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

+ W.P.(C) 7086/2013

% ***Judgment dated 02.09.2015***

UNION OF INDIA & ORS. Petitioners
Through : Mr.Vikram Jaitly, CGSC with
Mr.Abhishek Choudhary, Adv.

versus

RAVI DUTT PATHAK Respondent
Through : Mr.N.B. Joshi, Adv. along with
respondent.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. The petitioners have preferred the present petition under Article 226 of the Constitution of India seeking a direction to set aside the Order dated 15.5.2013 (hereinafter referred to as the impugned order) passed by Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'). The respondent had approached the Tribunal by filing an OA assailing the action of the petitioners herein in not opening the recommendations placed in a sealed cover in respect of the respondent herein made by the DPC for his regularisation as Principal Private Secretary (PPS) on 7.11.2002.

2. Learned counsel for the petitioners submits that the impugned order is grossly arbitrary, illegal and unjust. It is further submitted that the tribunal has erred in law in not appreciating the settled principles of law that the criminal prosecution is said to have commenced when the Magistrate took cognizance of a Police report by issuing summons to the accused. Counsel further contends that the Tribunal has failed to notice the settled position of law that even if a Government servant is recommended for promotion by the DPC, during the pendency of criminal prosecution, the recommendations would have to be kept in a sealed cover till the decision in the criminal case. The Tribunal has also erred in directing opening of sealed cover despite pendency of criminal prosecution against the respondent.
3. Learned counsel for the respondent submits that the law is well-settled that since on the date when the respondent became eligible for promotion neither any complaint was registered nor any FIR was lodged against him, the result of the DPC cannot be kept in the sealed cover. Counsel further submits that what is to be considered is as to whether the respondent had incurred any disqualification for the promotion for which DPC was held.
4. We have heard learned counsel for the parties. Before the rival submissions of counsel for the parties can be considered it would be necessary to notice some of the relevant facts of the case.

5. In this case, respondent was appointed as a Stenographer Grade 'D' in the Ministry of Shipping and Transport on 11.11.1974. On 1.4.1977 the respondent was again appointed as a Stenographer Grade 'C'/P.A. in the Ministry of Urban Development after having been selected by the Union Public Service Commission (UPSC). He was placed in the select list in the year 1976 in the Central Secretariat Stenographers Service (CSSS). The next avenue for promotion of the respondent was to the grade of Stenographer Grades 'B' and 'A' on completion of five years of regular service as a Stenographer Grade 'C' and on his passing the Combined Limited Departmental Competitive Examination for SO/PS conducted by the UPSC. On the respondent appearing in the Combined Limited Departmental Competitive Examination for the select list of the year 1983, he was declared successful and appointed as a PS on 30.10.1984 in the Ministry of Urban Development and continued to work there, except from 24.8.1995 to 26.8.1996 during which period he was on deputation through the Ministry of External Affairs to BPKIHS Project, Nepal. The respondent was due for next promotion i.e. PPS on 3.8.1998. Since, there was no regular post of PPS, 65 ad-hoc appointments were made from amongst the combined eligibility list for appointment through PS (designated as PPS of CSS), which included the name of the respondent. Although he continued to work as PPS on Ad-hoc basis but no DPC was

held till 6.11.2002. Meanwhile, an FIR was lodged by the CBI against the respondent on 27.12.2000. After completion of investigation, the CBI filed a charge sheet on 25.4.2002 and on 11.8.2008 charges were framed against the respondent by the Metropolitan Magistrate on the basis of case filed by the CBI.

6. The case pleaded by the respondent before the Tribunal was that while Ad-hoc appointment had been made in the year 1998 the regularisation of services could only taken place after four years that is in the year 2002. The respondent had also urged before the Tribunal that the recommendations of the DPC held in October, 2002, could not have been kept in a sealed cover as such procedure could only be resorted to when (i) the Government servant is under suspension; (ii) a charge sheet had been issued against him; and (iii) disciplinary proceedings were pending. While in the case of the respondent on the date when the respondent became eligible for promotion to the post of PPS, respondent was neither under suspension, nor any charge sheet had been issued nor any disciplinary proceedings were pending.
7. It may be noticed that the Tribunal in its impugned order has noticed that ad-hoc promotion of the respondent stood notified in the year 1998 and, thus, it was incumbent upon the Department to hold a DPC within a reasonable period of time as regular vacancies and candidates were

available. Since there is no dispute that the respondent was eligible for promotion on 3.8.1998 and at that point of time neither any complaint nor FIR, nor charge sheet stood framed against him, and further nor any disciplinary proceedings were pending against him, thus, had the DPC taken place in the year 1998 or even upto 26.12.2000, the respondent would have been eligible for promotion. Once there is clarity to the fact that on the date when the respondent became eligible no proceedings were pending against him, in our view, the respondent cannot be deprived of his promotion, neither his recommendation can be kept in a sealed cover, as rightly held by the Tribunal.

8. We are supported of the above view by the decision rendered by a Division Bench of this Court in the case of *Union Public Service Commission v. Smt.Renuka Tyagi*, W.P.(C)629/2014. Para 12 of the judgment reads as under:

“12. Having heard learned counsels for the parties and considered the materials placed on record, we are of the view that the present petition is meritless and there is no error or infirmity in the impugned order. We are concerned with the claim of the respondent to be considered for promotion in the vacancy year 2003-04. During that period, or immediately after the expiry of the said year 2003-04, the respondent was not under any cloud and no charge sheet/ inquiry was pending pertaining to the conduct of the respondent for the year 2003-04 or earlier. The consideration of the respondent by the DPC for the year 2003-04 had to take place by transporting itself back into time – as if in a time machine, if the DPC was being held soon after the expiry of the vacancy year 2003-04, by taking into consideration the fact situation

as then prevalent. Had the DPC actually met to consider the cases for promotion for the vacancy year 2003-04 soon after the expiry of the said year, it would not be in a position to know as to what the future hold for the respondent in terms of her conduct and discipline. Thus, the respondent could not have been subjected to any disadvantage on the basis of conduct which had not taken place till then, and would take place in the future – of which there was no means of having knowledge.”

9. Further in the case of *Union of India & Ors. v. Mahavir Prasad*, W.P.(C)4682/2013, it has been held as under:

“1. Respondent Mahavir Prasad is a member of the Armed Forces Headquarters Civil Service. Working as a Section Officer the next promotional post was that of a Deputy Director. Notwithstanding he being eligible for promotion and coming within the zone of consideration for the vacancy year 2002-2003 he could not earn a promotion because of the fact that the seniority of Section Officers was in litigation; the matter resolving itself in the year 2008 when the Supreme Court settled the issue. A revised seniority list of Section Officers was required to be issued which was done on August 13, 2008. Thereafter a DPC was constituted to prepare the select panel and since it was noticed that vacancies for the post of Deputy Director had accrued for the year 2001-2002 till the year 2004-2005, as required by law, select list was prepared yearwise and Mahavir Prasad found himself empanelled at serial No.1 of the select list for the year 2002-2003. But the fruit of the empanelment eluded him because of the fact that on September 09, 2008 a memorandum was served upon him enclosing therewith a charge-sheet for a major penalty proceeding under Rule 14 of the CCS (CCA) Rules, 1965 resulting in a penalty order dated February 07, 2011 imposing stoppage of one increment for 2 years without cumulative effect being inflicted.

2. The department took the stand that when the DPC met on May 05, 2011, after the seniority list was revised on August 13, 2008, the respondent had been issued a charge-sheet and thus the promotion had to be kept pending till the disciplinary proceeding reached the destination, which it did on February 07, 2011, when the order levying penalty was issued. The respondent took the stand that the vacancy to which he had to be promoted pertained to the year 2002-2003 and the DPC which met in the year 2009 was recommending the panel for the year 2002-2003 and thus the factual situation which had to be considered was by transporting oneself back to the year 2002-2003.

7. Three dates are important to be re-emphasized. The first is that the charge-sheet was issued on September 09, 2008 and the DPC met on May 05, 2011 and lastly that the penalty was inflicted on February 07, 2011. Notwithstanding the charge-sheet issued when DPC met, Mahavir Prasad's name was not only considered by the DPC but was not put in a sealed cover. The reason is obvious, and the logical culmination of the said reason, would determine the fate of the 2 appeals. The reason is that the DPC which met in the year 2011 had to transpose itself back to the year 2002-03 for the reason the select panel which it was drawing up pertained to said year. Now, if you have to transpose yourself back into the past and perform an act as of the past, the facts and circumstances existing as of the past alone would determine the further course of action; untainted and uninfluenced by the current events. This flows out from the law declared by the Supreme Court in the decision reported as (2000) 7 SCC 2010 *Delhi Jal Board vs. Mahinder Singh*. Considering the law declared by the Supreme Court in the decisions reported as (1999) 5 SCC 762 *Bank of India vs. Degala Suryanarayana* and (1998) 4 SCC 154 *State of A.P vs. N.Radhakishan*, the Supreme Court considered a case where the recommendations of the DPC pertaining to Mahender Singh

were kept in a sealed cover because Mahender Singh had been charge-sheeted. He was ultimately exonerated of the charges alleged against him, but unfortunately for him when said event took place he found himself under a cloud of a second charge-sheet being issued against him. With reference to the fact that the second charge-sheet was issued the department did not give effect to the recommendations of the DPC which were kept in the sealed cover in view of the pendency of the disciplinary enquiry relating to the first charge-sheet when the DPC met. Mahender Singh won the battle when a Single Judge of this Court allowed the writ petition filed by him. He won the second battle when intra court appeal filed by Delhi Jal Board was dismissed. He won the third battle before the Supreme Court which held that once the first disciplinary enquiry resulted in a decision in favour of Mahender Singh the benefit of the finding of the DPC lying in the sealed cover could not be denied to him on account of pendency of the second enquiry which commenced after the DPC had met. The ratio of law which we cull out is this that legal rights and liabilities have to be considered with reference to the facts in existence as of the date on which the right or the liability has to be considered.\

8. Thus, we hold that the view taken by the Tribunal is correct. The penalty imposed upon Mahavir Prasad on February 07, 2011 pertained to the charge-sheet issued on September 09, 2008 and it cannot be transposed back to the year 2002-2003. We would be failing not to note that the recommendations of the DPC which met on May 05, 2011 have been given retrospective effect for all others; even those who had died in the interregnum. The writ petitions are accordingly dismissed but without any order as to costs.”

10. Having regard to the facts of the case and the settled position of law, we are of the view that the petitioners cannot be allowed to put the clock back

and deprive the respondent the fruits of DPC, which was held in the year 2002, while the respondent was eligible for promotion in the year 1998.

11. Accordingly, we find no merit in the present writ petition and the same is dismissed. The respondent would be entitled to all the consequential benefits from the date of passing of this order.

12. Parties to bear their own costs.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 02, 2015

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