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

% *Date of Decision: 27th October, 2026*

\# **CNR No. DLHC010478502023**

\+ W.P.(C) 15333/2023

NEMA SINGH OTTI .....Petitioner

Through: Ms. Saahila Lamba, Advocate.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Richa Dhawan, SPC with Mr. Anuj Chaturvedi and Ms. Yashita Jain, Advocates for UoI.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH
HON'BLE MR. JUSTICE GURVINDER PAL SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition is filed by the Petitioner under Article 226 of Constitution of India seeking writ of mandamus to the Respondents for grant Non-Functional Financial Upgradation ('NFFU') in Junior Administrative Grade ('JAG') to the Petitioner from the date the benefit was granted to his batchmates, with all consequential benefits.

2. To the extent necessary, case of the Petitioner is that he was enrolled as Sub-Inspector in BSF on 05.12.1988 and was promoted to different ranks from time to time, owing to his dedicated and exemplary service. While Petitioner was posted at 129 BN BSF, a false FIR No. 56/2007 was registered on 22.03.2007 under Sections 21, 25, 61 and 85 of NDPS Act, 1985 against the Petitioner and one Constable (Driver) Chaman Lal for

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18:54:45

alleged involvement in smuggling of 4 kgs of narcotics and basis this Petitioner was suspended by the Respondents on 03.04.2012.

3. It is stated that vide judgment dated 05.11.2011, learned Sessions Judge, Special Court, District Kapurthala, Punjab convicted the Petitioner and sentenced him to undergo 10 years RI with fine of Rs.1,00,000/- and basis this, Petitioner was dismissed from service vide order dated 23.03.2012. The judgment was challenged by the Petitioner before the Punjab and Haryana High Court and vide judgment dated 01.04.2013, the Court acquitted the Petitioner of all charges and resultantly, Petitioner submitted a representation dated 02.05.2013 to the Respondents for reinstatement in service with all benefits.

4. It is stated that when no action was taken by the Respondents, Petitioner filed W.P. (C) 2894/2014 before this Court and during the pendency of the petition, Central Government issued an order dated 15.12.2014, directing reinstatement of the Petitioner and treating the period of absence from 03.04.2007 till the date of reinstatement in service as period spent on duty for all purposes and thus granting full pay and allowances under provisions of FR54 (2) and (3). Writ petition was disposed of, taking on record this order and directing the Respondents to pay to the Petitioner arrears towards pay and allowances, within two months. By order dated 04.02.2019, Respondents granted notional promotion to the Petitioner in the rank of Deputy Commandant w.e.f. 27.11.2009.

5. On 02.03.2020, Respondents issued an order granting NFFU in JAG to batchmates of the Petitioner, but his name was conspicuously missing from the order, despite being eligible for grant of NFFU. Petitioner submitted representations dated 06.03.2020 and 26.06.2023 to the

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18:54:45

Competent Authority but no response was received and hence, this petition was filed.

6. Insofar as the Respondents are concerned, the facts as noted above are not at variance. It is, however, the stand of the Respondents that when Petitioner and Constable (Driver) Chamanlal were arrested in connection with the criminal case, a Staff Court of Inquiry (SCOI) was conducted to enquire into the circumstances leading to commission of the alleged acts. At the time of finalising the SCOI proceedings, ADG, BSF (WC) recommended issue of DGs Displeasure to the Petitioner for frequent violation of SOP regarding entry and exit from the fence gate at IB and accordingly, show cause notice was issued on 29.03.2017 and being dissatisfied with Petitioner's reply, DGs Displeasure was awarded vide letter dated 05.06.2017.

7. It is submitted that as per DoPT OM dated 24.04.2009, all prescribed eligibility criteria and promotional norms, including benchmark for upgradation to a particular Grade Pay would have to be met at the time of screening for grant of higher pay-scale under NFFU and there is no provision for relaxation. Petitioner's case was considered for grant of NFFU with his batch by the Screening Committee held on 10.06.2022, however, the committee observed that Petitioner did not have the requisite two years Mandatory Field Service (MFS) as Deputy Commandant in Duty Battalion on crucial date i.e., 01.01.2020, which was mandatory for grant of NFFU in terms of the Recruitment Rules. Accordingly, Petitioner was not granted the benefit and when he completed two years MFS, he was considered by the Screening Committee on 26.08.2022, but was not recommended for grant of NFFU owing to DGs Displeasure awarded to the Petitioner on 05.06.2017,

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18:54:45

since ACR for the said year was taken into consideration by the Screening Committee. Accordingly, Petitioner was assessed 'unfit' for NFFU w.e.f. 01.01.2021 and for the same reason, he was also not recommended for NFFU by the Screening Committee held on 23.03.2023 for the year 2022 and by the Screening Committee held on 27.09.2024 for the year 2023. It is also urged that it is a settled law that DPC has the discretion to devise its own method and procedure for assessment of suitability and merit of the candidate and once the Screening Committee was of the view that with DGs Displeasure on record in the profile of the Petitioner, he was not entitled to NFFU, no interference ought to be made by this Court exercising power of judicial review and to support this plea, reliance is placed on the judgment of the Supreme Court in ***Union of India and Another v. S.K. Goel and Others, (2007) 14 SCC 641.***

8. Responding to the aforesaid submissions of the Respondents, learned counsel for the Petitioner submits that the only reason for non-grant of NFFU to the Petitioner was DGs Displeasure, however, this ground is unsustainable in law in light of the judgment of this Court in ***Dr. O.P. Nimesh v. Union of India and Others, 2018 SCC OnLine Del 12003,*** where the Division Bench held that in light of DoPT OM dated 27.03.2015, displeasure not being a penalty enlisted in Rule 11 of CCS (CCA) Rules, 1965 (CCA Rules), cannot be taken into consideration for denying promotion and therefore, DPC went wrong in giving weightage to displeasure, as a factor to deny promotion. This judgment was followed by the Division Bench in ***Arun Kumar v. Union of India & Ors, in W.P. (C) 8029/2019.*** Subsequently, in ***Chander Sen Singh v. Union of India & Anr., W.P.(C) No. 11418/2024*** and ***Mohit Pundeer v. Union of India & Ors.,***

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W.P. (C) No. 11452/2024, both decided by common order dated 05.09.2024, it was held that DGs Displeasure cannot come in the way of grant of NFFU, if the individual is otherwise eligible and therefore, the reason for denial of NFFU to the Petitioner herein is untenable in law.

9. Heard learned counsels for the parties and examined their submissions.

10. Indisputably, the sole reason for not granting NFFU in JAG to the Petitioner was the award of DGs Displeasure on 05.06.2017. In our view, Petitioner is right in his submission that it is no longer *res integra* that displeasure cannot be a ground to deny promotion or NFFU. In ***Dr. O.P. Nimesh (supra),*** this Court examined the issue in detail and after closely looking at the judicial precedent as also DoPT OM dated 15.07.2015, held that displeasure cannot be taken by the DPC to deny promotion since 'displeasure' is not a penalty enlisted in Rule 11 of CCA Rules. In this context, we may refer to paragraphs 12 and 13 from the judgment:-

> *"**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*

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Signing Date:04.11.2026
18:54:45

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 or 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."

13. *Hence the two aspects which weighed with the DPC are clearly untenable and could not have resulted in the petitioner not being recommended for promotion to the post of IG (Medical). It appears, the stand of the respondents, in the counter affidavit, is an after though only to wriggle out of an unreasoned decision taken to deny promotion to the petitioner."*

11. This judgment was subsequently followed in the case of ***Arun Kumar (supra),*** where the DPC found the Petitioner unfit for promotion to the post of Deputy Commandant due to a note of DGs Displeasure in the relevant APAR and the Court relying on decision in ***Dr. O.P. Nimesh (supra),*** negated the contention of the Respondents that the displeasure could be a reason to deny promotion and directed re-consideration of his case. We may note that the judgment in ***S.K. Goel (supra),*** cited by the Respondents herein was also relied upon by the Respondents in ***Dr. O.P. Nimesh (supra)*** and

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the Division Bench observed that no doubt, the DPC enjoys full discretion to devise its methods and procedures for objective assessment of suitability and merit of a candidate and the recommendations should not be interfered with unless they are in gross violation of concerned instructions or rules etc., however, DPC went wrong in ignoring DoPT OM dated 27.03.2015 and decided contrary thereto by taking the displeasure into consideration, which was impermissible. We entirely agree with this reasoning and hold that while DPC has full discretion to devise its own method to assess a candidate but it cannot act contrary to or in violation of Instructions/Rules on the subject.

12. It was lastly submitted by the Respondents that the two judgments in ***Dr. O.P. Nimesh (supra)*** and ***Arun Kumar (supra)*** pertain to cases of promotion while the present case relates to grant of NFFU and hence, the judgments are inapplicable. This contention only merits rejection. In ***Chander Sen Singh (supra)*** and ***Mohit Pundeer (supra)***, decided by common order, this Court has taken a view that displeasure will not come in the way of grant of NFFU and therefore, Petitioner's case is covered by these judgments. It does not stand to reason that while displeasure, which is not a prescribe penalty under CCA Rules, will not be an impediment for promotion, it will be an obstruction for grant of financial upgradation such as NFFU. It cannot also be overlooked that DoPT OM dated 24.04.2009, which governs grant of NFFU, provides in Para 3 of 'Terms and Conditions for Grant of Higher Pay-Scale on Non-Functional Basis to Officers of Organized Group-A Services' that all prescribed eligibility criteria and promotional norms including benchmark for upgradation to a particular Grade Pay would have to be met at the time of screening for grant of higher

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18:54:45

pay-scale under these orders and therefore, once the displeasure is not a handicap for promotion, it cannot be for grant of NFFU.

13. For all the aforesaid reasons, this writ petition is allowed and Respondents are directed to hold Review Screening Committee and consider the case of the Petitioner afresh for grant of NFFU in JAG within a period of eight weeks from today. If the Petitioner is found fit, NFFU in JAG will be granted to the Petitioner from the date the upgradation was granted to his batchmates, with all consequential benefits.

14. Writ petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

GURVINDER PAL SINGH, J

OCTOBER 27, 2026/AK

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