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

+ W.P.(C) 3078/2021

SOHAN PAL SINGH SHARMA

..... Petitioner

Through: Ms. Ritu Jain, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY AND ANR Respondents

Through: Mr. Arun Birbal and Mr. Sanjay Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% **17.03.2021**

CMs No.9331/2021 & 9332/2021 (both for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The applications are disposed of.

W.P.(C) No.3078/2021 & CM No.9330/2021 (for stay)

3. The petition impugns the order dated 10th February, 2021 of the Central Administrative Tribunal (CAT), Principal Bench, New Delhi, of dismissal of OA No.157/2021 preferred by the petitioner.
4. The petitioner preferred the OA aforesaid, impugning the order dated 18th January, 2021 of withdrawal of promotion dated 6th November, 2012 to the post of Assistant Section Officer and promotion dated 20th December, 2017 to the post of Assistant Director (Ministerial) as well as of Second Modified Assured Career Progression (MACP) granted with effect from 16th November, 2008 on 28th April, 2011 and reverting the petitioner to the post

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of Senior Secretariat Assistant.

5. We have heard the counsel for the petitioner.

6. Pursuant to the Departmental Promotion Committee (DPC) held on 6th November, 2012, the petitioner was promoted to the post of Assistant Section Officer and subsequently on 20th December, 2017 to the post of Assistant Director (Ministerial). It was subsequently realised, that on 26th December, 2007, sanction for prosecution of the petitioner had been granted and which fact remained to be considered at the time of promotion of the petitioner and/or at the time of grant of MACP to the petitioner. Accordingly, show cause notice dated 11th November, 2020 was issued to the petitioner and vide impugned order dated 18th January, 2021, the benefit of promotions and MACP, withdrawn.

7. The counsel for the petitioner, during the hearing, has informed that the petitioner has superannuated on 28th February, 2021.

8. The counsel for the petitioner has argued, that the respondents were well aware of the sanction for prosecution and of the prosecution pending against the petitioner and thus, the benefits granted of promotions and MACP could not have been withdrawn on the ground of having been granted in ignorance of the pending prosecution.

9. On enquiry, it is stated that there is no bar to the promotion or grant of MACP during the pendency of prosecution. However, instead of showing any dicta in support thereof, attention is drawn to the dicta of the Supreme Court in *Union of India Vs. K.V. Jankiraman* (1991) 4 SCC 109 and on the dicta of the Division Bench of this Court in *Ashok Kumar Singh Vs. Union of India* MANU/DE/1023/2001.

10. We have perused both the aforesaid judgments along with the counsel for the petitioner but rather than finding the same to be in favour of the petitioner, find the same to be against the petitioner. The first of the aforesaid judgments clearly lays down that when a prosecution or a departmental inquiry is pending against an employee, sealed cover procedure has to be followed and if promotion is recommended, the same takes effect only on discharge or acquittal of the employee from the charge and/or from the prosecution. As far as the latter of the two judgments is concerned, the same turns on its own facts.

11. The counsel for the petitioner has next contended that the prosecution was launched at the fag end of the long career of the petitioner and is *mala fide* and intended to only deprive the petitioner of the benefits of promotion and from reaping the benefits of MACP.

12. However that is beyond the domain of the proceedings before CAT, from which this petition arises.

13. In the present case, it is not as if the petitioner was reverted without following the procedure as aforesaid. Show Cause Notice was issued to the petitioner and after consideration of the response of the petitioner, the order of withdrawal of promotions and MACP has been passed.

14. Once promotion/grant of MACP during the pendency of prosecution is barred, the grant thereof to the petitioner has to be held to be erroneous and which error can be corrected at any time and no rights can arise in favour of the petitioner therefrom. In both, ***Bhajan Singh Vs. State of Uttarakhand*** (2013) 14 SCC 32, (relied upon in impugned order also) and ***Government of NCT of Delhi Vs. V. K. Bhardwaj*** MANU/DE/0309/2016, *W.P.(C) 3078/2021*

even on subsequent finding of promotion having been granted during pendency of prosecution, promotion granted was reverted.

15. There is no merit in the petition.

16. Dismissed.

17. At this stage the counsel for the petitioner has contended that the petitioner has already earned the pension of having worked at the promoted post.

18. However, if the petitioner was not entitled to the said promotion, the question of the petitioner having earned the pension commensurate to promoted post does not arise. Even now, if the petitioner is acquitted in the prosecution, he will avail of all the benefits and if is convicted, then again, no benefit can be claimed from what the petitioner was/is not entitled to in law.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 17, 2021

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