



2024:DHC:8619-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 07.11.2024***

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W.P.(C) 3332/2023

SATYENDRA SINGH SAHRAWAT

.....Petitioner

Through: Dr.S.S. Hooda, Mr.Aditya
Hooda, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Mukul Singh, CGSC,
Ms.Ira Singh, Adv. for R-1 & 2.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (Oral)**

1. This petition has been filed challenging the Order dated 31.08.2022 (hereinafter referred to as the 'Impugned Order') passed by the Ministry of Home Affairs whereby, the petitioner has been superseded by his immediate junior and has not been promoted to the rank of Deputy Inspector General in the Border Security Force (in short, 'BSF').
2. The limited grievance of the petitioner against the Impugned Order is that the concerned Departmental Promotion Committee (in short, 'DPC') held on 10.08.2022 has overlooked the petitioner for promotion placing reliance on the Director General's Displeasures issued on 22.03.2016 and 30.11.2017.
3. The learned counsel for the petitioner, placing reliance on the Office Memorandum (in short, 'OM') bearing No.I.45026/01/2015-



Pers.II dated 27.03.2015, submits that the said OM specifically provides that a displeasure is not a penalty enlisted in Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short, CCS (CCA) Rules, 1965) and therefore, it cannot be considered for denying promotion.

4. He submits that though the OM authorises the Reporting/Reviewing/Accepting Authority, while writing the Annual Performance Assessment Report (APAR), to take into consideration and to decide whether to reflect or not to reflect the displeasure in APAR based on the improvement or otherwise noticed in the person after receipt of the displeasure or warning, such displeasure cannot be taken into account by the DPC to deny promotion.

5. In support of his submission, he also places reliance on the judgment of this Court in *O.P. Nimesh v. Union of India & Ors.*, 2018 SCC OnLine Del 12003.

6. The learned counsel for the petitioner submits that though the APARs for the period 2015-16 and 2017-18 referred to the DG's Displeasures issued to the petitioner, in spite of the same, they grade the petitioner as 'very good'. The Pen Picture also does not contain any adverse remarks against the petitioner and in fact grades him as 'very good officer'. He submits that merely on account of DG's Displeasure being issued to the petitioner, the DPC could not have declared the petitioner unfit for promotion.

7. On the other hand, the learned counsel for the respondents submits that the DPC takes into account the APARs and Displeasures, if any, having been issued to the officer and then makes an



independent assessment on the suitability of an officer for promotion. In the present case, the DPC, taking note of the two DG's Displeasures, which were within the period of consideration, found the petitioner unfit for promotion. He submits that, therefore, no infirmity can be found in the decision of the DPC in this regard.

8. We have considered the submissions of the learned counsels of the parties.

9. The Office Memorandum dated 27.03.2015 reads as under:

“ No.I.45026/01/2015-Pers.II

*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 to 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."

10. The above OM clearly records that the displeasure is not a penalty and, therefore, cannot be considered for denial of promotion. It further goes to say that the Reporting/Reviewing/Accepting Authority may, while writing the APAR of an officer, take into account the Displeasure issued and reflect whether there was any improvement or otherwise noticed in the officer after receipt of the Displeasure or Warning. It further states that once the APAR of an officer or member of the Central Armed Police Forces is finalized for the year or the date for finalizing such APAR is over, the displeasure or warning conveyed will become infructuous.

11. In ***O.P.Nimesh*** (supra), this Court, considering the above OM, has held that Displeasure is not a penalty enlisted in Rule 11 of the CCS (CCA) Rules, 1965 and, therefore, it could not have been considered for denying promotion to the petitioner therein. It further held that though it is true that the DPC can make its own overall assessment of all the relevant confidential reports pertaining to all the eligible officers who have been considered, and it enjoys full discretion to devise its method and procedure for objective assessment



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of suitability and merit of the candidate being considered by it, the decision of the DPC which is contrary to OM dated 27.03.2015 cannot be sustained.

12. In the present case, in terms of Clause (i) of the OM dated 27.03.2015, the two DG's Displeasures could not have been taken into consideration by the DPC for denying promotion to the petitioner.

13. As far as the APARs for the years 2015-16 and 2017-18 are concerned, they also reflect that the two Displeasures though mentioned therein, were only for the purpose of completion of the record and did not eventually affect the Pen Picture of the petitioner, which was recorded as "very good". Paragraph 10 of the APAR for the period 01.04.2015 to 31.03.2016 and for the period 01.04.2017 to 31.03.2018, where the entry of the Displeasure(s) were mentioned, and paragraph 11, giving the pen picture of the Reporting Officer, and the remarks of the Reviewing Officer, read as under:

10. क्या अधिकारी को मूल्यांकन अवधि के दौरान कोई विफलताएं जारी किए गए हैं, यदि हाँ तो क्या इसकी संज्ञा एम.एच.ए के ओएम नं 145026/01/2015-पर्स.11 दिनांक 27 मार्च 2015 के अनुसार शिरोरित्त अधिकारी द्वारा मूल्यांकन करते समय ध्यान में रखा गया है-
If any displeasure is issued to the officer during the assessment period, has it been taken for consideration in the APAR as per MHA's OM No. 145026/01/2015-Pers.11 dated 27 March 2015.

DG's displeasure with HQ DG BSF (Conf)/Vig Dte: Conf
section) 2/No. C-14011/50/2017/CC/Pers/BSF/16332-39
dated 30 Nov 2017.



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11. रिपोर्टिंग अधिकारी के द्वारा पेन पिक्चर अधिकारी के संपूर्ण गुणों पर टिप्पणी करें, जिसमें उसकी सूरिया और कमिया शामिल हैं (लिकरीबन 100 शब्दों में):-

PEN PICTURE of the officer reported upon by Reporting Officer. (Please comment (in about 100 words) on the overall qualities of the officer including areas of strengths and lesser strengths).

An adequate, logical, effective, capable, resourceful, receptive, logical, disciplined and fluent officer. He is industrious, confident and persistent. The officer possesses very good professional knowledge and takes keen interest in assignment duties. I graded him as a very good officer.

Part IV - Review

1. रिपोर्ट लिखने वाले अधिकारी के पेन पिक्चर पर टिप्पणी (सुनरीक्षण अधिकारी द्वारा भरा जाए) ?

Remarks on the pen picture reflected by the reporting officer (To be filled by reviewing authority)

An Officer with immense potential and innate capabilities and talents. He is hardworking and organized & takes interest in welfare of troops.

14. Though there is a discrepancy between Hindi and English version of paragraph 10 of the APAR quoted above, the Hindi version clearly states that the Reporting Officer has to state whether the Displeasure has been taken into note while reporting the APAR. The mention of the Displeasure, therefore, reflects that the Reporting Officer has duly noted the Displeasures that were issued to the petitioner herein. In spite of noticing the Displeasures, as contended by the learned counsel for the petitioner, the Reporting Officer grades the petitioner as 'good'/'very good' as is reflected from his Pen



Picture and even from the overall numerical grading and Box Grading. In the APAR for 2017-2018, the Reviewing Officer agreed with Pen Picture and, in fact, gave higher marks to the petitioner, and the Accepting Officer gave him even higher marks in the Box Grading, while agreeing with the opinion of the Reporting Officer. Similarly, in the APAR for the period 2015-16, the Reporting Officer graded the petitioner as 'good', however, the same was upgraded to 'very good' by the Accepting Officer in the Box Grading.

15. Be that as it may, the consideration of the APAR of the petitioner for the purpose of promotion is within the domain of the DPC. The above observations are merely being made to show that in spite of the Displeasures being issued and noted in the APAR, the independent grading of the petitioner has been made by the Reporting/Reviewing/Accepting Authority. The DPC, therefore, should have acted without being influenced by the Displeasures that were issued to the petitioner and their mentions in the APARs of the petitioner.

16. In view of the above, we direct the respondents to convene a Review DPC to consider the case of the petitioner for promotion to the post of Deputy Inspector General. In case the petitioner is found fit for such promotion, without taking note of the Displeasures that have been issued to the petitioner for the relevant period, the petitioner shall be granted such promotion with retrospective effect and the petitioner shall be placed above his immediate junior, namely CH Sethuram, in the seniority list. The petitioner shall also be granted all consequential benefits, however, without differential of the actual pay for the



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intervening period. The entire exercise must be completed by the respondents within a period of twelve weeks from today.

17. The petition is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 7, 2024/Arya/VS

Click here to check corrigendum, if any