

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD  
(Special Original Jurisdiction)**

MONDAY, THE THIRTY FIRST DAY OF JULY  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI**

**WRIT PETITION NO: 26762 OF 2015**

**Between:**

C.T. VENKATESH, S/o. C.Bhaskar Rao, Aged about 50 years, Occ DIGP/GC/CRPF, Hyderabad, Office of the Inspector General of Police Southern Sector/CRPF/HYB. Hyderabad.

**...PETITIONER**

**AND**

1. Union of India, Rep by its Secretary, Ministry of Home Affairs Northern Block, New Delhi- 110 001.
2. The Director General CRPF, C.G.O. Complex. New Delhi - 003.
3. The Inspector General of Police, Southern Sector, CRPF, Hyderabad.

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ of Mandamus, or any other appropriate writ, order or direction declaring impugned Order G.O .II.1/2012-SZ.Estt.1 dated 13.12.2012 issued by Respondent No. 2 and Review DPC held on 26.09.2011 and also order No. P.VII-3/2010-pers-DA-1, Dt 2.3.2015 issued by the 2<sup>nd</sup> respondent as illegal, arbitrary and against the MHA GOI letter No. 45026/25/87-Pers-II. dated June 1989 and in clear violation of the petitioners fundamental rights guaranteed under Art. 14 and 16 of the Constitution of India and the same is set-aside and consequently direct the respondents herein to promote the petitioner in the rank of DIGP w.e.f. 30.09.2010 with all consequential benefits.

**(prayer is amended as per C.O.DT 3/7/17 IN WPMP.NO. 44196/16)**

**I.A. NO: 1 OF 2015(WPMP. NO: 34753 OF 2015)**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to consider the petitioner for promotion to the rank of DIGP w.e.f. 30.09.2010 with all consequential benefits such as seniority, pending disposal.of the above writ petition.

**Counsel for the Petitioner: SRI PRATHAP NARAYAN SANGHI FOR SRI  
P VISHNUVARDHANA REDDY**

**Counsel for the Respondents: SRI MANOJ KUMAR MISHRA FOR SRI GADI  
PRAVEEN KUMAR DEPUTY SOLICITOR  
GENERAL OF INDIA**

**The Court made the following: ORDER**

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

**WRIT PETITION No.26762 of 2015**

**ORDER:**

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner, seeking writ of mandamus declaring the order No.G.II.1/2012-SZ. Estt.I, dated 13.12.2012 issued by respondent No.2 and the Review DPC held on 26.09.2011, as illegal, arbitrary and against the MHA GOI letter No.I.45026/25/87-Pers.II, dated June, 1989 and consequently direct the respondents to promote the petitioner to the rank of DIGP w.e.f. 30.09.2010 with all consequential benefits.

2. I have heard the submissions of Sri Prathap Narayan Sanghi, learned Senior Counsel representing Sri P.Vishnuvardhan Reddy, learned counsel for the petitioner, Sri Manoj Kumar Mishra, learned counsel representing Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India representing the respondents and perused the record.

3. The facts, which are not in dispute, are that the petitioner was appointed as Assistant Commandant in CRPF on 03.07.1989. While he was working as Commandant, 99 RAF, Hyderabad, a show cause notice, dated 13.02.2009, for issuance of "Displeasure" was issued to him with the following allegations:

"a) he had vide signal No.T.V-1/105-Adjt, dated 29.11.2005 detailed Pharmacist Praveen V.S. of the unit of Annual Range Classification Firing (ARCF-2005) directly without the knowledge of Dr.Vivek Sivatsava, Medical Officer of the unit which was required as the pharmacist worked under direct command of the unit MO (Medical Officer).

b) The MO vide his Memo dated 27.07.2005 brought to the knowledge of the unit Commandant that in contraversion to instructions of Directorate personnel were send for AME (Annual Medical Examination) to civil doctors. In response, the Commandant instead of taking action against the guilty issued a letter to him asking him to observe proper decorum in office correspondence. This act against the Doctor was not called for.

c) CT (Constable)/Dvr (Driver) Vijay Kumar of the Unit was discharged from the Hospital on 12.11.2007 with Shape-2 (T-4). Accordingly, he was to be re-examined after a month. However, on 19.11.2007, he was awarded penalty of pack drill by the unit Commandant which was implemented. Technically, when the CT/Dvr was not Shape-1, such a punishment should not have been implemented and the commandant failed to judge the issue properly.

d) The MO had submitted the application for the post of MO in CSIR (Council of Scientific & Industrial Research) on 12.05.2008 which was forwarded to DIGP Allahabad only on 01.06.2008. This delay on the part of the unit could have been avoided."

Thereafter, the petitioner, *vide* letter, dated 27.02.2009 sought for a copy of the preliminary enquiry report, based on which, the show cause notice was issued. The respondents, *vide* letter, dated 30.03.2009, informed the petitioner that "Displeasure is not a formal penalty under CCS (CCR) Rules, 1972 and there is no provision to provide copies of preliminary enquiry report/documents." Thereafter, the petitioner submitted reply to the show cause notice. However, respondent No.2 issued an order, dated 18.06.2009 convening his "displeasure" with a further advise to the petitioner to be more careful in future. Thereafter, a meeting of the Departmental

Promotion Committee was convened to consider the promotions on the periods for consideration of the Confidential Records for the said vacancy upto 31.03.2009. The petitioner was denied promotion on the ground that he was awarded "DG's Displeasure". Thereafter, the petitioner made a representation, dated 18.10.2010 to the respondent No.1 requesting to constitute a review DPC to consider his promotion from the rank of Commandant to the rank of DIGP with effect from 30.09.2010 by ignoring the subject "Displeasure". Since there was no response from respondent No.1, the petitioner submitted another representation on 10.10.2012 for restoration of his seniority. Subsequently, the competent authority approved for convening of review DPC and accordingly, review DPC was held on 26.09.2011, wherein, the petitioner was declared as "unfit" for promotion. The same was intimated to the petitioner vide order in No.G.II.1/2012-SZ.Estt.I, dated 13.12.2012. Hence, this writ petition.

4. Learned Senior Counsel appearing for the petitioner would submit that the impugned order, dated 13.12.2012 issued by respondent No.2 is illegal and arbitrary and against the MHA GOI letter No.45026/25/87-Pers.II, dated June, 1989. In order to make evident the hollowness of the allegations levelled against the petitioner by the complainant (Dr.Vivek Srivatsava), the petitioner

vide letter, dated 27.02.2009, sought a copy of the preliminary enquiry report, based upon which, the show cause notice was issued to him. The respondents informed to the petitioner that "Displeasure is not a formal penalty under CCS (CCR) Rules, 1972 and there is no provision to provide copies of PE report/documents". In fact, the petitioner was denied reasonable opportunity of defending himself effectively by not providing the documents sought by him. Further, the order, dated 18.06.2009 expressing "displeasure" is a non-speaking order, wherein it was simply mentioned that the explanation submitted by the petitioner is found to be untenable. Even though the "displeasure" was communicated to the petitioner, it cannot have any adverse effect on the promotional aspects of the petitioner in the light of the provisions contained in MHA GOI letter No.45026/25/87-Pers.II, dated June, 1989, as it has not been awarded on any elements of dishonesty, pecuniary gain, abuse of power or moral turpitude. A perusal of the subject "displeasure" establishes beyond reasonable doubt that none of the elements of dishonesty, pecuniary gain, abuse of power or any moral turpitude were involved in the case of the petitioner and thus, the petitioner is entitled for due promotion. Further, DPC was convened to consider the promotions for the vacancy upto 31.03.2009. The displeasure was communicated to the petitioner on 18.06.2009. There is a specific provision in the instructions dated June, 1989 that the award of

"displeasure" should be taken note of only when it falls within the period of consideration of confidential reports by the DPC. Since the subject "displeasure" did not fall within the period of consideration of confidential reports by the DPC, the DPC ought not have taken into consideration to the award of "displeasure" to the petitioner. Accordingly, the petitioner made a representation, dated 18.10.2010 bringing the above facts to the notice of respondent No.1 and sought for review DPC to be constituted, to consider his promotion with effect from 30.09.2010, i.e., the date on which he was superseded when his junior was considered for the said post. The competent authority approved for convening of review DPC. Surprisingly, the petitioner was informed *vide* impugned order, dated 13.12.2012 that the review DPC declared him as unfit. The impugned order, dated 13.12.2012 is a non-speaking order. Aggrieved by the same, the petitioner submitted a representation, dated 10.10.2012 to the respondent No.1 submitting that he has not been communicated with any adverse remarks in his ACRs/APARs which leads him to believe that he was graded above the benchmark. In any event, the petitioner cannot be placed below his juniors, who were promoted. The facts and circumstances of the case leading to award of "displeasure" on the petitioner should not have been placed before the DPC and the DPC ought not have taken the same into consideration. The petitioner is entitled for promotion to the rank of

DIGP w.e.f. 30.09.2010 and ultimately prayed to allow the writ petition as prayed for.

5. The respondents filed counter. It has been contended on behalf of the respondents that the petitioner herein and one Dr.Vivek Srivatsava, Medical Officer, while functioning in 117 Battalion of CRPF, submitted complaints against each other to the Inspector General of Police, CRPF. Accordingly, a preliminary enquiry was held into the matter. It was found that both the officers were responsible for creating obnoxious situation in the unit, which not only spoiled the working atmosphere of the unit but also posed a bad example to the subordinates. The petitioner was responsible for not exercising proper command and control over his subordinates and win their confidence. Accordingly, show cause notice was issued to the petitioner on 13.02.2009 proposing to award "Director General's Displeasure" with a direction to submit his reply within 15 days. The petitioner, *vide* application, dated 27.02.2009 requested for providing copies of PE report. As per the orders of a competent authority, the position was communicated to the petitioner that "displeasure" is not a formal penalty under CCS (CCA) Rules, 1972 and as such, there is no provision to provide copies of PE report/documents. The petitioner submitted his reply to the show cause notice *vide* letter, dated 08.04.2009. The competent

authority, after taking into account of the relevant aspects as well as PE report, found that the averments of the petitioner are untenable and after carefully evaluating all the relevant factors conveyed "Director General displeasure" to the petitioner *vide* order dated 18.06.2009. In fact, the petitioner was considered for promotion to the rank of DIGP by the DPC held on 21.04.2010, but however, he was not empanelled for promotion. He was having "very good" grading in all 5 ACRs and he was also issued "DG's displeasure" which was brought to the notice of DPC. Though the petitioner was having "very good" grading in his ACRs for five years, he was not recommended for promotion as DIGP in view of the "Director General displeasure" awarded to him. On a representation of the petitioner to the Ministry of Home Affairs, the Ministry of Home Affairs convened approval for conducting a review DPC, which was held on 26.09.2011. However, the review DPC upheld the recommendations of DPC held on 21.04.2010 and assessed the petitioner as "unfit". The DPC enjoys the full discretion to device their own method and procedure for objective assessment of the suitability of a candidate who is considered by the DPC. Therefore, there is no violation of fundamental right as claimed by the petitioner. Further, though "Director General displeasure" is not a punishment under CCS (CCA) Rules, but the discretion and objective assessment of DPC cannot be challenged. Further, the PE report/investigation and the file dealing

with the disciplinary case against the Government servant should not be summoned. Further, the statements of witnesses recorded during preliminary enquiry did not constitute "evidence" because they cannot be used during regular enquiry. The preliminary enquiry is a "fact finding enquiry" and the evidence collected are to be examined only to come to a decision whether a *prima facie* case exists for initiation of formal disciplinary proceedings or otherwise. Moreover, displeasure is not a formal penalty under CCS (CCA) Rules, 1972 and as such, there is no provision to provide copies of PE report/documents at PE stage. All these facts were appraised to the petitioner. A Government servant has a right to be considered for promotion, but he has no right for promotion. The petitioner was considered by the DPC, as he fulfilled all the conditions for promotion. However, the discretion of DPC cannot be challenged. The specific indication mentioned by the petitioner regarding his non involvement in dishonesty, pecuniary gain, abuse of power or authority or moral turpitude has no relevance, as DPC was applied their conscious based on the material on record and arrived at a conclusion that the petitioner is not fit for promotion. Though conducting of PE might have consumed some time for finalisation due to administrative reasons, on completion of the same, the petitioner was held responsible to the extent that resulted in awarding "Director General's displeasure". The contentions raised on behalf of the

petitioner are unsustainable. There are no merits in this writ petition and accordingly, prayed to dismiss the writ petition.

6. I have given anxious consideration to the submissions made by both sides and meticulously examined the material placed on record.

7. Mr. Pratap Narayan Sanghi, learned Senior Counsel appearing for the petitioner submitted that it is evident that while considering the promotion of the petitioner along with his colleagues to the rank of DIG, CRPF, the "displeasure" was taken into consideration and his promotion was denied. That apart, it has been urged that the ACRs of the petitioner 2008-09, meaning thereby for the period upto 31.03.2009 was to be appraised by the DPC when the promotion against the vacancy to the rank of DIG was considered. It has been further contended that vide memorandum under No.I.45026/25/87-Pers.II, dated 28.06.1989 issued by Ministry of Home affairs, Government of India, it has been prescribed in para 3(iv) as follows:

*"If the displeasure falls within the period of consideration of CRs by the DPC, the facts and circumstances of the case leading to the award of displeasure should be placed before the DPC...., the DPC should not consider the officer for promotion for a period of one or two years from the date of award of the displeasure, as it may consider appropriate."*

Thus, it is clear that if the displeasure has been recorded in the CR for a period prior to the normal period of consideration of CRs by the DPC, it should be ignored. Admittedly, in the instant case, the

DPC was convened to consider the promotions to fill up the vacancies of DIGP upto 31.03.2009 and the displeasure was communicated to the petitioner on 18.06.2009. Thus, the authorities concerned, ought not have brought to the notice of DPC and the DPC ought not have considered that "displeasure" conveyed to the petitioner beyond the period for consideration of confidential report of the petitioner. Further, the DPC has to apply his mind in the facts and circumstances and take a view whether there is an element of dishonesty, pecuniary gain, abuse of power or authority or moral turpitude. If any of these elements are present, taking a serious view of the matter, the DPC should not be considered for promotion for a period of one or two years from the date of awarding of "displeasure". In case "displeasure" has been awarded for routine or trivial infraction of the rules and instructions, the DPC may take a more lenient view and include the petitioner in the panel for promotion. This Court has noticed that the charges levelled against the petitioner do not fall within the elements of dishonesty, pecuniary gain, abuse of power or authority or moral turpitude, so far as the preliminary enquiry report is concerned.

8. A crucial question which also arises for consideration in this writ petition is whether the "displeasure" is a punishment. Here, it is apt to extract Rule 11 of CCS and CCA Rules, which read as under:

"The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-

- i) Censure,
- ii) Withholding of his promotion,
- iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders.
- iv) a) reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension.
- v) Withholding of increments of pay."

While going through these rules, "displeasure" is not a punishment at all. The question is whether it can be a ground for denying promotion to the petitioner. In order to determine this controversy, it is necessary to reproduce hereunder the relevant portion of instructions regarding the effect of award of DG's displeasure to the officers of the para military forces conveyed by Deputy Secretary to Government of India vide No.45026/25/87-Pers-II:

"Displeasure if not a punishment. It is generally awarded in the cases where there is evidence of delinquency, but it is not worthwhile to institute formal disciplinary proceedings. There may be also be cases where the delinquency or irregularity is of a trivial nature or where there are extenuating circumstances which would not justify initiation of formal disciplinary proceedings, in other cases, the time and expense involved in conducting such proceedings would not be commensurate with the delinquency or irregularity and therefore displeasure is awarded."

While going through this instruction it is crystal clear that displeasure is not a punishment, provided displeasure is conveyed on the ground which is of trivial nature or where there are extenuating

circumstances which would not justify initiation of formal disciplinary proceedings and that cannot be the ground to deny the promotion. But Rule 4 of the said instructions mandates that DPC/competent authority can decline consideration of promotion of such officers for a period of one or two years from the date of award of the displeasure on the other grounds.

9. It is not known on what count DPC has refused to promote the petitioner to the next higher grade. No cogent reason was shown by the respondent that the act of the petitioner was such, which warranted not to consider the petitioner for promotion to the next grade. It appears that the displeasure was communicated to the petitioner on 18.06.2009 and the DPC was considering the CRs of the petitioner for his promotion to the next level upto 31.03.2009. Thus, it is clear that the respondents are not justified in denying the promotion to the petitioner to the next higher level.

10. There is another facet in this case. Admittedly, the petitioner sought for certain documents from the respondents to give effective reply to the show cause notice, but the same was ignored by the respondents on the ground that "displeasure" is not a formal penalty under CCS (CCR) Rules, 1972 and there is no provision to provide PE reports/documents. By denying to supply the copy of PE report to the petitioner, the respondents have violated the principles of natural

justice which denied the opportunity to the petitioner to contradict the contents of the subject PE report. It is well settled that under Article 226 of the Constitution of India, this Court cannot exercise its jurisdiction as the Court of appeal. Its inquiry should generally be restricted to the process leading to the decision and as to whether the decision is informed by reasons or it suffers from the vice of arbitrariness. In the instant case, though review DPC was convened at the request of the petitioner, it appears that the same was convened as an empty formality. Further, a perusal of the order of the review DPC makes it clear that the review DPC has not applied its mind in arriving at a conclusion that the petitioner was unfit for promotion. No reasons, much less cogent reasons were recorded by the review DPC in arriving at such a conclusion. Under these circumstances, it can be held that decision making process adopted by the petitioner in arriving at a conclusion that the petitioner is unfit for the promotion suffers from arbitrariness and unreasonableness and as such, the same is liable to be interfered by this Court by exercising power under Article 226 of the Constitution of India.

11. Taking into consideration the facts and circumstances of the case, I deem it fit and proper to set aside the impugned order, dated 13.12.2012 issued by respondent No.2 informing the petitioner that he was assessed as unfit for promotion to the post of DIGP as well as

the review DPC which was held on 26.09.2011. This Court is also of the considered opinion that the petitioner is entitled to be promoted to the rank of DIGP with effect from 30.09.2010 with all consequential benefits.

12. Accordingly, this Writ Petition is allowed. The order No.G.II.1/2012-SZ. Estt.I, dated 13.12.2012 issued by respondent as well as the Review DPC held on 26.09.2011 are hereby set aside. The respondents are directed to promote the petitioner to the rank of DIGP w.e.f. 30.09.2010 with all consequential benefits.

Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no orders as to costs.

SD/- T. JAYASREE  
ASSISTANT REGISTRAR  
//TRUE COPY//  
SECTION OFFICER

To,

1. Union of India, Rep by its Secretary, Ministry of Home Affairs Northern Block, New Delhi- 110 001.
2. The Director General CRPF, C.G.O. Complex, New Delhi - 003.], -
3. The Inspector General of Police, Southern Sector, CRPF, Hyderabad.
4. One CC to SRI. P VISHNUVARDHANA REDDY Advocate [OPUC]
5. One CC to SRI.GADI PRAVEEN KUMAR DEPUTY SOLICITOR GENERAL OF INDIA Advocate [OPUC]
6. Two CD Copies

KKS  
GJP

Pmg.

**HIGH COURT**

**DATED:31/07/2023**

**ORDER**

**WP.No.26762 of 2015**



**ALLOWING THE WP  
WITHOUT COSTS**

③ Pme,  
17/8/23.