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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 13.09.2022***

+ W.P.(C) 3118/2019

SHRI JEET KUMAR SOHRA

..... Petitioner

Through: Mr.Prag Chawla, Adv. with petitioner  
in person.

versus

LD. DISTRICT AND SESSIONS JUDGE (HQ) ..... Respondent

Through: Ms.Laavanya Kaushik, Adv. for  
Ms.Avnish Ahlawat, SC, GNCTD**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)**

1. The petitioner, an employee of the respondent, has approached this Court seeking the following relief:-

*“a. Issue a Writ of Mandamus/Certiorari or any other appropriate Writ/Order and/or Directions thereby, setting aside the order dated 05.02.2019 passed by the Respondent and further directing the Respondent to promote” the Petitioner as per order dated 22.03.2010, passed by this Hon'ble Court in W.P. (C) No. 5686/1998, titled as "Shri Jagdish Rana & Ors. Versus Govt. Of NCT of Delhi & Ors.”*

2. The petitioner, who belongs to the SC category, joined the services of the respondent as an LDC (Lower Divisional Clerk/Junior Judicial Assistant) on 08.11.1993. On 22.03.2010, this Court, vide its decision in



***Shri Jagdish Rana & Ors. vs. Govt. Of NCT of Delhi & Ors. W.P.(C) 5686/1998***, directed the respondents to upgrade within eight weeks the post of LDCs to that of UDCs (Upper Divisional Clerk) in the ratio of 40:60 w.e.f. 01.10.1979, and in the ratio of 50:50 w.e.f. 20.03.1994, as per the OMs dated 16.10.1979 and 20.03.1994 issued by the Department of Personnel, Government of India. In compliance with the said judgment, the respondents, vide their order dated 29.06.2017, after upgrading an appropriate number of posts of LDCs, granted promotion to the LDCs from their respective dates of eligibility.

3. Vide the aforesaid order, while the petitioner was promoted to the upgraded post of UDC w.e.f. 01.07.2016, one Shri Krishan Panwar, who is also a SC category candidate and had joined the service as LDC on the same date as the petitioner, i.e., 08.11.1993, was granted upgradation and consequential promotion as UDC w.e.f. 02.01.2001.

4. Aggrieved with the delayed upgradation granted to him, the petitioner submitted a representation dated 05.07.2017, but received no response thereto, and therefore, approached this Court by way of W.P.(C)12578/2018, which came to be disposed of with liberty to the petitioner to make a fresh representation, which was directed to be decided by the respondents within eight weeks.

5. Consequently, the petitioner submitted a representation dated 10.12.2018 which came to be rejected vide the impugned order dated 05.02.2019. Vide the impugned order, the petitioner has been informed that even though, Shri Krishan Panwar was, despite award of a censure on 30.11.2005, granted promotion as UDC w.e.f. 02.01.2001, the petitioner could be granted promotion only after expiry of various penalties imposed



on him between 07.12.2005 and 24.12.2013.

6. Being aggrieved thereby, the petitioner has approached this Court by way of the present petition.

7. Learned counsel for the petitioner submits that, once, it is an admitted position that as on 02.01.2001, the petitioner neither had any adverse entry in his service record, nor any departmental proceedings had been initiated against him, the first penalty imposed on him only on 07.12.2005, he could not be denied promotion at par with Shri Krishan Panwar, who had joined the respondents' service as an LDC on the same date as the petitioner and was awarded a censure on 30.11.2005. He, therefore, contends that the respondents, while rejecting the petitioner's prayer for grant of upgradation to the post UDC w.e.f. 02.01.2001, have erroneously taken into account his subsequent record, whereas they were required to consider his record only on 02.01.2001, on which date, even as per the respondents, he was eligible for the said promotion as per his seniority.

8. On the other hand, learned counsel for the respondent seeks to justify the impugned order by contending that, the petitioner was marred in the disciplinary proceedings for various charges of misconduct and negligence, on the date of his consideration for upgradation, which was done only after this Court's decision dated 22.03.2010 in *Shri Jagdish Rana (supra)*. It is, therefore, urged that the respondents could not be faulted for not granting promotion to the petitioner till the effect of the penalty orders ceased to operate on 30.06.2016.

9. Having considered the submissions of learned counsel for the parties and perused the record, I find that the primary reason given by the respondent in the impugned order for rejecting the petitioner's prayer for



grant of upgradation of post to him w.e.f. 02.01.2001, is that there were departmental proceedings pending against the petitioner w.e.f. 2002, which finally culminated in certain penalties, which were in force till 30.06.2016. Once it is the own case of the respondents, as is also emerging from the counter affidavit, that it is only on 08.08.2002 that the first charge sheet was issued to the petitioner, the respondents could not take the same into consideration for evaluating the petitioner's eligibility for promotion as on 02.01.2001, the date on which he became eligible for promotion to the post of UDC as per his seniority. In my view, merely because orders were passed at a much later stage, the respondents could not have ignored the petitioner's eligibility on the relevant date, which continues to be 02.01.2001. In support of their decision of rejecting the petitioner's prayer for granting him promotion w.e.f. 02.01.2001, the respondents have placed reliance on OMs dated 15.12.2004 and 28.04.2014 issued by the Department of Personnel Training, Government of India, wherein it is clearly stated that "*officer should not be promoted during the penalty period*". However, once it is undisputed that, as on 02.01.2001, no disciplinary proceeding whatsoever had been initiated against the petitioner, and there was no adverse entry in his service record on the said date, the respondents could not have denied him promotion from 02.01.2001, on which date he was admittedly eligible.

10. In the light of the aforesaid, I have no hesitation in holding that the action of the respondents in denying promotion to the petitioner on the upgraded post of UDC w.e.f. 02.01.2001 is clearly unsustainable and the impugned order is, therefore, liable to be set aside.

11. The respondents are directed to grant the promotion to the petitioner to the upgraded post of UDC in terms of this Court's order in W.P. (C)



5686/1998 w.e.f. 02.01.2001, i.e., at par with Sh. Krishan Panwar. The petitioner will also be entitled to all consequential benefits as has been granted to other similarly placed employees.

12. It is, however, made clear that this order will not preclude the respondents from taking into consideration subsequent penalties imposed on the petitioner for any purpose, including any upgradation, for which he becomes eligible after 08.08.2002.

**(REKHA PALLI)**  
**JUDGE**

**SEPTEMBER 13, 2022**

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