

(2023) 12 J&K CK 0068

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 2414 Of 2003, IA No. 01, 2684 Of 2003

Kashmir Singh Sandhu

APPELLANT

Vs

Union Of India Th And Others

RESPONDENT

Date of Decision : 28-12-2023

Acts Referred:

Citation : (2023) 12 J&K CK 0068

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : S. Kour, Ramandeep Kour, Rohan Nanda

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. Two adverse remarks were made in the ACRs of the petitioner for the year 1997-98 and 1998-99, which are reproduced as under:

"He should improve his personal conduct with Officers and men. He has been advised to obey the orders of his senior officers. He talks too much and irrelevant. He does not possess the sobriety maturity commensurate with his age and service."

"A short statured, intelligent and sober Officer but found to be careless. He lost his personal pistol from the FDL which is a serious lapse on his part."

2. The petitioner filed a writ petition bearing SWP No. 1913/2001, thereby challenging the orders, whereby his juniors were promoted and the order by which adverse remarks were communicated to the petitioner. The writ petition was disposed of vide order dated 28.09.2002 with the following directions:

"In the facts and circumstances of the case, the petition is allowed. Respondents are directed to re-consider the case of the petitioner and reconcile the two reports and if there is nothing adverse against him then the respondents would

remedy the wrong doing to the petitioner. In case these reports are obliterated then the petitioner be given further relief as may be deemed fit. This would include his consideration for future promotion. Let this exercise be completed within a period of two months from the date copy of this order is made available by the petitioner to the respondents. Disposed of as such."

3. The respondents pursuant to the directions dated 28.09.2002 reconsidered the case of the petitioner and reconciled the two reports, thereby refusing to obliterate or modify the adverse remarks made in the ACRs for the year 1997-98 and 1998-99 by virtue of order dated 06.05.2003. The petitioner has assailed the order dated 06.05.2003 on the following grounds:

(i) That no reason has been assigned in the order and without any cogent reason, the order impugned is not sustainable in the eyes of law.

(ii) That it is clear from the record of the petitioner that he was assigned important jobs and remained posted at various places where performance of the petitioner was found satisfactory and for his excellent performance, he was awarded different medals, but the respondents without considering the service record of the petitioner have passed the order impugned.

(iii) That the employee must be informed of the change in the form of any adverse remark and before any down-gradation has to be done, but in the present case, the respondent No. 2 has not appreciated that no show-cause notice or warning was ever given to the petitioner before down-grading the petitioner.

(iv) That the respondent No. 2 has not appreciated that the missing of the pistol was the case of theft and not a case of negligence. When the petitioner was deployed in the high altitude of Gurez Valley and Kargil, his Pistol was stolen and that was done at the behest of Commandant because the said Commandant wanted to downgrade the petitioner and FIR was also registered. The respondent No. 2 without appreciating the aforesaid fact, has passed the order dated 06.05.2003 without considering the issue as to whether it was because of sheer negligence on part of the petitioner which led to the loss of weapon or the circumstances were such, which led to theft.

(v) That there was delay in communicating the adverse remarks to the petitioner and the respondent No. 2 without affording any opportunity of hearing to the petitioner and without appreciating the service record of the petitioner has passed the order impugned.

4. The petitioner has leveled allegations of mala fide on part of the Commandant P.L. Badhu due to which adverse remarks were made in the ACR of the petitioner for the year 1997-98. The petitioner has also prayed for expunging the adverse remarks and to fix seniority of the petitioner and place the petitioner at the proper place in the seniority list at the post of Deputy Commandant over and above his juniors, who were given promotion with effect from 27.04.2000.

5. The respondents have filed the response, stating therein that the petitioner was communicated the adverse remarks recorded in his ACR for the period from 01.04.1997 to 31.03.1998 vide communication dated 19.06.1998. The representation dated 27.07.1998 submitted by the officer was forwarded to SHQ BSF Firozpur, which was rejected vide letter dated 28.01.1999. The petitioner again submitted a representation dated 22.02.1999 to the DIG BSF and the same was also rejected vide order dated 30.04.2001. Thereafter, the petitioner was communicated adverse remarks recorded in his ACR for the period from 01.04.1998 to 31.03.1999 vide letter dated 13.10.1999. The petitioner submitted a representation dated 27.02.2001 addressed to the DG BSF to expunge the adverse remarks and the same was returned to HQ Jammu for examining the case of the petitioner. The Frontier Head Quarter further sent the representation to Frontier Head Quarter, Jalandhar for their examination and disposal and the said representation was rejected being devoid of merit vide order dated 15.02.2001. It is further stated in July 1998, petitioner was deployed at FDL Sikander. A theft of pistol with empty magazine issued to the petitioner took place between 13-16 July 1998, while he was performing duty as Company Commander at FDL Sikander. FIR was lodged in the matter and despite efforts made by the Unit, the pistol with empty magazine could not be recovered. A SCOI was ordered by the DIG Bandipura and the officer was blamed for carelessness as he failed to ensure safe custody of the weapon. A penalty amounting to Rs. 21,115/- as cost of pistol and empty magazine was ordered by the IG BSF Baramulla in addition to IGs displeasure, which was served to the officer. It is further stated that the petitioner could not clear the DPC for promotion from AC to DC and resultantly was superseded for promotion vide order dated 25.04.2001 and his juniors were promoted to the rank of Deputy Commandant. It is further averred that the appreciation/commendation are incidents specific and have no relevance with the case of the petitioner. These commendations were earned by the petitioner for his performance for the period prior to year 1997-98 and have no relevance with the performance and conduct of the petitioner during the period 1997-98. The respondents have denied that the adverse remarks were recorded in the ACRs due to revengeful attitude and personal grudge of the Commandant, rather the adverse remarks were recorded after the objective assessment of overall performance and conduct of the petitioner during the period covered by the report. The petitioner was also issued warning letter for not obeying the orders of the Commandant and joining duty after 45 days of leave. It is also stated that as per Para 55 of BSF ACR Procedure and Instructions 1991, the time schedule for submission of ACR by the IO/RO is 30th April, by the DIG is 15th May and by IG is 10th June. The adverse remarks were communicated to the petitioner by Frontier Headquarter, Jalandhar vide communication dated 19.06.1998 within one month of the schedule date of completion, therefore, no delay has occurred. The representation of the petitioner dated 27.07.1998 was examined at Ftr. HQ BSF Jalandhar after calling the comments of Sh. P. L. Badhu, who recorded the adverse remarks and the same was rejected being devoid of merit. The petitioner was conveyed

accordingly vide Ftr HQ Jalandhar communication dated 28.01.1999. The petitioner again submitted the representation dated 22.02.1999 to DG BSF, which was examined after obtaining the records/comments from the concerned authorities/HQs and DG BSF rejected the same being devoid of merit. The petitioner was accordingly conveyed vide communication dated 30.04.2001. The adverse remarks in the ACR of the petitioner for the period from 01.04.1998 to 31.03.1999 were communicated to the petitioner vide communication dated 13.10.1999. The ACR was completed on 30.08.1999 and adverse remarks were conveyed to the petitioner after formulation of the decision. It is further averred that the instructions contained in BSF ACR Procedure and Instructions 1991 to communicate adverse remarks as far as possible within one month are only guidelines and not mandatory.

6. It is stated that it was the responsibility of the petitioner to ensure safe custody of the pistol which was issued to him. The petitioner lodged FIR with the Police Station, Gurez and the Police closed the case after proper investigation as ? untraced?. The court of enquiry was conducted on the orders of DIG BSF Bandipura, in which the petitioner was blamed for carelessness, negligence and for not ensuring the safe custody of pistol and magazine which was issued to him and penalty amounting to Rs. 21,115/- being the cost of the pistol and magazine was imposed upon the petitioner and he was also issued IG?s warning. The petitioner was given opportunity to cross-examine the witnesses during the SCOI, who deposed against him and to make statement in his defence under the BSF Rules, which the petitioner declined. Before conveying the displeasure of IG BSF Baramulla, a show-cause notice was issued to the petitioner vide letter dated 02.12.1999, which was not replied by the petitioner. Respondents have further stated that by virtue of order dated 06.05.2003 the case of the petitioner was examined in light of the directions passed by the Court but no merit was found and the representation was rejected.

7. The petitioner has filed rejoinder affidavit thereby stating that the court had allowed the petition for expunging the adverse remarks and directed the respondents to reconsider the case of the petitioner. The respondents without appreciating the same, again passed the same order in violation of the orders passed by the Court.

8. Ms. Surinder Kour, learned senior counsel appearing on behalf of the petitioner submitted that the respondents have passed the order dated 06.05.2003 in utter disregard of the directions issued by this Court vide its order dated 28.09.2002, as such, the order dated 06.05.2003 is not sustainable in the eyes of law. She further submitted that the adverse remarks were made in the ACRs of the petitioner only because of the malice, but the respondent No. 2 while passing the order dated 06.05.2003 has not considered the same. She further argued that the respondent No. 2 has also not considered that the petitioner had lodged the FIR in respect of the theft of the weapon. Learned senior counsel relied upon the judgments of Apex Court in cases of M.A. Rajasekhar vs. State of Karnataka and

Anr., 1996 10 SCC 369 and Daljit Singh Grewal vs. State of Punjab and ors. 2016 AIR (SC) 1260.

9. Per contra, Mr. Rohan Nanda, learned panel counsel appearing on behalf of the respondents argued that pursuant to the order passed by this Court on 28.09.2002, the case of the petitioner was reconsidered and the respondent No. 2 reconciled the two reports and came to the conclusion that the adverse remarks made in the ACRs of the petitioner for the year 1997-98 and 1998-99 cannot be modified or obliterated. He further submitted that the order impugned has been passed pursuant to the directions of this Court and the same is in accordance with the order dated 28.09.2002 passed by this Court. He further submitted that if the petitioner was aggrieved of the order dated 28.9.2002, which only enjoined upon the respondents to reconsider the case of the petitioner and reconcile the two reports, the petitioner should have assailed the same and now when the respondent No. 2 has complied with the order passed by this Court by passing the order impugned, the petitioner cannot raise the grounds which were already taken note of by the Court in its order dated 28.09.2002, whereby the Court declined to quash the adverse remarks made in the ACR of the petitioner.

10. Heard and perused the record.

11. This Court vide order dated 28.09.2002 as mentioned above directed the respondents to reconsider the case of the petitioner and reconcile the two reports. The respondent No. 2 vide order dated 06.05.2003 has returned a finding that Initiating Officer, Reviewing Officer and the Accepting Authority in respect of adverse remarks in the ACRs of the petitioner for the years 1997-98 and 1998-99 were different and the officer was deployed in different geographical areas and was working in different operational environments at the different timeframes, which clearly demonstrates that the officer, who initiated and endorsed the adverse remarks for the year 1997-98 and 1998-99 were different and during the two years mentioned above, the petitioner was posted at different geographical situations. The respondents were directed to reconcile the two adverse remarks made for two years, as in the ACR of the petitioner for the year 1997-98, it was mentioned that the petitioner did not possess sobriety and maturity commensurate to his age and service, whereas in ACR for the year 1998-99, he was shown as short-statured, sober and intelligent officer. The respondent No. 2 has justified that the maturity, sobriety and other personal traits are assessed by the authors of the ACR while observing the work and conduct of the petitioner in respect of the different works, situations and events in a particular timeframe. The conduct of an individual may change with the passage of time and is relatable to the situation as well. As per Para 46 of BSF ACRs Procedure and Instructions 1991, the pen picture of the officer should include the observations in respect of sobriety and maturity of the officer. The respondent No. 2 has also mentioned in the order dated 06.05.2003 that the weapon was entrusted to the officer and he was expected to keep the pistol

issued to him under his surveillance at all time and in the event of his inability to keep the weapon with him under his active surveillance, he should have made such an arrangement to ensure safe custody of the weapon, but the weapon issued to the officer was lost as he did not ensure its safe custody. A court of enquiry had gone into the circumstances of the loss of the pistol issued to the officer and arrived at an opinion that the negligence on part of the officer has resulted in the loss of the pistol. The Court of enquiry was examined at various levels and IG of the frontier while concurring with the finding of negligence on part of the officer had taken a lenient view and had closed the case by issuing IG's displeasure. The notice to that effect was issued to the petitioner on 02.11.1999 as to why the displeasure should not be issued to him on the loss of pistol within 15 days of the receipt of notice. The petitioner did not respond to the show-cause notice within the stipulated period of time and as such, displeasure was issued to the officer. The respondent No. 2 has stated that there is no ground for further mitigation of the IG's displeasure.

12. The respondent No. 2 has passed a well-reasoned and detailed order thereby reconsidering the case of the petitioner and reconciling the two adverse remarks made in the ACRs of the petitioner for the year 1997-98 and 1998-99.

13. This Court while exercising the power of judicial review cannot act as an Appellate Authority over the decision of the respondent No. 2. This Court is only concerned with the mode and manner in which the decision has been arrived at by the respondent No. 2. The petitioner has not at all been able to repel the assertions of the respondents in respect of the displeasure issued to him by the IG, BSF. The contention of the petitioner that the adverse remarks were obliterated by the order of this Court is misconceived, as mere perusal of the directions issued by the Court vide its order dated 28.09.2002 would reveal that the respondents were directed to reconsider the decision and reconcile the two reports, which has been done by the respondent No. 2 by passing the order dated 06.05.2003.

14. In *Amrik Singh v. Union of India*, (2001) 10 SCC 424, the Hon'ble Supreme Court of India has held as under:

21. In the result, we are not inclined to grant any relief to the appellant in spite of the fact that his performance in the subsequent years has been shown to be very good and his ratings were very high. Ultimately the single adverse remark of 1985-86 by the Reviewing Officer had stood in his way, not only at the time of original consideration but also when the matter was considered afresh pursuant to the directions of the High Court. The result may be unfortunate. But the scope of the jurisdiction of the High Court being very limited, we cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board on the two occasions.

(emphasis added)

15. The judgments relied upon by the learned senior counsel for the petitioner is

not applicable in the present facts and circumstances of the case.

16. Viewed thus, there is no merit in the present petition. The same is, accordingly, dismissed.