

(2024) 05 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16647 Of 2018

Dr. Ajay Kumar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 13-05-2024

Acts Referred:

Citation : (2024) 05 PAT CK 0018

Hon'ble Judges : Dr. Anshuman, J

Bench : Single Bench

Advocate : Rakesh Kumar Sharma, Alok Anand, Vitesh Kumar Singh,
Bindhyachal Rai

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the Union of India.
2. The present writ petition has been filed for quashing the letter dated 15.02.2018 issued by DIG (Adm) B/S HQ CRPF by which the representation of the petitioner was rejected. Further prayer is for quashing the adverse remarks in APAR for the year 2014-15.
3. Learned counsel for the petitioner submits that the petitioner joined in the CRPF and completed the training of the department. He was posted as Senior Medical Officer at Composite Hospital, Muzaffarpur, and at the time of filing the representation he was attached to Group Centre, Mokamaghat, Patna. Learned counsel for the petitioner submits that at the time of his posting at Suratgarh, the Commandant 217 Bn. CRPF written APAR of the petitioner and given overall remarks as 'Very Good' on 11.06.2015 but in the middle of APAR, the respondent authority has given him adverse remarks. Counsel for the petitioner submits that since overall remark was very good, therefore, the petitioner had not taken care of since overall remarks is very good but when his matter was considered for promotion then the said APAR was treated as adverse remark and he was refused from grant of his promotion; whereas his junior was granted promotion.

Learned counsel for the petitioner submits that as soon as the petitioner realized that his APAR though given very good remark, but due to entry made in the middle of the APAR has been treated adverse then he filed statutory representation before the authority concerned i.e., the DIG (Medical), CH, Muzaffarpur, CRPF, (Bihar), but his representation was rejected treating as time barred.

4. Learned counsel for the petitioner relied on standing order No.56 of 2001 dated 18.10.2001, in which Clause 2.3 states that according to instructions on ACRs, only adverse remarks recorded in the ACR, if any, are to be communicated to the Government servant. Counsel submits that no such communication with regard to adverse remark has been made to the petitioner. As such, the petitioner was in confusion that since the overall remark is very good then any comment made in the APAR shall not be treated as adverse. Counsel submits that no separate letter with regard to the said adverse remarks has been communicated to him in the light of the standing order No.56/2001.

5. Learned counsel for the petitioner submits that another letter which provides guideline in maintenance of APAR has been issued from the Directorate General, CRPF, vide letter dated 28th of June, 2018, in which it has been depreciated that adverse remarks in some column and overall grading made very good. Such type of remarks are contradictory and may create confusion in the mind of the concerned officer and, therefore, it was directed to the authorities to follow the guidelines. The said letter he has annexed as Annexure-6 to the supplementary counter affidavit. Learned counsel for the petitioner submits that Union of India has filed counter affidavit and in the counter affidavit only point has been taken that representation has been filed by the petitioner with delay.

6. Learned counsel for the Union of India submits that in the counter affidavit it has been categorically mentioned that the APAR was communicated to the petitioner but he has not made representation against his adverse remark well within time as prescribed in the norm and, therefore, the authority concerned has rightly rejected the same. Learned counsel for the Union of India submits that on this ground alone this representation is fit to be dismissed.

7. Upon going through the provisions of law on the basis of which the petitioner relied, i.e. the extract of standing order No.56/2001 dated 18.10.2010, Clause-2.3 thereof states as follows:-

"2.3. According to instructions on ACRs, only adverse remarks recorded in the ACR, if any, are to be communicated to the Government servant. The grading in the ACR, even if "Average" (which may not make him eligible to achieve the prescribed bench mark for promotion) need not be communicated. However, in the past, officials who were graded as "Average" in their ACR, were advised suitably (without disclosing grading) to improve their performance. The intention behind this was that the Govt. servant should be advised to improve his performance in the interest of his career."

As well as the operative part of Annexure-6 letter issued from Directorate General, CRPF, (MHA) dated 28th of June, 2008, states as follows:-

"The guidelines for initiation/review/maintenance of APAR have been laid down in S.O.4/2015. The procedure for communication of APAR has been laid down in para 13 of .O.4/2015:-

1. It has been observed that in some cases the Reporting/Reviewing Officer have endorsed adverse remarks in some columns but have given overall grading "Very Good". Such remarks are contradictory and may create confusion in the mind of the concerned Officer and he may not be able to comprehend whether the remarks in APAR may construed as adverse or not. The overall grading endorsed in the APAR, should be in consonance with remarks given in the relevant column/ Pan Picture by them. The Reporting/Reviewing authorities should be requested to go through the guidelines on completion of APAR as laid down in DoP&T OM No.21011/1/2005-Estt.(A)(Pt-1) dated 23.07.2009 and S.O.4/2015.

2. The competent authority has desired that while forwarding the APAR to the Officer, it may be clearly mentioned in the covering letter that there are adverse remarks/below bench mark grading in his APAR.

3. The bench mark for MACP is "Very Good" as per provisions contained in DoP&T OM No. F.35034/3/2015-Estt(D) dated 28.09.2016. Therefore any grading below Very Good may be construed as below bench mark grading. The same may also be mentioned in the covering letter.

4. I have been desired by the competent authority to request you to follow the above instructions while forwarding APAR of all officers."

8. Upon perusal of these two letters, it becomes crystal clear that the authority, who has rejected the representation of the petitioner vide Annexure-2 dated 15.02.2018, has not applied his mind with regard to the above said provisions of law mentioned above. In that backdrop, the letter dated 15.02.2018 is hereby set aside and the matter is remanded back to the authority concerned to pass order completely in accordance with the Rules mentioned above within a period of 90 days from the date of receipt/production of a copy of this order.