

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: April 29, 2021

+ W.P.(C) 13432/2018

INDERJEET DABAS

..... Petitioner

Through: Mr. Rajat Aneja, Ms. Rajula and
Ms. Chandrika Gupta, Advs.

versus

**THE DISTRICT AND SESSIONS JUDGE
(HEADQUARTERS)**

..... Respondent

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mrs. Tania Ahlawat,
Mr. N.K. Singh and Ms. Palak
Rohmetra, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner seeking his promotion to the post of Judicial Assistant w.e.f July 05, 2008.

2. Some of the brief facts are, on July 05, 2003, the petitioner was appointed as Lower Division Clerk in the Office of the District and Sessions Judge (HQs). While working on the post of Ahlmad, in the Court of the then learned Additional Sessions Judge, Patiala House Courts, New Delhi, he was charge sheeted for illegally supplying uncertified copies of an order dated July 28, 2009. The said charge sheet resulted in a penalty of stoppage of two increments without cumulative effect vide

order dated September 02, 2014. On an appeal filed by the petitioner against the order of the penalty, the same was modified to the extent it was converted as withholding of one increment without cumulative effect vide order dated August 02, 2016.

3. On August 23, 2017, an order was issued by the respondent promoting 838 Junior Judicial Assistants (LDCs) to the post of Judicial Assistants (UDCs) from different dates.

4. The case of the respondent is, the petitioner has been given promotion to the post of Judicial Assistant w.e.f July 01, 2016 on the petitioner serving the penalty period.

5. It is the submission of Mr. Rajat Aneja, that the petitioner had completed five years of service as Junior Judicial Assistant (LDC) for being promoted as Judicial Assistant (UDC) on July 05, 2008 and many of his colleagues have been granted promotion from that date. His submission was also that, as there was no charge sheet issued / pending on July 05, 2008, there was no impediment for the petitioner to be appointed as Judicial Assistant. In support of his submission, he has relied upon the instructions issued by DoP&T annexed at Page 71 of the paper book to contend that a penalty is not an impediment for the respondent to promote the petitioner with effect from July 05, 2008. He would rely upon the Judgment in the case of ***Sushant v. The District and Sessions Judge, W.P.(C) 2894/2019*** decided on January 30, 2020. He also relied upon ***Pradeep Kumar v. The District and Sessions Judge, W.P.(C) 2219/2018***, decided on March 09, 2018; ***N.K. Sood v. Food Corporation of India and Ors., CWP 6543/1992*** of the Punjab and Haryana High Court

decided on April 03, 2012; *Union of India v. K. Krishnan, Civil Appeal No. 4718/1991* decided on November 20, 1991.

6. On the other hand, Mrs. Avnish Ahlawat, learned counsel appearing for the respondent would justify the action of the respondent by contending that the petitioner has been rightly given promotion w.e.f July 01, 2016 when the penalty ceased to operate.

7. Having considered the submissions made by the learned counsel for the parties, the only issue which arises for consideration is whether the petitioner is entitled to promotion w.e.f July 05, 2008 or July 01, 2016 as has been given to him.

8. The promotion in this case was given in the year 2017 with retrospective effect. Concedingly, the charge sheet which has been issued to the petitioner was in the year 2009. The eligibility for promotion from the post of Junior Judicial Assistant to Judicial Assistant is five years. The petitioner had completed five years on July 05, 2008. The promotion not only depends upon the eligibility, it also depends upon the availability of a vacancy. I find from the promotion order, that persons have been promoted till 2014. There cannot be any contest that there were vacancies available for promoting the petitioner on July 05, 2008. The petitioner has stated that many of his colleagues have been promoted on completion of five years, the only case of the respondent is, that the petitioner has been granted promotion from July 01, 2016 as the penalty was in vogue till June 30, 2016. The issue in this regard has to be seen from the perspective, whether on July 05, 2008, was there any impediment that would

disentitle the petitioner, promotion as Judicial Assistant. In normal course, on issuance of a charge sheet, the recommendation of the DPC are kept in a sealed cover, but the promotion in this case being retrospective, the position as existing on July 05, 2008 needs to be seen.

9. From time to time, the DoP&T has issued instructions with regard to the manner in which the cases of Officers, against whom disciplinary proceedings are pending, need to be dealt with when they are due for promotion. One of the OM is dated September 14, 1992, which contemplates that in the eventuality none of the three conditions testified in Para 2 of the OM exist then the DPC will assess the suitability of the Officer and promote him, if found fit; otherwise, the proceedings shall be kept in a sealed cover. None of the three conditions are attracted in the case of the petitioner inasmuch as, the petitioner was neither under suspension nor any departmental charge sheet was issued nor any prosecution for criminal charge was pending. Even the subsequent OM issued by the DoP&T dated April 28, 2014 reiterates the position in terms of September 14, 1992 as is clear from Para 7(c) at Page 74 of the paper book. If that be so, the petitioner having the eligibility and the vacancies being there, the plea of Mr. Aneja need to be accepted. The plea of Mrs. Ahlawat is that, it is only after the penalty ceased to operate, the promotion was given would have been justified if any of the three conditions of Para 2 of OM dated September 14, 1992 had existed on July 05, 2008. But as I have already said, none of the three conditions existed. In normal circumstances also, the DPC

proceedings would not have been put in a sealed cover and the petitioner would have been promoted. In this regard, I may refer to the judgment of the Supreme Court in the case of ***Union of India vs. K.V. Jankiraman 1991 AIR 2010***, wherein in para 6, the Supreme Court held as under:-

“6. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings / criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo / chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official; ()

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before . ' ' There' is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

We, therefore, repel the challenge of the appellant- authorities to the said finding of the Full Bench of the Tribunal. "

10. On this short ground, the present petition is liable to be allowed and the petitioner shall be entitled to promotion to the post of Judicial Assistant w.e.f July 05, 2008 with all consequential benefits but with 50% back wages. The 50% back wages are for the reason that in 2009, a charge sheet was issued, which culminated in a penalty of stoppage of one increment without cumulative effect, unlike a case where the charges are not proved. The order shall be complied within four months from today. The petition is disposed of.

V. KAMESWAR RAO, J

APRIL 29, 2021/jg