

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A No.446 of 2023

Vijay Bihari Sharan, aged about 74 years, son of Late Rajeshwari Sharan, resident of 182-B, Pkt.-A, Mayur Vihar, Phase-II, P.O.-Parparganj, P.S.-Pandavnagar, East Delhi, District-New Delhi.

..... **Petitioner/Appellant**

Versus

1. Union of India, through the Secretary, Ministry of Home Affairs, North Block, P.O. & P.S.-North Block, District-New Delhi;
2. Director General, Central Reserve Police Force, CGO Complex No.1, Lodhi Road, P.O. & P.S.-Lodhi Road, District-New Delhi-03;
3. Additional Deputy Inspector General of Police, Office of Directorate General, Central Reserve Police Force, CGO Complex No.1, Lodhi Road, P.O. & P.S.-Lodhi Road, District-New Delhi-03;
4. Inspector General of Police, Northern Sector, Central Reserve Police Force, West Block No.8, R.K. Puram, P.O. & P.S.-R.K. Puram, District-New Delhi-66;
5. Deputy Inspector General of Police (Administration), Central Reserve Police Force, Sunder Nagar, Jamshedpur, P.O. & P.S.-Sunder Nagar, District-East Singhbhum;
6. Inspector General of Police (Operational), Bihar Sector, Central Reserve Police Force, Sheikhpura, Baily Road, P.O. B.V. College, P.S.-Baily Road, District-Patna (Bihar).

..... **Respondents**

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD**

For the Appellant	: Mr. Rohit Ranjan Sinha, Advocate Mr. Kumar Rahul, Advocate Mrs. Chanchal Verma, Advocate
For the Resp.-UOI	: Mr. Prashant Pallav, ASGI Mr. Parth Jalan, AC to ASGI Mrs. Niki Sinha, CGC

C.A.V on 09.03.2026

Pronounced on 07/04/2026

Per Sujit Narayan Prasad, J.

1. The instant appeal under Clause 10 of the Letters Patent is directed against the judgment/order dated 25.04.2023 passed in W.P(S) No.5499 of 2012 whereby and whereunder the learned Single Judge has dismissed the writ petition preferred by the appellant-writ petitioner.
2. In the writ petition being W.P(S) No.5499 of 2012, the following prayers have been made by the writ petitioner:

(i) For issuance of an appropriate writ, orders directions or a Writ in the nature of certiorari for quashing of the Memo dated 24.09.2001 issued under the signature of Additional Dy. Inspector General of Police (Personnel-I) i.e. the Respondent No.3 whereby and whereunder adverse remarks in the ACR of the writ petitioner was communicated to the petitioner even when the basic misconduct alleged by the respondent authority of absence from service was due to the fact that the petitioner attended official work after attaining clearance from his higher officials.

And/or

(ii) For issuance of an appropriate writ, orders directions for quashing of the consequent order dated 17.03.2010 issued by the Director General, Central Reserve Police Force i.e. the Respondent No.2 whereby and whereunder the submissions of the petitioner in his representation against the aforesaid adverse remarks have been rejected summarily without assigning any cogent reason or without going through the materials on records and the representation of the petitioner.

And/or

(iii) For any other writ(s)/order(s)/direction(s) as Your Lordships may deem fit and proper under the facts and circumstances of this case for doing equitable and conscionable justice to the petitioner”

Factual Matrix

3. The brief facts of the case as per the pleadings made in the writ petition as has been asserted in the memo of appeal reads as under:
- i. The appellant-petitioner was Commandant, 10th Battalion, Central Reserve Police Force (CRPF) and was posted in 121st Battalion at HEC, Dhurwa, Ranchi.
 - ii. During his tenure of service, he had variously served throughout the country at different places and was involved in various crucial and sensitive operations against the extremists of North East of Assam, Kokrajar, Kashmir insurgencies and other places and during the period 1980-82, he was actively involved in the operations against Naxalites in Bengal, Bihar, Orissa and in the period 1995-96 to 1997-99, he was posted in sensitive areas of Assam and North East.
 - iii. Further, during the period 1999 and 2000 he was posted at Baramulla in Jammu-Kashmir and was actively involved in the operation against Kashmir insurgency;
 - iv. All the aforesaid postings are considered to be hard posting in the organization. The area mentioned above against which he was posted were particularly disturbed and he performed his job with great sincerity and sensitivity attached to it. The appellant performed his duty to his fullest efficiency and sincerity for which he was also given many commendation certificates.

- v. Further, he was surprised to receive the memo dated 24th September, 2001 whereby and whereunder some adverse entries were recorded in the appellant-petitioner's ACR for the period 01.04.2000 to 31.03.2001.
- vi. He was surprised to receive the aforesaid memo, especially in view of the fact that to his personal knowledge, his Initiating Officer as well as his Reviewing Officer had not initiated any such adverse remarks in the above manner.
- vii. The ACR for the aforesaid period was initiated by two different Initiating Officers, i.e., I.O. (Administration) and I.O. (Operation) and both the Initiating Officer as well as the Reviewing Officer did not make any adverse entries in his ACR.
- viii. During the said period, a departmental proceeding was initiated against the petitioner vide memo dated 20.7.2000 for maintaining some lives stocks at alleged official residence while he was posted at Kokrajhar in Assam for which the enquiry officer was detailed being DIGP, CRPF, New Delhi.
- ix. He was posted at the relevant time at Baramulla, which was his operational headquarter whereas his department, i.e. 10th Battalion had its Administrative Headquarter at Kolkata.
- x. Particularly during the said period, various dates were fixed by the Enquiry Officer in the aforesaid enquiry proceedings at New Delhi and, therefore, he had to take movement orders for attending disciplinary enquiry at New Delhi;

which was well within the knowledge of his Administrative Head.

- xi. It is further pleaded that no officer in the Organization could leave the station without operational clearance and necessary permission of the Operational Head. For attending proceedings before the Enquiry Officer in the disciplinary enquiry as above, he was issued adverse comments whereas as a natural corollary; he would be guilty of a disciplinary misconduct if he would not have attended the enquiry proceedings.
- xii. For the purpose of recording evidence, the Enquiry Officer had fixed one sitting at Bhopal, which he had attended but only after taking necessary operational clearance, and all the aforesaid attendances of the petitioner for the disciplinary enquiry was very well documented and had been undertaken only after due permission and sanction of the movement order and for which no penal action could be initiated against him.
- xiii. Because of the hard posting, he also became seriously ill and was diagnosed for "Gross Labor spondylitis" for which he took constant medical advice at Dr. Ram Manohar Lohia Hospital, New Delhi as well as at R.G. Kar Medical College and Hospital (Government), Kolkata. He while visiting his administrative headquarter at Kolkata, also consulted the local Government Hospital and had to undergo various clinical tests for the aforesaid illness, which was not only

nagging him but because of which he had to take forced rest several times. His diagnosis happened only during the said period, for which he had to take leave variously totaling a period of 30 days in the entire year.

- xiv. It is pleaded that the petitioner had never shied away from any hard posting and the illness which had all of a sudden occurred during the said period subsided later and, therefore, it did not reoccur in future nor he ever took any ground of illness whatsoever during his entire service records, either in the past or thereafter.
- xv. Further, he made a detailed representations detailing therein his each and every absence from the operational headquarter at Baramulla, which was necessitated by the compulsion to attend the disciplinary enquiry proceeding at New Delhi and his failure to attend the same would have invited further disciplinary action and therefore, he had no choice but to compulsorily attend enquiry proceeding on each and every date.
- xvi. The petitioner was given/assigned visit to administrative headquarter at Kolkata for which necessary permission was accorded and he left the operational headquarter on duty to attend administrative work at the administrative headquarters at Kolkata.
- xvii. The petitioner detailed the alleged dates of absence from operational headquarter and the reasons for the same as well

as the sanctioning authority under whose orders he had left the operational headquarter.

- xviii. There had not been any other absence from operational area of Baramulla (J&K) except above. Since the Battalion Headquarters of 10 Battalion CRPF was ordered by the Department to be kept at Kolkata (W.B), it was essential for the Commandant to visit the Headquarters frequently for administrative and establishment reasons. The prescribed period laid down by the department for such visit was 7 days in every month, i.e., 84 days in a year. Similarly, the Department ordered the enquiry. It was mandatory for the officer to attend it as and when ordered by the Enquiry Officer and leaves were availed by the officer only after the competent authorities sanctioned them and/or operational clearances were granted as per details above.
- xix. The petitioner had filed a detailed representation dated 19.11.2001 against the aforesaid communication of the adverse remarks before the Director General of Police, CRPF.
- xx. His representation was summarily rejected vide letter dated 4.10.2002.
- xxi. He being aggrieved with the aforesaid, filed a writ petition being W.P.(S) No.2068 of 2003 before this Court.
- xxii. The said writ petition was allowed vide order dated 23.11.2009 whereby the order dated 4.10.2002 was set aside and the Director General, CRPF, New Delhi was directed to

consider his representation afresh and pass a reasoned order in accordance with law within a period of eight weeks.

- xxiii. In the light of the aforesaid judgment/order of the High Court, his representation was re-considered by the Director General of Police, CRPF and the same was again rejected vide Directorate Order No.R.XIII-19/2001-CRC dated 17.3.2010 on the same grounds as earlier in a most arbitrary manner without applying any mind to the same.
- xxiv. It is the case of the writ petitioner that the points raised by him in his original representation remained unconsidered. In the order dated 17.3.2010, the reasons which had been previously stated in the order dated 4.10.2002, which stood quashed, for endorsement of adverse remarks in his ACR, had been repeated and reiterated without appreciating his submissions.
- xxv. Being aggrieved, he submitted another representation dated 10.5.2010 to the Home Secretary, MHA which was also not considered and summarily rejected vide Letter No.R.XIII-19/2011-CRC dated 19.1.2011.
- xxvi. Thereafter, he filed another representation dated 16.5.2012 before the Director General, CRPF with reference to the non-compliance of the order of this Court in W.P.(S) No.2068 of 2003.
- xxvii. The said representation was again summarily rejected vide Letter No.R.XIII-19/2001-CRC dated 3.7.2012.

4. Being aggrieved, the appellant-writ petitioner preferred a writ petition being W.P(S) No.5499 of 2012 wherein the memo dated 24.09.2001(Annexure-, i.e. some adverse entries were recorded in the Petitioner's ACR) and order dated 17.03.2010 (by which the Representation filed by petitioner against the said adverse remarks was rejected) have been assailed.
5. The said writ petition was dismissed by the learned Single Judge vide order dated 25.04.2023.
6. To, challenge the aforesaid order dated 25.04.2023 passed in W.P(S) No.5499 of 2012 the instant appeal has been preferred by the appellant-writ petitioner.
7. It is evident from the factual aspect as narrated in the writ petition that the appellant-petitioner was the Commandant, 10th Battalion, CRPF and during his service tenure he performed various operational activities against the Naxalites in Bengal, Bihar, Orissa etc. He was also posted in sensitive areas of Assam and North East and upon transfer he joined detachment Headquarter at Baramulla (J&K). He was subjected to a departmental proceeding for maintaining some livestock at his alleged official residence while he was posted at Kokrajhar in Assam and the inquiring authority was DIG (P), CRPF, New Delhi. He suffered Gross Lumbar Spondylosis for which he took constant medical advice at Dr. Ram Manohar Lohia Hospital, New Delhi and at R.G. Kar Medical College and Hospital, Kolkatta (A Government Hospital) and also consulted the local government hospital. Due to said problem, he

had to take forced rest several times upon taking leave for a period of 30 days in a year.

8. The petitioner has been endorsed good remarks in the ACR by Operational Reporting Officer, i.e, DIGP (Ops) as well as by Operational Reviewing Officer (IGP (Ops) and Administrative Reporting Officer (DIG/Dy. Director). But surprisingly, the Superior Reviewing Officer (DIGP (Ops) has not agreed to the aforesaid remarks in the ACR and has opined that the petitioner has been over-assessed. He absented from performing Ops duties on medical and every other pretext. Has become a liability to the force. Work and conduct below average.
9. When the petitioner was posted as the Commandant, 10th Battalion, CRPF, he was served a memo dated 24.09.2001 received on 21.10.2001 communicating adverse remarks from ACR for the year 2000-2001 mentioning therein “You absented from performing Ops duties on medical and every other pretext. Has become a liability to the Force. Work and conduct below average.”
10. The writ petitioner was asked to represent against the adverse remarks within one month. In response to the aforesaid communication, the writ petitioner has submitted his detailed representation dated 19.11.2001 addressing to the Director General, CRPF or the competent authority through proper channel highlighting all the aspects communicated to him and denied such allegation by giving para wise reply.

11. The said representation of the writ petitioner was rejected by the competent authority vide order dated 04.10.2002.
12. Being aggrieved, the writ petitioner has preferred a writ petition being W.P(S) No.2068 of 2003 before this Court challenging the order dated 04.10.2002 which was allowed by the learned Single Judge on 23.11.2009 and while quashing and setting aside the order dated 04.10.2002 remanded the matter with a direction to the competent authority, i.e., Director General, CRPF, Lodhi Road, New Delhi to consider the representation of the petitioner afresh and pass a reasoned order in accordance with law within a period of eight weeks from the date of receipt/production of a copy of the order.
13. Thereafter, the competent authority, i.e, D.G. CRPF vide order dated 17.03.2010 has passed fresh order holding no merit worth consideration and the adverse remarks endorsed in the ACR were order to stand. Being aggrieved, the writ petitioner made representation before the Home Secretary, Ministry of Home Affairs, Government of India, New Delhi against the order dated 17.03.2010 but the same was again rejected vide communication dated 19.01.2011 that no specific action was warranted on his representation dated 10.05.2010 as everything had been considered in the order dated 17.03.2010.
14. Thereafter, the writ petitioner made a fresh representation on 16.05.2012 to the DG, CRPF who passed the order dated 17.03.2010 against the non-compliance of the Hon'ble Court's order dated 23.11.2009 and requested to examine the issue afresh

and in response to the same, he was communicated that no further action on his application/representation dated 16.05.2012 was warranted as his representation already stood rejected.

15. Being aggrieved, the writ petitioner has preferred a writ petition being W.P(S) No.5499 of 2012 before this Court which was dismissed vide order dated 25.04.2023 by the learned Single Judge and, hence, the present appeal.

Submission on behalf of the appellant-petitioner:

16. Mr. Rohit Ranjan Sinha, the learned counsel appearing for the appellant has taken the following grounds to assail the impugned judgment:

(i) The learned Single Judge has not appreciated the fact that while passing the order afresh on the basis of order of remand the Director General, CRPF, Headquarters, has only reiterated the fact which was already there while considering the representation made in the defence of the recording of the Annual Confidential Report (ACR) which is available from the face of the order.

(ii) The learned Single Judge has also not appreciated the fact that the fundamental reason for interfering with the decision taken by the then Director General, CRPF, Headquarters while taking decision on 17.03.2010 has rejected the representation without assigning any reason and again, on remand, without any reason the representation has been rejected by only referring the cause that the defence

which has been put in the representation has not found to be satisfactory.

(iii) It has been contended that why the reason is not found to be satisfactory, i.e., to be reflected to the decision so taken said to be order in accordance with law and, particularly, in terms of the order passed by this Court remitting the matter before the Director General, CRPF, Headquarters.

(iv) The Director General, CRPF, Headquarter has also not appreciated the fact that the reference of recording the adverse entry in the ACR is only on the issue of absenteeism as would be evident from the very face of the order but another conduct of the writ petitioner, the appellant herein, has been inserted, i.e., not discharge of the duty in a proper manner controlling the command of his duty, as such, the opportunity to defend has not been provided, since, while communicating the adverse entry for the purpose of giving an opportunity to defend only reference has been made with respect to the issue of absenteeism and nothing more.

(v) The Director General, CRPF, Headquarter has also not appreciated the fact that the factual aspect which was recorded by the then Director General, CRPF, Headquarter while referring the adverse entry in the service record of the writ petitioner and the same has been reiterated without considering the other available records wherein the appreciation letter has been issued in favour of the writ

petitioner by the Headquarter on visit of the subsequent Director General at the place of deployment.

(vi) So far as the issue of absenteeism is concerned, the document available on record pertaining to grant/sanction of the leave by the Regional Head Office at Kolkata by the order of the Director General of the Regional Headquarter has not been taken into consideration, since, whenever the petitioner has gone out of the duty, i.e., on the basis of the sanctioned leave. Hence, the question of absenteeism as per the adverse entry made in the ACR does not arise.

(vii) The learned Single Judge, since, has not appreciated the entire aspect of the matter which is the requirement as per law, hence, the present appeal.

17. The learned counsel for the appellant-writ petitioner, based upon the aforesaid grounds, has submitted that the impugned order/judgment dated 25.04.2023 passed by the learned Single Judge, therefore, suffers from an error and, as such, it is not sustainable in the eyes of law.

Submission on behalf of the Respondent-UOI:

18. Per contra, Mr. Prashant Pallav, the learned ASGI appearing for the respondent-UOI to defend the impugned order/judgment has raised the following grounds:

(i) It has been contended that the competent authority has applied its mind and after going through the entire record, the adverse entry of absenteeism from duty has been recorded and as per

requirement of law, the same was communicated to the writ petitioner to put his defence and when not found satisfactory such representation was rejected.

- (ii) So far the issue of fresh order dated 17.03.2010 passed by the Director General, CRPF, on the basis of the order of remand passed by this High Court vide order dated 23.11.2009 passed in W.P(S) No.2068 of 2003 is concerned, the same is well speaking order and the Director General, CRPF, Headquarters has given its finding on being not satisfied with the grounds referred in the representation. The ground since has not been accepted and, as such, while making reference of the word “being not satisfied” is sufficient enough to come to the conclusion that the mind has been applied.
- (iii) So far the question of exceeding the jurisdiction beyond the content of the communication of the adverse entry made in the ACR is concerned, it has been argued that the question of maintaining the force is inbuilt in the duty to be discharged by the petitioner being a member of the disciplined force. As such, even if that part of the order has not been communicated for the purpose of providing an opportunity to put his defence no prejudice will be said to be caused.
- (iv) So far the other entries are concerned as per the argument advanced on behalf of the petitioner, i.e., grant of sanction of leave by the competent authority or the issuance of the citation by way of appreciation are concerned the same is not relevant to be considered, rather only relevant thing which was to be

considered was the absenteeism and maintaining the forces at the deployed place were the only issue which has already been communicated for the purpose of putting a defence and the response which was submitted since has not been found to be satisfactory, therefore, by referring the reason of being not satisfied with the reason explained with the representation which has been rejected the same suffers from no error.

19. The learned ASGI, based upon the aforesaid grounds, has submitted that the learned Single Judge has appreciated the fact in its entirety and, as such, there is no error in the impugned order/judgment.

Analysis:

20. We have heard the learned counsel appearing for the parties.

21. In the backdrop of the aforesaid contention of the learned counsel for parties and the factual aspect, the following issues require consideration in the present case are:

- i. Whether it is available for the authority to travel beyond the entry made in the service record without communicating the same to the employee for the purpose of providing an opportunity of hearing as per the law laid down by the Hon'ble Apex Court in the case of "**Dev Dutt vs. Union of India & Ors.**", (2008) 8 SCC 725?*
- ii. Whether the rejection of the representation on the basis of the order of remand passed by the learned Single Judge of this Court vide order dated 23.11.2009 in W.P(S)*

No.2068 of 2003 merely by showing the reason of not being satisfied can be said to be a speaking order?

iii. Whether the entry which has been recorded to the effect of absenteeism and discharge of the duty at the place of deployment can be said to be absenteeism if the leave has been sanctioned by the competent authority and whether the same was required to be taken into consideration by the Director General, CRPF, Headquarter at the time of making adverse entry in the ACR?

22. Since all the issues are interlinked and, as such, being taken up together for their consideration.

23. But this Court before considering the aforesaid aspect of the matter needs to refer herein the applicability of the law in this regard with respect to the issue of relevance of communication of the adverse entry considering the underlying purpose thereof.

24. The purpose to communicate the adverse entry after entering into the service record is to provide an opportunity of hearing to the concerned public servant so that he may get an opportunity to defend himself in a case of recording of the adverse entry and if the entry has been recorded said to be on the basis of the better performance of work which also needs to be communicated for the purpose of impetus and further improvement in discharge of the official duty.

25. We are concerned with the issue of communicating the adverse entry in the backdrop of the fact that in a case where the adverse entry is being recorded in the service record and if it is not communicated to the concerned public servant, then for all time to come the recording of the adverse entry will prejudice the service career of the concerned public servant. As such, the law has been laid down that after making entry in the service record the same is to be communicated mandatorily by giving an opportunity to the concerned public servant to response and the same is for the purpose of its consideration. The same is on the principle that a man cannot be subjected to any adverse decision without providing an opportunity of hearing. Further, for the purpose of providing an opportunity of hearing so that the mandate of principle of natural justice be followed.

26. The aforesaid aspect of the matter has been dealt with by the Hon'ble Apex Court in the judgment rendered in the case of ***Dev Dutt v. Union of India and Ors. (Supra)*** for ready reference, the relevant paragraphs of the said judgment are being quoted herein as:

“16. In our opinion if the office memorandum dated 10/11-9-1987, is interpreted to mean that only adverse entries (i.e. “poor” entry) need to be communicated and not “fair”, “average” or “good” entries, it would become arbitrary (and hence illegal) since it may adversely affect the incumbent's chances of promotion, or to get some other benefit. For example, if the benchmark is that an incumbent must have “very good” entries in the last five years, then if he has “very good” (or even “outstanding”) entries for four years, a “good” entry for only one year may yet make him ineligible for promotion. This “good” entry may be due to the personal pique of

his superior, or because the superior asked him to do something wrong which the incumbent refused, or because the incumbent refused to do sycophancy of his superior, or because of caste or communal prejudice, or to for some other extraneous consideration.

17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways: (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597] that arbitrariness violates Article 14 of the Constitution.

18. Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.

22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.

37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry,

otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

41. In our opinion, non-communication of entries in the annual confidential report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.”

27. The aforesaid settled position of law has been again reiterated by the three Judge Bench of the Hon’ble Apex Court in the case of **“Sukhdev Singh v. Union of India”, (2013) 9 SCC 566**, for ready reference the relevant paragraphs are being quoted as under:

8. In our opinion, the view taken in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR—poor, fair, average, good or very good—must be communicated to him/her within a reasonable period.

28. The another settled position of law is that while making entry in the service record said to be adverse one, for the purpose of providing an opportunity of hearing to the concerned public servant considering the purpose thereof the adverse entry which has been made is only need to be communicated and there cannot be any addition of any other misconduct, if any, if it has not been recorded in the service record.
29. If any addition is being made excess to the adverse entry recorded in the service record the same will be said to be improper by virtue of *mala fide* exercise of power of the appointing authority as the fact of the present case is.
30. Herein, the adverse entry which has been made is only with respect to the issue, i.e., (i) *"You absented from performing Ops (operational duties) on medical and other pretext, (ii) Has become a liability to the force, and (iii) Work & Conduct below average"*.
31. There is no another entry said to be adverse noted in the service record for the period from 01.04.2000 to 31.03.2001.
32. The petitioner has been communicated with the same but very surprisingly the addition has been made therein which has been taken note in the subsequent order passed on remand, i.e., availed EL/CL, (ii) availed Medical Rest as also the then Director General, CRPF, Headquarter had visited Baramulla on 08.12.2000 to assess the operational situation of the area and their interaction with the officers and men in Baramulla, the command and control of the

petitioner over his troops was not found upto the desired mark due to his long absence.

33. Thus, the adverse remarks with regard to overall operational performance and conduct of the petitioner were recorded by the competent authority on the basis of own assessment and sufficient material evidence on record against the petitioner. The addition made in the adverse entry recorded in the communication dated 24.09.2001 for the period from 01.04.2000 to 31.03.2001 as referred hereinabove has come out with in addition thereon.

34. The appellant-writ petitioner, after being communicated with the adverse entry vide communication dated 24.09.2001 has made a due representation highlighting the fact that there is no absenteeism, rather the appellant has proceeded on medical rest when permitted by the DIG (P), CRPF, Kolkata vide its Signal No. LII.I/2001-CC dated 15.02.2001. The period was subsequently regularized vide DIG(P), CRPF, Durgapur Signal No. L II.I/2001-DA-I dated 31.05.2001. The DIG, Operational, Sri Nagar also permitted/accorded operational clearance vide Signal No. GII-10/2001-PA dated 24.03.2001 to avail the medical rest.

35. The authority has rejected the said representation without assigning any reason and, hence, the petitioner has challenged the same by filing a writ petition being W.P(S) No.2068 of 2003 which was disposed of on 23.11.2009 while allowing the writ petition and the order as contained in Annexure-5 dated 04.10.2002 has been set aside and the respondent no.2, the Director General,

Central Reserve Police Force, CGO Complex No.1, Lodhi Road, New Delhi was directed to consider the representation of the petitioner afresh and pass a reasoned order in accordance with law within a period of eight weeks from the date of receipt/production of a copy of the order.

36. The Director General, CRPF, in compliance to the order passed by this Court dated 23.11.2009 has passed afresh order on 17.03.2010 and while passing the order a specific reference of the adverse entry recorded in the service record that (i) “You absented from performing operations duties on medical and other pretext, (ii) Has become a liability to the force, and (iii) Work & Conduct below average”.

37. The fresh order has been passed rejecting the representation by referring the reason that after going through the representation and the relevant material on record, the Director General (P), CRPF, Headquarter have strong reason to believe that the petitioner was reluctant to perform operational duties. The adverse remark as recorded by the competent authority were based on actual performance of the petitioner during the period and on the basis of established facts and other material evidence on record. The adverse remarks were endorsed by the competent authority after evaluating the operational performance of the petitioner during his stay in Baramulla, J & K from July, 2000 to March, 2001. After taking all facts into consideration, the Director General (P), CRPF, Headquarter/competent authority has come to the conclusion that

the submission of the petitioner has no merit worth consideration and the adverse remarks endorsed in the ACR as mentioned above are ordered to stand and, as such, the representation dated 19.11.2001 has been rejected being devoid of merit, for ready reference the part of the order dated 17.03.2010 as referred in paragraph-5 is being referred hereunder as:

“After going through the representation and the relevant material on record, I have strong reasons to believe that the petitioner was reluctant to perform operational duties. The adverse remarks as recorded by the competent authority were based on actual performance of the petitioner during the period and on the basis of established facts and other material evidence on record. In fact, the adverse remarks were endorsed by the competent authority after evaluating the operational performance of the petitioner during his stay in Baramulla, J & K from July, 2000 to March, 2001. After taking all facts into consideration, I have come to the conclusion that the submission of the petitioner has no merit worth consideration and the adverse remarks endorsed in the ACR as mentioned above are ordered to stand. Hence, the representation of the officer dated 19.11.2001 is hereby rejected being devoid of merit.”

38. The order dated 17.03.2010 has been assailed by the writ petitioner-appellant by filing writ petition being W.P(S) No.5499 of 2012. The learned Single Judge has dismissed the writ petition upholding the decision dated 24.09.2001 issued under the signature of Additional Dy. Inspector General of Police (Personnel-I) as also the order afresh dated 17.03.2010 passed by the Director General, CRPF rejecting the representation of the petitioner which are under challenge in this appeal.

39. The questions which require consideration of the aforesaid issues are :

- (i) Non-application of mind while passing order afresh on 17.03.2010,
- (ii) The authority exceeding to the jurisdiction by taking other factual aspect which is not recorded as an adverse entry in the service record as was communicated on 24.09.2001, and
- (iii) While passing the order, the learned Single Judge has not appreciated the fact that if the adverse entry is being communicated, then the same is required to be communicated for the purpose of filing representation with respect to only adverse entry without addition of any other conduct of the concerned public servant. Otherwise the same will lead to frustrating entire purpose of communicating the adverse entry even though there is no adverse entry but consideration is being made on the aforesaid conduct of the concerned public servant even without giving an opportunity and without giving any reference of the adverse entry made therein, that too, once the matter has been remitted by the order passed by this Court by passing order afresh.

40. Another issue i.e. “merely by making reference by the authority, that he is having strong reason to believe that the petitioner was reluctant to perform operational duties without verifying the other documents leading to the appreciation of the writ petitioner while discharging his official duty and the sanction of leave”, can it stated to be correct approach.

41. The factual aspect has been referred hereinabove, particularly, the fact about absenteeism from performing operational duties on medical and every other pretext are concerned, as was taken note in the adverse entry, this Court has thought it proper to again refer the admitted facts based upon the documents which has been called for by this Court by virtue of the order passed on 19.08.2025 in the present proceeding, for ready reference the order dated 19.08.2025 is being referred hereunder as:

*“ 1.Heard the learned counsel appearing for the appellant.
 2.We after going through the order dated 17.03.2010 has found that the A.C.R for the year 2000-01 has carried out with adverse remarks against the appellant/writ petitioner.
 3.It appears from the record that the appellant/writ petitioner has joined his service sometime in the year 1974 as Assistant Commandant. He has been promoted to the higher hierarchy to the post of Commandant.
 4.It has been contended on behalf of the appellant/writ petitioner by referring to Annexure-3 series that various appreciation letters have also been issued based upon the performance of the appellant/writ petitioner while discharging his duty by issuance of the citation/appreciation letter.
 5.This Court in order to assess the action taken by the respondent-authority in making adverse entries for the particular year, i.e., 2000-01 needs to consider service profile of the appellant/writ petitioner.
 6.The record is necessary to be seen, since, it is the specific case of the appellant/writ petitioner that he was to be promoted to the higher post of the Deputy Inspector General (D.I.G) of Police, a cadre post. The appellant/writ petitioner has superannuated from service after attaining the age of superannuation sometime in the year 2006.
 7.Let the record pertaining to the service profile of the appellant/writ petitioner be produced for perusal of this Court on the next date of hearing.
 8.List this case on 17.09.2025.”*

42. This Court has thought it proper to pass the order dated 19.08.2025 only in order to consider the factual aspect for the purpose of doing the substantive justice when the factual aspect has been found from

the face of the order, both the order communicating the adverse entry dated 24.09.2001 and the subsequent order passed on 17.03.2010 wherein there was departure from the adverse entry as was communicated by making addition therein as would be evident from the fresh order dated 17.03.2010, for ready reference the order dated 17.03.2010 is being referred hereunder as:

Confidential/Registered

DIRECTORATE GENERAL: CRPF

Block No.1: K.K. Parisar: Lodhi Road, New Delhi-03

(M.H.A.)

No.R.XIII-19/2001-CRC

Dated, the 17/03/2010

ORDER

The following adverse remarks were communicated to Shri V.B. Sharan, Comdt-10 Bn (now retired) (IRLA-1299) from his ACR for the year 2000-01 vide this Dte. letter No.G.11-1/2001-CRC dated 24th September 2001:-

"You absented from performing Ops duties on medical and every other pretext. Has become a liability to the Force. Work and conduct below average."

2. Aggrieved with the above adverse remarks, the officer earlier preferred a representation dated 19/11/01 addressed to the DG, CRPF for its expunction. The Competent authority had rejected the said representation being devoid of merit and an Order to this effect was issued vide Dte. Genl. Order No.R.XIII-19/2001-CR Cell dated 04/10/2002.
3. The aggrieved officer then filed a W.P.(S) No.2068 of 2003 V/S UOI & ORs in the Hon'ble High Court of Jharkhand at Ranchi. The Writ application was allowed by the Hon'ble Court and after taking certain factors into consideration, this Dte. Order ibid dated 04/10/2002 has been set aside, with further direction to consider the representation of the petitioner afresh by the DG, CRPF and to pass a reasoned order in accordance with law as pronounced vide Count of der 06/23-11/2009.
4. In the light of directives issued by the Hon'ble High Court of Jharkhand at Ranchi vide its order-06/23-11/2009, the undersigned has gone through the representation of officer and relevant material on records minutely. The following facts have emerged while examining the case afresh which have been taken into consideration:-
 - (a) The aforesaid officer had taken over charge of 10 Bn, CRPF on 26/06/2000 at Bn Hqrs at Kolkata and reported at Detachment Hors at Baramulla, Jammu and Kashmir on 03/07/2000. Since the date of joining in the Unit, the petitioner was always reluctant to

perform operational duties. On the pretext of illness, visiting unit Hqrs at Kolkata and attending Departmental Enquiry against him, he was often away from Detachment Hqrs where all six Coys of his Battalion were deployed in sensitive area of Baramulla district in Kashmir Valley. He hardly stayed in the operational area for performing operational duties. The petitioner always tried his best to project various problems to find ways and means to stay away from detachment Hqrs and his posting out to units deployed in soft area.

(b) Regarding the plea of the officer that, no warning / advisory letter was given to him, it is evident from records that the IGP-E/Sector had issued an advisory letter No. G.II-1299/2000-ES-Estt(1) dated 14/11/2000 to the officer, taking serious note of his approaching Directorate Genera: directly for his transfer on grounds of personal grievances, ill health etc, ignoring prescribed channel.

(c) The ACR for the year 2000-01 of said officer was accepted by the then S.R.O. on 11/09/2001 and the adverse entries were communicated to the officer vide Dte. Genl. letter No.G.II-1/01-CRC dated 24/09/2001 as per existing instructions (i.e. within one month) as per provisions contained in G.I.D.P. & A.R. O.M. No.21011/1/77-Estt dated 30/01/78.

(d) The adverse remarks were recorded after evaluating the operational performance of the petitioner during his stay in Baramulla from July 2000 to March 2001. The details of his absence from operational area on leave and other duties etc. are as under:-

(1) Availed EL/CL

The officer reported at Hqr 10 Bn on 26/06/2000 and at Dett 10 in J&K on 03/07/2000. Availed EL/CL as per details given below:

- (i) 2 days CL wef 22/08/2000 to 24/08/2000 w/p to avail 21/08/2000 & 23/08/2000.
- (ii) 2 days CL wef 30/10/2000 to 31/10/2000.
- (iii) 60 days EL wef 18/12/2000 to 15/02/2001.

(2) Availed Medical rest:

Officer proceeded on 60 days EL wef 18/12/2000 to 15/02/2001 and thereafter availed medical rest upto 27/03/2001 and reported at Dett on 28/03/2001.

Period of absence from Ops area on other duties:

- (i) 14/08/2000 to 20/08/2000 to visit Bn HQ (7 days).
- (ii) 15/10/2000 to 10/11/2000 to visit unit HQ and attend DE proceedings against him (27 days).

- (iii) 21/11/2000 to 22/11/2000 in c/w DE against him at Delhi (2 days).
- (iv) 11/12/2000 to 13/12/2000 to attend DE proceedings against him at Delhi (3 days).
- (v) 14/12/2000 to 16/12/2000 to visit Bn Hqr. (3 days).

Apart from above, the officer had made number of requests seeking Ops clearance on various grounds from the competent authority.

(e) The adverse remarks were endorsed by the competent authority on the basis of material evidence and facts on record.

(f) The then Director General, CRPF had visited Baramulla on 8th December, 2000 to assess the operational situation of area and during his interaction with the officers and men at Baramulla, the command and control of the petitioner over his troops was not found upto the desired mark due to his long absence. Thus, the adverse remarks with regard to overall operational performance and conduct of the petitioner were recorded by the competent authority on the basis of own assessment and sufficient material evidence on record against the petitioner.

(g) The petitioner was always away from detachment HQrs either on leave visiting unit Hqrs at Kolkata or attending DE against him whereas his six Coys were deployed in sensitive and terrorist infested area of J&K.

(h) Since the petitioner was often away from Detachment Hqr where all six Coys of his Battalions were deployed in sensitive area of Baramulla District in Kashmir Valley during the period under report as mentioned above, no credit in supervising the operational achievement of the Unit would obviously go in favour of the petitioner alone.

(i) The petitioner has not produced any documentary evidence to substantiate his claim of excellent performance on operational /administrative ground. The excellent performance/operational achievement referred to by the petitioner in his representation pertain to the period prior to the assessment period in question.

5. After going through his representation and the relevant material on records, I have strong reasons to believe that the petitioner was reluctant to perform operational duties. The adverse remarks as recorded by the competent authority were based on actual performance of the petitioner during the period & on the basis of established facts and other material evidence on record. In fact, the adverse remarks were endorsed by the competent authority after evaluating the operational performance of the petitioner during his stay in Baramulla, J&K from July 2000 to March 2001. After taking all facts into consideration, I have come to the conclusion that the submission of the petitioner has no merit worth consideration and the adverse remarks endorsed in the ACR as mentioned above are ordered to stand. Hence, the representation of the officer dated 19/11/2001 is hereby rejected being devoid of merit.

6. Order issued vide this Dtd. Order of even number dated 04/10/2002 is treated as cancelled in view of *ibid* Court Judgement 06/23-11/2009.

Sd/-
(Vikram Srivastava)
Director General

Shri V.B. Sharan, Comdt (Retired)
(IRLA-1299)
At: 182-B, Pkt-A, Mayur Vihar-2,
New Delhi-110091
(Through DIG, CRPF, New Delhi Rangs: by Registered Post)

43. The law is well settled that if the adverse entry is being recorded in the service record, then the particular adverse entry is required to be communicated as per the law laid down by the Hon'ble Apex Court in the case of "***Dev Dutt***" (*Supra*) for the purpose to provide an opportunity of hearing. If any addition is being made in the adverse entry recorded while passing the final decision, the same will be contrary to the spirit of the law laid down by the Hon'ble Apex Court in the case of "***Dev Dutt***" (*Supra*) and further contrary to the spirit of the principle of observance of natural justice.

44. Here, only communication of the adverse entry said to be recorded as has been recorded in the service record as communicated vide communication dated 24.09.2001 is

“you absented from performing Ops duties on medical and every other pretext. Has become a liability to the Force. Work and conduct below average”

45. Against that a due representation was made. Due reply was given by the writ petitioner on 19.11.2001 as appended as Annexure-4 to the paper book giving therein the fact, for ready reference some of the factual aspects which has been brought to the notice of the competent authority is being quoted hereinbelow:

A) First Remarks:-" You absented from performing ops duties on medical and every other pretext

FACTS AND SUBMISSIONS

i) It is not true, I have never left ops area or remained absent from ops duties without approval/permission of the competent authority.

ii) If the absence period is considered more, it may be due to my unit HQ being away from ops area, the Inquiry officer in DE against me ordered me to come out of ops area to attend DE on all hearings etc. which added to By leave/illness periods. However for all periods of absence from the ops area, the competent authority had accorded approval/permission/ops clearance in each case. There is not a single case even before, during or after the period under report when I left the ops area on my own or remained absent from the ops area without approval/permission/ops clearance from the competent authority. Hence the above adverse remark is not justified and may kindly be ordered to be expunged.

iii) I served in 29 in CRPF till 3/5/2000 and was relieved from 29 Bn wef 4/5/2000 and had fallen ill at New Delhi while availing my joining time there. I reported to one of the best and renowned Govt. Hospital there i.e. Dr. Ram Hanohar Lohia Hospital, where I was treated and was advised/availed medical rest essential for treatment from 16/5/2000 to 21/6/2000 i.e. a total of 38 days. I kept all competent authorities duly informed always. My availing of the rest was approved vide DIGP CHPF Kolkata vide his Signal No. T. IX-25/2000-CC dated 30/5/2000 and I was permitted to join duties at 10 Bn CRPF HQ Kolkata, where I reported on 26/6/2000. I was permitted to halt there for a week and thereafter reported to Dett. 10 CRPF at Baramulla on 3/7/2000, I beg to submit that when I was granted medical rest, I was neither asked not to avail rest and report for duty inspite of my ill health nor I was directed to report to a Base Hospital or before any other medical board/doctor for second medical opinion. Rather my rest was permitted, approved and regularised by the DIG Kolkata. Hence I strictly adhered to the orders/direction of my superior officers and did not absent myself from duty on my own. Hence this instance should not contribute to reflection of above adverse remark in my ACR.

iv) After reporting at Dett.10 Baramulla on 3/7/00 I never left the ops area on my own but only when ordered or permitted or ops clearance accorded for visiting unit HQ which is mandotory for

administrative control and supervision, for attending DE proceedings as ordered by senior officer/1.0., to avail some C.L. and E.L. when granted etc. and on all such occasions proper ops clearances were accorded by senior officer/DIGP (Ops), Srinagar. However the old case of my orthopaedic problem increased and I took treatment at a Post Graduate Medical College Hospital, one of the best Govt, Hospital at Kolkata. Due to extreme compelling circumstances, I was advised 42 days medical rest from 14/2/2001 Kar Medical College and Hospital, Calcutta, which I intimated to all senior officers in time i.e. IGP E/S. IGP Ops, DIGP Durgapur and DIGP Ops Srinagar. Again in this case I availed the above medical rest only when I was permitted by the DIGP20HPF Kolkata vide his signal No. L.II-1/2001-CC dated 15/2/2001. The period was subsequently regularised vide DIGP CHPF Durgapur Signal No. L.II-1/2001-DA-I dated 31/5/2001. The DIG Ops Srinagar also permitted/accorded ops clearance to me vide his Signal No. G.II-10/2001-PA dated 24/3/2001 to avail the medical rest. None of the senior officers ever directed me not to avail rest and join duty ignoring the medical advice. I was neither directed to report to any other doctor/hospital/BH nor to any board for second medical opinion.

In view of above facts and submissions, I request your kind honour not to treat it as my willful absence from ops duties/area on my own. Hence the above adverse remark may kindly be ordered to be expunged.

v) Since the allegation of myself absenting from ops duties on every other pretext is a vague term and not clear, I am not in a position to submit more exact facts on this account However it is submitted that I never absented from ops duties on any pretext without permission/approval of the competent authority, kept all such authorities properly informed about my movements/absence, never disobeyed any of their direction to report back to ops area, and would have even ignored the medical rest/advice if so desired/ordered by any of my senior ops/adm authorities, Hence the above adverse remarks may kindly be ordered to be expunged.

vi) As per para 2 (iii) of Director (Estt) Dte.Genl CRPF letter No. R.9/I-CRC dated 24/12/91 quoting para 3 of Dte. Genl letter No. R.9 I-CRC dated 15/4/91, relevant in this case, the illness or ill health of an officer should not be taken as adverse unless it is found that the same is aggravated by the officer himself by negligence on his part or by abuse of his personal life and it mitigates against efficient performance of his duties. In my case, I had contracted the medical problem of hypertension, allergic bronchiolitis and lumber spondylosis only while performing my official duties in the interior, remote areas in the different parts of the country, including North-East. I had kept the Deptt. also informed. Now after taking proper treatment, my health is much

improved. I had requested the DIGP CRPF Ops Srinagar vide my hindi letter No. G.II-1/2001-10-PP dated 12/9/2000 that in view of above, during extreme cold climate, I may be permitted to be away from Dett. HQ Baramulla and perform duties at unit IIQ Kolkata. The DIGP ops Srinagar while forwarding my case to IGP Ops Srinagar vide his letter No. G.11-10/2000-PA dated 20/10/2000 had also confirmed that my case to genuine. However in view of the honorable DG's visit to Dott. Hg on 8/12/2000 at Baramulla during ECC. There was snowfall on 7/8 Dec 2000 All these contributed to aggravation of my medical problems 00, I had to stay and further led to medical treatment/rest as above. Hence it is requested that in view of above circumstances, absence from ops duties due to medical rest should not be used against me to reflect adverse remarks in my ACR. In view of above, towards my career prospects and order to expunge the adverse remarks.

B) SECOND REMARKS:-"Has become a liability to the Force"

Facts and submissions:-

This remark has perhaps been made by the competent authority because of the specific instance of my falling ill and availing medical rest. However any specific instance should not form a basis for endorsing adverse remarks against an officer as per the instructions on the subject. My performance in the period under report as well as in earlier years have been outstanding/excellent as under:

i) During my commend and supervision of the unit (Dett HQ 10 CRPF) the achievements during 2000-2001 are as under :-

Militants killed : 5

Militants apprehended : 7

Recovery

Ak Series Rifles : 12

AK Series Magazine : 26

Pistol : 1

Pistol magazines : 2

Grenade Launcher/Thrower: 4

Ammunitions : 792

Grenades : 9

Disposable missiles : 2

Rockets : 2

Rocket Boosters : 2

Wireless sets VHF : 4

R.D.X. Explosives in KGS: 5

Remote Control Devices for Bombs : 42

- ii) *During 9/10 October 2000, there were series of operations personally led by me in which 5 hardcore militants were apprehended and large scale of Naan/ Arms/ Explosives/ Wireless sets were recovered. The IUP, E/S, CRPF vide his signal No. D.III-3/00-0ps dated 21/10/2000, highly appreciated my performance terming it as EXCELLENT", which is quoted as under Convey my congratulation to TIGER 10 and the officers/men of 10 Bn for excellent work done".*

Hence the above adverse remark is totally contrary to my performance and ability. I, therefore, request your honour not only to expunge the adverse remark but to add a few words about my excellence.

- (iv) *During the period under report the DG, IG OPS Srinagar IG P E/S, CRPF, DIG OPS Sri9nngar, DIG CRPF Durgapur they all visited my Dett. 10 and unit Hq. All their visit notes, cash rewards to personal speak of the excellent performance in all fields, It is known fact that the performance of Bn speaks of the ability of the Battalion Commander. Hence my ability should also be treated as excellent. (iv) Followings are, in short, proofs of my existing/sustained previous excellent abilities:-*

(a) *Awarded DG's Commendation Disc. Twice in 1987 and 1996 for outstanding operational performance.*

(b) *Awarded commendation certificates/appreciation letters by D.O by IGP, SPL. CRPF on 27//.83 and again on 8/12/84, DIGP Neemuch on 20/6/91,, IGP C/s CRPF on 6/12/93, IGP NES CRPF on 5/10/96, IGP B/S CRPF on 1/6/96. IGP (OPS) Srinagar on 31/5/96, IGP M/N CRPF on 17/2/97 and IGP M/N on 17/6/98. Endorsing the Nagaland Govt's appreciation conveyed vide the Chief Secretary, Nagaland letter of my excellent performance dated 23/5/98.*

(c) *First officer of CRPF who, because of his excellent performance remained a senior instructor as vice/Asst Principal of central Training College of*

Telecommunications, CRPF, for seven years continuously from 1982 to 1989.

(d) First out of only two officers of CRPF who did Graduate Entry Equipment Orientation course at Military College of Telecommunications, ENA, Mhow (in 1986), equivalent to communication Engineering and passed with 68.88% marks. The brigadier/Faculty Commander gave remarks in the course report dated 13/11/86 as under:-

“A smart very well behaved officer with pleasing manner and amiable personality. He is intelligent, Matured and hard working. He has put in sustained effort and showed keen interest through-out the duration of the course, he has very clear verbal and written expression and forms a useful member of the team. He is confident in practical handling of the equipment. He has the aptitude for learning and higher education He is recommended for Post Graduate course in Communication Engineering. He is recommended for instructional and staff appointments in his parent organisation”

The Major General Y. Deva of the MCIE also remarked on 15/11/86 as under:-

“A Conscientious officer. worked hard on the course to achieve a high average standard. Is an instructor material”

(e) As the Member Committee appointed by the DD (C), CRPP, developed a comprehensive proposal on Modernisation of Signal Communication in CRPF and submitted report on 9/11/92, which was accepted even by the MIIA and the proposal is being implemented in signals Range, CRPF, in phases. as well as excellent work and conduct. But I pray that my future career prospects may not be allowed to be sealed by allowing the above adverse remarks to stay, which may bring down my moral and enthusiasm, without getting any chance to prove my excellence, efficiency, ability, work and conduct:”

46. A final decision has been taken by the authority on 04.10.2002 issued under the signature of Additional DIG of Police, (Personnel-I) and while rejecting the representation the reason has been assigned that on the pretext of illness, visiting Unit Head Quarters at Kolkatta and attending DE against him, he was often

away from detachment Head Quarters where all six Coys. of his Bn. were deployed in sensitive area of Kashmir Valley.

47. The petitioner has approached to the High Court *inter alia* on the ground that while rejecting the representation no reason has been assigned. However, the fact was tried to be improved by filing an affidavit.

48. The learned Single Judge of this Court has allowed the writ petition being W.P(S) No.2068 of 2003 vide order dated 23.11.2009 by quashing the order dated 04.10.2002 with a direction to the Director General, Central Reserve Police Force, CGO Complex No.1, Lodhi Road, New Delhi to consider the representation of the petitioner afresh and pass a reasoned order in accordance with law within a period of eight weeks from the date of receipt/production of a copy of the order.

49. The fresh order was passed on 17.03.2010. The fact about departure from the adverse entry cannot be disputed as would be evident from the face of the communication dated 24.09.2001, the reply furnished on 19.11.2001 and the order passed on 04.10.2002 wherein the subject matter of the adverse entry has been referred as “You absented from performing Ops duties on medical and every other pretext. Has become a liability to the Force. Work and conduct below average”.

50. But if the order passed afresh on 17.03.2010 is being seen, then also the reference of adverse entry made, i.e., “You absented from performing Ops duties on medical and every other pretext. Has

become a liability to the Force. Work and conduct below average” is there but in addition thereto the other conduct of the petitioner has also been referred, i.e., (1) Aailed EL/CL and (2) Aailed Medical Rest.

51. The question is that when there is no communication being not based upon the entry made with respect to aailed EL/CL and aailed Medical Rest, then on what ground the consideration with respect to the additional conduct said to be misconduct by the Director General of Police, CRPF, Headquarters has been taken note while passing the order afresh in terms of the order of remand passed by this Court in W.P(S) No.2068 of 2003 in addition to the reference of the adverse entry of absence from Ops (operational) area.

52. The petitioner has brought to the notice of the competent authority regarding permission to go for the medical rest which was granted by the DIGP, CRPF, Kolkata having competence in this regard being Signal No.L.II-1/2001-CC dated 15.02.2001 but again there is no consideration of the same that once the competent authority has sanctioned the leave for medical rest, then how can it be termed as absenteeism even after due approval by the competent authority.

53. The other document has been brought on record by making reference in the reply as referred hereinabove, but there is no consideration to that effect in the order afresh, rather by taking note of another conduct said to be misconduct regarding aailed EL/CL

and availed Medical Rest. The representation has again been rejected by referring the reasons of strong reasons to believe.

54. There must be a reason to come to the conclusion of “strong reasons to believe” which can only be arrived at if all the documents will be appreciated for the purpose of active application of mind, then only it will be said to be the consideration in the eyes of law.

55. Consideration means not the perusal, rather active application of mind by taking into consideration the factual aspect put before the competent authority before taking such decision. Further, the meaning of 'consideration' is the active application of mind of the factual aspect, as per the definition of 'consideration' given by the Hon'ble Apex Court in ***Chairman, Life Insurance Corporation of India & Ors. Vs. A. Masilamani, (2013) 6 SCC 530***, wherein, at paragraph-19, it has been held by the Hon'ble Apex Court as under:-

“19. The word "consider" is of great significance. The dictionary meaning of the same is, —to think over^l, —to regard as, or —deem to be. Hence, there is a clear connotation to the effect that there must be active application of mind. In other words, the term —"consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority should reflect intense application of mind with reference to the material available on record. The order of the authority itself should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority and proceed to affirm its order. (Vide Indian Oil Corpn. Ltd. v. Santosh Kumar [(2006) 11 SCC 147] and Bhikhubhai Vithlabhai Patel v. State of Gujarat [(2008) 4 SCC 144] .)”

56. Herein, it is evident from the order dated 17.03.2010 that what is the reason to come to the conclusion of “strong reasons to believe” is lacking. Further, the petitioner was reluctant to perform operational duties. The adverse remarks endorsed by the competent authority after evaluating the operational performance of the petitioner during his stay in Baramulla (J&K) from July, 2000 to March, 2001 and based upon the thought of the then Director General, CRPF, the incumbent Director General, CRPF has passed an order on 17.03.2010 without verifying the relevant documents as referred in the reply furnished in terms of the communication of the adverse entry made vide communication dated 24.09.2001.

57. The purpose of communication of the adverse entry is not merely a formality, rather it is for the specific purpose, i.e, to provide an adequate and sufficient opportunity to defend the imputation made by recording in the service record which will prejudice the future service avenues of the concerned public servant. As such, the controlling/appointing authority cannot be said to be so mechanical in rejecting the representation merely on the ground of “strong reasons to believe”, rather the “strong reasons to believe” must be supported by the valid reason which can only be possible after appreciating the relevant documents which is lacking in the present case.

58. The learned Single Judge in its order dated 25.04.2023 passed in W.P(S) No.5499 of 2012 while considering the issue has not

appreciated the factual aspect, rather has accepted the view taken by the authority of making direct communication to the Director General, CRPF for his transfer on the ground of personal grievance, ill health etc. ignoring the prescribed channel.

59. This Court is of the view that even accepting the same to be correct, but while dealing with the issue of propriety of the decision taken in terms of the communication of the adverse entry, then it is the bounden duty of the authority considering the representation to look into the propriety of the adverse entry recorded in the service record only to the extent of the communication of the adverse entry as recorded in the service record. It is not available for the competent authority to go beyond the entry recorded in the service record which has not been communicated.

60. The question of directly approaching the Director General of Police can be a misconduct. But the same cannot be taken into consideration simultaneously while dealing with the issue of adverse entry. Rather, the same could have been considered by initiating a departmental proceeding considering the same to be a misconduct but that recourse has not been taken.

61. The learned Single Judge has considered the applicability of the judgment rendered by the Hon'ble Apex Court in the case of *“Rajendra Singh Verma (Dead) through LRs. & Others Vs. Lt. governor (NCT of Delhi) & Others, (2011)10 SCC 1*, wherein ratio has been laid down that normally the Tribunals/Courts are loath to interfere in cases of complaints against adverse remarks

and to substitute their own judgment for that of the reporting or reviewing officers. It is because these officers alone are best suited to judge the qualities of officials working under them and about their competence in the performance of official duties entrusted to them. Despite fear of abuse of power by prejudiced superior officers in certain cases, the service record contained in the confidential reports, by and large, reflects the real personality of the officer. In paragraph-148 of the said judgment as taken note in the paragraph-15 of the impugned order/judgment passed by the learned Single Judge, the issue which was under consideration of the compulsory retirement and the fact of the said case is also on the issue of compulsory retirement as to whether before taking such decision the adverse entry recorded in the service records needs to be communicated or not.

62. There is no dispute upon the aforesaid proposition but that is only applicable in the case of the principle of dead wood and in a case, in the public interest, if the decision has been taken to compulsory retire a public servant, then it is not required to communicate the adverse entry but at the time when the adverse entry was recorded, it is mandatorily to be communicated.

63. Further, if the representation has been made by the concerned public servant, then it has to be decided in accordance with law and based upon the aforesaid consideration if the representation has been rejected, then that adverse entry is to be taken into

consideration for the purpose of compulsory retirement otherwise not.

64. At this juncture, it requires to refer herein the settled proposition of law that before forming an opinion to be adverse, the reporting officers writing confidential 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. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***“State of U.P Vs. Yamuna Shanker Misra & Another, (1997) 4 SCC 7 .***

65. Further, as per the settled position of law, as has been settled by the three Judges Bench of the Hon'ble Apex Court in the case of ***Sukhdev Singh Vrs. Union of India & Ors.***, reported in ***(2013) 9 SCC 566*** and ***“Dev Dutt”, (supra)*** that every entry made in the ACR of the public servant, is to be communicated to the concerned public servant by the competent authority.

66. This Court, based upon the aforesaid reasoning, is of the view that the order dated 25.04.2023 passed in W.P(S) No.5499 of 2012 by the learned Single Judge is to be interfered with and, accordingly, it is being quashed and set aside.
67. In the result, the writ petition being W.P(S) No.5499 of 2012 stands allowed.
68. At this juncture, Mr. Prashant Pallav, the learned ASGI has submitted that the matter may again be remitted to the authority for passing order afresh, but this Court is not interested in such argument reason being that the subject matter of the adverse entry is of the year 2000-2001.
69. The first decision dated 04.10.2002 which was taken on the representation dated 19.11.2001 made by the appellant had been quashed and set aside vide order dated 23.11.2009 passed in W.P(S) No.2068 of 2003 by the learned Single Judge and again in pursuance of the order dated 23.11.2009 an order was passed on 17.03.2010 by the authority concerned by which representation filed by the petitioner has been rejected.
70. Since the year of adverse entry more than 25 years has already been elapsed and the petitioner has been informed to be superannuated from service. Hence, if at this juncture, the matter will again be remitted before the authority concerned, it will cause serious prejudice to the appellant-writ petitioner herein that too, of the fault committed on behalf of the respondent-authority that even though the opportunity was given to them by the order dated 23.11.2009 passed by the learned Single Judge of this Court in

W.P(S) No.2068 of 2003 and while passing the fresh order no consideration has been given by taking into consideration the entire aspect of the matter as discussed hereinabove.

71. Thus, it is evident that the respondent-authority, even though the opportunity was granted, has failed to consider the issue on the basis of the law invoked and the material as was brought on record by way of representation and if in such circumstances the matter will again be remitted before the authority, the same is not permissible since a wrong doer cannot be allowed to take advantage of his own wrong, that too, causing prejudice to the interest of the appellant who is in the predicament of the adverse entry for the last 25 years and since then he is before the Court of law.

72. This Court is of the view that at this juncture the judgment rendered by Hon'ble Apex Court in the case of "***Punjab National Bank & Others Vs. Kunj Behari Misra***" reported in (1998) 7 SCC 84 wherein while dealing with the issue of remand as under paragraph 21 in a backdrop of the case that enquiry was not conducted as per the statutory rule and in such circumstances, the Hon'ble Apex Court has been pleased to hold that after lapse of substantial period it will not be proper to remit the matter for fresh enquiry or for taking fresh decision, for ready reference, paragraph 21 of the aforesaid judgment is being referred herein :-

"21. Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More

than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals, we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs."

73. The Hon'ble Apex Court in the case of "***Kusheshwar Prasad Singh vs. State of Bihar and Ors.***", (2007) 11 SCC 447, while observing that a wrong doer cannot be allowed to take advantage of his own wrong at paragraphs-14, 15 and 16 has held as under:

*"14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in *Mrutunjay Pani v. Narmada Bala Sasmal* [AIR 1961 SC 1353] wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim *commodum ex injuria sua nemo habere debet* (no party can take undue advantage of his own wrong).*

*15. ... This Court (at SCC p. 142, para 28) referred to *Broom's Legal Maxims* (10th Edn.), p. 191 wherein it was stated: "It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."*

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".

74. This Court applying the aforesaid principle herein, as also the principle that a wrong doer cannot be allowed to take advantage of his own wrong is of the view that remanding the matter again before the respondent-authority will not be just and proper. Accordingly, the aforesaid prayer is hereby rejected.

75. In the result, the instant appeal stands allowed and disposed of as such.

76. Consequential benefit, if any, to follow.

77. Pending I.As, if any, stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree.

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

Sudhir
Dated:07/04/2026
Jharkhand High Court, Ranchi
AFR

Uploaded on 08/04/2026.