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

% Judgment delivered on: 05.06.2020

+ CONT. CAS. (C) 256/2020

PADAM KUMAR Petitioner

versus

DR. AJAY KUMAR, IAS & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Nitin K. Gupta, Advocate

For the Respondent: Mr. Nikhil Goel, Standing Counsel with Mr. Dushyant Sarna,
Advocate

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.
2. Petitioner has filed this petition contending that Respondents have failed to comply with order dated 29.01.2020 passed in Writ Petition (Civil) 9401/2019.
3. By order dated 29.01.2020, the Division Bench had directed as under:
 - “4. In view of the above clarifications, the following directions are issued:
 - (i) The second stage advice of the CVC will be rendered not later than 28th February, 2020.

- (ii) *The DA's final decision thereafter will be taken not later than 31st March, 2020 and communicated to the Petitioner not later than 15th April, 2020.*
- (iii) *In the event that the Petitioner stands exonerated in the enquiry, all further steps of granting the promotion, if recommended by the DPC held in 2017, will be taken and orders issued accordingly within 15 days of such exoneration.*
- (iv) *In the event that the Petitioner is aggrieved by the order passed by the DA, it will be open to him to seek appropriate remedy in accordance with law."*

4. It is contended by the Petitioner that the petitioner was exonerated in the enquiry and the CVC opinion is in his favour and despite that Petitioner has not been granted promotion by the Respondents.

5. Counter affidavit has been filed by respondent nos. 1 to 3. It is stated in the Counter Affidavit as under:

"16. It is submitted that the Exoneration Order of the officer as issued vide Government of India, Ministry of Defence, D(Vig) (MES&BRO) Order No. 02(04)/BRO/20165/D (Vig)/436 dated 24.04.2020, was received by E1D (DPC) Section from HQ DGBR/D&V under their letter No. 17008/1520/DGBR/PK/22/E1E dated 27.04.2020 which was perused by the Competent Authority in HQ DGBR on 28.04.2020. On receipt of the Exoneration Order from HQ DGBR/D&V, action for processing the proposal for opening of sealed cover of the petitioner for the DPC for the year 2017, was taken on priority. It is further submitted that fresh vigilance clearance status of the officer is required for this purpose and the same was sought from HQ DGBR/D&V Dte on 29.04.2020 and the vigilance status was received on 30.04.2020. Immediately on receipt of the vigilance status from the HQ DGBR/D&V Dte, the proposal for opening of sealed cover was submitted to Ministry of Defence on 01.05.2020. As already mentioned in reply to

paras 1 and 2 above, further action is already under process in the light of recommendations of DPC having been made known after opening of sealed cover.

21. It is further submitted that approval of the Minister of Defence has since been obtained for acceptance of the recommendations of the DPC held on 04.09.2017 in respect of Shri Padam Kumar, for promotion to the grade of Chief Engineer(Civil) in BRO for the vacancy year 2017-18. The case has been forwarded to DOPT for obtaining ACC's (Appointments Committee of the Cabinet) approval."

6. Learned counsel for respondent nos. 1 to 3 submits that the case of the petitioner has been duly processed and the case has been forwarded to Department of Personnel & Training ('DoPT') for obtaining the approval of the Appointments Committee of the Cabinet (ACC).

7. Learned counsel appearing for the petitioner submits that as per his instructions the file has been forwarded to the DoPT only on 01.06.2020. He further submits that in case the petitioner is not cleared for appointment and is not appointed to the post of Chief Engineer (Civil) before 30.06.2020, it may prejudice the petitioner with regard to his subsequent promotion to the post of Additional Director General, Border Roads because his date of superannuation is 30.06.2021.

8. The Counter affidavit states that all steps that had to be taken at the end of the respondents have been taken and the file has not been sent to Department of Personnel & Training ('DoPT') for obtaining the approval of the Appointments Committee of the Cabinet (ACC).

9. In view of the counter affidavit, no case is made out for initiating any proceedings under the Contempt of Courts Act, 1971 against the Respondents.

10. However, keeping in view of the facts and circumstances, specifically the fact that the departmental inquiry related to an incident of 2008 – 2009 and charge sheet was served on the petitioner only in the year 2017 and the petitioner has since been exonerated, I deem it expedient to direct the DoPT to expedite the processing of the case of the petitioner for promotion to the post of Chief Engineer (Civil).

11. The petition is disposed of in the above terms.

12. List on 25.06.2020, on which date Respondents shall place on record the status report of the progress of the case.

13. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsel for the parties.

SANJEEV SACHDEVA, J

JUNE 05, 2020
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