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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgement pronounced on: 08.09.2022

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W.P (C) 1224/2021**SATYA PRAKASH**

..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. Satya Ranjan Swain, Sr.
Panel Counsel with Mr. Amit
Gupta, GP and Mr. Kautilya
Birat, Advocate for R-1.
Mr. Sanjay Katyal, Advocate
for R-2 and 3.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE TALWANT SINGH****TALWANT SINGH, J.:**

1. The petitioner has filed the present petition praying for quashing and setting aside the judgement/order dated 21.10.2020 passed by Central Administrative Tribunal (in short 'Tribunal'), Principal Bench, New Delhi in OA No. 3111/2015 and consequently, for allowing the prayers made in the said OA.

2. Arguments have been heard.

3. Both the sides have also filed written submissions.

4. Our considered view is as under:

4.1 The case of the petitioner has been summed up in order of this Court



dated 25.03.2021 as under:

“4. (i) the present case has a chequered history and this petition arises from the order of dismissal of fifth OA preferred by the petitioner before Central Administrative Tribunal (CAT), Principal Bench, New Delhi;

(ii) the petitioner was charge sheeted but the Inquiry Officer reported the charges to have not been proved; the Disciplinary Authority however disagreed with the report of the Inquiry Officer and imposed punishment on the petitioner; on the petitioner preferring the departmental appeal, the punishment imposed was enhanced by the Appellate Authority; OA preferred by the petitioner thereagainst was allowed and the matter remanded to the Inquiring Officer, from the stage of cross-examination;

(iii) the said remanded proceedings resulted in re-imposition of the same punishment as had been imposed earlier by the Appellate Authority; in the departmental appeal, the punishment imposed was modified; the second OA preferred, was allowed and the matter remanded to the Inquiry Officer;

(iv) the said remanded proceeding again resulted in punishment, though this time a different one and the appeal preferred thereagainst was dismissed; this resulted in the third OA being preferred and which was again allowed and this time the matter remanded to the Appellate Authority;

(v) the Appellate Authority passed a fresh order and against which the fourth OA was preferred, which was dismissed by CAT and the review application preferred thereagainst was also dismissed;

(vi) W.P.(C) No.8086/2014 preferred against the order aforesaid in the fourth OA was however allowed and the matter again remanded to the Disciplinary Authority;

(vii) the remanded proceedings resulted in the punishment of censure being meted out to the petitioner; the said order attained



finality;

(viii) the OA from which this appeal arises, being the fifth in chronology, was preferred claiming that the petitioner ought to have been promoted to the post of Upper Division Clerk (UDC), from 17th February, 2006, when his juniors were promoted but was in fact promoted with effect from 23rd November, 2016; and,

(ix) that CAT, in the impugned order has accepted the stand of the respondents that the petitioner was free from vigilance, only on 23rd November, 2016 and was not exonerated but censured prior to the same and thus no fault could be found with the promotion having been granted with effect from 23rd November, 2016.”

4.2 Notice was not issued but the learned counsel for the respondents appeared on advance notice and he was heard.

4.3 The only challenge before the Tribunal was confined to the claim of the petitioner that he ought to have been promoted to the post of Upper Division Clerk (UDC) with effect from 17.02.2006, the date on which his junior LDCs were promoted but in the case of the petitioner, he was promoted with effect from 23.11.2016 only on the ground that in an enquiry initiated in 1999, the final order of ‘censure’ was passed on 22.1.2016. The relevant portion of the order passed by the Tribunal, while dealing with this contention is as follows:

“Since "censure" is a punishment, promotion can take place only after its effect is over. In the instant case, "censure" was awarded on 22.11.2016 and applicant was granted upgradation the very next day on 23.11.2016 and promotion order was also issued shortly thereafter on 20.12.2016.

32. The charges relate to moral turpitude which was held detrimental to peaceful environment of the office (para-1 supra),



in that, the applicant threatened a fellow employee not to occupy a quarter allotted to him and also using obscene language for wife of a fellow employee. The charges were proved and Tribunal also held that enquiry was conducted in a manner so as to give full opportunity to applicant to defend himself (para-6 supra).

The applicant did not allow quietous to the whole episode and kept on approaching one judicial forum or the other. Thus the charge-sheet which could have come to a closure' earlier, kept on lingering with its consequential adverse effect on promotion and other benefits.

33. It is true ' that eventually the punishment of "censure" was imposed on 22.11.2016 after chargesheet was issued on 30.11.1999. However, applicant has to blame himself for this delay as he never allowed the matter to set at rest and kept on making one challenge or the other (para 3 to 8.1 supra).

34. The relied upon judgments are of no help to the applicant as circumstances are very different as brought out above.

35. The ratio of Hon'ble Apex Court judgments in **Manoj K. Singh v. Coal India Ltd.** (para-30 supra) and **Union of India v. A.N. Mohanan** (para-31 Supra) squarely cover the controversy regarding delay and the effect of punishment of "censure" when it was awarded on the basis of a charge-sheet issued long ago. From the sequence of finalization of charge-sheet, it is clear that there was no deliberate delay by respondents.

36. The OA is thus found to be devoid of any merit and is accordingly dismissed. No costs."

5. The impugned order dated 21.10.2021 has been minutely perused by us. The petitioner has relied upon an O.M. dated 15.12.2004 in support of his contention that he is entitled to promotion immediately after the expiry of period of currency of penalty and although punishment of censure was



imposed on 22.11.20216 but it should relate back to the incident of charge i.e., October, 1998 or to the date when the charge-sheet was issued to him on 30.11.1999 or at worst when the punishment was initially imposed on 17.02.2004.

6. The contention of the respondent on the other hand is that it is the petitioner who had never allowed the departmental proceedings to attain finality and he has been challenging the same before every possible forum and ultimately the punishment of censure was awarded on 22.11.2016 and the petitioner was granted the upgradation on the very next day, i.e., 23.11.2016 and his promotion order was also issued subsequently. The stand of the department is that although the charge-sheet was issued on 30.11.1999 but the said departmental proceedings attained finality only on 22.11.2016, when the punishment of 'censure' was imposed. Moreover, this was a case of moral turpitude as the petitioner had threatened a fellow employee to not to occupy the quarter allotted to him and he had also used obscene language for the wife of another employee. Full opportunity was given to petitioner to defend himself but the final outcome of the departmental enquiry was against him, which resulted in awarding punishment of 'censure' against him on 22.11.2016.

7. The sum and substance of the arguments on behalf of the petitioner is that although he has relied upon number of judgments before the Tribunal but the same were not considered by Tribunal in their true letter and spirit and were distinguished without giving any valid justification; the sealed cover procedure was not followed and the Tribunal has failed to appreciate that and the petitioner has been discriminated against.

8. On the other hand, the respondents reiterated that the petitioner was considered for promotion by several DPCs but he was not found fit as he



was not free from the vigilance angle due to the pending charge-sheet against him. There is no denial of this fact from the side of the petitioner. It is further submitted that the petitioner became free from the vigilance angle only w.e.f. 23.11.2016. The charges against him stand proved and the charge-sheet issued to him has finally culminated in the punishment of censure and the charge-sheet remains alive till the punishment of censure was awarded to petitioner on 22.11.2016.

9. The petitioner has relied upon the judgment of Hon'ble Supreme Court in the matter of **“Union of India vs. P. Gunasekaran” (2015) 2 SCC 610**. The said matter relates to dismissal of an employee which was challenged before the Tribunal and during the pendency of the said O.A., the employee was acquitted by the Sessions Court in the criminal case. The matter ultimately reached the Hon'ble Supreme Court. It was ordered that the alteration in punishment from 'dismissal' to 'compulsory retirement' would be effective from the same date i.e., 10.06.1997 when the order of 'dismissal' was passed. With due respect, in the present case, it is not the question of the substituting 'dismissal' order with 'compulsory retirement' of an employee. Rather in the present case, the petitioner was facing a disciplinary proceeding; which had ultimately resulted in awarding of punishment of 'censure' after the charges were found to be proved against him and thereafter the petitioner was considered for upgradation and promotion.

10. The petitioner has also relied upon the judgement of **R. Thiruvirkolam vs. Presiding officer and Ors. , MANU/SC/0159/1997**. The said case also relates to 'dismissal' of an employee and it was held that the order of punishment has to operate from the date when the same was made by the employer and not from a subsequent date when the Labour Court had



passed the award. The ratio of the said judgment is not applicable to the facts of this case as it is not a case of dismissal and there is no question of order of dismissal being relating back to the said date, when the employee in the said case was dismissed.

11. The petitioner has also relied upon the judgment of Hon'ble Supreme Court in the matter of ***Prem Nath Bali vs. Registrar, High Court of Delhi & Anr., (2015) 16 SCC 415***, wherein it was observed by the Hon'ble Supreme Court that every employer must make sincere efforts in the departmental enquiry to complete the same within a reasonable time. In the present case, in our view, the employer made all the possible efforts to conclude the departmental proceedings well within time. However, it was the petitioner himself who never allowed the proceedings to attain finality and as mentioned above the said enquiry proceedings ultimately culminated after five rounds before different judicial forums, only on 22.11.2016 and thereafter the respondents have taken immediate steps for extending the benefits to him regarding his upgradation and promotion.

12. The petitioner has also relied upon a judgment of this Court in the matter of ***Union of India vs. Hardam Singh*** being W.P.(C) No. 6428/2011 decided on 30.03.2012. The said case relates to 'dismissal' of an employee and it was held that the DGM of Delhi Milk Scheme, while complying with the directions of this Court, could have compulsorily retired the employee from service w.e.f. the date when similar order was passed by the General Manager of DMS. The ratio of this judgment is also not applicable to the facts and circumstances of present case as this is not a case of 'dismissal' and there is no dispute related to the date of 'dismissal' before this Court.

13. The petitioner has also placed reliance on an Office Memorandum dated 08.12.2017, which contains the Frequently Asked Questions and



guidelines of completion of disciplinary proceedings under CCS (CCA) Rules, 1965. Here the time lines have been provided from the date of receipt of the order of appointment till completion of enquiry. As mentioned above, it is the petitioner himself who never allowed the departmental proceedings to end in time and he kept on agitating the issue regarding the departmental proceedings before one legal forum or the other and ultimately the departmental proceedings could end only on 22.11.2016. Hence, it is not the respondents, who had delayed the departmental proceedings, rather the blame lies upon the petitioner.

14. The petitioner has also filed on record an Office Memorandum dated 15.12.2004, wherein it was directed that the promotion is to take effect from the date, subsequent to the expiry of the currency of the penalty. The respondents have complied with this Office Memorandum. The penalty of 'Censure' was imposed on 22.11.2016. On the very next date, immediately thereafter the steps were taken regarding upgradation and the promotion of the present petitioner was ordered in a reasonable time.

15. The petitioner has also placed on record certain guidelines regarding promotion as an extract from a book by Swami and O.M. dated 21.11.2016 regarding guidelines of treatment of effect of penalty on promotion. The penalty of censure was awarded to present petitioner on 22.11.2016. The departmental proceedings have finally ended against the petitioner on the said date and prior thereto charge-sheet against him was subsisting. The petitioner was found guilty of the charges levelled against him and the penalty of 'censure' was awarded, which has finally ended the departmental proceedings on 22.11.2016 and immediately thereafter the petitioner has been upgraded and promoted. Hence, in our view the respondents have complied with the relevant circulars and Rules.



16. The respondents have relied upon the judgment of the Hon'ble Supreme Court in the matter of *Union of India & Ors. Vs. A. N. Mohanan (2007) 5 SCC 425*. The controversy in the said case lies within a very narrow compass, as quoted below:

“Departmental enquiry was started against the respondent on 3.8.1999. The Departmental Promotion Committee (in short, the 'DPC') made the selection on 1.11.1999. Since the enquiry was pending against the respondent, sealed cover procedure was adopted. On 13.9.2001 the penalty of censure was awarded. Promotion was granted to the respondent on 26.11.2001. However, he claimed that promotion should have been given to him with effect from 1.11.1999. He moved the CAT seeking for such direction. CAT by its order dated 18th June, 2004 held that penalty of censure is not a bar for promotion and though the sealed cover procedure was adopted, the sealed cover should have been opened and the recommendation of DPC should have been given effect to by giving the respondent promotional benefit with effect from 1.11.1999.

The order of CAT was challenged before the High Court by filing a writ petition. The High Court noted that awarding of penalty of censure would not affect the promotion of the respondent and the department was not right in contending that the awarding of penalty (censure) would stand on the way of promotion. Accordingly, the writ petition was dismissed.”

16.1 The order of the High Court was challenged by the department before Hon'ble Supreme Court. It was argued on behalf of the respondent/employee before Supreme Court that ‘Censure’ is not a punishment, but it was held:

“Though learned counsel for the respondent submitted that awarding of censure does not amount to awarding of penalty, the same is clearly untenable.”

16.2 It was also submitted before Supreme Court that Rule 3 and 3.1



contained in the Office Memorandum dated 14.09.1992 relating to promotion of Government employees are applicable. The said Rules are quoted below:

“Rule 3: On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the Junior, most officiating person. He may be promoted notionally with reference to the date of promotion of junior. However, whether the officer convened will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc., these are only some of the circumstances where such denial can be justified.

Rule 3.1: If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the Criminal prosecution against him, the finding of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."



16.3 After hearing arguments advanced by all the parties, Hon'ble Supreme Court held that:

“Awarding of censure, therefore, is a blameworthy factor. A bare reading of Rule 3.1 as noted above makes the position clear that where any penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course.

Having regard to the penalty imposed on him, undisputedly the respondent has been given promotion with effect from 26.11.2001. His claim for promotion with effect from 1.11.1999 was clearly unacceptable and, therefore, the CAT and the High Court were not justified in holding that he was entitled to be promoted with effect from 1.11.1999. The order of High Court affirming the view taken by the CAT cannot be sustained and is, therefore, set aside.”

16.4 The ratio of this judgment is fully applicable to the facts of the present case as the ‘censure’ was awarded on 22.11.2016 and thereafter the present petitioner was considered for upgradation and promotion.

17. The contesting respondents have also relied upon the judgment of Hon'ble Supreme Court in the matter of ***Manoj Kumar Singh vs. Coal India Ltd. & Ors. (2006) 13 SCC 705***. Relevant portions of this judgment are extracted under:

“2. The appellant was the Deputy Materials Manager at the Regional Stores, Rajrappa Area in the year 1996. Certain procedural irregularities in issuing a tender notice were alleged to have been committed by him. A vigilance inquiry was initiated on the basis of which a decision was taken on 20-1-1999 for initiating disciplinary proceedings against the appellant. Before the disciplinary proceedings were initiated, the Departmental Promotion Committee was constituted for



considering the promotion of various persons including the appellant for promotion to the next higher grade. The Departmental Promotion Committee which met on 8-10-1999 did not promote the appellant. It is the appellant's case that the appellant's juniors were promoted. It was only thereafter that on 10-11-1999 a charge-sheet was served on the appellant. The disciplinary proceedings ended with a censure order passed against the appellant on 21-6-2000. On 30-8-2000 a Departmental Promotion Committee was again constituted. This time the appellant was promoted to the next higher grade.

3. The appellant filed a writ petition claiming promotion with effect from 8-10-1999 when his juniors were promoted. His submission in the writ petition was that there were no departmental proceedings pending within the meaning of relevant rules when the 8-10-1999 DPC was held and as such the appellant was entitled to be considered for promotion on that date.

4.

5.

6. From the uncontroverted statement in the counter-affidavit, it is clear that the vigilance proceedings were pending against the appellant much prior to the date on which DPC first promoted the appellant's juniors.

7.

8. In the present case, the decision to take action against the appellant had been formed on 20-1-1999. Therefore, the appellant could not have been granted vigilance clearance. In the circumstances, we see no reason to interfere with the order under challenge. The appeal is, accordingly, dismissed. There shall be no order as to costs.”

17.1 In the above matter Hon’ble Supreme Court has held that the vigilance clearance is a pre-requisite for promotion and in the said case, the petitioner could not have the vigilance clearance till the enquiry was pending



against him. The employee can be considered for promotion only after the conclusion of the departmental proceedings.

18. In the present case, the ratio of this judgment is fully applicable to the facts and circumstances. The departmental proceedings initiated in 1999, ultimately culminated on 22.11.2016 and thereafter the petitioner could have been considered for upgradation and promotion and that was rightly done so by the respondents.

19. In view of the above, we do not find any illegality or infirmity in the order passed by the learned Central Administrative Tribunal dated 21.10.2022 in OA No. 3111/2015.

20. The writ petition is without any merit and the same is hereby dismissed.

**TALWANT SINGH
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

SEPTEMBER 08, 2022/pa/mr