

(2021) 11 DEL CK 0090

In the Delhi High Court

Case No : Civil Writ Petition No. 12681 Of 2021

Rahul Vashishtha

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 12-11-2021

Acts Referred:

Citation : (2021) 11 DEL CK 0090

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Dr.S.S. Hooda, Jivesh Kumar Tiwari, Anirudh Shukla

Final Decision : Disposed Of

Judgement

Navin Chawla, J

1. The hearing has been conducted through video conferencing.
2. The present writ petition has been filed challenging the order dated 21.09.2020 passed by the Directorate General, Border Security Force rejecting petitioner's Representation against the impugned adverse remarks in his UN Mission Performance Appraisal Report for the period 20th January 2015 to 17th October 2015 (hereinafter referred to as "UNPAR"). The petitioner further seeks directions to the respondents to expunge the impugned adverse remarks in the petitioner's UNPAR.
3. In the alternative, the petitioner seeks directions to the respondents to not rely on the petitioner's UNPAR for any purpose. The petitioner also seeks grant of Non-Functional Selection Grade (hereinafter referred to as "NFSG") from the date he was eligible.
4. Learned counsel for the petitioner states that the petitioner, while being posted with 139Bn of the Border Security Force (hereinafter referred to as "BSF"), proceeded on deputation as part of the Indian contingent to the United Nations Stabilization Mission in Haiti as a member of the IFPU-3 (Indian Formed

Police Unit-3). He submits that the deputation commenced from 20.01.2015 and the petitioner was to be deployed there for a period of one year. The impugned UNPAR pertains to the period while the petitioner was serving in Haiti.

5. He states that during his stint at Haiti, the petitioner had questioned various illegal acts of the respondent No. 3, the Commandant, BSF. The respondent No. 3, being the Reporting Officer of the impugned UNPAR, has let his personal vindictiveness and malice towards the petitioner overshadow the factual scenario in giving the impugned adverse remarks in the petitioner"s UNPAR.

6. He points out that this flawed and baseless assessment has led to the petitioner not being granted NFSG while officers junior to the petitioner have been granted NFSG.

7. He emphasizes that the respondents relied on the said UNPAR, which at the relevant time had not been communicated to the petitioner for denying NFSG to the petitioner. He submits that this goes against the settled principle of law that un-communicated remarks cannot be used to deny any benefits to an employee.

8. He states that as per United Nations Department of Peacekeeping Operations Standard Operating Procedures on Performance Appraisals of United Nations Police Officers (hereinafter referred to as "DPKO SOP"), the final performance appraisal must be completed prior to the check-out and end of tour of the concerned Police Officer. However, the impugned UNPAR was initiated after a period of 119 days from the date of departure of the Petitioner from Haiti, which is an inordinate delay for initiating performance report.

9. He states that since the petitioner is a member of the BSF, his Annual Performance Assessment Report (hereinafter referred to as "APAR") has a periodicity of 1st April of a year to 31st March of the next year. However, impugned UNPAR was issued for January 2015 to October 2015 which does not fall within the periodicity of the BSF APAR and is in violation of the Ministry of Home Affairs Office Memorandum dated 20.05.1972.

10. He submits that as per DPKO SOP, performance appraisal of each officer must be completed for each period of six months of continuous service. In the present case, however, it has been done for a period of 10 months in violation of the said Standard Operating Procedures.

11. Placing reliance on the Office Memorandum dated 05.11.2002, the learned counsel for the petitioner submits that only the Annual Confidential Report reported and reviewed by the UN authorities can be accepted by the respondent. In the present case, however, as there was no annual appraisal of the petitioner, UNPAR cannot be considered against the petitioner for any purpose.

12. He also points out that the impugned UNPAR has been communicated to the petitioner in January 2020, after an inordinate delay of 5 years. He submits that petitioner"s representation against the UNPAR has been decided in a very cavalier manner without going into the merits of the dispute. He submits that

mechanical reliance was placed on the report of the Initiating Officer and the Contingent In-Charge, without appreciating that the petitioner had raised serious concern on the integrity of the Initiating Officer.

13. The learned counsel for the petitioner further contends that the petitioner in all his previous and post APAR/PPAR has never been awarded an overall grade of less than 7. Placing reliance on the judgments of the Supreme Court in *Dev Dutt v. Union of India & Ors.*, (2008) 8 SCC 725; *Sukhdev Singh v. Union of India & Ors.*, (2013) 9 SCC 566 and *State of Uttar Pradesh v. Yamuna Shanker Misra & Anr.*, (1997) 4 SCC 7, he submits that the impugned UNPAR is liable to be set aside by this court on this ground alone.

14. We have considered the submissions made by the learned counsel for the petitioner, however, find no force in the same.

15. At the outset it is noted that the petitioner was issued a Counselling Letter dated 28.05.2015 issued by the Inspector General, BSF, which reads as under:

" It's well-known fact that the BSF Contingents deployed on UN Mission have been selected by a high level Board of Officers to bring the honours & glories for the Force by serving abroad under United Nation. I have no hesitation to mention here that the present contingent deployed at Haiti also comprises most suitable and deserving officers of the Force.

2. However, of late, it has been noticed that BSF Contingent deployed at Haiti on UN Mission is being misrepresented in the eyes of UN HQ due to leveling allegations against the superior officers of the Contingent.

3. On going through the recent state of affairs at the Contingent prima facie, I could reach at a conclusion that immature act on your part may bring bad name not only to our organization but also to the Nation, which is a matter of serious concern.

4. You are, therefore, suggested to co-operate with the organization in general and the Contingent Commander in particular. If you have any grievances, the same should be brought to the notice of the undersigned first, for its redressal.

Confidential

5. I am looking forward for a good team of officers leading BSF contingent at Haiti and brining laurels for the Nation."

16. Though the petitioner claims to have represented against the above Counselling Letter, the same raises a genuine concern on actions of the petitioner which cannot be ignored while considering his challenge to his UNPAR for the same period/posting.

17. It is also to be noted that the petitioner was repatriated to India mid-term on 17.10.2015. Though the learned counsel for the petitioner asserts that this was at the request of the petitioner, no document in support of such assertion has

been filed by the petitioner along with the present petition.

18. Regarding the submission of mala fide against respondent No. 3, we find that again, barring bald assertions, there is no material placed on record by the petitioner in support of the same. In any case, it is the own assertion of the petitioner that he raised these issues before the Inspector General, BSF, however, Inspector General, BSF issued the above referred Counselling Letter against the petitioner. The Competent Authority therefore, presumably found no merit in the allegations made by the petitioner.

19. Further, the impugned UNPAR has been reviewed by an officer of the UN, against whom there are no allegations of mala fide. Representation there against has also been dismissed. We cannot sit in appeal over such decision.

20. As far as the submission of the learned counsel for the petitioner that in terms of DPKO SOP, the appraisal of an Officer is for each period of six months and should be completed prior to the checkout and end of tour of duty of the concerned Officer, it need only be noted that the petitioner admittedly was repatriated mid-term. This may have been a cause for his UNPAR being recorded for his entire period of stay at Haiti in one go and for delay in completion of the same. In any case, the same having been accepted by the Authorities, the above cannot be a ground to set aside the UNPAR.

21. Similarly, the reliance of the learned counsel for the petitioner on the Office Memorandum dated 05.11.2002 is ill-founded. The said Office Memorandum clearly states that for personnel for whom there is a system of annual appraisal in UN, only the ACR reported and reviewed by UN authorities for the period the personnel are on deputation with UN, is the valid ACR and has to be accepted and taken on record. For other members of the Contingent, the appraisal by Contingent Incharge should suffice. Therefore, either way, there can be no challenge laid to UNPAR placing reliance on this OM as the impugned UNPAR has been reported and reviewed by UN authorities and has been initiated by the Contingent Incharge.

22. We also find no merit in the submission of the learned counsel for the petitioner that because UNPAR is to be recorded for every six months while APAR/PPAR are for a financial year, the same are of no value. UNPAR is for the period of stay of the officer on deputation with UN and cannot be ignored on this ground.

23. In view of the above, we find no merit in the present petition. The same is dismissed. There shall be no order as to cost.