

**IN THE HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

(THROUGH VIRTUAL MODE)

Reserved on: 24.05.2021
Pronounced on: 16.06.2021

WP(C) No.1096/2020

MANZOOR AHMAD RATHER

...PETITIONER(S)

Through: Mr. Sidhant Gupta, Advocate.

Vs.

UNION OF INDIA & ORS.

....RESPONDENT(S)

Through: Mr. Vishal Sharma, ASGI.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1) The petitioner, in this petition, is essentially aggrieved by the adverse remarks recorded by the Initiating Officer in his Annual Performance Assessment Report (APAR) from 16.05.2016 to 31st of March, 2017 (the relevant period). The petitioner is also aggrieved and has challenged orders dated 18.05.2019, 02.11.2018 and 25.01.2019, whereby representations filed by the petitioner on 30th of August, 2017, 19th of July, 2018 and 14th of November, 2018, to upgrade the grading and to expunge the remarks, have been rejected by the competent authority. The petitioner also seeks a command to the respondents to upgrade his APARS and to expunge the adverse remarks recorded by the Initiating Officer for the relevant period.

2) Briefly put, the facts narrated by the petitioner, as a precursor to the challenge to the impugned orders, are that the petitioner was appointed as Assistant Commandant (direct) on 11th of December, 2012 and was made to undergo Basic Officer's Training at BSF Academy, Takenpur. Upon successful completion of the training, he was given the first posting in 5th Bn. Dantewada, Gujarat. As a Company Commander, the petitioner came to be deployed at different places including Border Outpost in vulnerable areas of Rann of Kutch. He also came to be posted in the Union Territory of Jammu and Kashmir for a brief period where he led his company during Assembly Elections in the year 2014.

3) In the year 2015, to be precise, in the month of May, 2015, the petitioner availed 13 days earned leave to proceed to his home town. The petitioner developed symptoms relating to anxiety depression, as a result, his medical condition deteriorated. He was given treatment in SKIMS, Srinagar, as well as Composite Hospital, Srinagar. Because of his ailment, the petitioner was forced to overstay his earned leave. Accordingly, a request was made to the Company Commandant at Dantewada, Gujarat, for extension of his leave.

4) The petitioner after availing the sanctioned leave on medical grounds, resumed his duties and on joining, the petitioner was asked to explain his leave of absence which the petitioner did satisfactorily supported by medical prescriptions. The petitioner was, however, placed in Low Medical Category (SHAPE-II) and was referred to

Civil Hospital, Ahmadabad in the month of July, 2015. The doctors at Civil Hospital, Ahmadabad assessed the petitioner and concluded on 20th of July, 2015, that he was suffering from anxiety depression and, accordingly, the petitioner was placed in SHAPE-II category.

5) The petitioner was re-examined by Head of the Department Psychiatry of Civil Hospital, Ahmadabad, in the month of March, 2016. It was found that the petitioner was not showing any symptoms of anxiety and depression as earlier and was completely fit to resume his duties with firearms. The petitioner was also recommended for up-gradation to medical category SHAPE-I. It is submitted that despite there being categoric opinion of the Psychiatrist of Civil Hospital, Ahmadabad, the Medical Board constituted by the respondents for up-gradation of the petitioner's medical category rejected the opinion of the Psychiatrist and kept the petitioner in SHAPE-II medical category. The petitioner was re-assessed in the month of September, 2016, first by the Psychiatrist at Civil Hospital, Ahmadabad, and then by the Medical Board constituted by the respondents at Amritsar Punjab and on the basis of medical opinion, upgraded to category SHAPE-I.

6) It is claimed that the petitioner despite his medical condition performed the work and tasks entrusted to him with all devotion, sincerity and to the best of his ability. The petitioner has, in some detail, narrated his so-called exemplary services which he claims to have rendered during the relevant period to the satisfaction of his superiors.

7) It is submitted by the petitioner that while he was in Amritsar, he visited local market on 9th of January, 2019, for buying some essentials when a mishap took place wherein identity card and laptop of the petitioner was stolen. The petitioner claims that he immediately acted in the matter and lodged an FIR with the concerned police station and at the same time informed his higher officers as well. The petitioner was finally able to get his identity card back recently.

8) It is submitted that despite following all the standard procedures, the petitioner was served with an advice on 6th of March, 2017, along with a penal deduction of Rs.100/ by respondent No.3 on the instructions of respondent No.5. The petitioner was served with another advice and this time it was for a minor omission of not endorsing the duty of traveling in government vehicle while on a visit to market in Amritsar on 09.01.2017. A third advice was also served upon the petitioner on 14th of March, 2017 and this was for another omission of the petitioner failing to deposit the railway counterfoil on the return journey of the petitioner from Ahmadabad where he had gone to attend the proceedings of Medical Review Board. Similarly, another advice was served upon the petitioner on 06.06.2017 for another omission for which the petitioner claims he was not at all responsible.

9) Be that as it is, because of the above omissions and the advices tendered by the respondents from time to time, the Initiating/Reporting Officer, while initiating APARs for the relevant

period, endorsed his remarks in the Pen Picture of the petitioner that “A young and smartly bearing officer who hardly performed any operational duty being LMC till 9th Dec 2016. He is casual, disinterested towards profession. The overall performance of officer was assessed as “Good” during the period under report.” The copy of APAR for the relevant period and the substance of adverse remarks recorded therein, was provided to the petitioner directing him to file representation, if any, within one month of the date of communication of the aforesaid remarks.

10) The petitioner filed a representation before Special DG(WC) BSF, Chandigarh, being next higher authority to Accepting Authority, seeking review of APAR grading and the adverse remarks mentioned therein. The representation was rejected. The petitioner made second representation on 18.08.2018, to DG, BSF, New Delhi. The same too was rejected. The petitioner was also given an option to appear before the DG, BSF, for personal interview, which option the petitioner availed and appeared before the DG, BSF, on 14.11.2018. The matter was considered by DG, BSF, but the plea of the petitioner for expunging of adverse remarks was not accepted, hence this petition.

11) The impugned adverse remarks recorded in the APARs and the orders passed on the representations of the petitioners have been assailed, primarily, on the ground that the same are contrary to the settled legal position as laid down by the Hon’ble Supreme Court in the case of **M. A. Rajshekhar v. State of Karnataka, 1996(10) SCC**

369 and that the adverse remarks endorsed on the APAR are vague and do not clearly afford an opportunity to the petitioner to improve his performance. Reliance has been placed on the judgment of the Supreme Court in the case of **Sukhdeo v. Commr Amravati Division, (1996) 5 SCC 103**. The impugned adverse remarks in the APARs in question have also been assailed on the ground that the same have not been initiated and accepted as per the General Instructions issued by the Government of India on the subject. It is submitted that despite the fact that the petitioner, because of his ailment, was in low medical category till 9th December, 2016, yet he performed his duties assigned to him with full dedication and to the best of his ability. The minor incidents, which have been strongly relied upon by the Initiating Officer to downgrade APARs of the petitioner for the relevant period, were too trivial to tell upon the performance of an officer.

12) Respondents have opposed the maintainability of the petition by filing reply affidavit through Mr. Vishal Sharma, learned ASGI. The respondents have also taken the plea of jurisdiction of this Court on the ground that no part of cause of action has accrued within the territorial jurisdiction of this Court. It is submitted that the APARs for the relevant period were written by respondent No.5 while he was posted at Khasa, Amritsar, Punjab, and the representation of the petitioner against adverse remarks were also dealt with at Chandigarh, Rajasthan and New Delhi and, therefore, there was no occasion for the petitioner to file a petition in this Court when not even a fraction of

cause of action had accrued to the petitioner within the territorial jurisdiction of this Court. Aside that, the case of the petitioner is also met by the respondents on merits. It is submitted that writing of APAR is on the basis of assessment of an officer by his superior officer on the basis of his conduct, performance and other attributes and this subjective assessment of the superior officer cannot be gone into by the High Court while exercising writ jurisdiction, in that, the High Court while exercising its jurisdiction under Article 226 of the Constitution of India does not sit in appeal over the judgment of the Initiating/Accepting Officer of the APARs.

13) It was argued by Mr. Sharma, ASGI, that on the basis of the conduct and performance of the petitioner, the Initiating Officer made the adverse remarks in the APARs for the relevant period and before recording such remarks, the petitioner had been advised on three occasions. The adverse remarks were duly communicated to the petitioner and he was given option to make representation, if any. He availed of that option and made three representations to different authorities. All the representations were considered and an informed decision was taken thereon.

14) Having heard learned counsel for the parties and perused the record, I am of the view that the petitioner has no case on merits. I also find merit in the submission of Mr. Sharma, ASGI, that this Court may lack territorial jurisdiction to entertain this petition.

15) Admittedly, during the relevant period, the petitioner was not posted in the then State of Jammu and Kashmir. The petitioner's APAR for the relevant period was written by respondent No.5 when the petitioner was posted at Amritsar Punjab. His representations filed against the adverse remarks recorded in APARs were also dealt with and rejected at Chandigarh, Rajasthan and New Delhi. That being the position, it cannot be said that any part of cause of action or even a fraction thereof ever accrued to the petitioner within the territorial jurisdiction of this Court. Though the learned counsel for the parties have strenuously agitated the case on merits yet I am afraid I cannot adjudicate the matter once having come to the conclusion that this Court lacks territorial jurisdiction to entertain the petition.

16) On the issue of jurisdiction, this Court in the case of **Rajesh Kumar Tomar vs. Union of India** (WP(C) No.40/2020 decided on 8th of March, 2021, has concluded thus:

“From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for purpose of deciding whether facts averred by the petitioner-appellant, would or would not constitute a part of cause of action,, one has to consider whether such fact constitutes a material, essential or integral part of cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the

suit/petition. Nevertheless it must be a ‘part of cause of action’, nothing less than that.”

17) The judgment of this Court relies upon the authoritative pronouncement of the Supreme Court on the issue rendered in the case of **Nawal Kishore Sharma v. Union of India, (2014) 9 SCC 329.**

18) In view of the aforesaid, this petition is dismissed for want of jurisdiction of this Court. It shall, however, remain open to the petitioner to work out his remedy before the appropriate Court having territorial jurisdiction in the matter.

19) Since this petition has been dismissed for want of territorial jurisdiction of this Court and, therefore, it is not necessary to deal with the case law cited by the learned counsel for the parties on the subject of writing of adverse APARs.

20) No order as to costs.

(Sanjeev Kumar)
Judge

Jammu
16.06.2021
“Bhat Altaf, PS”

Whether the order is speaking: Yes
Whether the order is reportable: Yes

Judgment pronounced today on 16.06.2021 in terms of Rules 138 (3) of the Jammu and Kashmir High Court Rules, 1999.

(Javed Iqbal Wani)
Judge