APAR of the year 2017-2018. It is stated that some legal grounds have also been taken in the writ petition and which may be considered by the authority deciding the representation.

10. We have heard the counsel for the respondents BSF on the aforesaid aspect.

11. The aforesaid request of the counsel for the petitioner is found to be reasonable and is allowed.

12. The writ petition is disposed of by directing the Home Secretary, MHA to treat this writ petition as a representation of the petitioner against the APAR for the year 2017-18 and to, notwithstanding the delay, consider the said representation

on merits and to pass a reasoned order thereon and to communicate the same to the petitioner on or before 31st December, 2020.

13. The petition is disposed of.