

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

Date of Order: March 09, 2018

+ **W.P.(C) 2219/2018 & CM 9186/2018**

PRADEEP KUMARPetitioner

Through: Mr. Rajat Aneja, Ms. Vandna
Aneja and Ms. Nisha Sharma, Advocates

versus

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

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel for respondent-GNCTD(Services),
Mr. Nitish Singh and Ms. Palak Rohmetra,
Advocates

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**ORDER
(ORAL)**

1. In the first round of litigation, respondent was directed vide order of 24th January, 2018 to pass a speaking order on petitioner's Representation seeking promotion with effect from 13th June, 2008 when similarly placed employees as petitioner's were promoted. Vide impugned order of 16th February, 2018 (*Annexure P-10*) petitioner's Representation has been rejected while referring to OM dated 28th April, 2014 of the Ministry of DoPT, Government of India and by observing

that petitioner could not be promoted from back date as he was serving penalty which ceased to have effect on 30th June, 2010 and so petitioner was promoted with effect from 1st July, 2010.

2. Learned counsel for petitioner assails the impugned order (*Annexure P-10*) on the ground that petitioner was eligible to be promoted in June 2008 and at that time, petitioner was exonerated and was not serving any penalty and lateron, on 2nd January, 2009 Disciplinary Authority had inflicted minor penalty of stoppage of one increment without cumulative effect. It is pointed out that the penalty was inflicted because petitioner had not given any reminder to seek permission as sought vide applications of 17th August, 1998 and 9th September 1998. The precise submission of petitioner's counsel is that entitlement of petitioner to promotion accrued in June, 2008 and though the petitioner may not be entitled to the actual salary from the said date but deserves to be notionally promoted from June, 2008 as he stood exonerated on the relevant date.

3. On the contrary, learned counsel for respondents maintains that promotion has been rightly granted to petitioner with effect from 1st July, 2010 as earlier thereto, petitioner was serving a penalty.

4. Upon hearing and on perusal of impugned order (*Annexure P-10*) and the material on record, I find that as per OM of 28th April, 2014 of the Ministry of DoPT, Government of India an employee can be considered for promotion even during the currency of the penalty. In the instant case, no penalty was awarded to petitioner on the relevant date in June, 2008 and so he was eligible to be promoted. In any case, the background

in which penalty of stoppage of one increment has been awarded to petitioner, has to be considered. Though petitioner had sought permission to obtain higher qualification i.e. appear in 12th class examination from National Open School, New Delhi, but merely because he had not sent a reminder would not justify denial of promotion to petitioner from the date when it was due to him. In view of aforesaid, impugned order is quashed and the first respondent is directed to grant promotion to petitioner from the due date i.e. from 13th June, 2008 when similarly placed employees were granted promotion.

5. This petition and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

MARCH 09, 2018

v