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

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HARI RAM BAROT

W.P.(C) 11954/2016

..... Petitioner

Through: Ms Ankita Patnaik, Advocate.

versus

UOI AND ORS.

..... Respondents

Through: Mr Gaurang Kanth, CGSC for UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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11.04.2019

1. The Petitioner who is at present a Commandant in the Sashastra Seema Bal ('SSB') is aggrieved by the order dated 14th September, 2012, whereby the Petitioner was informed that his promotion to the post of Deputy Inspector General (DIG) has been placed in a sealed cover. The Petitioner is also aggrieved by the order issued by the Directorate General, SSB on 16th May, 2014 whereby the juniors of the Petitioner have been promoted to the rank of DIG and also confirming that the recommendations of the Departmental Promotion Committee ('DPC') in the case of the present Petitioner to be kept in a sealed cover.

2. The case of the Petitioner in short is that the Petitioner was due for consideration and promotion to the rank of DIG. When the DPC met on the first occasion, 29th August, 2011, the Petitioner was not promoted and no reasons were given for doing so. A review DPC was held on 29th August

2012 where the Petitioner was again not promoted. The Petitioner submitted a representation to the IG (Pers. & Trg). SSB regarding reasons for not releasing the promotion order of the Petitioner.

3. The Petitioner received a reply dated 14th September 2012, stating that the promotion of the Petitioner was kept under a sealed cover in accordance with DOPT OM dated 14th September 1992 because of the charge-sheets filed against him in three criminal cases on 30th January, 31st January and 3rd February, 2012. It is submitted that when the Petitioner's case was first considered for promotion on 29th August 2011 there was no charge sheet filed. This was the position even on the date of holding the review DPC on 23rd January, 2012. Relying on an Office Memorandum (OM) dated 21st November, 2002, issued by the Department of Personnel and Training ('DoPT'), the Petitioner contends that even in the Review DPC, the sealed cover procedure could not have been adopted. The Petitioner points out that the other colleagues of his, in whose cases the sanction for prosecution in the criminal cases involving death, have not been granted, were granted promotions, awaiting the issuance of such sanction. Accordingly, the Petitioner claims that he has been discriminated against by the Respondents by adopting the sealed cover procedure in his case.

4. The admitted position is that in the three of the criminal cases involving the Petitioner, he stands acquitted in two of them. However, in the third criminal case, which is pending, he is facing trial for the offences under Sections 302 read with Section 120B read with Section 34 IPC.

5. The Court notes that according to DOPT OM dated 14th September 1992, the sealed over procedure is adopted in the following categories of cases where the government servant is: (i) under suspension; (ii) disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings and (iii) in respect of whom prosecution for a criminal charge is pending for sanction of prosecution or a decision has been taken to accord sanction for prosecution.

6. While in the present case there may be justification for the Petitioner to contend that on the date of the first convening of the DPC on 29th August, 2011, no charge-sheet had been filed in any of the three criminal cases and, therefore, there was no occasion to adopt the sealed cover procedure on that date, the fact still remains that at least in one of the three cases, the Petitioner is facing prosecution. It may have been a different matter if even before the filing of the charge-sheet in the third case, the Petitioner had sought for or resorted to a legal remedy and insisted that he should be granted promotion without adopting the sealed cover procedure.

7. However, at this distance in time, the Court cannot be unmindful of the fact that the Petitioner is facing trial for a grave offence punishable under Section 302 IPC. In the circumstances, it is not possible for the Court to issue any mandamus to the Respondents to retrospectively grant promotion to the Petitioner as of the date of the Review DPC i.e. 23rd January, 2012.

8. In that view of the matter, the Court is not inclined to interfere with the impugned order dated 16th May, 2014 issued by the DPC on the basis of the

order dated 14th September, 2012 placing the decision in respect of the Petitioner's promotion to the post of DIG in a sealed cover.

9. Learned counsel for the Petitioner prays for a mandamus to the Respondents to consider the Petitioner's case for 'ad hoc promotion'. However, considering the seriousness of the charge for which the Petitioner is facing trial, the Court is not inclined to accede to this prayer of the Petitioner as well. Depending upon the outcome of the third criminal case, it will be open to the Petitioner to seek further reliefs in accordance with law.

10. The petition is accordingly dismissed. No costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 11, 2019
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