



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

% *Date of decision: February 05, 2024*

+ W.P.(C) 14141/2022

RD DOGRA Petitioner
Through: Dr. S.S. Hooda, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Kushagra Kumar,
Mr. Abhinav Bhardwaj and
Ms. M. Kondepudi, Advs. for UOI

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:

“In view of the foregoing facts and circumstances, this Hon’ble Court may graciously be pleased to:

a) Issue a Writ, order, or direction in the nature of Certiorari quashing the impugned order dated 31.08.2022 passed by the Ministry of Home Affairs, to the extent that Petitioner has been ignored and his juniors i.e.

Respondent No. 3 to 5 have been promoted to the post of Deputy Inspector General;

b) Issue a Writ, order, or direction in the nature of mandamus directing the Respondents No. 1 and 2 to consider the Petitioner for promotion to the rank of Deputy



Inspector General for the vacancy year 2022 and include his name in the Select Panel and he may also be promoted on his own turn alongwith all consequential benefits.

c) Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The primary challenge of the petitioner in this petition is to the order dated August 31, 2022 passed by the respondent No.1, whereby, the petitioner was denied promotion to the post of Deputy Inspector General ('DIG', for short) in Level-13A in the BSF and as such the juniors to the petitioner, who have been arrayed as respondent nos. 3, 4 and 5 in this petition, were promoted.

3. It is the case of the petitioner and as contended by Dr. S.S. Hooda that the petitioner while working as Commandant was graded '*very good*' / '*outstanding*' in the last five relevant ACRs for considering his case for promotion to the post of DIG for the vacancy year 2022.

4. Dr. S. S. Hooda states that the petitioner meets the benchmark for promotion and yet, he has been denied promotion for the reasons best known. Thus, according to the Dr. Hooda, the reasons for denying promotion to the petitioner have not been communicated him. Dr. Hooda also concedes to the fact that though in the year 2016, the petitioner was communicated the displeasure of the Director General ('DG', for short) of the BSF, the displeasure being not in the nature of penalty could not have come in the way of promotion of the petitioner in view of '*very good*' / '*outstanding*' grading possessed by the petitioner in the last 5 preceding years of consideration, i.e., 2022. He



would rely upon the circular dated June 28, 1989 and OM dated March 27, 2015, issued by Ministry of Home Affairs/respondent No.1 to contend that it is no more *res integra* that displeasure is not a punishment/penalty and the same is generally awarded in cases where there is evidence of delinquency or irregularity but it is not considered worthwhile to institute formal disciplinary proceedings. He states that circular dated June 28, 1989, also contemplates, if displeasure has been recorded in a Confidential Record ('CR') for a period prior to the normal period of consideration of CRs by the DPC, it should be ignored. He further relies upon the Judgment of this Court in the case of *Dr. O.P. Nimesh v. Union of India and Ors., W.P.(C) 2466/2017*, decided on October 2, 2018 to contend that the present case is squarely covered by the ratio laid down in the said judgment to the effect that displeasure cannot act as an embargo to promotion.

5. Dr. Hooda has also shown to the Court, the show-cause notice dated November 27, 2015, issued to the petitioner by the respondent No.1, which ultimately led to the conveyance of displeasure of DG to the petitioner. He specifically relies upon the OM dated March 27, 2015, to contend once an APAR of an officer or a member of CAPF is finalized for the year or the date of finalizing such APAR is over, the displeasure or warning conveyed will become infructuous. He submits that the ACR of the petitioner of the year 2015-16 having been graded as '*very good*', despite consideration of the displeasure conveyed to the him, the same has now become infructuous. In other words, it is his submission that displeasure could not have been considered by the DPC, in view of the fact that despite considering the displeasure



conveyed to petitioner, he has been graded 'very good' for the year 2015-16 and also in view of the OM dated March 27, 2015.

6. On the other hand, it is the case of Mr. Ripu Daman Bhardwaj, learned CGSC appearing for the respondent Nos. 1 and 2, that the petitioner joined the BSF on December 09, 1991, as Assistant Commandant and subsequently promoted to the ranks of Deputy Commandant w.e.f. October 7, 1998, Second-in Command w.e.f. June 3, 2005 and Commandant w.e.f. September 3, 2010. He states, the medical category of the petitioner is SHAPE-I. The petitioner's case for empanelment and promotion to the rank of DIG was considered by the supplementary DPC held on August 10, 2022, under the Chairmanship of Special Secretary (IS) for the vacancy year 2022. However, the DPC graded the petitioner 'unfit' due to DG's displeasure awarded to him on January 21, 2016. He states, it is pursuant thereto, the impugned order dated August 31, 2022 has been issued.

7. According to him, as per DoPT's, OM dated February 8, 2002, the prescribed benchmark for promotion to the post of DIG is 'very good'. Moreover, there should not be any adverse entry in any of the ACRs under consideration of the DPC. In the present case, for the DPC held for the vacancy year 2022, the APARs for the last 5 years i.e., from 2015-2016 to 2019-2020 were to be considered. Since, the petitioner was awarded DG's displeasure on January 21, 2016, which fact is recorded in his APAR for 2015-2016, the DPC has rightly found him unfit.

8. He further submits that though the petitioner has submitted the representation dated September 05, 2022, the same has been sent to



respondent No.1 for its decision and as such, the outcome of the same shall be intimated to the petitioner.

9. In the rejoinder submissions, Dr. Hooda, would submit that the stand of the respondent Nos. 1 and 2, that the displeasure having been recorded in the APAR of 2015-2016 and the same has been taken into consideration for denying promotion to the petitioner is totally an untenable argument. He also submits that the stand of Mr. Bhardwaj that DPC enjoys full discretion to devise its own method and procedure for objective assessment for suitability of candidates who are to be considered by them is also a misconceived argument as power to devise own method and procedure cannot be equated to laying down its own benchmark in contravention of the specific policies laid down by the Cadre Controlling Authority i.e., the respondent No.1. In other words, it is his submission, when specific guidelines have been laid down as to when the issuance of DG's displeasure can be considered by the DPC, the DPC cannot go beyond the policies which have been laid down. He submits that the policy regarding DG's displeasure by necessary implication means the grounds for consideration of DG's displeasure beyond what is provided for are barred. He submits that in terms of the policy dated March 27, 2015, it is clear that the issuance of DG's displeasure after writing of ACR, automatically become infructuous. In the instant case, the Reporting Officer has recorded in the petitioner's APAR for the period April 01, 2015 to March 31, 2016 at Column No. 9(d), only the factum of DG's displeasure being conveyed to the petitioner. The Reporting Officer did not even find it worth considering the impact of DG's displeasure on the suitability of the petitioner for



discharging his duties. Moreover, the Reporting Officer has recorded that the petitioner is a sincere and empowered officer and takes adequate interest in his command and also takes adequate steps for welfare, training and operations and as such graded him 'very good' by giving him 6.04 marks out of 10, which has also been accepted by the Reviewing Authority.

10. In substance, it is his plea that DPC has by going into facts and circumstances under which the DG's displeasure is issued and then deciding to ignore the petitioner for promotion, has gone beyond the well articulated and clear guidelines on the subject.

11. Having heard the learned counsel for the parties, the issue which arises for consideration in the present case, is no more *res integra*, in view of the Judgment of this court in the case of **Dr. O.P. Nimesh (supra)** decided on October 22, 2018, inasmuch as, in the said case, this Court had considered the effect of the displeasure conveyed to an officer, which is evident from paragraphs 10,11 and 12, reproduced as under:-

"10. Having heard the learned counsel for the parties, the issue which falls for consideration is whether the petitioner was rightly denied promotion. The relevant proceedings have been placed before us and against the petitioner the following has been stated:

Sl. No.	Name	Designation	Medical Category	Recommendation of the DPC	Remarks
2.	Dr. O.P. Nimesh	DIG (Medical)	SHAPE-I	Unfit	Not meeting the benchmark in APAR for the year 2012-13. DG's



					<i>displeasure in 2012-13</i>
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11. From the above it is noted that the two aspects which weighed with the DPC in not finding the petitioner fit for promotion, are; (i) he has not met the benchmark in APAR for the year 2012-2013, and (ii) DG's displeasure in 2012-2013.

12. On (i) above, there is nothing in the proceedings of the DPC, except stating that DPC in terms of guidelines of DoP&T is required to make its own assessment on the basis of entries in the ACR's, to suggest that DPC had made its own assessment on the basis of the entries in the CRs. Had it been so, it should have depicted in what manner, the petitioner has not met the benchmark. Such an expression, surely would have made the decision more transparent. We also find that the DPC had considered the displeasure communicated to the petitioner on 4th December, 2012 for declaring the petitioner unfit for promotion. **As per the DOP&T OM dated 27th March, 2015, which was in place when the DPC was held on 15th July, 2015, it is clear that, "displeasure" is not a penalty enlisted in Rule 11 of the CCS (CCA) Rules, 1965 and it could not have been considered for denying promotion.** The relevant part of OM dated 27th March, 2015 is reproduced as under:-

*"No.I.45026/01/2015-Pers.III
Government of India
Ministry of Home Affairs*

*North Block, New Delhi
Dated the 27th March, 2015
OFFICE MEMORANDUM*

Subject: Instructions regarding the effect of award of DG's displeasure of officers of the Central Armed Police Forces. The undersigned is directed to refer to this Ministry's letter No.I.45026/25/87-Pers-II dated June 1989 on the subject



mentioned above and to issue the following fresh instructions in supersession of the aforesaid letter:-

(i) Displeasure is not a penalty enlisted in Rule 11 of CCS(CCA) Rules, 1965 and therefore it cannot be considered for denial of promotion,

(ii) If a Displeasure or warning has been given to an officer / Member of the CAPF, the Reporting / Reviewing / Accepting Authority, while writing the Annual Performance Assessment Report (APAR), should take this into consideration and decide to reflect or not to reflect the same based on the improvement or otherwise noticed in the person after receipt of the displeasure or warning.

(iii) Once the APAR of an officer or member of the CAPF is finalized for the year or the date for finalizing such APAR is over, the displeasure or warning conveyed will become infructuous.

2. These revised instructions will take effect from the date of issue of this OM. In no case, cases settled before issue of this OM in the light of the instructions dated June 1989 in vogue till now, will be reopened.””

(emphasis supplied)

12. In paragraph 12 of the said judgment, this Court had considered the OM dated March 27, 2015, which has superseded the policy dated June 28, 1989, and the same is clear from bare perusal of paragraph 2 of the OM dated March 27, 2015. The Court also noted the stipulation in the Office Memorandum dated March 27, 2015 to the effect that displeasure is not a penalty as enlisted in Rule 11 of the CCS (CCA) Rules, 1965 and therefore, the same cannot be considered for denial of promotion. If that be so, the fact that the displeasure has been recorded in the APAR of 2015-2016, would have no consequence as far as promotion of the petitioner is concerned. In fact, clause (iii) of the OM dated March 27, 2015, itself makes it clear that once the APAR of an



officer or a member of CAPF is finalized for the year or the date for finalizing such displeasure is over, the displeasure or warning conveyed, becomes automatically infructuous.

13. In the case in hand, the displeasure was conveyed to the petitioner on January 21, 2016, whereas the ACR is for the period April 1, 2015 to March 31, 2016, the said ACR having been finalized, wherein the petitioner has been graded as 'very good', the displeasure has become infructuous.

14. We also note that the judgment in the case of *O.P. Nimesh (supra)* has been upheld by the Supreme Court in *SLP (Civil) No. 7975/2019* titled as *Union of India & Ors. v. Dr. O.P. Nimesh & Anr.*, decided on April 15, 2019. Even the Judgment in the case of *O.P. Nimesh (supra)* has been referred to and followed by the Coordinate Bench of this Court in the case of *Rajdeep Chowdhary v. Union of India and Ors.*, *MANU/DE/4510/2023*, wherein, in paragraph 26,29 and 36 it has been held as under:-

"26. Now the question which arises for consideration before this Court is as to whether due to DG's "displeasure", the petitioner can be deprived of the promotion, especially when the charge framed against him has been recommended to be set aside. This Court has gone through the Minutes of DPC Meeting dated 19.02.2014 and 19.02.2015, wherein the reason for keeping petitioner's case pending is mentioned as "pendency of ROE" and not "displeasure".

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29. This Court in O.P. Nimesh (Supra) in view of the fact that when DPC in the said case was held on 15.07.2015, the aforesaid OM dated 27.03.2015 had already been notified, held that "displeasure" was not a bar in promotion of the petitioner therein and directed the respondents therein to



hold a review DPC and assess petitioner's case in accordance with rules.

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36. In view of above-said, the present petition is allowed. In the light of OM dated 27.03.2015, the Show Cause Notice dated 12.05.2016 and order dated 22.07.2016 conveying "displeasure" by the respondents, are set aside. This Court is informed that petitioner has already been promoted to the post of Deputy Commandant on 06.11.2016. Consequently, a direction is issued to the respondents to convene a review DPC within four weeks to consider the case of petitioner subject to fulfilment of other eligibility criteria prevalent in the year 2014. Needless to say, if petitioner fulfils the criteria, he shall be promoted from the post of Assistant Commandant to the post of Deputy Commandant w.e.f. 01.04.2014 i.e. the date his juniors have been promoted, with all consequential benefits." (emphasis supplied)

15. Suffice to state that displeasure being the only reason for denying promotion to the petitioner and as already held above that the same cannot be the basis to deny him the promotion, we are of the view, that the present petition needs to be allowed. It is ordered accordingly.

16. In view of our discussion above, the order dated August 31, 2022 is held to be bad only to the extent that the petitioner has not been given promotion. He shall be considered for promotion by the review DPC for the said year, the batchmates of the petitioner were promoted to the post of DIG and if he is found fit (by overlooking displeasure), he shall be given promotion / empanelment to the rank and post of DIG from the year 2022, when his batchmates were promoted. This exercise shall be carried out within the period of eight weeks from today. The present petition stands disposed of. No Costs.



2024:DHC:804-DB



CM APPL. 43190/2022

Dismissed as infructuous.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 05, 2024/jg