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

+ W.P.(C) 2894/2019

SUSHANT

..... Petitioner

Through: Petitioner in person.

versus

THE DISTRICT AND SESSIONS JUDGE

..... Respondent

Through: Mrs. Avnish Ahlawat, Standing
Counsel GNCTD (Services) along
with Mr. Nitesh Kumar Singh,
Advocate.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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30.01.2020

By the instant petition, the petitioner, in effect, seeks grant of promotion to the post of UDC now Judicial Assistant w.e.f. 11.09.2008, instead of 01.01.2016 as has come to be granted vide orders dated 23.08.2017.

2. The case of the petitioner is that he had completed five years on his regular appointment to the post of LDC on 10.09.2008, and, thereby, as per the extant Recruitment Regulations, he was entitled to be promoted to the post of UDC, now, Judicial Assistant w.e.f. 11.09.2008. He was charge sheeted vide Memorandum dated 27.06.2012 for having lost a file of complaint case bearing No.80/06, BSES RPL Vs. Subhash, U/s. 135 of the Electricity Act in the year 2009 and held guilty of misconduct. As a result thereof, a penalty of reduction to a lower stage of time scale of pay for a

specified period of two years w.e.f. 01.01.2015 with further directions that he shall not earn increments of pay during this period of reduction to a lower stage of time scale of pay for a period of two years etc. was imposed. The petitioner assailed imposition of such penalty by preferring a statutory appeal. The Appellate Authority modified the penalty to a lower stage of time scale of pay for a period of one year, the other terms and conditions of the penalty remaining undisturbed. Vide order dated 23.08.2017, the seniority of the petitioner to the post of Judicial Assistant came to be fixed w.e.f. 01.01.2016. On this, the petitioner made a representation to seek promotion w.e.f. 11.09.2008. The representation so made came to be rejected by the competent authority and conveyed to the petitioner vide letter dated 15.11.2018. Aggrieved thereof, the petitioner has preferred the instant petition.

3. The respondent opposes the reliefs sought by the petitioner on the premise that the DPC constituted for the purpose has duly considered the diverse aspects and made recommendation for promotion of the petitioner w.e.f. 01.01.2016, and, it happened only after the effect of the punishment upon the petitioner got over, and, it was in consonance with the applicable O.M. dated 28.04.2014.

4. The petitioner appearing in person strenuously contends that he was due for promotion on 11.09.2008 in as much as he had completed 5 years of regular service as LDC and there was no impediment for his promotion from the said date, and, the misconduct attributable to him was of a later point of time. In his submissions, the delay in holding the DPC to give him, what was due to him, should not be detrimental to his interest. More so, for the solitary incident of loss of file in a complaint case, which, in his

submissions, was even withdrawn by the complainant itself and the penalty imposed by the competent authority was modified by the Appellate Authority observing that no ulterior motive was attributable to him for the loss of file. Also in his submissions, the O.M. dated 28.04.2014, was to be construed in his favour rather than against his interest in as much it provides for discretion to be exercised in granting promotion after the expiry of the currency of the penalty.

5. In the submissions of Ms.Ahlawat, learned Standing Counsel for the respondent, the promotion could not be given to the petitioner during the currency of the penalty, which, according to her expired on 31.12.2015, and, when DPC met in the year 2017, the case of the petitioner was duly considered and promotion granted in consonance with O.M. dated 28.04.2014.

6. During the course of hearing, it emerges, the DPC in its meeting held on 19.08.2017, considered the cases of almost 900 employees. Nothing however comes to be pointed for the individual case of the petitioner having been considered on its own merits but for considering the vigilance report(s) and the punishment imposed. The petitioner having undergone the rigors of punishment, his being denied promotion, when it was actually due, cannot be seen in contravention of the said O.M. dated 28.04.2014. Suffice, it would be to observe, the O.M. dated 28.04.2014 only prescribes for the promotion to be given effect after the expiry of the currency of penalty. It nowhere provides that the due benefit of promotion should not flow to the employee having undergone the rigors of the penalty. In other words, it does not suggest that a right accruing to an employee, at a time, when there was even no allegation of any misconduct, can be taken away. As pointed

out by the petitioner, a learned Single Judge of this Court in W.P. (C) 2219/2018 titled as '*Pradeep Kumar vs. The District and Sessions Judge (Headquarters)*' has taken somewhat similar view and on being queried during the course of hearing, Ms.Ahlawat, learned counsel for the respondent concedes that the judgment given in the *Pradeep Kumar's* case (supra) has been accepted and given effect to. Thus, there is no reason as to why the petitioner be not given due promotion w.e.f. 11th September, 2008, when, undisputedly, he had become entitled for promotion as per the extant Rules and Regulations in the absence of any impediment to grant him promotion, when due.

7. For the foregoing reasons, the petition is granted and a writ of mandamus is issued to the respondents to grant promotion to the petitioner to the post of the then UDC notionally w.e.f. 11.09.2008 with all consequential benefits, within six weeks from today.

8. The writ petition stands disposed of accordingly.

A. K. CHAWLA, J.

JANUARY 30, 2020

"shailendra"