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

Date of Judgment: 13th November, 2018

+ **W.P.(C) 6487/2002**

UOI

..... Petitioner

Through: Mr.Bhagwan Swarup Shukla, CGSC
with Mr.Kamaldeep & Mr.Shravan
Kumar Shukla, Advocates

versus

GAJRAJ SINGH & ORS.

..... Respondent

Through: Mr.K.C.Mittal, Ms.Ruchika Mittal &
Mr.Amit Prakash Shahi, Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S.RAVINDRA BHAT, J. (ORAL)

ORDER

13.11.2018

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1. The petitioner, Union of India is aggrieved by the findings of the Central Administrative Tribunal [hereinafter referred as "CAT"] which the respondent/officer approached complaining of arbitrariness in terms of promotion.
2. The brief facts are that the respondent [hereinafter referred to as "applicant"] was working as Assistant Commissioner of Police [hereinafter referred to as "ACP"] on ad-hoc basis from 16.11.1990 against a regular vacancy. The cadre strength of ACPs was increased to 278 from the

existing cadre strength of 168 on 01.06.1994. The promotions to that post are regulated by the Delhi, Andaman Nicobar Islands Police Services Rules, 1971 [hereinafter referred to as “DANIPS Rules”]. Apparently, no Departmental Promotion Committee [hereinafter referred to as “DPC”] was constituted for the year 1990-1991. DPC held for the years 1991-1992 did not consider the petitioner’s claim as he was not eligible. Thereafter, there was increase in the cadre strength. Annual DPC was not held till 1999. In these circumstances, an application was preferred to the CAT by other employees, and by orders made on 12.06.2000, several ad-hoc employees were granted regular promotions. However, the petitioner’s name was excluded. He approached this Court and eventually approached CAT apprehending reversion. The position of the UOI was that when the petitioner’s name was considered, disciplinary proceedings had been initiated with effect from 01.03.2000 and the resultant uncertainty to his service records did not compel them to consider his case for promotions. It was urged that rather the Central Government adopted ‘Sealed Cover Procedure’, contemplated by the office memorandum issued by the Ministry of Personnel, Public Grievance and Pensions on 14.09.1992. The CAT after considering the entire circumstances and the decision of the Supreme Court in the case of **Union of India vs. K.V. Jankiraman (1991) 4 SCC 10** held that the petitioner’s eligibility for promotion arose from 1993 and during all the subsequent years after the cadre increase, right upto 1998, there was no impediment in granting him promotion during those dates, as and when his entitlement to any existing vacancy was to be considered.

3. It was further stated that the disciplinary proceedings relate to the year 1998 and that in the given circumstances the reference to the ‘Sealed Cover Procedure’ was not appropriate.

4. Learned counsel for the appellant relied upon para 2, 2.1, 3.1, 3.2 and 7 of the OM dated 14.09.1992 emphasised that the authorities were justified and duty bound to not grant promotions in the manner claimed by the petitioner but rather grant it only after the conclusion of the disciplinary proceedings which in this case culminated in a censure order on 25.02.2000. It was submitted that the procedure contemplated in para 2.1 read with para 7 of the O.M. clearly visualized the withholding of the promotion even if an employee was found suitable, selected and even recommended for selection to the post, on account of pendency of the disciplinary proceedings on the date of consideration.

5. This Court is of the opinion that the opinion expressed by the Tribunal and the conclusion and findings rendered by it are unexceptionable and need to be affirmed. Undoubtedly in the case of *K.V.Jankiraman* (supra), the Court highlighted that someone under a cloud and facing disciplinary proceedings ought not to be granted promotion, but rather prudence dictated that his case ought to be considered by the concerned DPC, but its recommendations be kept in sealed cover. In the present case, what is evident, however, is that though the disciplinary proceedings did not culminate in the clear order of exoneration but rather censure, the penalty *per se* could not have completely effaced the applicant's case for promotion from the date he was eligible and was deemed to be eligible for the subsequent period [i.e. 1993-1998]. In these circumstances, the operation of censure – as it naturally was prospective [i.e. from the date the order was made] had no effect on the recommendations which were to the effect that the petitioner was eligible on the date vacancies arose from the period 1993 onwards. Furthermore, cadre enhancement in respect of the post of ACP took place by an order in 1994.

6. Given all these circumstances and also upon careful consideration of the judgments of the Supreme Court in the case of *K.V.Jankiraman* (supra), as well as the judgment in the *Union of India vs. Kewal Kumar (1993) 3 SCC 204* and the subsequent judgment in *Union Of India & Ors vs Sangram Keshari Nayak 2007(6) SCC 704*, the Court is of the opinion that there is no merit in the petition.

7. The same is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

NOVEMBER 13, 2018

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