

(2025) 01 DEL CK 1742
In the Delhi High Court
Case No : Writ Petition (C) No. 3465 Of 2023

Makhdum Ali Haidar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 27-01-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2025) 01 DEL CK 1742

Hon'ble Judges : Navin Chawla, J; Shalinder Kaur, J

Bench : Division Bench

Advocate : Prem Prakash, Nidhi Banga, Nishant Kumar

Final Decision : Allowed

Judgement

Shalinder Kaur, J

1. The petitioner has preferred this writ petition under Article 226 of the Constitution of India, assailing the Annual Performance Assessment Report ('APAR') for the period between 01.04.2015 to 31.03.2016, wherein a below benchmark grading of '3.1' has been awarded to the petitioner.

2. The petitioner also assails the Order dated 11.06.2020 passed by Special Director General, Border Security Force ('BSF'), Eastern Command, vide which the Order dated 22.05.2019, passed by Inspector General ('IG'), North Bengal Frontier, BSF, was set aside solely on the ground that no second representation is permissible against the adverse remarks in an APAR.

3. The brief facts leading to filing of the present petition are that the petitioner joined the BSF as a Sub-Inspector (DE) on 10.09.2012 and received his first posting at the 41st Battalion, BSF, Raiganj (West Bengal), after completing the mandatory basic training, on 06.08.2014. For the period between 02.08.2014 to 30.04.2015, the petitioner received a grading of '6.3' with the remark 'Very Good' in the APAR submitted by the Reporting Authority.

4. During his service, the petitioner overstayed his leave on different occasions, which was subsequently regularized vide the Order dated 04.01.2019. He was granted 30 days Earned Leave from 27.02.2016 to 27.03.2016. He overstayed his leave for a period of 75 days with effect from 28.03.2016 to 10.06.2016, and thereafter, for a period of 331 days with effect from 11.06.2016 to 07.05.2017. The impugned APAR of the petitioner for the period from 01.04.2015 to 31.03.2016 was written by the Reporting Authority while the petitioner had overstayed his leave.

5. The claim of the petitioner is that he was undergoing treatment at a Government Hospital in Pilibhit, Uttar Pradesh, from 27.02.2016 to 10.06.2016. His Over Stay Leave ('OSL') had been regularized vide the Order dated 04.01.2019, by the office of the Commandant. However, the petitioner received a below benchmark grading of '3.1' with the remark 'Average' for the period from 01.04.2015 to 31.03.2016, by the Reporting Authority, for which the petitioner also received communication of adverse/advisory remarks vide the Letter dated 04.09.2016. The Reviewing and the Accepting Authority concurred with the reporting of the Reporting Authority and endorsed the grading with a remark, "I Agree", without any further explanation.

6. The petitioner, on 11.10.2017, filed his first representation before the Deputy Inspector General ('DIG'), Force Headquarters, BSF, R.K. Puram, New Delhi, against the adverse grading in the Impugned APAR, which was rejected vide the Order dated 31.07.2018, without giving any reason therein.

7. Being aggrieved, the petitioner made yet another representation to the IG, North Bengal Frontier, BSF, requesting for a review and upgradation of his APAR, who vide the Order dated 22.05.2019, upgraded the APAR grading from '3.1' to '6.0' for the year 2015-16, for the reasons that no warning was issued to the petitioner and that the APARs for the period 2014-15 and 2017-18 were 'Very Good'.

8. The respondents, thereafter, served a Show Cause Notice dated 19.01.2020, for withdrawal of the Order dated 22.05.2019 passed by IG, BSF, stating that no second representation is permissible after the first appeal/representation has been decided. The petitioner submitted a reply to the Show Cause Notice on 25.04.2020. The Competent Authority rejected the petitioner's reply vide the Order dated 11.06.2020, and his APAR grading was restored to '3.1' from '6.0'.

9. Aggrieved by the above, the petitioner filed the present petition assailing the APAR of the period from 01.04.2015 to 31.03.2016, and also the Order dated 11.06.2020 passed by respondents, whereby the Order dated 22.05.2019, which had upgraded the APAR of the petitioner, was set aside.

Submissions of the Petitioner

10. In support of the petition, the learned counsel for the petitioner submitted that the Impugned Order dated 11.06.2020 is erroneous and liable to be

quashed. Drawing our attention to Rule 4.17, and Rule 4.20 of the APAR Procedure and Instructions, 2012 (in short, 'Instructions, 2012'), read with, DOP&AR OM No. 1903/82/Estt dated 31.05.1982, he contended that a combined reading of the aforementioned would show that every representation is to be made to an Authority which is superior to the Authority who had passed the earlier order, and that the second representation is to be made within six months to the original representation. He submitted that the petitioner made the first representation to the office of DIG, which was the superior Authority to the Reporting Authority, and the second representation to the office of the IG, again, an Authority superior to the DIG. Further, the second representation dated 25.02.2019, was made within a period of six months of the first representation and thus, the respondents had no ground to recall the order passed on the second representation.

11. He submitted that the adverse remarks in the APAR for the year 2015-16 do not effectively state the purpose for which the same were made. It appears that main premise for the down gradation of the petitioner is his OSL. However, the APAR does not give OSL as a reason for which a below benchmark grading in the Impugned APAR was given. The adverse remarks, learned counsel for the petitioner submitted, thus, are hard to reconcile. More so, he submitted that it failed to align with the very objective of the Instructions, 2012, and did not provide the petitioner with appropriate feedback and guidance for correcting his deficiencies, and to improve his performance in order to serve the interest of enhancing efficiency of the Force, and for this reason alone, the Impugned APAR is liable be set aside. The learned counsel for the petitioner placed reliance on the decisions of the Supreme Court in *State of Gujarat vs. Suryakant Chunilal Shah*, 1999 (1) SCC 529, and *Dev Dutt vs. Union of India*, (2008) 8 SCC 725.

12. The petitioner further contended that his OSL status had no impact on the below benchmark grading in the Impugned APAR, as there was no mention or finding related to his leave status in the said APAR. Further, he relied on *Anand Sarup v. Union of India and Ors*, 2019 SCC OnLine Del 11401, and submitted that once the OSL is regularised by the Competent Authority, then the same remains of no consequence and therefore, no action should be taken against an employee on the basis of such OSL.

13. The learned counsel for the petitioner further submitted that the petitioner had consistently received 'Very Good' remarks with a grading above '6', except for the period in question, that is, 2015-2016. He contended that in the view of a consistent 'Very Good' performance, the petitioner could not have been given an 'Average' grading and more so, without proper reasons. In support of his plea, he placed reliance on the decision of this Court in *Sanjeev Dhundia vs. Union of India*, (2022) 6 HCC (Del) 708.

14. He submitted that the Reporting Authority and Reviewing Authority acted in connivance in order to victimize the petitioner, which is a fraud on BSF Rules, as the scores of Reporting Authority and the Reviewing Authority were identical,

which could not be a co-incidence. More so, the Reviewing Authority did not provide a reasoned Pen Picture while affirming the Impugned APAR, rather limited it to a cryptic remark 'I Agree'. He contended that general terms, such as, 'I Agree' or 'Disagree' in the orders of the Reviewing Authority, cannot be construed as sufficient reasons for upgrading/downgrading the overall gradings given by the Reporting Authority and therefore, the Impugned APAR for the year 2015-16 is liable to be quashed.

15. The learned counsel for the petitioner submitted that the petitioner was not facilitated an option of submitting a self appraisal report prior to initiating the Impugned APAR, due to being on OSL. He submitted that the said action of the respondent was arbitrary and capricious, and denied him the opportunity of being heard before such a drastic measure was taken against him, that is, assigning a below benchmark APAR grading. Reliance was placed on the decision of the Supreme Court in *Sukhdeo vs. Commissioner Amravati Division*: (1996) 5 SCC 103.

16. The learned counsel for the petitioner submitted that there is a stark change in reporting in the Impugned APAR, wherein it is mentioned that petitioner is "A medium statured and medium built SO who has adequate intelligence" as compared with the remarks from the previous APAR for the year 2014-15, where he was described as a "A tall, smart, physically fit, and energetic SO". He submitted that such contradictory reporting about the physical stature of a person suggests that the adverse remarks were made with malafide intent.

17. Finally, he submitted that the below benchmark APAR grading for the period 2015-16 will have a devastating effect on the career prospect and service trajectory of the petitioner, which will delay his Promotions and other Consequential Benefits.

Submissions of the Respondents

18. On the other hand, the learned counsel for the respondents, while seeking dismissal of the writ petition, submitted that while the petitioner was undergoing the SI (DE) training, he had extended his notice for resignation from Service, which was accepted by the DIG, Subsidiary Training Centre, BSF, Bangalore with effect from 19.10.2012. However, the petitioner later submitted an application to the Competent Authority for withdrawal of his resignation notice, pursuant to which the petitioner was reinstated in BSF, and was asked to report to STC, BSF, Bangalore on 16.01.2013, where the petitioner underwent basic training for SI (DE).

19. He submitted that the petitioner's grading in the Impugned APAR was based on his performance under the command of the concerned Reporting Authority and in consonance with Instructions, 2012. The petitioner was assigned the duties of Platoon Commander from 01.04.2015 to 26.02.2016. However, he proceeded on 30 days of EL and remained OSL for a period 331 days. During the limited period that he performed his duties as Platoon Commander, the Reporting

Authority assessed his performance and the same was found to be 'Average'.

20. The learned counsel for the respondent further submitted that even subsequent to the petitioner joining his duties after his OSL, the petitioner was not showing keen interest in discharging his duties and thus, was accordingly graded in his APAR.

21. The learned counsel for the respondent, while drawing our attention to Ministry of Home Affairs (MHA) (Pers-II Desk), UO No. 1-45020/7/2014/Pers-II dated 02.09.2014, clarified that DOP&T's OM dated 14.05.2009, does not provide for a further representation or appeal once the Competent Authority has decided on the officer's initial representation or appeal against adverse remarks or below benchmark grading in the APAR. Since the petitioner's first representation was rejected, the petitioner was not entitled to make a second representation.

22. He submitted that the assessment of the petitioner made in the APARs for the period of 2014-15 and of 2016-17 was endorsed by different Reporting Officers and cannot serve as a basis for a challenge to the Impugned APAR for the year 2015-16, as the performance of an officer must be evaluated each year independently for ensuring fair assessment.

23. The learned counsel for the respondents submitted that the petitioner overstayed his leave from 28.03.2016 to 07.05.2017, for a total of 331 days, which was regularised by an Order dated 04.01.2019. Due to the petitioner's extended period of OSL, his APAR for the period from 01.04.2015 to 31.03.2016 was initiated by the Reporting Authority in accordance with paragraph 2.34 and 2.46 of the Instructions, 2012. Therefore, APAR was endorsed without recording the petitioner's self-appraisal report.

24. The learned counsel for the respondent further submitted that the difference in the remarks with respect to physical stature, is merely a difference of opinion between one Reporting Authority and another. Furthermore, physical stature, by itself, does not account for the entire APAR and there are various other aspects given consideration and carefully observed by the Reporting Authority for the relevant period, and thereafter, the APAR is endorsed.

25. He further contended that Anand Sarup(supra), the case relied upon by the petitioner, does not apply in the present case as the petitioner's OSL period had no bearing on his Impugned APAR.

Analysis and Findings

26. We have heard the learned counsels for both the parties and perused the record.

27. Before dealing with the rival contentions raised on behalf of the parties, incipiently, it would be appropriate to refer to Instructions, 2012 issued by Directorate General, BSF, New Delhi, relied upon by the parties.

28. The aim of writing APARs is explained in Chapter 1, Clause 1.8 of the

Instructions, 2012, which provides that the APAR is to have an objective assessment of an individual's professional and personal qualities, competence, personality, integrity, and employability, and to provide the individual appropriate feedback and guidance for correcting his deficiencies, and to improve his performance to serve the interest of enhancing efficiency of the Force.

29. The Instructions, 2012 emphasize that the Reporting and the Reviewing Authorities are required to make an analysis with respect to assessment of work output, personal attributes, and functional competency of an individual, for which they are required to grade them on a scale of '1' to '10', and different weightage is provided for the assessment of the abovementioned sections.

30. The assessment of the performance also requires a Pen Picture of the individual with regards to the performance, conduct, behavior, and potential of such individual, keeping in mind the distinction between what is a fact and what is an opinion. Further, there should be definite correlation between the Pen Picture of the officer in question and the marks allotted to him in various attributes. The Pen Picture should not be sketchy and too brief, rather, it should amply describe the qualities and shortcomings of an officer, so that one is able to make out the personality, potential, character, attitude, intelligence, industry, aptitude etc., for the same. The Pen Picture should include the reasons for awarding lower than average marks by the Reporting and Reviewing Authorities. In addition, the Reporting Authority and the Reviewing Authority are required to refer to various inspection reports prepared periodically while endorsing their remarks on the APAR of an officer.

31. The Pen Picture is followed by the grading assigned by the Reporting and the Reviewing Authorities, who should ensure that the grading is balanced and not recklessly made in an irresponsible manner. The assessment report of a government employee is a privileged document, which involves a tremendous responsibility on the part of the Reporting and the Reviewing Authorities, and therefore, it is essential that the APAR is filled with due care and attention and the said task should not be casually undertaken. Any adverse/advisory remarks must be communicated to the assessee, so that the assessee knows about such shortcomings and can make efforts to rectify them.

32. In the light of the aforesaid, it is relevant to refer to the Impugned APAR, which reads as under: -

"BORDER SECURITY FORCE

ANNUAL PART PERFORMANCE

ASSESSMENT REPORT

(APAR)

For the period from 01/04/2015 to 31.03.2016

… … …

1. Please state whether you agree with self appraisal, if not please furnish factual details

The SO in OSL therefore APAR has been submitted without self appraisal

2. Personal

(a) FPET STD-Qualified/Not qualified-Qualified Very Good

(b) ARCF STD-FC

3. Attitude of official towards superior as well as troops under command-
Restrained and

4. Assessment of work output, Grades should be assigned on a scale of 1-10
Weight age to this section will be 40%

Reporting Authority

Reviewing Authority

Initial of Reviewing Authority

(a)

Interest and performance in various training courses

3

3

Sd/-

(b)

Supervisory skills

3

3

Sd/-

(c)

Efficiency of work

3

3

Sd/-

(d)

Performance of exceptional work/unforeseen task assigned

3

3

Sd/-

Total Score

12

12

Sd/-

Average Score

3

3

Sd/-

Weighted Average

1.2

1.2

Sd/-

5. Assessment of Personal Attributes, Grades should be assigned on a scale of 1-10 Weight age to this Section will be 30%

Reporting Authority

Reviewing Authority

Initial of Reviewing Authority

(a)

Attitude to work

3

3

Sd/-

(b)

Sense of responsibility

3

3

Sd/-

(c)

Maintenance of discipline

3

3

Sd/-

(d)

Communication skills

4

4

Sd/-

(e)

Leadership qualities

3

3

Sd/-

(f)

Capacity to work in team spirit

3

3

Sd/-

(g)

Capacity to work in time limit

3

3

Sd/-

(h)

Inter personal relations

4

4

Sd/-

(i)

Appearance and bearing

4

4

Sd/-

Total Score

30

30

Sd/-

Average Score

3.33

3.33

Sd/-

Weighted Average

1.0

1.0

Sd/-

6. Assessment of Functional Competency, Grades should be assigned on a scale of 1-10 Weight age to this Section will be 30%

Reporting Authority

Reviewing Authority

Initial of Reviewing Authority

(a)

Knowledge of Rules/Regulations/Procedures in the area of function and ability to apply them correctly

3

3

Sd/-

(b)

Coordination ability

3

3

Sd/-

(c)

Ability to motivate and develop subordinates/work in a team

3

3

Sd/-

(d)

Interest in welfare to Troops

3

3

Sd/-

(e)

Decisiveness

3

3

Sd/-

(f)

Resource management

3

3

Sd/-

Total Score

18

18

Sd/-

Average Score=*6

3

3

Sd/-

Weighted Average-y*0.3 C

(C)=0.9

(C)=0.9

Sd/-

7. Integrity this Column should be filed as per instructions issued under MHA OM No. 51/4/64-Estt(a) dated 21 June 65 (Please see Part V Integrity of ACR Procedure & Instructions Booklet-2003)

Comments of IO

Comments of RO

Comments of A/Auth

Beyond Doubt Sd/-

Beyond Doubt Sd/-

Beyond Doubt Sd/-

8. PEN PICTURE of the Subordinate officer reported upon by reporting officer. (Please comment in about 100 words on the overall qualities of the Subordinate officer including areas of strengths and lesser strengths.

A medium statured and medium built SO who has adequate intelligence. He is self-reliant and restraint in terms of discipline"

9. Overall grade (on a score of 1-10) (A+B+C)=3.1

Date:-

Signature of Reporting/

Initiating Authority with date

Name:

Designation:

Part IV-Review

1. Remarks by the Reviewing officer to indicate specifically the differences if any with the assessment made by the reporting officer and the reasons therefore.

I Agree

2. Overall grade on a Scale of 1-10(A1+B1+C1)=3.1 Date:

Signature of Reporting/

Initiating Authority with date

Name:

Designation: Second in Command

41 BN BSF

Part V (a) Technical/ADM Remarks (as applicable)

Date:-

Signature

Name

Designation

(b) Other Remarks (if any) Date:-

Signature

Name

Designation

Part VI-Acceptance

1. Do you agree with the remarks of the reporting/reviewing authorities:-Yes

2. In case of difference of opinion details and reasons for the same may be given

I Agree

3. Overall Grade (on a score of 1-10)=3.1 Date: 27.09.2016

Signature of Reporting/Initiating Authority with date Name:

Designation: Commandant

41 BN BSF"

33. The petitioner was communicated a copy of the aforesaid Impugned APAR, on 04.09.2016, stating that the substance of remarks recorded in his APAR is mentioned as below:

"He is self reliant and restrained in terms of discipline. I grade him 'Average'."

34. In the light of the above, it must be noted that the Reporting Authority, in the Pen Picture, has not explained the manner in which the petitioner was restrained in terms of discipline or was self reliant, if self-reliance can be stated to be a negative attribute. The most glaring part of the APAR for the year 2014-15 and the Impugned APAR is the Pen Picture in the two APARs, describing the personality attributes of the petitioner. In the APAR for the period 02.08.2014 to 30.04.2015, the petitioner has been described as "A tall, smart, physically fit and energetic SO" and his overall grading is '6.3', whereas, in stark contradiction to the above, in the Impugned APAR, it is stated that the petitioner is of "A medium stature and medium built". From the bare perusal of the two Pen Pictures in the APARs for two different periods, they appear inconsistent with

regards to the physical appearance of the petitioner. It is not possible that the same person could have been described as, "A tall, smart and physically fit" and in the next year, be described as of "medium stature". In any case, the impugned APAR does not give any particular incident or any prior warning or Memo issued to the petitioner regarding the negative attributes ascribed in the Pen Picture.

35. In this regard, we may note the observations made by the Court in *Sanjeev Dhundia v. Union of India*, 2020 SCC OnLine Del 1842:

"19. …Writing in the APAR that the petitioner had not shown initiative or had to be prodded or had to be nudged into action, without quoting specific instances, which were also followed up and substantiated by written advisories for improvement, and relying on letters sent in the early part of the assessment year, which in any case do not qualify as advisories, to make such adverse remarks in the APAR, leaving no opportunity for the petitioner to improve his performance, militates against principles of natural justice and the objectives of recording the APARs. No efforts seem to have been made by Respondent 4 to find out the causes why the performance of the petitioner who was an „outstanding? officer had in that year fallen so steeply, and to thereafter, make efforts to remove the issues interfering with excellence in performance of his duties. Moreover, when no written advisories were issued to the petitioner to improve his performance, it cannot be concluded that the petitioner had continued with unsatisfactory performance despite cautioning and opportunities to improve, to substantiate the adverse remarks recorded by Respondent 4."

36. In the present case, the Pen Picture of the petitioner in the Impugned APAR is sketchy and brief, and thus, does not provide for the adverse grading for the potential, character, attitude, and aptitude of the petitioner. The Impugned APAR further does not provide the reasons for awarding the 'Average' remark for the petitioner. In absence of any written advisory, it cannot be said that the performance of the petitioner was unsatisfactory during the relevant period. Also, he had no opportunity to improve upon his work performance as no deficiency was informed to him.

37. Another interesting aspect is that both the Reporting and the Reviewing Authorities, while making an assessment regarding the work output and functional competence, have given the same numerical grading for every aspect, which seems highly improbable. It is further evident that the Reviewing and Accepting Officers, in a casual manner, have concurred with the remarks endorsed by the Reporting Officer.

38. What emerges from the record is that the Reporting Authority, in the Impugned APAR, did not mention the petitioner's OSL as a reason for reporting him as 'Average'. There is no finding or reference in the Impugned APAR to the effect that petitioner's leave status was the basis for the said below benchmark grading. It is an admitted position that even otherwise, the OSL was subsequently regularized by the respondents. The learned counsel for the

petitioner had vehemently submitted that once the leave was regularized, the petitioner should not be made to suffer on the ground of OSL. To appreciate the plea of the petitioner, it is relevant to refer to the case of Anand Sarup, (supra), wherein this Court has observed as under:-

"22. … Once the said overstay is held to be regularised, there can be no hurdle in granting the Petitioner the proforma promotion in his parent cadre as Inspector with effect from 2nd June, 2005. It is ordered accordingly."

39. In view of the above, it emerges that OSL status can have no impact on the assessment in the Impugned APAR. Even though the Reporting Authority has not mentioned that the OSL was the reason for reporting below benchmark grading, nonetheless, once the OSL has been regularized by the Competent Authority, it becomes inconsequential. Consequently, no action should be initiated against an officer solely on the basis of such overstay. Thus, in the present case, once the OSL of the petitioner was regularised, the same could not have been the basis to downgrade the petitioner.

40. The learned counsel for the respondents has submitted that as per the MHA (Pers-II Desk), UO No. 1-45020/7/2014/Pers-II dated 02.09.2014, no second appeal lies against the adverse remarks/below benchmark grading in the APAR after the first appeal has been decided by the Competent Authority, which is the next senior authority to the Accepting Authority. The relevant extracts thereof read as under:

"3. In a proposal of CRPF, clarification was sought by this Ministry from DoP&T regarding scope of second appeal in a case where the first appeal made under DoP&T's OM dated 14.5.2009 has been rejected by the competent authority. The DoP&T has clarified that DoP&T's OM dated 14.5.2009 does not provide for further representation/appeal after the Competent Authority has decided on the 1 st representation/appeal submitted by the officer reported upon against the adverse remarks/below benchmark grading in his APAR.

4. All CAPFs & AR are, therefore, requested not to entertain the 2 nd appeal/representation against the adverse remarks/below benchmark findings in APAR after the 1 st appeal/representation is decided by the competent authority (the authority next senior to the accepting authority)."

41. In the present case, on the representation dated 25.02.2019 made by the petitioner to the superior authority, the IG had reviewed the findings of the Reporting and the Reviewing Authorities, and thereafter, improved the overall grading of the petitioner from '3.1' to '6.0', and had given findings, which read as under:-

"Examined the representation of the SO, he has been awarded 3.1points for the APAR 2015-16 and reasons for awarding below bench mark grading by the IO/RO seems not justified as no warning was issued to the SO. Further the other APAR of the SO for the period 2014-15 and 2017-18 are VERY GOOD. In view of above,

APAR of the SO for the period 01.04.2015 to 31.03.2016 is upgraded from 3.1 to 6.0 Points.”

42. As per (MHA) (Pers-II Desk), UO No. 1-45020/7/2014 Pers-II dated 02.09.2014, no second appeal lies against the adverse remarks/below benchmark grading in an APAR after the first appeal has been decided by the Competent Authority. The numerical grading given by the IG, being the second Appellate Authority, therefore, has no bearing in the present case. However, even without considering the upgradation made by the IG, we find that the remarks and grading given by the Reporting and Reviewing Authorities are blatantly erroneous and warrant setting aside.

43. In light of the above, in the impugned APAR, the petitioner has been graded as 'Average' with a score of 3.1, however, no justifiable reason or an incident has been mentioned for recording the adverse remarks and below benchmark grading, therefore, the adverse remarks/grading in the impugned APAR deserves to be set aside.

44. In view of the foregoing analysis, the writ petition is allowed to the extent that the Impugned APAR for the period between 01.04.2015 to 31.03.2016 is quashed. It is further made clear that the respondents shall not consider the said Impugned APAR for any kind of assessment related to the petitioner in the future.

45. Application, if any pending, is also disposed of.