
(2022) 12 DEL CK 0040

In the Delhi High Court

Case No : Civil Writ Petition No. 11041 Of 2021 & CM APPL. 40707 Of 2021 & 3672 Of 2022

Sanjeev Dhundia

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 09-12-2022

Acts Referred:

Citation : (2022) 12 DEL CK 0040

Hon'ble Judges : Suresh Kumar Kait, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Ankur Chhibber, Anshuman Mehrotra, Asheesh Jain, Keshav Mann, Gaurav Kumar, Vivek Goyal, Jitendra Kumar Tripathi

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. The petitioner has preferred the present petition seeking quashing of uncommunicated recommendations of the Departmental Promotion Committee ('DPC') dated 14.07.2021, vide which he has been declared 'unfit for promotion to the rank of Inspector General of Police'. In addition, quashing of order dated 08.09.2021, whereby petitioner has been informed that the Appointments Committee for the Cabinet ('ACC') has removed him from the panel for promotion to the rank of Inspector General of Police in CRPF for the year 2021, is also sought.

2. According to petitioner, he had applied and was appointed to the post of Assistant Commandant in Central Reserve Police Force ('CRPF') in December, 1987. During 33 years of his service, he performed his duties with utmost dedication and hard work. Resultantly, petitioner claims to have received promotions in the rank of Deputy Commandant; Second-in-Command; Commandant and Deputy Inspector General during this period. Petitioner further claims that all his Annual Performance Assessment Reports ('APAR') prior and

subsequent to year 2018-19 have been consistently graded as "Outstanding". However, for the period 01.04.2016 to 16.12.2016, petitioner was graded "Very Good" in his APAR. Being aggrieved, petitioner made a representation to the Ministry of Home Affairs ('MHA') and vide order dated 28.05.2018, upgraded his APAR for the said period was to "Outstanding".

3. On this aspect, petitioner has averred in the petition that on receipt of copy of APAR for another period 01.04.2017 to 31.03.2018 on 02.04.2019 in terms of guidelines dated 14.05.2009 by the Department of Personnel and Training (DoPT), petitioner found that he was awarded only 7.1 marks out of 10, which although meant "Very Good" but certain adverse remarks like "lack of initiative, improvement in welfare of men and weak in inter personal relations" were recorded by the Reporting Officer in the said APAR without prior warning or advisory being issued to him; on the contrary he was awarded "Outstanding" by the DG, CRPF in the said APAR. The petitioner made another representation to the Home Secretary, MHA to expunge the adverse remarks and this time also, vide order dated 28.05.2018, the respondents expunged the same and upgraded it to "Outstanding". Further, the MHA vide order dated 07.01.2020 expunged all the adverse remarks recorded in the APAR for the years 01.04.2017 to 31.03.2018.

4. Thereafter, the Reporting Officer initiated the APAR of petitioner for the period 01.04.2018 to 31.03.2019, the online copy of which was received by the petitioner on 19.09.2019, wherein he was awarded 5.8 marks out of 10. Meaning thereby, the petitioner was awarded grading "Good" with certain adverse remarks like "no welfare activities initiated on his own, behaviour / attitude with staff / men not up to the mark, no control over anger" without ever issuing any notice or advisory to him. Again, the petitioner made a representation to the MHA requesting for expunging of remarks for the year 2018-19, but the same was rejected vide order dated 08.05.2020 on the ground that the assessment of the Reporting Officer was on the basis of performance and behaviour of the officer during the period.

5. Being aggrieved with the arbitrary rejection of his representation by the MHA, petitioner approached this Court vide W.P.(C) 3533/2020 seeking quashing of his APAR for the year 01.04.2018 to 31.03.2019 wherein adverse remarks were made against the petitioner and also the order dated 08.05.2020 of rejection of his representation. The said writ petition was decided by this Court vide judgment dated 21.12.2020 and order dated 08.05.2020 passed by the MHA was set aside and respondents were directed to expunge the adverse remarks and grading "Good" for the period 01.04.2018 to 31.03.2019 and to grant revised benchmark "Very Good" with all consequential benefits; and to ensure that the DPC be constituted to consider petitioner for promotion while ignoring the grading "Good" for the said period.

6. It is averred in the petition that in terms of judgment of this Court dated 21.12.2000 in W.P.(C) 3533/2020, respondents were duty bound to pass an

order for removing the adverse remarks and upgrade the grading from "Good" to "Very Good". It was submitted that petitioner has been holding the rank of Deputy Inspector General since 22.09.2009 and is due for promotion to the rank of Inspector General of Police and fulfils all the eligibility criteria laid down in the CRPF Group 'A' (General Duty) Officers Recruitment Rules, 2010.

7. During the course of hearing, learned counsel appearing on behalf of petitioner submitted that a Signal dated 30.12.2020 was issued by the respondents calling for drawl of panel for promotion of DIGs to the rank of IG for the vacancy year 2021, wherein petitioner was at Serial No.9 in the zone of consideration. It was empathically submitted by learned counsel that during the relevant time, process of implementation of judgment dated 21.12.2000 in W.P. (C) 3533/2020 had commenced and the Ministry of Law as well as learned ASG after examining the case of petitioner recommended it was not a fit case for filing Special Leave Petition ('SLP'). Even thereafter, learned counsel submitted, respondent initiated the process of persuading the ASG to recommend filing of SLP, which was infact a tactic to cause delay in consideration of petitioner's name for promotion. In the meanwhile, Mr.Kuldiep Singh, who was the Reviewing Authority of the APAR for the year 2017-18, which was directed to be set aside by MHA; took over the charge of Director General of CRPF.

8. It was further submitted by learned petitioner's counsel that since there was huge delay in implementation of the order dated 21.12.2020 in W.P.(C) 3533/2020 passed by this Court, the petitioner preferred a contempt petition i.e. CONT. CAS 423/2021 against the respondents before this Court, wherein vide Order dated 12.07.2021, this Court directed the respondents to consider the APAR of the petitioner in terms of judgment dated 21.12.2020 and DPC was required to be communicated the same. Yet again, respondents put up a fresh proposal before the learned ASG to consider the case of petitioner for filing SLP, which was turned down reiterating the earlier opinion.

9. Learned counsel next submitted that despite judgment dated 21.12.2000, the respondents did not pass any administrative order to set aside adverse remarks and up-gradation of petitioner's APAR. It was submitted by learned petitioner's counsel that in the DPC convened on 14.07.2021, the name of the petitioner was considered for promotion to the rank of Inspector General of Police, however, petitioner was issued an advice letter on 23.08.2021 by the Director General of CRPF.

10. Thereafter, an order dated 08.09.2021 was issued by the respondents, wherein the Appointment Committee of the Cabinet approved empanelment of seven officers for promotion to the rank of Inspector General, however, excluded the petitioner. Learned counsel for petitioner submitted that had the petitioner been empanelled, he would have been at Serial No.6 on 01.10.2021, after superannuation of an officer on 30.09.2021. Learned counsel next submitted that in terms of DoPT's notifications dated 08.05.2017 and 27.08.2021, which provides that ACRs/APARs of last five years immediately preceding the vacancy/

panel years, have to be considered irrespective of the date of convening of DPC. It was submitted that in the present case, the vacancy year was 2020-21 and so, the APARs up to the year 31.03.2019 were required to be considered and petitioner's APARs for the year 2010 till 2018 has been "outstanding" and for the year 2019 has been "Very Good" despite that, respondents did not recommend the name of petitioner for promotion.

11. Learned counsel for petitioner submitted that despite there-being no disciplinary proceedings/ vigilance pending against him and holding Shape-I medical category in the present rank, respondents in connivance with Mr.Kuldiep Singh, who had put adverse remarks in petitioner's APAR, which were set aside by this Court vide judgment dated 21.12.2020 and also issued an advice dated 23.08.2021 to the petitioner, got promoted to the rank of Director General of Police; have deliberately not complied with the judgment dated 21.12.2020.

12. Learned counsel for petitioner submitted that on superannuation of one Inspector General of Police, one vacancy get due on 01.10.2021, but due to order dated 08.09.2021, the petitioner apprehends that he will be ignored and the next eligible officer will be promoted. Hence, the petitioner seeks quashing of un-communicated recommendations of the DPC dated 14.07.2021 and 08.09.2021 and writ of mandamus directing the respondents to conduct a review DPC in compliance of judgment dated 21.12.2020.

13. On the other hand, the stand of respondent in the counter affidavit is that pursuant to directions of this Court vide Judgment dated 20.12.2020, DPC was held on 14.07.2021 to draw a panel for promotion to the rank of Inspector General (IG) in CRPF to fill 06 vacancies for the year 2021, wherein petitioner's case was also considered. In the said DPC, in terms of directions of this Court, petitioner's APAR grading the year 01.04.2018 to 31.03.2019 was considered as "Very Good" without any adverse remarks. Pursuant to the recommendations of the DPC, the MHA vide its order dated 08.09.2021 conveyed the approval of the ACC for empanelment of the DIGs for promotion to the rank of Inspector General for the panel year 2021, wherein petitioner was not considered. It was submitted that based on the approval of ACC, the order dated 08.09.2021 has been issued by respondent No.1 and thereby, quashing of un-communicated recommendations of the DPC dated 14.07.2021 is unjustified.

14. Learned counsel submitted that the directions passed by this Court vide judgment dated 21.12.2020 stand fully complied with by the respondents and subsequent upon respondents' filing compliance affidavit dated 18.09.2021, the contempt petition [CONT.CAS 423/2021] filed by the petitioner stood dismissed as withdrawn.

15. Learned CGSC reiterated that Judgment dated 21.12.2020 was apprised to the DPC convened on 14.07.2021 and the APAR of the petitioner for the period 01.04.2018 till 31.03.2019 was considered as "Very Good" without any adverse remarks and further, the MHA vide its Order dated 08.09.2021 has conveyed the

approval accorded by the ACC for empanelment of the DIGs for promotion to the rank of Inspector General for the year 2021. However, since name of petitioner is not recommended, the prayer of petitioner for conducting the review DPC by complying the above judgment dated 21.12.2020 is beyond the scope of applicable rules.

16. In support of above submissions, learned CGSC placed reliance upon "Guidelines on Departmental Promotion Committee" notified vide office Memorandum No. 22011/5/86-Estt. (D) dated 10.04.1989 issued by the DoPT-Ministry of Personnel, Public Grievances and Pensions to submit that review DPC can only be conducted in limited cases. It was submitted that it is not the case that respondents did not consider petitioner's name in the DPC; rather his name was mentioned at Serial No.9 of the list of candidates for promotion to the post of Inspector General and there is no allegation of wrong procedure adopted by the DPC.

17. Reliance was placed upon decision of Hon'ble Supreme Court in Union of India & Anr. Versus S.K.Goel & Ors. (2007) 14 SCC 641 wherein it is held that "DPC enjoy full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it. Hence, the interference by the High Court is not called for". It was submitted that the DPC enjoys full discretion to assess the suitability of a candidate for consideration of promotion.

18. It was next submitted that overall grading is a guiding factor and not decisive factor for DPC to consider the case of a candidate for promotion. Reliance was placed upon Office Memorandum bearing No. 22011/3/2007-Estt(D) dated 18.02.2008 whereby DPC guidelines were issued specifying that DPC is required to make its own assessment on the basis of entries in the ACRs and not be guided by overall grading and thereby, consideration of overall grading of 05 previous years is only a guiding factor and liable to be rejected. Further reliance was placed upon another decision of Supreme Court in Union of India & Ors. Vs. S.P. Nayyar (2014) 14 SCC in support of above submissions. Reliance was also placed upon decision in Union of India And Others Vs. K.V.Jankiraman and Others (1991) 4 SCC 109 in support of respondents' case.

19. With regard to petitioner's plea of biasness that Mr.Kuldiep Singh was the part of DPC who rejected petitioner's candidature for promotion, learned CGSC submitted that by virtue of the provisions of Central Reserve Police Force Group 'A' Officers (General Duty) Recruitment Rules, 2010, the DPC has to be convened comprising of (i) Secretary Ministry of Home Affairs as Chairman (ii) Director General, CRPF as Member (iii) Director General from other Central Police Organization as Member; and (iv) Special Secretary/Addl. Secretary, MHA as Member. Thus, Mr. Kuldiep Singh was not the final authority but one of the member of the DPC and it does not mean that all other Members/Chairperson of the DPC were also biased. Lastly, it was submitted that the present petition is lacking merit and deserves to be dismissed.

20. In rebuttal, learned counsel appearing on behalf of petitioner submitted that despite judgment dated 21.12.2020, directions issued by this Court were not complied with and the file kept moving from one desk to another to consider whether SLP was required to be filed or not. Even after clear recommendations of the Ministry of Law and ASG that no SLP was required to be filed; the respondents made another effort to convince the ASG to file SLP only to kill time. Even at the time of consideration of petitioner's name in the DPC, respondents though kept the name of the petitioner in the zone of consideration but ignored him for appointment; meantime Mr.Kuldiep Singh took over the charge of Director General of CRPF.

21. In support of above submissions, learned counsel placed reliance upon decision of High Court of Bombay in Shri Premanad G. Phadte Vs. State of Goa, through the Secretary & Ors. 2016 SCC OnLine Bom 9829 wherein direction was issued to convene review DPC, since the recommendations of the DPC were vitiated. Reliance was also placed upon decision of this Court in Avtar Singh Arora Vs. Union of India and Ors. 2019 SCC OnLine Del 11559 wherein review DPC was directed to be held and if found fit, notional promotion from back date was directed to be given. Hence, learned counsel submitted that the petitioner vide present petition is seeking quashing of illegal and arbitrary decisions of the respondents, deserves to be allowed.

22. The arguments advanced by learned counsel representing both the sides were heard at length and the decisions relied upon by learned counsel for the parties were also adverted to.

23. Upon perusal of material placed before us, we find that till the year 2018-19, petitioner's APARs have been graded as "Outstanding". When upon receipt of copy of APAR, petitioner found that for the period 01.04.2017 to 31.03.2018, he was awarded low marks and his grading was "Very Good" and certain adverse remarks were also given by the Reporting Officer; he made a request to the Home Secretary, MHA for reconsideration of his APAR and vide order dated 07.01.2020, the remarks were expunged and he was awarded grading as "Outstanding". The aforesaid order dated 07.01.2020 reads as under:-

"DIRECTORATE GENERAL, CRPF,

BLOCK NO.1, CGO COMPLEX, LODHI ROAD, NEW DELHI-110003

(Ministry of Home Affairs)

No.R.XIII.02/2019-DA-13(APAR) Dated, the Jan., 2020.

::ORDER::

WHEREAS, APAR for the period from 01/04/2017 to 31/03/2018 of Shri Sanjeev Dhundia, DIG (IRLA-2663) of O/o IG, West Bengal Sector, CRPF was graded as 'Very Good' by Shri S. Raveendran, IPS, IG, West Bengal Sector, the Reporting Officer and Shri Kuldiep Singh, IPS, ADG, CZ, the Reviewing Officer. Shri Rajeev

Rai Bhatnagar, IPS, DG, CRPF, the Accepting Authority had accepted the APAR and he was graded as 'Outstanding'. The following remarks were endorsed in APAR of the Officer by the Reporting and Reviewing Officers:-

Xxxxxxxxxx

Xxxxxxxxxx

6. NOW, THEREFORE, after considering the representation of the officer and all documents on record, MHA has conveyed approval of Hon'ble Home Secretary to expunge the impugned remarks as mentioned at para-1 above. Therefore, the all adverse remarks recorded in APAR for the period from 01/04/2017 to 31/03/2018 (Year 2017-18) of Shri Sanjeev Dhundia, DIG (IRLA-2663) are hereby expunged accordingly.

(Annie Abraham)

DIG(CR& VIG)

Shri Sanjeev Dhundia, DIG

(IRLA-2263) W.B. Sector HQr

(Through IG, W/B Sector, CRPF Kolkata)

No. R.XIII.02/2019-DA-13(APAR) Dated, the 07Jan, 2020"

24. Again on receipt of online copy of APAR for the further period from 01.04.2018 to 31.03.2019, petitioner found that the marks awarded were very low which, determined his grading as "Good" and again there were certain adverse remarks too and so, he again made a representation to the MHA for expunging of remarks as well as reconsideration of his APAR. However, his representation was rejected vide order dated 08.05.2020. The said rejection order reads as under:-

"DIRECTOREATE GENERAL, CRPF,

BLOCK NO.1, CGO COMPLEX LODHI ROAD, NEW DELHI-110003

(Ministry of Home Affairs)

NO.R.XIII 20/2019-DA-13(APAR) Dated: May 2020

ORDER

AND, WHEREAS, APAR for the period from 01/04/2018 to 31/03/2019 of Shri Sanjeev Dhundia, DIG (IRLA-2663) of O/o IG Raveendran, IPS, IG, West Bengal Sector, CRPF was graded as 'Good' by Shri s, Raveendran, IPS, IG West Bengal Sector (the Reporting Officer), Shri Rajeev Rai Bhatnagar, IPS, DG, CRPF, the Accepting Authority. The Reporting Officer had endorsed some adverse remarks at Part-III (Appraisal) and at Part-V (Pen Picture).

5. AND, WHEREAS, the matter has been examined/ considered by the Hon'ble

Home Secretary, MHA and it has been observed that, the assessment of the Reporting Officer has been made on the basis of the performance and behaviour of the Officer during the period under report and Reporting Officer has also been agreed to the assessment by the Reviewing Officer. Thus, the representation of Shri Sanjeev Dhundia, DIG for upgrading his APAR from good to 'Very Good' and expunging the adverse remark recorded in his APAR for the period from 01.04.2018 to 31.03.2019 (2018-19) does not merit consideration.

6. NOW THEREFORE, considering the representation of the Officer with the documents relevant to the case, the Hon'ble Home Secretary, MHA GOI has rejected the representation dated 03/10/2019 due to observations as at Para-5 above."

25. Being aggrieved, petitioner preferred writ petition being W.P.(C) 3533/2020 before this Court seeking quashing of his APAR for the year 01.04.2018 to 31.03.2019 wherein adverse remarks were made against the petitioner and also the order dated 08.05.2020 passed by the MHA/respondents, as noted above, whereby his representation was rejected. The said writ petition was disposed of by this Court vide Judgment dated 20.12.2020, holding as under:-

"20. In the circumstances, we find no justification for the respondent No.4 to have recorded adverse remarks and to have downgraded the petitioner to the grading of "Good" in the APAR of the petitioner for the period 1st April, 2018 to 31st March, 2019. The order dated 8th May, 2020 rejecting the representation of the petitioner against the adverse remarks and downgrading without considering all these factors and reflecting a non-application of mind, deserves to be and is hereby set aside. The respondents are directed to expunge the adverse remarks and the grading of 'Good' for the relevant period i.e. 1st April, 2018 to 31st March, 2019 and to grant all consequential benefits to the petitioner including a revised benchmark grading of 'Very Good' and to ensure that the DPC, which may be constituted to consider the petitioner for promotion as and when it is due, shall ignore this grading of "Good" for the said period, for the purposes of promotion of the petitioner."

26. Upon perusal of judgment dated 20.12.2020 passed by this Court, we find that in the APAR of petitioner for the period 01.04.2018 to 31.03.2019, this Court had directed the respondents to expunge the adverse remarks and revise his grading from "Good" to "Very Good". This Court also directed the respondents to constitute DPC and grant petitioner all consequential benefits. However, we find that respondents took considerable long time to decide whether SLP against the judgment dated 20.12.2020 was required to be filed or not and despite recommendation of the Ministry of Law and ASG in the first place that no SLP was required to be filed, second opinion was also sought, which further delayed implementation of judgment dated 20.12.2020 and no administrative order was passed. In the meantime, the DPC for promotion to the post of Inspector General (IG) was convened on 14.07.2021, wherein though name of petitioner was kept in consideration zone but vide letter order dated 08.09.2021 issued by the

respondents, seven officers were considered for promotion to the rank of IG, however, petitioner was excluded. Also, in the interregnum an advice letter dated 23.08.2021 was issued to the petitioner.

27. Relevantly, we have gone through the advice letter dated 23.08.2021, which reads as under:-

"No.D.IX-31/2021-CRC

DIRECTORATE GENERAL, CRPF

(Ministry of Home Affairs)

Block No.1, CGO Complex,

Lodhi Road, New Delhi-03

Dated, the 23rd August, 2021

To

Shri Sanjeev Dhundia,

DIG (IRLA-2663)

O/o the IG, RAF Sector, CRPF,

R.K. Puram,

New Delhi-110066.

(Through IG, RAF Sector, CRPF)

Subject: ADVICE

Whereas, you had forwarded a representation direct to Shri Ajay Kumar Bhalla, the Home Secretary vide D.O letter No.O-II-1/2021-APAR dated 09.06.2021, in connection with your own service/personal matters without following the proper channel of submission of representations.

2. And whereas, MHA vide OM No.P.VII-2/2021-Pers.II dated 03.08.2021 has observed that the submission of aforesaid representation by you without following proper channels of submission, by using government stationery, was in violation of Rule 3(i)(iii) of CCS (Conduct) Rules, 1964.

3. And whereas, being a senior officer of the Force, you are expected to be aware of the rules and regulations governing govt. servants and follow the same while making official communication on personal matters.

4. Now therefore, after taking into consideration all aspects relevant to the issue, you are hereby "advised" to be more careful and to ensure adherence of laid down instructions while dealing with such cases in future.

5. The receipt of this letter may be acknowledged.

(Kuldiep Singh), IPS

Director General

28. During the course of hearing in this petition, we had directed the respondents to produce relevant DPC proceeding. At the final hearing, the respondents produced before us the "Minutes of Departmental Promotion Committee Convened at MHA on 14/07/2021 to Consider The Case of Deputy Inspector General (DIG) to Draw Panel For Promotion to The Rank of Inspector General (IG) in CRPF For The Vacancy Year 2021" in a sealed cover. Upon opening the said sealed cover taking note of observations made therein, we find the following criteria has been set for promotion to the rank of IG in CRPF:-

"3. As per CRPF Group 'A' officer (General Duty) Recruitment Rules, 2010 notified vide GSR 679 (E) dated 10/09/2010 as amended vide GSR 209 and 210 dated 03/08/2012, DIsG who have rendered 24 years Group 'A' service including two years as DIG and have successfully completed pre-promotional course as prescribed by DG, CRPF, are eligible for promotion to the rank of IG in CRPF. Besides, the officers should be in the Medical Category Shape-I.

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XXXXXX

6. As per DoP&T OM No. 35034/7/97-Estt (D) dated 08.02.2002 and OM No. 2201/3/2007-Estt. (D) dated 18/02/2008, benchmark grading for promotion to the rank of IG is 'Very Good' and is to be filled by 'selection' mode. Further, the prescribed benchmark of 'Very Good' is invariably to be met in all the ACRs of five years under consideration. The DPC may determine the merit of those being assessed for promotion with reference to the prescribed benchmark and accordingly grade them as 'Fit' or 'Unfit'. The DPC has assessed the records of the eligible officers for the period from 2014-15 to 2018-19 for the vacancy year 2021."

29. It is not disputed by the respondents that petitioner at the time of convening the DPC, was eligible and he fulfilled the criteria as mentioned in Para-3 of the Minutes of Meeting held on 14.07.2021. With respect to eligibility in Para-4 thereof, vide order dated 28.05.2018 passed by the MHA, petitioner was granted grading as "Outstanding" and vide order dated 07.01.2020, respondents expunged all the adverse remarks for the period 01.04.2017 to 31.03.2018 in the APAR of the petitioner. Further, by virtue of decision dated 20.12.2030, the adverse remarks against the petitioner in the APAR for the period 01.04.2018 to 31.03.2019 were expunged and his bench mark was revised from "Good" to "Very Good". However, with respect to petitioner's candidature, the DPC in the Minutes of Meeting held on 14.07.2021 noted as under:-

"

Sr. No.

IRLA

Name

Medical Category

Assessment

Remarks

9.

2663

Shri Sanjeev Dhundia

SHAPE-I 20/10/2020

UNFIT

The DPC considered the APARs of the officer for the period 2014-15 to 2018-19. The DPC observed that the officer is having below bench mark grading "Good" with adverse remarks in APAR for the year 2018-19. The representation of the officer for expunction of adverse remarks and for upgrading his APAR was also rejected. The DPC noted that the pen picture of the Officer carried adverse remarks indicating lack of initiative, mercurial temperament and no control over anger.

The DPC was apprised that Hon'ble Delhi High Court vide Order dated 21.12.2020 has directed the respondents to expunge the adverse remarks and the grading of 'Good' for the year 2018-19 and to grant all consequential benefits to the petitioner including a revised benchmark of "Very Good" and to ensure that the DPC which may be constituted to consider the petitioner for promotion, shall ignore this grading of 'Good' for the said period, for the purposes of promotion of the petitioner.

The DPC was also apprised of Hon'ble Delhi High Court's Order dated 12.07.2021 wherein the DPC has been directed to duly consider the Order ibid dated 21.12.2020.

Keeping in view the aforesaid Order of Hon'ble Delhi High Court, the DPC considered the grading in the APAR of the officer for the period 2018-19 as 'Very Good' without any adverse remarks.

The DPC further observed that in the APAR of the officer for the year 2017-18, the Reporting Officer has recorded that the Officer lacks initiative and in the pen picture column, inter personal relations and soft-skills has been shown as area of weakness. Though, the Competent Authority had expunged adverse remarks in the APAR of the officer for the year 2017-18 on the recommendations of CRPF.

The DPC also noted that the Officer was severely reprimanded advised for his misbehaviour towards a subordinate staff by DG, CRPF vide Order dated

27.12.2019. In an Armed Force, such behaviour towards a subordinate staff is totally uncalled for, specially from a senior officer of the level of DIG. DPC also noted that in his subsequent APAR for the period 01.04.2019 to 23.12.2019, the officer has been graded as 'Good'

As per the DOP&T instructions, the DPC is required to make its own assessment on the basis of entries in the ACRs/APARs and not to be guided merely by the overall grading. The DPC is of the view that the Officer in question is to be considered for promotion to the post of Inspector General, a Senior management level position, which requires him an unblemished record of service.

The DPC giving due regard to the Orders of Hon'ble Delhi High Court, is constrained to grade the officer as unfit, going by the overall records of service."

30. Appositely, in terms of DoPT OM dated 18.02.2008, the ACRs/APARs of last five years have to be considered. Meaning thereby, for the DPC held on 14.07.2021, the five APARs of petitioner from 2015 till 2019 were to be considered. It is pertinent to mention here that the APARs of petitioner for the period 01.04.2015 till 31.03.2015; 01.04.2015 till 14.10.2015; 01.04.2016 till 16.12.2016; 01.04.2017 till 31.03.2018; 27.12.2019 till 31.03.2019; 19.05.2020 till 06.09.2020 were graded as "Outstanding" and for the period 01.04.2018 till 31.03.2019, APAR was graded as "Very Good" and there existed no adverse remarks against him. However, DPC noted all the adverse remarks against the petitioner and noted that petitioner's APAR for the period 01.04.2019 to 23.12.2019 was graded as "Good" and it did take note of the fact that by virtue of judgment dated 20.12.2020, the grading for the said period was upgraded to "Very Good"; but also observed that the post of Inspector General is a Senior Management level position, which requires petitioner to carry an unblemished record of service. Interestingly, though the DPC has taken note of advisory dated 27.12.2019 issued to petitioner, however, the same has been withheld as there is no mention of advisory dated 27.12.2019 issued to the petitioner in the counter affidavit filed on behalf of respondents nor copy thereof has been placed on record. It is the case of petitioner that no advisory was issued to him to mind his behaviour and it is only the time when DPC was in the process, that Advisory dated 23.08.2021 was issued to him. We have also gone through the advisory dated 23.08.2021, as noted above, though we do not wish to comment upon the correctness of the advise issued, however, we find that the contents thereof are not such grave or blemish to deprive petitioner of his next promotion.

31. There is no dispute to the settled legal position set out in decisions in Union of India & Ors. Vs. S.P. Nayyar and Union of India And Others Vs. K.V.Jankiraman and Others (Supra) relied upon by the respondents that DPC has to exercise full discretion to make its own assessment and not to be guided by the grading awarded in the ACRs/APARs. However, it is also settled position that the assessment has to be made on the basis of material placed before it. The DPC while considering the case of petitioner only took note of the remarks and grading, which stood expunged, but did not weigh that the remarks were

expunged and grading stood reviewed. The DPC did not take note of the fact that the said advisory was issued at the most relevant time when it was already constituted for consideration of petitioner's promotion.

32. At this juncture, this Court is constrained to note the allegation of biasness made by the petitioner against the respondents. Similar objections were raised by petitioner in the first round of litigation before this Court, which were taken note of and dealt in the judgment dated 20.12.2020 passed by this Court, stating as under:-

"19. The petitioner has succeeded in establishing bias on the part of the respondent No. 4 in assessing him for the year 2018-2019. There is nothing on the record which shows that the performance of the petitioner had dropped drastically in that year which deserved a grading of "Good". The previous incident of abuse of staff had occurred in 2017 and the other case had happened, according to the respondent No.4, in June, 2019. The complaint given by the respondent No. 4 recommending departmental action against the petitioner on 28th June, 2019, a day before he recorded the APAR, reflects the state of mind of the Reporting Officer, and there was real likelihood of bias. He should have held his hand, if he was unable to collect his thoughts, to correctly assess the petitioner. 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 the respondent No.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 the respondent No.4."

33. The respondent No.4- Mr. Kuldiep Singh in the judgment dated 20.12.2020 is the one and the same person as arrayed respondent No.4- Mr.Kuldiep Singh in the present petition. Let us now once again examine the role of respondent No.4 to the present case. This Court in the judgment dated 20.12.2020 has already noted role of Mr.Kuldiep Singh in writing adverse comments against the petitioner, which stood expunged and also noted that no advisory was issued to the petitioner. In the present petition, the advisory dated 23.08.2021 is said to have been issued against the petitioner under the signatures of the very same Mr.Kuldiep Singh, acting as the Director General, which we have already dealt

with in Para-24 above and held that the advise issued was not such grave which would preclude petitioner from promotion. Here, we find force in the submission of petitioner's counsel that once the adverse remarks passed by respondent No.4 in the APAR of petitioner were set aside by this Court vide Judgment dated 20.12.2020, specifically holding that "petitioner had succeeded in establishing bias on the part of respondent No.4", the action of respondent No.4 to issue advisory dated 23.08.2021 to petitioner shows his deliberate intent to cause harm to the career of petitioner. Furthermore, even in the Minutes of DPC for the vacancy year 2021, signatures of respondent No.4 are appended. The stand of respondent No.4 is that by virtue of the provisions of Central Reserve Police Force Group 'A' Officers (General Duty) Recruitment Rules, 2010, the DPC has to be convened comprising of Director General, CRPF as Member; here we wish to note that during the relevant time the petitioner was facing different rounds of filing representations and litigations, the respondent No.4 was promoted to the rank of DG. Knowing the past history, his participation should have been avoided. We have no hesitation to say that the conduct of respondent No.4- Mr.Kuldiep Singh smells of his mala fide intention to clear path for his promotion and create hurdles in petitioner's promotion.

34. Taking note of copies of Meritorious Medal awarded to the petitioner by the then President of India on 15.08.2009; Appreciation Letter dated 12.09.2016 given by respondent – CRPF; Commendation Disc and Certificate dated 03.02.2017 and list of medals, award etc. mentioned at Serial No.7 in the copy of APAR of the petitioner pertaining to the year 01.04.2010 till 31.03.2011; which shows that petitioner's performance has been consistently up to the mark and in his APARs he has been awarded grading "outstanding", we are fortified to state that there was hardly any fault/ error on the part of the petitioner.

35. We are of the considered opinion that once by virtue of order dated 07.01.2020 passed by the MHA and judgment dated 21.12.2020 passed by this Court, the adverse remarks against the petitioner stood expunged and APAR stood upgraded, the respondents in the DPC for the year 2021, were expected to consider petitioner's name in the light of reviewed grading and remarks and respondents were not right in not considering petitioner for promotion despite judgment dated 21.12.2020 had attained finality. It is apparent from the Minutes of Meeting dated 14.07.2021 that a panel of 06 officers for promotion to the rank of IG in CRPF for the vacancy year 2021 has been made.

36. For the reasons afore-noted, we find that by having five APARs within the criteria established under the relevant Rules and for having unblemished service record, petitioner deserves to be promoted to the rank of IG in CRPF from the date when 06 Officer named in Para-12 of the Minutes of DPC for the year 2021 convened on 14.07.2021 and in the order dated 08.09.2021, have been promoted.

37. We hereby direct the respondents to promote the petitioner to the post of IG in CRPF (Level-14) from the date 06 officers named in Para-12 of the Minutes of

DPC for the year 2021 convened on 14.07.2021 and in the order dated 08.09.2021, were promoted. We hereby make it clear that if the 06 vacancies for the year 2021 to the post of IG are already filled, then petitioner shall be given notional promotion according to his seniority position, with all consequential benefits. The respondents shall do the needful within four weeks.

38. With aforesaid directions, the present petition and pending applications are accordingly disposed of.