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

Date of Decision: 16th December, 2025

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+ W.P.(C) 1559/2020

S. K. SHAH

.....Petitioner

Through: Mr. Padma Kumar and Mr. Gurpreet Singh, Adv.

versus

UNION OF INDIA AND ORS.

....Respondents

Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Adv.

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+ W.P.(C) 13936/2018

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versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Adv.
Ms. Pratima N Lakra, CGSC with Ms. Shailendra Mishra and Ms. Mansi Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

DINESH MEHTA, J. (ORAL)

W.P.(C) 1559/2020

1. The instant writ petition lays challenge to impugned communication dated 03.01.2020, whereby Petitioner's claim for grant of Non-Functional



Selection Grade (*hereinafter referred to as 'NFSG'*) has been denied.

2. The facts relevant for the present purposes lie in a very narrow compass, which can be summarized as under:

- i) The Petitioner was appointed as SI (GD) Sahastra Seema Bal (SSB in short) on 28.07.1980 and he was promoted to the posts of Inspector, Assistant Commandant and Dy. Commandant at different time.
- ii) He was thereafter promoted to the post of Junior Administrative Grade (Second-in-Command) on 12.07.2006.
- iii) On 16.10.2019, all the persons, even those who were junior to the Petitioner were given benefit of NFSG, however, the Petitioner was not, for which, he sent a legal notice dated 10.12.2019 asking the Respondents as to why the benefit of NFSG had not been given to him.
- iv) Petitioner's said notice was replied to by the Respondents *vide* communication dated 03.01.2020, stating that since the Petitioner had been issued a chargesheet on 22.08.2007 and after completion of the inquiry, he was awarded a penalty of withholding of 20% of his monthly pension for a period of five years *vide* order dated 17.01.2011, he was not eligible for getting the benefit of NFSG.

3. Learned counsel for the Petitioner submitted that a look at the impugned communication dated 03.01.2020 shows that the Petitioner was otherwise eligible for grant of benefit of NFSG and it was only because of the penalty that had been imposed by the Respondents *vide* order dated 17.01.2011, he was denied the benefit. While maintaining that the order of



penalty, which was passed on 17.01.2011, could not have been made a basis for denying the benefit of NFSG for which he became due to him on 12.07.2006 upon completion of 14 years on the post of Junior Administrative Grade Officer.

4. He further submitted that the penalty, which had been imposed upon him in any case, had been set aside by this Court *vide* judgment dated 20.08.2015 passed in W.P (C) No. 8289/2014 and therefore, the reason or the basis for which the Petitioner was denied benefit of NFSG, has ceased to exist. He argued that the impugned communication dated 03.01.2020, impugned in the present writ petition, is absolutely illegal, arbitrary and contrary to the record and law.

5. Learned counsel for the Respondents, on the other hand submitted that the Respondents were justified in taking into account the penalty imposed by the Respondents *vide* order dated 17.01.2011, because the same related to the financial year 2004-05.

6. He further submitted that true it is, that the penalty that was imposed by the Respondents had been set aside by this Court, however, the adverse remarks which were made in Petitioner's ACR had not been touched upon or expunged.

7. In this regard he invited Court's attention towards Page No. 9 of the counter affidavit, and submitted that the Petitioner was not only penalized with the above referred penalty, but also an adverse remark was also made in his ACR. He argued that in face of the adverse remark, he could not be granted benefit of NFSG, as the condition of not having any adverse remark in preceding five years, ACR is a condition precedent.



8. Heard learned counsel for the parties.
9. It is pertinent to note that, but for the penalty order, which has been imposed upon the Petitioner *vide* order dated 17.01.2011, there was no other reason which was mentioned in the impugned communication for denial of the benefit of NFSG to the Petitioner.
10. So far as first contention of learned counsel for the Petitioner is that the Respondents could not have taken into account the penalty order passed on 17.01.2011, while considering Petitioner's case for grant of NFSG for period 2006-07 is concerned, the law is more or less settled that order of punishment / penalty passed after the relevant period cannot be taken into consideration.
11. Be that as it may. Leaving this issue apart, even if Petitioner's case on merit is concerned, a simple look at the impugned communication shows that the order dated 17.01.2011 was the only reason indicated in the order. It would not be out of place to reproduce relevant extract of the impugned communication dated 03.01.2020, which reads thus:

*“However, on examination of the ACRs for the last five years w.e.f 2001-02 to 2005-06 it was found that the ACR of the officer for the year 2002-03 is adequate which is below benchmark according to DoP&T instructions. Accordingly, his ACR for the year 2003-04 to 2007-08 has been taken into account to assess his suitability but in the meantime, a Departmental Enquiry was initiated against the officer in which he was issued charge sheet on 22/8/2007 and after completion of Departmental Enquiry, he was awarded penalty of withholding of 20% of monthly pension for a period of 5 years *vide* order dated 17.01.2011. As a result, he was unfit for getting the benefit of NFSG.”*

12. We wish to observe that the Respondents were not justified in turning down Petitioner's notice for demand of justice by the impugned



communication dated 03.01.2020 or not otherwise considering his case for grant of benefit of NFSG by relying upon a penalty order passed on 17.1.2011, which stood set aside by this Court *vide* judgment and order dated 20.08.2015. Such a stand on the part of Respondents is not only arbitrary but also shows clear non-application of mind.

13. Adverting to the stand taken by the Respondents that the Petitioner was having an adverse entry as intimated in the counter affidavit concerned, we are of the view that the same had never been a reason for rejection of Petitioner's entitlement. The same has been taken in the counter affidavit just to deprive the Petitioner from his entitlement.

14. It is settled position of law that a reason which has not been a part of the impugned order cannot be taken in counter affidavit or reply, as has been held by Hon'ble the Supreme Court in the case of *Mohinder Singh Gill And Anr. vs. Chief Election Commissioner, New Delhi And Others*, 1978 1 SCC 405.

15. The writ petition is therefore, allowed. The impugned communication dated 03.01.2020 denying the benefit of NFSG to the Petitioner is hereby quashed and set aside.

16. The Respondents are directed to confer the benefit of NFSG to the Petitioner, when he became entitled i.e. 01.04.2008, because his ACR of 2002-03 was below benchmark, as has been indicated in the impugned communication.

17. The Respondents are directed to calculate the differential amount and pay the arrears of salary up to the period when the Petitioner retired and calculate the additional pension payable to the Petitioner. It shall be



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incumbent upon the Respondents to pay the entire arrears (salary and pension) latest by 31.05.2026.

18. The Respondents shall, however, commence payment of revised pension of the Petitioner (after considering the benefit of NFSG as directed above with effect) from 01.04.2026.

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19. Since the Petitioner has been granted substantial relief by way of the order, which has been passed in connected case (W.P.(C) No. 1559/2020) learned counsel for the Petitioner does not press the present writ petition.

20. The writ petition is therefore, dismissed as withdrawn.

DINESH MEHTA, J

VIMAL KUMAR YADAV, J

DECEMBER 16, 2025/hk