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

+ **W.P.(C) 3958/2017**

NARESH KUMAR

..... Petitioner

Through: Mr. Nikhil Palli along with Mr.
Pranav Chadha, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Vikas Mahajan, CGSC with Mr.
Aakash Varma and Mr. Prajesh VS,
Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **16.01.2020**

1. The Petitioner, who is presently serving as a Senior Medical Officer ('SMO') in the 15th Battalion of the Border Security Force ('BSF') in West Bengal, challenges in the present petition an order dated 2nd May, 2013 expressing the displeasure of the Director General ('DG'), BSF at certain 'lapses' on the part of the Petitioner. The Petitioner has also assailed orders dated 26th October, 2015, 10th May, 2016, and 13th April, 2017 rejecting his representations seeking the mitigation of the DG's displeasure.

2. The Petitioner joined the BSF on 7th July, 2005 as an Assistant Commandant/Medical Officer and was promoted to the post of Deputy Commandant/Senior Medical Officer on 7th July, 2009. The Petitioner got

married on 19th July, 2010 while he was posted at Bikaner. However, it appears he got estranged from his wife soon thereafter. She did not reside with him.

3. On 29th March, 2012, the Petitioner, while in Gwalior in connection with a postgraduate course being conducted at the Gwalior Medical College, decided to pay a visit to Dr. C. S. Velangi (Assistant Commandant/Dental Surgeon), his batchmate from the BSF Academy, who resided on the Composite Hospital Campus in Tekanpur.

4. It is the Petitioner's case that he visited Dr. Velangi at 0900 hrs. He was sitting in the guestroom, using his laptop, when Constable Ajay Kumar, Dr. Velangi's security aide, entered the house with the intention to sexually assault her, but was caught on spot. The Petitioner alleges that the said Constable Ajay Kumar, in an attempt to defend himself, made false allegations as regards the nature and appropriateness of the Petitioner's relationship with Dr. Velangi.

5. Subsequent to the aforesaid incident of the Petitioner visiting Dr. Velangi's house, the Office of the Director, BSF Academy Tekanpur (Gwalior) issued an order dated 26th April, 2012 stating that the Competent Authority ('CA') had approved conducting a "one-man" Court of Inquiry ('CoI') to "investigate and collect evidence" in relation to the following issues:

- (i) Whether the Petitioner regularly visited Dr. Velangi who was posted at CH, BSF Tekanpur?

- (ii) Whether the Petitioner was married? If so, what are the details of the Petitioner's wife and children?
- (iii) What are the details of the previous visits of the Petitioner at the government accommodation of Dr. Velangi?
- (iv) Whether the Petitioner's visit at Dr. Velangi's accommodation constituted a violation of any of the provisions of the BSF Act or Rules on the part of the Petitioner and/or Dr. Velangi?

6. In terms of the aforesaid order, a copy of the proceedings of the CoI along with its findings was to be forwarded to the Office of the Director, BSF Academy by 1st May, 2012.

7. The CoI convened on 30th April, 2012. A total of 8 witnesses were examined, which included the Petitioner, his wife, Dr. Velangi and Constable Ajay Kumar. 6 documents were also exhibited. The CoI undertook a detailed analysis of the witness statements and the exhibits to arrive *inter alia* at the following conclusions in relation to the issues framed in the order dated 26th April, 2012:

- (i) The Petitioner did not regularly visit Dr. Velangi.
- (ii) No previous visits of the Petitioner to Dr. Velangi's government accommodation at the BSF Academy in Tekanpur could be "ascertained/established".
- (iii) The Petitioner's association with Dr. Velangi and visit to her accommodation did not indicate any violation of BSF Act and Rules.

8. Despite the finding of the CoI that the Petitioner's conduct did not

constitute a violation of the BSF Act and Rules, the Director, BSF Academy, Tekanpur, issued remarks dated 11th June, 2012, which read as follows:

“2. IRLA No. 10591666 Dr Naresh Kumar, SMO, 15 Bn BSF got married to Smt. Poonam Aryan, D/o Shri Jaswant Singh Arya on 19 July 2010, which was an arranged marriage. According to the statement of Smt. Poonam Arya, wife of Dr. Naresh Kumar, he was unhappy with the marriage because he wanted to marry Dr. Velangi. Dr. Naresh Kumar remained in contact with Dr. C.S. Velangi even after his marriage and because of this, he began to ignore his wife Smt. Poonam Arya.

3. On 29 March 2012, Dr. Naresh Kumar visited the residence of Dr C.S. Velangi without informing the Adjutant of BSF Academy as well as IG CH, BSF Academy. His presence there on that day led to an unfortunate incident in which No.97007755 Const Ajay Kumar tried to molest Dr. Velangi for which proceedings under BSF Act & Rules have been initiated. It is clear that the conduct of Dr. Naresh Kumar, SMO is unbecoming of an officer and not in consonance with good discipline and order in the Force. Though, the evidence collected during the COI does not warrant action under BSF Act & Rules against him but the evidence is sufficient for the issue of DG's displeasure to Dr. Naresh Kumar. It is my recommendation that Dr. Naresh Kumar, SMO, 15 Bn BSF be issued displeasure of DG, BSF for conduct unbecoming of an officer i.e. for a relationship with a lady despite being married to another lady.

4. During the course of COI Const Ajay Kumar of 81 Bn BSF presently attached with STC BSF Tekanpur while recording his statement snatched his original hand written statement and swallowed the portion which bore his signature. He also refused to sign the document and tried to run away. He was apprehended by the guard present there and brought back. It is mentioned that Const Ajay Kumar of 91 Bn BSF tried to molest Dr Velangi on 29 Mar'2012 at her residence for which he has

been arrested and disciplinary action under BSF Act & Rules is under process.”

9. Based on the above adverse remarks, the Petitioner was issued a Show Cause Notice (‘SCN’) dated 26th July, 2012, wherein it was stated that “on perusal of COI proceedings, remarks and recommendation of ADG/Director, BSF Academy, Tekanpur, it is observed that your visit to Gwalior and then to Dr Velangi’s house had a definite purpose. The un-officer like behaviour on your part within a BSF Campus is independently established.” He was therefore asked to show cause why he ought not to be issued the DG’s displeasure.

10. The Petitioner states that he made a “detailed interim reply” to the SCN on 10th January, 2013 denying the allegations against him. He was nonetheless issued the impugned order expressing the DG’s displeasure.

11. Thereafter, the Petitioner was denied promotion to the post of Chief Medical Officer (‘CMO’) (OG) under the Dynamic Assured Career Progression (‘DACP’) Scheme. The Petitioner was informed, upon his making a representation against such denial, by way of a letter dated 28th July, 2015 that he had been found ‘unfit’ by the Departmental Screening Committee (‘DSC’) held on 24th February, 2015 to consider his case for promotion due to the DG’s displeasure.

12. As a result, the Petitioner made representations against the DG’s displeasure on 11th September, 2015 and 2nd February, 2016, which were summarily rejected on 26th October, 2015 and 10th May, 2016 respectively.

13. Meanwhile, Dr. Velangi also made a representation dated 20th January, 2016 to the Inspector-General (Personnel) seeking expunction of the remarks “regarding my association with the above mentioned SMO in DG displeasure issued to him.” This representation was rejected on 3rd May, 2016 by stating that the DG’s displeasure did not “contain any objectionable material regarding your association with Dr. Naresh Kumar, SMO” and hence could not be amended. Another representation dated 13th May, 2016 made by her was rejected on the same ground, because “your name was not associated with Dr Naresh Kumar, SMO in the displeasure conveyed to him.”

14. Finally, the Petitioner made a third representation against the DG’s displeasure on 21st January, 2017, which was rejected on 13th April, 2017, whereby the Petitioner was also directed not to make further representations in this regard.

15. The Petitioner’s grievance is that the remarks of the Director, BSF Academy (Respondent No. 3 herein) bear no relation to the findings and conclusions arrived at by the CoI, and are, to that extent, unwarranted. Consequently, the Petitioner is also aggrieved by the DG’s displeasure issued on the basis of the aforesaid remarks, which has, in turn, led to him being denied promotion under the DACP Scheme. The Petitioner has also agitated, in maintaining his probity, the fact that Constable Ajay Sharma has been held guilty of sexually assaulting Dr. Velangi, and duly punished by the Summary Security Force Court.

16. Pursuant to the notice issued in the petition on 13th July 2017, a counter affidavit has been filed on behalf of the Respondents. It is stated therein that a CoI was ordered to be conducted to ascertain the “factual aspects” of the Petitioner’s involvement with Dr. Velangi. The CoI had found the Petitioner and Dr. Velangi to have become “good friends”. It is further stated that the Director, BSF Academy, Tekanpur had found the Petitioner’s conduct unbecoming as he had “visited the house of a lady officer who was staying alone, without informing anyone”. According to the Respondents, the Petitioner’s failure to make an entry in the visitor register at the main gate of Composite Hospital, Tekanpur demonstrated that the Petitioner “wanted to secretly visit Dr. C.S. Velangi who was living alone in her quarter”. In this regard, it is also stated that the Petitioner did not inform any of the concerned authorities that he would be visiting the accommodation of Dr. Velangi; he had “no valid explanation for visiting the residence of lady medical officer who was alone at home”.

17. It is stated that the statements before the CoI of the Petitioner’s wife as also Dr. Velangi’s statement that she received an SMS from the Petitioner’s wife threatening to commit suicide, allowed the Respondents to draw an “inference” that he was in “continuous contact” with Dr. Velangi. It is stated that the CoI is a “fact finding mechanism and the standard of proof in such domestic inquiry is preponderance of probability”. The Director’s remarks on the CoI proceedings were based on the facts and witness statements recorded in the CoI.

18. Finally, it is contended that the Departmental Promotion Committee

(‘DPC’) is entitled to apply its mind to the facts and circumstances of the Petitioner’s case, including the penalty of ‘displeasure’ imposed on him, and decide whether to promote him pursuant to the DACP scheme.

19. A rejoinder has been filed on behalf of the Petitioner wherein he has reiterated the stand taken in the writ petition.

20. The Court has heard Mr. Nikhil Palli, learned counsel for the Petitioner and Mr. Vikas Mahajan, learned standing counsel for the Respondents. The Court has also perused the proceedings and the findings of the CoI that convened on 30th April, 2012. It is seen that the CoI entered findings in respect of the issues framed in the order dated 26th April, 2012 of the Office of the Director, BSF Academy, Tekanpur, upon undertaking a comprehensive analysis of the statements of all the 8 witnesses as well as the documents that were exhibited before it.

21. The Court is of the view that remarks dated 11th June, 2012 of the Director, BSF Academy, Tekanpur, have no basis whatsoever in the findings and conclusions of the CoI. The Director’s recommendation that the Petitioner be issued the DG’s displeasure appears to be singularly premised on his conviction that the Petitioner’s relationship with Dr. Velangi was “unbecoming of an officer”. The Director’s assessment of the nature of the relationship between the Petitioner and Dr. Velangi seems to be entirely a product of his perception of the Petitioner’s private affairs. On the other hand, the CoI has, on an independent examination of the material before it, returned the finding that the Petitioner’s association with Dr. Velangi was

not violative of any provision of the BSF Act and Rules. While it is true that the CoI did find evidence indicating that the Petitioner was estranged from his wife, this alone cannot be brought to bear on the determination of the nature of the association between the Petitioner and Dr. Velangi, an aspect upon which the CoI has proceeded with due circumspection.

22. The power of the DG to convey ‘displeasure’ is governed by Rule 176 A of the BSF Rules, 1969. Rule 176 A (1) states that such ‘displeasure’ may be imposed “for good and sufficient reasons”. In the present case, the DG appears to have mechanically accepted and relied on the recommendation of the Director without giving reasons why he was discarding the finding of the CoI which was based on statements recorded of as many as eight persons and on other material. This was particularly necessary since the Director’s recommendation was in stark contrast with the findings and conclusions of the CoI. Moreover, it is not possible to accept the proposition advanced by Mr. Mahajan, learned counsel for the Respondents, that even though the CoI found that the Petitioner’s association with Dr. Velangi and visit to her accommodation did not indicate any violation of BSF Act and Rules, the DG could in exercise of the powers under Rule 176 A still award a ‘displeasure’.

23. The Court is also constrained to observe that the private affairs of the Petitioner, despite not attracting the definition of misconduct under the BSF Act and Rules, cannot be labelled as “conduct unbecoming of an officer”. In other words, it is not open to the superior officers to assess the actions of a member of the BSF in the private sphere, not attracting the BSF Act or Rules, by applying their subjective or personal moral standards and conclude

that it was ‘unbecoming of an officer of the force.’ Further, the DG has not in the impugned order, which ought to be a reasoned one, referred to any evidence which could constitute “good and sufficient reasons” for conveying displeasure to the Petitioner in terms of Rule 176 A of the BSF Rules, 1969.

24. For all the aforementioned reasons, the impugned order dated 2nd May 2013 conveying to the Petitioner the DG’s displeasure is hereby quashed. Correspondingly the orders of the Respondents rejecting the representations of the Petitioner against the said order are set aside.

25. As a result, the Respondents are directed to convene a Review DPC to consider the Petitioner’s case for promotion as CMO (OG) under the DACP Scheme and pass all consequential orders, including granting such promotion, if he is found fit, notionally from the date that it was due to him, without the benefit of arrears of pay. The above steps be completed within a period of twelve weeks.

26. The petition is allowed in the above terms with no orders as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 16, 2020

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