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

Date Of Decision:- 29th November, 2017.

+ W.P.(C) 463/2017

NEMA SINGH OTTI

..... Petitioner

Through

Ms. Saahila Lamba, Advocate

versus

UNION OF INDIA & ORS

..... Respondent

Through

Mr. Anurag Ahluwalia, Advocate with
Mr. Vinod Kumar, Deputy
Commandant, BSF and Mr. Rajbir
Singh, Head Constable

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

HIMA KOHLI, J (ORAL)

1. The petitioner has filed the present petition aggrieved by the order dated 22.01.2016, informing him that his case for promotion to the rank of Deputy Commandant in the Border Security Force(hereinafter referred to as BSF) by way of relaxation in qualifying mandatory Command and Logistic Course had been examined by the competent authority and was rejected.

2. The brief facts of the case are that the petitioner had joined the BSF on

W.P.(C) 463/2017

page 1 of 6

05.12.1988 as a Sub-Inspector and was promoted to the post of Assistant Commandant with effect from 27.11.2009. On 22.03.2007, FIR No. 56/2007 was registered against the petitioner and one Chamanlal under section 21, 25, 61 & 85 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act and under Section 489 (C) of IPC, for their alleged involvement in smuggling of four kg of narcotics from the border outpost at Jammu & Kashmir. After conclusion of trial, vide judgment dated 05.11.2011 the learned Sessions Judge, District Kapurthala, Punjab, acquitted the co-accused but the petitioner was sentenced to undergo rigorous imprisonment for a period of 10 years, under section 29 of NDPS Act alongwith fine of Rs. 10000/-.

3. Aggrieved by the aforesaid judgment, the petitioner preferred an appeal before the High Court of Punjab & Haryana which was allowed vide order dated 01.04.2013 and he thus stood acquitted. In the interregnum, while the petitioner's appeal was still pending before the High Court, an order dated 23.03.2012 was passed by the respondents terminating his services by passing a dismissal under Section 10 of Border Security Force Act, 1968, read with Rule 23 (A) of the Border Security Force Rules, 1969. After being acquitted, the

petitioner submitted a representation dated 02.05.2013, seeking review of his dismissal order and prayed for reinstatement in service with all benefits. Vide order dated 15.12.2014, the Competent Authority allowed the said representation but while reinstating him in service, directed that the period of absence of the petitioner between 03.04.2007, to the date of his reinstatement in service be treated as a period spent on duty for all purposes and he was held eligible to be paid full pay and allowance as per his entitlement.

4. Upon reinstatement in service, the petitioner underwent the mandatory command and logistics course and qualified the same and thereafter, he applied to the respondent/BSF for granting him promotion to the rank of Deputy Commandant, at par with his batchmates. The said representation was however, turned down by the respondent/BSF vide order dated 22.01.2016. Aggrieved by the rejection of his representation, the petitioner has filed the present petition praying inter-alia for issuing direction to the respondent to promote him to the rank of Deputy Commandant with effect from 23.11.2009 i.e. the date from which his juniors were promoted to the said rank.

5. Mr. Ahluwalia, learned counsel for the respondent states that on the last

date of hearing it had transpired that the petitioner had also been graded as below bench mark in his ACR of 2006-2007, which would stand in the way of his promotion and in these circumstances, he was directed to inform the court as to whether the respondent could have relied on the adverse or below the benchmark ACR of the petitioner i.e. ACR of 2006-2007, which was admittedly considered by the Departmental Promotion Committee (DPC) for considering his case for promotion apart from his ACRs for the years 2003-04, 2004-05 & 2005-06.

6. Mr. Ahluwalia further states that the ACR for the year 2006-2007 wherein the petitioner was graded below benchmark, was duly communicated to him and he had duly represented against the said ACR. He states that vide order dated 30.06.2008, the representation of the petitioner was rejected. He however admits that except from the ACR for the year 2006-07, in all his ACRs in consideration i.e. those for the years 2003-04, 2004-05 & 2005-06, the petitioner had been graded as very good.

7. Learned counsel has produced the ACR record and having perused the same, we find that though the initiating officer had graded the petitioner as

good in the ACR for the year 2006-07, but the reviewing officer had downgraded the petitioner as 'Average' with an observation that he was involved in a criminal case. This down-grading by the Reviewing Officer was accepted by the Accepting Authority as well.

7. Having regard to the subsequent events that had transpired wherein the petitioner stood acquitted in the criminal case based on which, he had been downgraded by both the Reviewing and the Accepting Officer, we deem it appropriate to direct that the petitioner's ACR for the year 2006-07 ought to be reviewed and a fresh grading granted to him by taking note of the subsequent events. Needful shall be done within six weeks from today.

8. It is further directed that the said fresh grading of the petitioner for the year 2006-07 shall be placed before a review DPC alongwith his ACRs for the year 2003-04, 2004-05 and 2005-06 which shall be convened within eight weeks from the date his fresh grading, in terms of the directions given hereinabove, is made available. Based on the recommendation made in the Review DPC, the petitioner shall be considered for promotion to the post of Deputy Commandant, BSF alongwith his batch mates and appropriate orders in

this regard shall be passed within two weeks thereafter under written intimation to him.

9. The petition is disposed off with no orders as to costs.

HIMA KOHLI, J

REKHA PALLI, J

NOVEMBER 29, 2017

cd/sr