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

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Date of Decision: 07.05.2026

+ **CONT.CAS(C) 1285/2022**

NASIMUDDIN ANSARIPetitioner

Through: Mr. Tapas Das, Adv.

versus

SATISH SINGH IRSMERespondent

Through: Mr. Farman Ali, CGSC, Mr. Amit Acharya, GP, Ms. Usha Jamnal and Ms. Tanya, Adv.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

1. The present petition has been filed by the petitioner alleging wilful disobedience/non-compliance with the directions contained in the order dated 20.09.2019 passed in W.P.(C) 11767/2016. The said order reads as under:

CM APPL. 41040/2019 (for modification)

1. This is an application by the Petitioner seeking modification of the order dated 25th October 2018 passed by this Court.

2. In the said order this Court had, inter alia, concluded in para 14 that given the fact that the charges against the Petitioner had only been partly proved and to a limited extent, and the Petitioner not having been held responsible for causing any monetary loss to the Government, there was no occasion for the imposition of a penalty different from the one awarded to Mr. V. V. Rao SC (ENM) who was also proceeded against and who was the Petitioner's superior discharging a higher responsibility than the Petitioner.



3. In paragraph 12 of the order dated 25th October, 2018 this Court had recorded that the penalty imposed on Mr. V.V. Rao was that of 'censure'. This was apparently a mistake. Enclosed with the present application is a copy of an order dated 25th October 2002 in the case of Mr. Rao, the operative portion of which reads thus:

“The Disciplinary Authority, therefore has been pleased to drop the proceedings against Shri V.V, Rao, SE(E&M) Retd. However, the displeasure of the Govt. is hereby communicated to him for the minor infringement referred to above.”

4. Consequently, the sentence in para 12 of this Court's order dated 25th October which reads “The Court's attention is drawn to the penalty imposed on Mr. V.V Rao SC (ENM) where, under similar circumstances, he was awarded the penalty of "censure", shall stand corrected to read as under:

“The Court's attention is drawn to the order passed in the case of Mr. V.V Rao SC (ENM) where, under similar circumstances, he was communicated the displeasure of the government and the proceedings against him were dropped.”

5. In that view of the matter, the corresponding direction in para 16 of this Court's order dated 25th October 2018 is corrected to read as follows:

“Consequently, the Court sets aside the impugned order dated 11th March 2003 passed by the Border Roads Development Board insofar as the penalty is concerned and directs that the Petitioner will be communicated the displeasure of the Government and the proceedings against him will be dropped.”

6. As a result, the order dated 11th February, 2019 passed by the Disciplinary Authority (DA)/Joint Secretary (JS) in the Ministry of Defence (MoD) consequent upon the order dated 25th October 2018 is hereby set aside. A direction is issued to the DA/JS, MoD to now pass a fresh order in terms of the above corrected order of this Court not later than 4 weeks from today and grant all consequential reliefs to the Petitioner.

7. The application is disposed of in the above terms.



2. In terms of the aforesaid directions, the order dated 11.02.2019 passed by the Disciplinary Authority qua the petitioner was set aside, and a fresh order was directed to be passed.
3. A perusal of the record reveals that an order dated 12.12.2019 came to be issued thereafter. The same has been filed as Annexure P2 to the present petition and reads as under:

ORDER

WHEREAS, disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules 1965 were initiated against Shri M.N. Ansari, the then Assistant Executive Engineer(E&M), vide Ministry of Surface Transport, Border Roads Development Board Charge Memorandum No. BRDB/02(123)/99/GE-II dated 30.05.2000, as per the Statement of imputations of misconduct contained in the Annexure-II to the ibid Memorandum.

2. AND WHEREAS, after examination of the findings of Inquiry Authority in its Report submitted to the Disciplinary Authority, advice of the Central Vigilance Commission (CVC) and Union Public Service Commission (UPSC); a minor penalty of withholding of one increment, for a period of two years, was imposed on Shri M.N. Ansari, AEE(E&M) vide order No. BRDB/02(123)/99/GE-II dated 11.03.2003.

3. AND WHEREAS, being aggrieved with the penalty imposed on him, vide ibid order dated 11.03.2003, Shri M.N. Ansari, AEE(E&M) filed Writ Petition (Civil) No 11767 of 2016 before Hon'ble High Court of Delhi against the said penalty order.

4. AND WHEREAS, Hon'ble High Court of Delhi, vide para 16 of its order dated 25.10.2018 passed in WP(Civil) No 11767 of 2016, set aside the impugned order No. BRDB/02(123)/99/GE-II dated 11.03.2003, in so far as the penalty is concerned and directed that the penalty of the Petitioner would be one of 'censure'.

5. AND WHEREAS, after examining the Hon'ble High Court of Delhi Order dated 25.10.2018, on the facts & merits of the case and also considering the facts of the case in respect of the other co-delinquent officer, Shri V.V. Rao, SE(E/M), the Disciplinary authority, while keeping in mind the *doctrine of equality*, concluded that ends of justice would be met, if Shri M.N. Ansari is awarded penalty similar to the one imposed on Shri V.V. Rao. Accordingly, earlier order dated 11.03.2003 of minor penalty of withholding of one increment for a period of two years, imposed on Shri M.N. Ansari, AEE(E&M), was **modified** and a minor penalty of '**Censure**' was imposed on Shri M.N. Ansari, AEE(E&M), vide order of even number dated 11.02.2019.



6. AND WHEREAS, being aggrieved, Shri M.N. Ansari, AEE(E&M), filed a Civil Miscellaneous Appeal before the High Court of Delhi for further modification of its ibid order dated 25.10.2018.

7. AND WHEREAS, the said Appeal of the Petitioner has been heard and disposed of by the Hon'ble High Court vide its order dated 20.09.2019. The operative part of the High Court's order dated 20.09.2019 reads as under:

"In view of the matter, the corresponding direction in para 16 of this Court's order dated 25.10.2018 is corrected to read as follows:

"Consequently, the Court sets aside the impugned order dated 11.03.2003 passed by the Border Roads Development Board insofar as the penalty is concerned and directs that the Petitioner will be communicated the displeasure of the Government and the proceedings against him will be dropped."

"As a result, the order dated 11.02.2019 passed by the Disciplinary Authority(DA), in the Ministry of Defence, consequent upon the order dated 25.10.2018, is hereby set aside. A direction is issued to the DA to now pass a fresh order in terms of the above corrected order of this Court"

8. AND WHEREAS, pursuant to the Hon'ble High Court of Delhi's ibid order dated 20.09.2019 and in modification of this Ministry's earlier orders dated 11.03.2003 and dated 11.02.2019 as mentioned in para 2 and 5 above respectively, Disciplinary Authority has now decided to communicate "**Displeasure of the Government**" to Shri M.N. Ansari, AEE(E&M), to be effective from 11.03.2003, i.e. the date on which a minor penalty of withholding of one increment, for a period of two years, was imposed on him, vide aforementioned order No. BRDB/02(123)/99/GE-II dated 11.03.2003. **And orders accordingly.**

9. The necessary action regarding consequential benefits to Shri M.N. Ansari, EE(E&M) may be taken by concerned authorities as per rules.

10. Receipt of this order should be acknowledged.

(By order and in the name of the President)

Arup Kumar Das
12/12/2019
(Arup Kumar Das)

Under Secretary to the Government of India

4. As can be seen from the aforesaid order, the same records the decision of the Disciplinary Authority to communicate the "Displeasure of the Government" to be effective from 11.03.2003, i.e., the date on which a minor penalty of withholding of one increment for a period of two years had earlier been imposed on him. The said order also records that the consequential benefits on account of the said decision shall be given to the petitioner.



5. It transpires, during the course of the hearing, that substantial benefits have been given to the petitioner, *inter alia*, promotion from AEE(E&M) to EE(E&M) with effect from the year 2000.
6. The only controversy is as regards the following aspects:
 - (i) The petitioner's entitlement to promotion from EE (E&M) to SE (E&M).
 - (ii) A proposal to grant NFU to the petitioner in the Grade Pay of Rs. 8700.
7. The respondent concedes the petitioner's entitlement to the above. The controversy is confined to the date with effect from which the aforesaid is to be given to the petitioner.
8. During the course of the hearing, it transpires that the petitioner's case for promotion from EE(E&M) to SE(E&M) was considered by the Review DPC held in the year 2008-09. However, the petitioner could not be considered for promotion since a disciplinary inquiry was pending against the petitioner.
9. It transpires from Annexure R4 to the written submissions filed on behalf of the respondent/Union of India that the factual position in this regard has been clarified in an order passed by the UPSC. The same reads as under:



No. 14/SWS/AP-3/2025/SWS

Subject: Limited Review DPC proposal for promotion to the post of SE(E&M) in BRO to consider the case of Mohd Nasimuddin Ansari for the vacancy year 14-15 and if, required for the years 2015-16 to 2016-17 and 2019 in compliance of court orders.

The case records along with the forwarding letter have been received in Single Window. The Preliminary Scrutiny of the documents and the availability of the documents as referred by the Ministry/ Department (Defence) in their forwarding letter No.7(52)/2024/D(Apptts) dated 12.2.2025 and the proforma/ checklist has been made and the same has been indicated in pencil.

2. The proposal has been examined and it is observed that the DPC for the post of **SE(E&M) in BRO against the years 2014-15, 2015-16 to 2016-17, 2019** have been held in the office of the Commission on **13.1.2015, 23.12.2016/01.5.2018 and 13.3.2020, respectively** and **D(Vigilance MES & BRO)** had denied Vigilance clearance to the officer for his consideration in all these vacancy years through the Limited Review DPC proposal

3 Regarding denial of vigilance clearance to Mohd Nisimuddin for the purpose of limited Review DPC, it is stated that instructions issued vide DoP&T O.M. No. 22034/4/2012-Estt (D-II) dated 23rd January, 2014, has clarified that, in the case of a review DPC, where a junior has been promoted on the recommendations of the original DPC, the official would be considered for promotion if he/she is clear from vigilance angle on the date of promotion of the junior, even if the provisions of para 2 of DoPT OM dated 14.9.92 get attracted on the date the actual promotion is considered, as provided in DoPT O.M. No.22011/2/99-Estt (A) dated 21.11.2002.

4. The Chargesheet dated 8.5.2008 issued against the officer culminated into imposition of penalty of "recovery of 20% of total loss amount of Rs....." vide order dated 8.12.2009 which later on upheld by Hon'ble High court vide their order dated 26.2.2018. Therefore, after the issuance of order dated 8.12.2009, no new vigilance case was pending against the officer during the period aforementioned DPC(s) were held and it is apparant that the officer was clear from vigilance anagle on the date of the DPCs, in question, held on **13.1.2015, 23.12.2016/01.5.2018 and 13.3.2020**. Attention is invited to this office letter No. No. F. 1/33(65)/2024-PD-3 dated 1.10.2024, wherby it has already been intimated that as per DoP&T O.M. No. 22012/ 1/99-Estt. (D) dated 25.10.2004, vigilance clearance for promotion may be denied only in the following three circumstances:-

- (i) Government servants under suspension;
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.



5. Moreover, Chargesheet issued on 18.10.2024 shall not have any bearing on the vigilance status of Mohd Nisimuddin as on the date of aforementioned DPC(s) held in the office of the Commission.

6. Further it may also be inccated that as per instruction issued by Cabinet Sectt.(Department of Personnel) OM No. 21/5/70-Ests.(A) dated the 15th May, 1971, inter alai, states that in the case of promotion of a Government servant, who has been awarded the penalty of censure, the penalty of recovery from his pay of the loss caused by him to Government or of withholding his increment(s) does not stand in the way of his consideration for promotion though in the latter case promotion is not given effect to during the currency of the penalty.

7. In view of the Above, the denial of promotion to Mohd Nisimuddin for the vacancy years 2014-15, 2015-16 to 2016-17 and 2019 on the plea that a Writ Petition was pending against the officer till 13.01.2015 and that vigilance status of the officer as on date is denied due to chargesheet issued on 18.10.2024 is not in order.

8. As for the purpose of Review DPC, the vigilance clearance is to be given in accordance with DoP&T O.M. dated 23rd January, 2014, it is suggested that **D(Vigilance MES & BRO)** may approach DoP&T for further clarification at the earliest so that Court order in WP(C) No.11767/2016 can be complied with expeditiously.

Shri Sanjay Kumar Mishra
Executive Engineer(E&M)

Sangeeta
Under Secretary
18.02.2025

10. It can be seen from the above that the DPCs for the post of SE(E&M) in BRO for the years 2014-15, 2015-16 to 2016-17, and 2019 were held in the office of the Commission on 13.1.2015, 23.12.2016/01.05.2018 and 13.3.2020, respectively.

11. The petitioner was denied Vigilance clearance for consideration in all these vacancy years. Accordingly, the aforesaid order passed by the UPSC concludes as under:

“7. In view of the Above, the denial of promotion to Mohd Nisimuddin for the vacancy years 2014-15, 2015-16 to 2016-17 and 2019 on the plea that a Writ Petition was pending against the officer till 13.01.2015 and that vigilance status of the officer as on date is denied due to chargesheet issued on 18.10.2024 is not on order.”

12. As such, the position that emerges is that the denial of promotion to



the petitioner for the vacancy year 2014-15 was not in order.

13. In the circumstances, the petitioner is required to be considered for promotion to the post of SE(E&M) against the aforesaid vacancy year.

14. In the circumstances, it is directed that a Review DPC be held for the said purpose and for granting promotion to the petitioner from the requisite date, in terms of the aforesaid order passed by the UPSC. Needless to say, all consequential financial benefits shall also be granted to the petitioner, as may be mandated, based upon the Review DPC.

15. The next issue is as regards the grant of NFU to the petitioner. Although NFU has already been granted to the petitioner with effect from 2013, it is the case of the petitioner that he is entitled to the same with effect from 01.04.2006.

16. It transpires, during the course of the hearing, that a Departmental Screening Committee (DSC) considered the matter for grant of NFU to the petitioner and concluded that, for the panel year 2006-07, the petitioner was unfit due to a below benchmark ACR for the period from 18.09.2000 to 31.03.2001.

17. The Minutes of the DSC, along with the annexures thereto, have been handed over during the course of the hearing, recording the aforesaid position.

18. It also transpires that the petitioner filed a writ petition bearing W.P.(C) No. 3333 of 2024 assailing the ACRs for the period from 18.09.2000 to 31.03.2001. The Division Bench of this Court has passed the following order dated 05.03.2024 in the said writ petition:



W.P.(C) 3333/2024

1. This petition has been filed by the petitioner with the following prayers:

A. quash the letter No. 16800/RPSN/2114K/MNA/09/E1D dated 21.02.2022 on the ground that the representation of the petitioner dated 13.01.2022 disposed of illegally and cryptically since the disposal has remained an obscure affair since no reasons have been recorded leading to the demonstration of disclosure of mind so applied while disposing of the representation because of rejection of upgradation of part ACR from 18.09.2000 to 31.03.2001 the Petitioner (now Retd.) will be deprived of NFU w.e.f. 01.07.2006 ;

B. issue writ of mandamus or any other appropriate Writ Order or directions directing the respondents to grant the

benefit of non-functional upgradation with effect from the date of 01.04.2006 along with consequential benefits by holding a review meeting of Screening Committee; pass any other or further orders or directions in favour of the petitioner and against the respondents as this Hon'ble Court may deem fit and proper.

2. During the course of hearing, we have been informed that a contempt petition has been filed by the petitioner for non-compliance of order dated September 20, 2019 in CM APPL. 41040/2019 in W.P. (C) 11767/2016 wherein the petitioner's primary relief for grant of consequential benefits were granted by the Court.

3. Even during the course of hearing, Mr. Das would submit that the prayer for grant of NFU w.e.f. July 1, 2006 is in terms of the order passed by the Court in the aforesaid CM APPL. 41040/2019.

4. If that be so as the petitioner has already filed a contempt petition where he is seeking identical prayer i.e. for grant of NFU as a consequential benefit granted by the Court, we close this petition, by granting liberty to the petitioner to challenge the letter dated February 21, 2022 after the culmination of the contempt proceedings initiated by the petitioner and also if any cause survives for the petitioner in respect of grant of NFU.

5. It is made clear that we have not expressed any opinion on the issue of grant of NFU to the petitioner w.e.f. July 1, 2006.

6. The petition is disposed of.

19. During the course of the present proceedings, the petitioner handed over a copy of the pleadings of W.P.(C) 3333/2024, in which the aforesaid



2026:DHC:4184



order came to be passed. A perusal of the same indicates that the petitioner had made a representation dated 13.01.2022 against the aforesaid ACRs, and the said representation was disposed of *vide* communication dated 21.02.2022, in the following manner:

CONFIDENTIAL

मुख्यालय
सीमा सडक महानिदेशालय
सीमा सडक भवन
रिंग रोड, दिल्ली कैंट
नई दिल्ली 110010

16800/RPSN/2114K/MNA/09/E1D

१६ फरवरी २०२२

MEMORANDUM

1 Attention of GO-2114K AEE (E&M) [Now EE (E&M)] Md Nasimuddin Ansari of ESD is hereby invited to his representation dated 13 Jan 2022 against adverse comments/remarks and grading endorsed by IO, RO and Accepting Offr (AO) in the APAR for the period from 18 Sep 2000 to 31 Mar 2001.

2 GO-2114K AEE (E&M) [Now EE (E&M)] Md Nasimuddin Ansari of ESD is hereby informed that issue raised by him in his representation have been given due consideration by the Competent authority, who has concluded/directed that the representation is devoid of any merits and the same is rejected.

3 The receipt of this memorandum shall be acknowledged.

(पी एच रेडडी)
कर्मल
निदेशक (कार्मिक)
कृते महानिदेशक सीमा सडक

20. It is evident that the petitioner's representation was disposed of in a completely cryptic manner, without dealing with the contentions of the petitioner. The same cannot withstand the scrutiny of law.

21. The petitioner's challenge to the aforesaid communication dated 21.02.2022, is predicated purely on legal grounds. The same are being considered in these proceedings in line with the directions issued by the Division Bench of this Court, *vide* the aforesaid order dated 05.03.2024. Considering that this aspect is in a purely legal compass, the requirement for any elaborate factual inquiry/pleadings, is obviated.



22. Reference is apposite to the judgment passed by the Division Bench of this Court in **Sant Kumar Singh vs. Union of India & Ors.**, 2014:DHC:3718-DB. It has been observed as under :

“12. We also find that there was a delay of two years in communicating the said ACRs to the petitioner for which the respondents have given no cogent reason. Not only this, the representation made by the petitioner vide his representation dated 23.10.10 was rejected by the Competent Authority by passing a very cryptic and non-speaking order, without giving any regard to the contentions raised by the petitioner in his representation. There is no justification for said order which was passed on a representation by an officer seeking upgradation of his ACRs. Such a cryptic order is in gross violation of sub para (vi) of para 2 of the Office Memorandum dated 14th May, 2009, which mandates that the Competent Authority shall decide the representation objectively, based on the material placed before him within a period of 30 days from the date of receipt of the representation. The said guideline is reproduced as under:-

“2. (vi) The competent authority for considering adverse remarks under the existing instructions may consider the representation, if necessary, in consultation with the reporting and / or reviewing officer and shall decide the matter objectively based on the material placed before him within a period of 30 days from the date of the receipt of the representation.”

23. In **Ravi Balina vs. Union of India And Ors.**, 2024:DHC:6523-DB, a Division Bench of this Court observed as under:

“8. In the light of this position when it is evident that the grading of ‘6’ awarded to the petitioner in the aforesaid APAR has to be treated as ‘very good’, we may now deal with his plea that the adverse remarks endorsed in the APAR are inconsistent with the grading awarded to him. Having given our thoughtful consideration to this plea of the petitioner, we find that he is correct in urging that the grading and the pen picture remarks in his aforesaid APAR for the period between 01.04.2010 to 13.11.2010, are absolutely inconsistent. The petitioner is, therefore, correct in urging that his Reporting and Reviewing Officers have endorsed the APAR without appreciating the fact that there was an inconsistency in the recording of the APAR. We are, therefore, of the view that the APAR is liable to be set aside on the ground of inconsistency itself. It was the duty of the petitioner’s Reporting Officers to ensure that the remarks and grading awarded to him are in



consonance with each other.”

24. In the present case as well, a perusal of the relevant ACR (which has been handed over in Court, the same being appended to the aforesaid W.P.(C) No. 3333/2024) reveals a clear dichotomy/inconsistency between the grading of the petitioner and the pen-picture remarks contained therein. For this reason as well, the rejection of the petitioner’s representation by way of a cryptic order without dealing with the contentions made by the petitioner in his representation, does not withstand legal scrutiny.

25. In view of the aforesaid circumstances and upon an overall consideration, the denial of NFU to the petitioner for the panel year 2006-07, based purely on ACR for the period from 18.09.2000 to 31.03.2001, is unjustified.

26. Accordingly, the respondent is directed to reconsider the matter and pass an appropriate order, as to whether the petitioner is entitled to be granted NFU for the year 2006-07. The said exercise shall be undertaken without taking into account the ACR for the period from 18.09.2000 to 31.03.2001. If there is no other impediment to granting NFU to the petitioner w.e.f. 2006-07, the same shall be accordingly, granted. All consequential benefits/financial entitlement shall be duly worked out and paid to the petitioner.

27. There remains one other aspect, which is that in respect of certain payments due to the petitioner, certain TDS has been deducted, but the corresponding amount/s have not been released to the petitioner. The petitioner shall make a representation to the respondent regarding this aspect. The consequential benefits to which the petitioner is entitled



pursuant to such notional promotion shall be duly paid to the petitioner within a period of 12 weeks from today.

28. The above directions have been issued to ensure that there is no disobedience of the directions contained in the order dated 20.09.2019 passed in W.P.(C) 11767/2016. The judgment of the Supreme Court in **Anil Kumar Shahi v. Prof. Ram Sevak Yadav**, (2008) 14 SCC 115 also mandates and makes it incumbent on this Court to issue appropriate consequential directions. The operative directions therein are as under:

“50. It is by now well settled under the Act and under Article 129 of the Constitution of India that if it is alleged before this Court that a person has wilfully violated its order it can invoke its jurisdiction under the Act to enquire whether the allegation is true or not and if found to be true it can punish the offenders for having committed “civil contempt” and if need be, can pass consequential orders for enforcement of execution of the order, as the case may be, for violation of which, the proceeding for contempt was initiated. In other words, while exercising its power under the Act, it is not open to the Court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of Court. There is no wilful disobedience if best efforts are made to comply with the order.”

29. The petition is disposed of in the above terms. It is made clear that failure on the part of the respondents to comply with the aforesaid directions, would be construed as wilful disobedience of the directions contained in the judgment/order dated 20.09.2019 passed in W.P.(C) 11767/2016.

30. In such eventuality, this Court shall be constrained to take appropriate action against the respondent for wilful disobedience of the orders passed by



2026:DHC:4184



this Court.

31. List for reporting compliance on 29.09.2026.

MAY 7, 2026/at/sv

SACHIN DATTA, J