

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

% **Date of decision: 24th August, 2021.**

+ **CONT.CAS(C) 50/2019 & CM APPL.53258/2019**

O.P. NIMESH

Through: Ms. Garima Sachdeva Singh,
Advocate

..... Petitioner

versus

RAJIV GAUBA & ORS.

Through: Mr. Ravi Prakash, CGSC for UOI

..... Respondents

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J. (Oral)

1. The present petition has been filed under Sections 11 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India for initiating contempt proceedings against the respondents for wilful violation of the judgment dated 22nd October, 2018 passed by the Division Bench of this Court in W.P.(C) 2466/2017.

2. The petitioner, being a doctor with the Central Reserve Police Force (CRPF) had approached this Court by way of a writ petition impugning order dated 26th February, 2016 whereby the petitioner had been denied promotion to the rank of Inspector General (Medical) and order dated 23rd January, 2017 whereby the representation made by the petitioner to hold a review Departmental Promotion Committee (DPC) was rejected.

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3. The writ petition filed by the petitioner was allowed by this Court vide judgment dated 22nd October, 2018. It was held that the DPC proceedings held on 15th July, 2015 were illegal and the same were set aside to the extent that the petitioner was found unfit for promotion. The respondents were directed to convene a review DPC for considering the case of the petitioner for promotion to the post of IG (Medical) within a period of eight weeks and it was directed that the petitioner be assessed by giving reasons strictly in accordance with rules and instructions. Relevant part of the directions given are set out below:

*“15. ...We are of the view that the DPC proceedings held on 15th July, 2015 are illegal to the extent that petitioner was found unfit for promotion. The same are set aside to that extent. **A review DPC shall be convened by the respondents for considering the case of the petitioner for promotion to the post of IG (Medical) within a period of eight weeks from the receipt of the copy of judgment and assess the petitioner by giving reasons strictly in accordance with rules and instructions.** If the petitioner is found fit for promotion as IG (Medical), the same shall relate back to 4th March, 2016, the date from which Officers junior to the petitioner have been promoted with all consequential benefits. The pay of the petitioner shall be fixed on national basis on such promotion. The petition is allowed. No costs.”*

4. It is the case of the petitioner that since the respondents did not act in compliance with the said judgment, the petitioner was constrained to file the present petition for initiating contempt proceedings. The present petition came up first before this Court on 21st January, 2019, when notice thereof was issued. The respondents preferred a Special Leave Petition against the aforesaid judgment dated 22nd October, 2018. However, the same was dismissed vide order dated 15th April, 2019.

5. A short affidavit was filed on behalf of the respondents on 23rd March, 2021 wherein it is stated that pursuant to the judgment dated 22nd October, 2018 review DPC meeting was convened by the respondents on 21st June, 2019 and the petitioner was found unfit for promotion to the post of IG (Medical). The relevant part of the minutes of the review DPC meeting are set out below:

“7. In compliance of Hon'ble Delhi High Court order dated 22.10.2018, the review DPC duly perused the records and the officer has not been assessed fit for promotion due to the following reasons:-

- (i) In the APAR for the year 2012-13, the said officer was graded 'Good' by Admn Reporting Officer and 'Zero' (3.66 numerical grading) by Technical Reviewing Officer. Accepting Authority while agreeing with the remarks of Admn/Technical Reporting/Reviewing Authorities, graded him 'Very Good'. In view of the adverse remarks endorsed in the APAR for the years 2012-13 and the fact that the Accepting Authority has agreed with the adverse remarks although grading him as very good, the DPC in terms of DoPT OM dated 18.02.2008 have assessed the APAR in toto and have concluded that the APAR be graded as 'Good'. Thus, his overall grading has been assessed as below benchmark for the year 2012-13 by the Review DPC.*
- (ii) The said officer preferred his representation dated 27.06.2016 (i.e. after the delay of three years, that too, after being found unfit in the DPC dated 15.07.2015) requesting for expunging the adverse remarks and upgrading his APAR for the year 2012-13. The representation was considered and rejected by the Competent Authority, being devoid of merit. The same was conveyed to Dr. OP Nimesh (Petitioner herein) vide CRPF Hqrs Letter NoR.XIII.02/2016-DA-11 dated 23.01.2017.*

*8. The Review DPC duly perused the records/facts as contained in Review DPC note and having considered the facts placed before it and also in view of the adverse remarks endorsed in the APAR for the year 2012-13, has assessed Dr. O P Nimesh **'UNFIT' for promotion***

to the rank of IG (Med) {PB-4+GP Rs. 10,000/-} {pre-revised} (Level 14 of the pay Matrix) with reference to the DPC meeting held on 15.07.2015 for the vacancy year 2015-2016'.

3. DoPT vide their communication No. 6/20/2015-EO-(SM.II) dated 11.10.2015 have conveyed the approval of the Appointment Committee of the Cabinet (ACC) for the non-empanelment of Dr. O P Nimesh for promotion to the grade of Inspector General (Medical) in the CAPFs, NSG & AR Medical Cadre, based on the recommendations of the review DPC held on 21.06.2019 in compliance with the order dated 22.10.2018 of the Hon'ble High Court of Delhi in WP(C) No. 2466 of 2017, in pay scale of Rs.37,400-67,000/- with grade pay of Rs. 10,000/- (Pre-revised) for the panel year 2015-16". "

6. The learned counsel appearing on behalf of the petitioner has relied upon paragraphs 11 and 12 of the judgment dated 22nd October, 2018 to contend that the earlier DPC had considered the displeasure communicated to the petitioner on 14th December, 2012 for declaring the petitioner unfit for promotion, whereas as per the DoPT OM dated 27th March, 2015 "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." Accordingly, the proceedings of the DPC held on 15th July, 2015 were declared to be illegal to the extent that the petitioner was found unfit for promotion and the same was set aside. It is contended that despite the directions contained in the judgment dated 22nd October, 2018, the review DPC has considered the same factors viz. the displeasure communicated to the petitioner while grading the petitioner and finding him to be below the benchmark. Despite the judgment in his favour, the petitioner was denied promotion by the review DPC on the same grounds that did not find favour in the judgment of this Court. The learned counsel for the petitioner draws attention of this Court to page 97 of the electronic file where the following

pen picture has been made in respect of the petitioner by the Technical Reviewing Authority:

“Dr. O.P. Nimesh has been facing serious allegation and as per the enquiry report it is established that Dr. O.P. Nimesh DIG (Med) Bhopal have been found guilty on various charges leveled against him.

- a) *Harassment of the staff.*
- b) *Arbitrary distributions of duties.*
- c) *Pressurizing Mo's to declare unfit personnel as fit and vice versa.*

There were other serious charges regarding proximity of female staff etc. DG CRPF has issued displeasure on the part of Dr. O.P. Nimesh. Since I am due for superannuation all relevant papers regarding these allegations are enclosed herewith for further followup.

In view of above, his performance is assessed as below average.”

It is submitted by the learned counsel for the petitioner that the above said adverse remarks, which note the remark of ‘displeasure’ have been considered by the review DPC while assessing the case of the petitioner and in view of the judgment dated 22nd October, 2018, the same could not have been considered by the review DPC. It is further contended that the marks of 3.66 could only have been given on account of the displeasure communicated in respect of the petitioner.

7. *Per contra*, the learned counsel appearing on behalf of the respondents submits that the previous DPC rejected the promotion of the petitioner on two grounds, viz. (i) not meeting the benchmark in the Annual Performance Assessment Report (APAR) for the year 2012-13; and, (ii) displeasure of the DG, CRPF – 2012-13. In the judgment dated 22nd

October, 2018, as regards ground (i) it was observed that the DPC should have stated in what manner the petitioner has not met the benchmark and this would have made the decision more transparent. As regards ground (ii) above, it was noted that the DPC has indeed considered the displeasure communicated to the petitioner on 04th December, 2012 for declaring him unfit for promotion. He submits that the displeasure was communicated only on account of the other serious charges regarding proximity of female staff and not relatable to charges mentioned at (a), (b) and (c) contained in the pen picture of the petitioner. The review DPC had complete discretion to devise its own procedure for grading the petitioner and in its wisdom, decided to give the grading of 'good' to the petitioner. On account of such grading, the petitioner did not meet the benchmark and hence, the petitioner was denied promotion. It is his submission that the DPC duly applied its mind in giving the grading 'good' and has given reasons for the same.

8. I have considered the rival submissions. In the judgment, of which the contempt is alleged, it has been clearly noted that the DPC enjoys full discretion to devise its own method and procedure for objective assessment of suitability and merit of the candidate being considered by it. In light of this, the review DPC has examined the APAR of the petitioner for the year 2012-13 and noted the various gradings given by the reporting officer/review officer/accepting officer. Taking an overall view of the matter, the review DPC has concluded that the APAR of the petitioner be graded as 'good' and declared the petitioner as not fit for promotion. There is nothing to suggest that the review DPC has taken into account the displeasure communicated to the petitioner. Further, as was mandated by

the judgment dated 22nd October, 2018 passed by this Court, the review DPC has given reasons in respect of the petitioner's assessment made by it. Whether the reasons given by review DPC are adequate or not, cannot be subject matter of contempt proceedings. If the petitioner is aggrieved by the findings of the review DPC, the proper remedy for the petitioner would have been to file a substantive petition challenging the same. In exercise of contempt jurisdiction, this Court cannot go into the issues of adequacy of reasons given, when the mandate of the judgment was only to give reasons in support of the conclusions reached by the review DPC. There is no merit in the contention of the petitioner that a presumption is to be drawn, that the review DPC has taken into account the displeasure communicated to the petitioner. For contempt proceedings to be initiated, the alleged disobedience with the court order has to be wilful and clear and cannot be based on mere surmises and conjectures. Reference may be made to the judgment of the Supreme Court in ***Kanwar Singh Saini v. High Court of Delhi***, (2012) 4 SCC 307, which details the law on contempt in the paragraphs set out below:

“30. In an appropriate case where exceptional circumstances exist, the court may also resort to the provisions applicable in case of civil contempt, in case of violation/breach of undertaking/judgment/order or decree. However, before passing any final order on such application, the court must satisfy itself that there is violation of such judgment, decree, direction or order and such disobedience is wilful and intentional....

...

38. The contempt proceedings being quasi-criminal in nature, the standard of proof required is in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence,

including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures.”

9. Consequently, in the opinion of the Court, no presumption can be drawn that the review DPC has taken into account the displeasure communicated to the petitioner. Whether displeasure was considered by the review DPC or not cannot be a matter of conjecture. It has to emerge from a clear reading of the minutes of the review DPC that the aforesaid displeasure was considered by them while grading the petitioner. The assessment made by the review DPC was on a conjoint reading of the entries made by all the officers who had reviewed the petitioner for the year 2012-13, including the adverse remarks made against the petitioner. The petitioner has failed to make out a case of wilful, deliberate and intentional disobedience of any of the directions given by this Court in the judgment dated 22nd October, 2018.

10. No case for initiating contempt proceedings against the respondents is made out.

Dismissed.

AUGUST 24, 2021
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AMIT BANSAL, J.