2025:DHC:9046-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th OCTOBER, 2025

IN THE MATTER OF:

\+ **W.P.(C) 5600/2018**

SURESH SANKHLA .....Petitioner

Through: Mrs. Tamali Wad, Sr. Advocate with Mr. Varyam Pandey and Ms. Palak Garg, Advocates.

versus

UNION OF INDIA AND ORS. .....Respondent

Through: Mr. Akshay Amritanshu, Senior Panel Counsel with Ms. Drishti Saraf, Ms. Drishti Rawal, Mr. Sarthak Srivastava and Mr. Mayur Goyal, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The Petitioner has approached this Court by filing the present writ petition with the following prayers:

> *"a) Call for the records of the Respondents pertaining to the Petitioner's service during the period 01.04.2014 to 31.03.2015.*
>
> *b) Issue a writ of mandamus or any other appropriate writ, order or direction thereby quashing and setting aside the impugned order dated 03.01.2018 passed by the Directorate General Border Security Force (BSF), Ministry of Home Affairs, Government of India and the order dated 09.12.2016 passed by the Special Director General (Eastern Command) BSF.*

> *c) Issue a writ of mandamus or any other appropriate writ, order or direction and thereby expunge the adverse remarks recorded in the Petitioner's SMPAR for the period 17.05.2014 to 16.11.2014 and his PPAR w.e.f 01.04.2014 to 28.02.2015.*
>
> *d) Pass such further or other order that this Hon'ble court may deem fit and proper in the facts of the present case."*

2. The facts of the case reveal that the Petitioner herein had joined the Border Security Force ['**BSF**'] as an Assistant Commandant (Group A) in November, 2012 and that he belongs to 2012 Batch of Officers. It is stated that prior to joining the BSF, the Petitioner had also served in the Central Industrial Security Force (**'CISF'**) for a period of three years to the post of Sub-Inspector. It is stated that the Petitioner has got several laurels during his training and that he was assessed as a 'Very Good Officer' by four senior Officers up to the rank of ADG & Director, BSF Academy, Tekanpur, Gwalior (MP). It is stated that after completion of his basic training, the Petitioner was allotted to the unit of 73 Battalion BSF where he assumed charge as a Company Commander. It is stated that the Petitioner has also performed duties at the Indo-Bangladesh Border. Material on record indicates that the Petitioner has also been posted in Kashmir for some time.

3. A perusal of the record indicates that there are two types of Assessment Reports in BSF i.e., Six Monthly Performance Appraisal Reports (SMPAR) and Annual Performance Appraisal Report (APAR). With respect to the Petitioner's SMPAR, for the period between 17.05.2014 to 16.11.2014, the Reporting Authority of the Petitioner i.e., the Commandant, 73 Battalion BSF, has given the following assessment:

> *"A young, smart, physically tough and highly educated officer. Though he is young yet an outstanding Coy*

Commander. He is highly dependable. His leadership skill and management skill during recent elections in J&K was outstanding and appreciable. He is an asset to the unit who is mature and highly dependable. An Outstanding Officer."

4. The Reporting Authority in SMPAR had given 9.25 grade out of 10 to the Petitioner. However, the Reviewing Authority did not completely agree with the assessment of the Reporting Authority and gave 6.5 grade out of 10 to the Petitioner by giving the following assessment:

"I partially agree with the IO. The Officer has been over assessed by the Commandant. During the period performance of the officer was observed by me and he was found lacking in leadership qualities as well as command and control of troops. He needs to improve to become dependable and a mature officer. I grade him as Very Good"

5. The assessment of work output by the Reporting Authority and the Reviewing Authority under various heads reads as under:

2. किए गए कार्य का मूल्यांकन, व्यक्तिगत विशेषताएं और कार्य क्षमता ।
Assessment of work output, personal attributes and functional competency.

		रिपोर्टिंग अधिकारी Reporting Authority	पुनरीक्षण अधिकारी Reviewing Authority	पुनरीक्षण अधिकारी के हस्ताक्षर Initial of Reviewing Authority
(क) (a)	किये गये कार्य का मूल्यांकन। ग्रेड को 1–4 के पैमाने पर दिया जाए। Assessment of work output Grades should be assigned on a scale of 1-4	3.75	2.0	
(ख) (b)	व्यक्तिगत विशेषताओं का मूल्यांकन। ग्रेड को 1–3 के पैमाने पर दिया जाए। Assessment of Personal Attributes, Grades should be assigned on a scale of 1-3	2.75	2.2	
(ग) (c)	कार्य क्षमता का मूल्यांकन। ग्रेड को 1–3 के पैमाने पर दिया जाए। Assessment of Functional Competency, Grades should be assigned on a scale of 1-3	2.75	2.3	
	कुल मिलाकर ग्रेड Overall Grading	9.25	6.5	

6. Pertaining to the Petitioner's APAR for the period between 01.04.2014 to 28.02.2015, the Reporting Authority of the Petitioner i.e., the Commandant, 73 Battalion BSF, has given the following assessment:

> *"A young, smart and very hardworking officer. Though he is young, he utilized his experience of his previous service in CISF to full extent. I closely monitored his performance during J &K assembly election 2014 in which he came out with flying colours despite his Coy was deployed in most volatile and sensitive area. His attitude towards work and his accomplishment is excellent. One of the bright fort young officer I have seen who is a future prospect for this force."*

7. The Reporting Authority in APAR had given 9.3 grade out of 10 to the Petitioner. However, the Reviewing Authority did not completely agree with the assessment of the Reporting Authority and had given 6.62 grade out of 10 to the Petitioner by giving the following assessment:

> *"I Partially agree with IO. The officer has been again over assessed by the IO. His performance was observed by me and found him to be lacking in command and control of troops. He needs to improve to became dependable and a mature officer. I grade him as 'Very Good'."*

8. The Petitioner, thereafter, gave a representation dated 14.12.2015 to Special Director General, Eastern Command, BSF, Kolkata against the assessment given by the Reviewing Authority on the basis of a copy of the assessment reports supplied to the Petitioner. In his representation, the Petitioner has stated that during the period mentioned in the report, he commanded BSF Company deployed at Indo-Bangladesh border in South West Khasi hills of Meghalaya state and during the Assembly Election, 2014 in Jammu and Kashmir as well as IS duty in Assam during December,

2014. He further stated that he had commanded the Company in the most sensitive area of Bandipora, Kupwara, Sopore, Anantnag district of Kashmir and R.S. Pura district of Jammu during the Assembly Elections and under his command, the Company braved stones, bullets and IED's and came out with the flying colours. He stated that his leadership qualities as well as command and control of troops were tested to the limits and in recognition to his duties performed in an exemplary manner, he was awarded by IG's Commendation card by IG BSF Srinagar. He also stated in his representation that he had commanded the Company in sensitive areas of Indo-Bangladesh border and made seizure worth Rs.77,800. This was highly appreciated by the Commandant, his Reporting Officer, who had been monitoring his performance on a day-to-day basis throughout the year. He stated that his Reporting Officer had also physically visited and inspected his Company location frequently and monitored the Company's daily performance. The Petitioner further stated in his representation that Reviewing Officer i.e., DIG, BSF neither visited his Company while he was deployed at Indo-Bangladesh border nor was he his Supervisory Officer during his deployment in J&K. In fact, he stated that he had no interaction with the Reviewing Officer by any means of communication during the period mentioned in the report. He stated that the Reviewing Officer visited the Company only once and at that time he was on leave, and therefore, downgrading and making adverse comments by the Reviewing Officer is against the principle of fairness and impartiality.

9. Material on record indicates that the Petitioner had also given a second representation dated 25.08.2017 more or less on the very same grounds as made in the first representation.

10. The first representation dated 14.12.2015 was rejected by the Special Director General, BSF *vide* Order dated 09.12.2016. Paragraph Nos.3, 4, 5 and 6 of the said Order reads as under:

> *"3. Whereas, on the representation of the officer, comments of Reviewing authority as well as Accepting Authority have been obtained and considered in detail as per the instructions contained in DOP&T OM No. 21011/1/2005-Estt.(A)(Pt-II) dated 14 May 2009 and DOP&T OM No. 21011/1/2010-Estt.A dated 13 April 2010.*
>
> *4. Whereas, the Spl DG BSF (Eastern Command) Kolkata has been assigned the responsibility to dispose of the representations against adverse/advisory remarks and below benchmark grading in ACR/APAR/PPAR/SMPAR of all ranks posted in HQrs/Units of Eastern Theatre vide HQ DG BS Pers (Confd Section) L/No. A-28018/ 22/ 2010/CS/Pers/BSF/ 4537-4836 dated 09 Jun 2011.*
>
> *5. The Competent Authority has gone through the APAR and the SMPAR for the period in question of the representationist, his representation, and comments of Reviewing Authority as well as Accepting Authority at length.*
>
> *6. On careful consideration of all the relevant records, the Additional Director General (Eastern Command) BSF has noted that there is no material fact or evidence, even anecdotal, on record, either in the self appraisal of the officer or assessment of the Initiating Officer that would justify "outstanding" grading."*

11. The second representation dated 25.08.2017 was also rejected *vide* Order dated 03.01.2018 passed by the Directorate General, BSF on the ground that the second representation/appeal is not maintainable under the Rules.

12. It is these Orders dated 09.12.2016 and 03.01.2018 (hereinafter referred to as the "**Impugned Orders**") rejecting the representations of the Petitioner which are under challenge in the present writ petition.

13. Learned Senior Counsel appearing for the Petitioner strenuously contends that the Impugned Orders are unreasoned Orders, due to which the Petitioner had lost two increments and the effect of losing two increments is cumulative in nature. She states that it is well settled that an Order rejecting a representation is an Administrative Order and that too when the same has got several consequences, it has to be passed with reasons and, therefore, the Impugned Orders are unsustainable in the eyes of law.

14. Learned Senior Counsel for the Petitioner further contends that there is no objectivity in assessing the Petitioner. She states that in view of the fact that there was no interaction at all between the Petitioner and the Reviewing Officer, there was no basis to assess the Petitioner by the Reviewing Officer. She, therefore, states that the comment of the Reviewing Authority is *mala fide* and based on extraneous considerations.

15. On facts, the learned Senior Counsel for the Petitioner contends that the Reviewing Authority had no occasion to evaluate the performance of the Petitioner and, therefore, without there being any occasion to review the performance of the Petitioner, adverse remarks given by the Reviewing Authority cannot be sustained against the Petitioner. She also contends that the Petitioner has also not been given any opportunity to correct his mistakes and adverse remarks have been given to him.

16. Learned Senior Counsel for the Petitioner has placed reliance on the following judgments in support of her contention:

i. Commandant Ranjeet Singh Rana vs. Union of India & Ors, **2019 SCC OnLine Del 7528**.

ii. The Commissioner, Kendriya Vidyalaya Sangathan & Ors. vs. A.K. Kaushal, **2010 SCC OnLine Del 1899**.

iii. Amit Nehra vs. Union of India, **2019 SCC OnLine Del 7594**.

iv. Mukesh Kumar Singh vs. Union of India & Ors., **2023 SCC OnLine Del 6541**.

v. Manudev Dahiya vs. Union of India, **2023 SCC OnLine Del 4164**.

17. *Per contra*, learned Counsel appearing for the Respondents contends that the Petitioner has not lost his promotions on the basis of his assessment reports and has been duly promoted along with his batch mates. He states that the Petitioner cannot allege malice against the Reviewing Officer without making him a party and, therefore, the allegation of malice cannot be countenanced while adjudicating the present petition. He states that there were sufficient material before the Special Director General, BSF and on the basis of material before him, the Special Director General, BSF, was satisfied with the remarks given by the Reviewing Authority and rejected the representation, and therefore, the same does not require any interference from this Court. He states that the Petitioner has been consistently maintaining his assessment as "Very Good" and even though the remarks have been changed but the Petitioner's grade has not changed.

18. Learned Counsel for the Respondents further states that that the scope of Writ Courts in entertaining a writ petition against an Order of rejecting representation regarding adverse remarks in the assessment report is extremely narrow and Writ Courts should not sit as an Appellate Authority over the decision arrived at by the Reviewing Officer. He states that

sufficient opportunities have been given to the Petitioner and, therefore, no interference is called for from this Court.

19. Heard learned Counsel appearing for the Parties and perused the material on record.

20. No rule has been pointed out to this Court by the learned Senior Counsel for the Petitioner wherein the Approving Authority i.e., the authority to whom representation is made against adverse remarks given by the Reviewing Authority, must give reasons while rejecting the representation. The Superior Authority i.e., Special Director General, BSF, while considering the representation of a Government Servant, in the absence of any rule mandating to record reasons, is under no obligation to record or communicate reasons for its decision. The Apex Court in Union of India v. E.G. Nambudiri, **(1991) 3 SCC 38** has observed as under:

> ***"9.*** *There are however, many areas of administrative activity where no reasons are recorded or communicated, if such a decision is challenged before the court for judicial review, the reasons for the decision may be placed before the court. The superior authority while considering the representation of a government servant against adverse remarks, is not required by law to act judicially, it is under no legal obligation to record or communicate reasons for its decision to the government servant. The decision, rejecting the representation does not adversely affect any vested right of the government servant nor does it visit him with any civil consequences. In many cases having regard to infinite variations of circumstances, it may not be possible to disclose reasons for the opinion formed about the work and conduct or character of the government servant. In the instant case adverse remarks as contained in Item Nos. 1 to 4 were expunged but those at serial numbers 5 and 6 were not expunged and the respondent's representation to that extent was rejected. On a careful scrutiny of the two*

remarks, it would appear that observation contained in Item No. 5 "that nothing adverse has come to notice regarding your integrity" is not adverse to the respondent's work and conduct. These remarks are neutral in nature, and they do not adversely comment upon the respondent's work, conduct or character, though they are not commendatory in nature. As regards the remarks at serial No. 6, they are self-explanatory, which show that in spite of oral and written warnings the respondent did not improve. If the superior authority was not satisfied with the explanation of the respondent as contained in his representation, what reasons could be stated, except that the authority was not satisfied with the explanation. The superior authority was not obliged to write detailed judgment or order giving details of the warnings or the material on which he formed opinion.

10. *There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the questions raised by the government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception can be taken to the order rejecting representation merely on the ground of*

absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In governmental functioning before any order is issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action."

21. The aforesaid judgment passed by the Apex Court applies in all force to the present case. The performance assessment of the persons concerned is subjective to the satisfaction of the Reporting Authority and the Reviewing Authority throughout the year. Since these evaluations are subjective in nature, Courts do not sit on the arm chair of either the Reporting Authority or the Reviewing Authority to take a decision as to how the subjective satisfaction has been arrived at by the Authorities.

22. In APAR, the Reviewing Authority has made similar observations as has been made in the SMPAR. The object of writing confidential reports is to give opportunities to a Public Servant to improve excellence. Undoubtedly, the Officer entrusted with the duty to write confidential

reports has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the Subordinate Officer. The Apex Court in State of U.P. v. Yamuna Shanker Misra, **(1997) 4 SCC 7,** has observed as under:

> ***"7.*** *It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51-A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to*

> *know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion."*

23. This Court has perused the judgments relied on by the learned Senior Counsel for the Petitioner.

a. The Judgment of Commandant Ranjeet Singh Rana (supra) is not applicable to the facts of this case as it relates to an inquiry and not assessment report.

b. The Judgment of The Commissioner, Kendriya Vidyalaya Sangathan (supra) is also not relevant because it relates to communication of adverse entry, however, in the present case, not only an opportunity was given to the Petitioner to improve himself after adverse entry in his SMPAR but also adverse remarks were also communicated to the Petitioner.

c. The Judgment of Amit Nehra (supra) is completely distinguished to the facts of the present case.

d. In the judgment of Mukesh Kumar Singh (supra), the Court has specifically recorded that the Accepting Authority has not given any reasons as to why it is disagreeing with the remarks given by Reviewing Authority and, therefore, this judgment is also distinguishable to the facts of the present case.

e. In the judgment of Manudev Dahiya (supra), the Court, on the basis of facts, came to the conclusion that the Authorities were irritated by the allegations of corruption made against them and they have taken out their irritation by giving adverse remarks and therefore, this case is also distinguished to the facts of the present case.

Therefore, none of the above judgments, on which reliance has been placed by the Petitioner, are relevant to the facts of the present case.

24. Though in the present case, the question of corruption is not involved, it cannot be said that the Petitioner has not been given an opportunity to improve himself. After adverse remarks in SMPAR, the Petitioner was communicated about adverse remarks against which a representation was given by the Petitioner which was rejected by the Special Director General, BSF and as held by the Apex Court in E.G. Nambudiri (supra), it was not incumbent on the Special Director General, BSF, to indicate reasons for his decision to the Government Servant. In any event, the promotion of the Petitioner is unaffected despite these adverse remarks.

25. Given the scope of Article 226 of the Constitution of India wherein the Writ Courts do not substitute their conclusion to the one arrived at by the Reporting Authority and the Reviewing Authority and that sufficient opportunities have been given to the Petitioner to improve himself after the adverse remarks in SMPAR and also an opportunity of giving a representation was given to the Petitioner which has been duly considered by the Special Director General, BSF, this Court is of the opinion that no interference is called for by this Court in the present case.

26. Resultantly, the writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV

OCTOBER 10, 2025
S. Zakir