

\$~77

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

% *Date of Decision: 03rd February, 2023*

+ W.P.(C) 2545/2019

SUNIL CHAURASIA

..... Petitioner

Through: Ms. Amita Singh Kalkal and
Ms. Aditi Gupta, Advocates.

versus

DISTRICT AND SESSIONS JUDGE (HQS) Respondent

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD (Services) with Mr. N.K.
Singh, Ms. Palak Rohmetra, Ms. Laavanya
Kaushik and Ms. Aliza Alam, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following reliefs:-

“A. Issue a writ of Certiorari for quashing of the impugned order dated 7.2.2019 passed by the respondent being violative of Article-14 & 16 of Constitution of India;

B. A writ of Mandamus directing the respondent to consider the petitioner for promotion to the post of Judicial Assistant w.e.f. 20.6.2008 as granted to the immediate junior namely Ravi Shanker with all consequential benefits;”

2. The factual matrix is in a narrow compass.

3. Petitioner was appointed as Ahlmad in the District Court on 25.06.2003 after due selection. On 19.06.2009, a charge sheet was served upon the Petitioner alleging that he had not consigned the decided files in the record room. A detailed reply was submitted by the Petitioner stating that the decided files could not be consigned due

to shortage of staff and heavy workload of the routine work in the pending matters.

4. Thereafter, inquiry was initiated against the Petitioner, which culminated into a penalty of withholding of one increment without cumulative effect *vide* order dated 19.07.2011, which admittedly was not assailed by the Petitioner.

5. This Court *vide* judgment dated 02.05.2017 in W.P.(C) 5686/1998 decided certain issues pertaining to promotions of the District Court staff and the relevant part of the judgment is as follows:-

“15. This petition therefore succeeds. The respondent GNCTD is directed to forthwith sanction the up-gradation of/upgrade the posts of LDCs to UDQs in terms of the office memorandums dated 1st October, 1979 and 20th March, 1994, of the staff working in the office of the District & Session Judge, Delhi, Judge Small Causes Court, Delhi and Administrative Civil Judge, Delhi save whose posts have already been upgraded pursuant to the orders in CWP No.907/1996. The same together with all consequential steps be done/taken within a period of eight weeks from today.”

6. Pursuant to the said judgment, the Respondent convened a meeting of the Selection Committee on 19.08.2017 for filling up vacancies of Judicial Assistants Group ‘B’ (Non-Gazetted), wherein the immediate junior of the Petitioner namely, Shri Ravi Shanker was recommended for promotion from 20.06.2008. Based on the recommendations of subsequent Selection Committee held on 08.11.2017 Petitioner was recommended for promotion and was placed at serial no. 24 of the list *albeit* promotion to the post of Judicial Assistant was made effective from 01.07.2013 and Petitioner was placed at serial no. 39 in the provisional seniority list.

7. Aggrieved by the fact that the Petitioner was given promotion from 01.07.2013 as against the actual promotion of his immediate junior from 20.06.2008 and notional promotion from 24.05.2008,

Petitioner made a representation to the Respondent on 09.01.2018, seeking promotion from 24.05.2008. Reliance was placed by the Petitioner on a DOPT O.M. dated 02.11.2012 and the plea was that in 2008 the Petitioner was not under a cloud as no charge sheet had been issued and therefore, there was no reason for denying him promotion from the date of notional promotion of his immediate junior Shri Ravi Shanker. Petitioner made another representation dated 01.11.2018 reiterating his request and relying on the judgment of the Supreme Court in *Shiv Kumar Sharma v. Haryana State Electricity Board, Chandigarh and Others, 1988 Supp SCC 669*.

8. Respondent rejected the representation of the Petitioner by order dated 07.02.2019 taking a stand that Petitioner was correctly promoted from 01.07.2013, when the currency of the penalty imposed on him expired and the action was in consonance with DoPT O.M. dated 28.04.2014. Petitioner thereafter filed the present writ petition seeking promotion from the date of grant of promotion of his immediate junior.

9. Contention on behalf of the Petitioner is that Petitioner was eligible to be considered for promotion to the post of Judicial Assistant in the year 2008 as he had completed 5 years of eligibility service in terms of 'Delhi District Courts Establishment (Appointment & Conditions of Service) Rules, 2012'. In 2008, there was no impediment in promoting the Petitioner as no charge sheet had been issued and he was not under a cloud. Admittedly, the charge sheet was issued only on 19.06.2009 and therefore, the promotion of the Petitioner should date back to the date of promotion of his immediate junior in the said year and the action of granting effect to the promotion from 01.07.2013 is illegal. In support of the proposition canvassed, counsel for the Petitioner has placed reliance on a

judgment of the Division Bench of this Court in *Union Public Service Commission v. Smt. Renuka Tyagi, 2014 SCC OnLine Del 2025* as well as judgments of Co-ordinate Benches of this Court in *Pradeep Kumar v. The District and Sessions Judge (Headquarters) 2018 SCC OnLine Del 7793* and *Sushant v. The District and Sessions Judge, W.P.(C) 2894/2019*, decided on 30.01.2020.

10. *Per contra*, it is the case of the Respondent, as strenuously canvassed by Mrs. Avnish Ahlawat, that the inquiry proceedings against the Petitioner culminated into a penalty of withholding of one increment without cumulative effect on 19.07.2011 and therefore, during the currency of the penalty no promotion could be granted. As soon as the currency of the penalty expired on 30.06.2013, Petitioner was promoted w.e.f. 01.07.2013 and this action is in consonance with DOPT O.M. dated 28.04.2014.

11. It is further submitted that Petitioner cannot claim any parity with his junior Shri Ravi Shanker who had no blemish from the vigilance angle as no penalty was imposed on him. In contrast, insofar as the Petitioner is concerned, show cause notices were issued to him in the year 2008 to which he had replied, followed by memos in the same year. No doubt, the charge sheet was issued on 19.06.2009 but it is not correct for the Petitioner to contend that he was not under a cloud in 2008 on account of the show cause notices and memos pertaining to the same allegation, which was later subject matter of the charge sheet. Petitioner has not assailed the penalty imposed upon him and the Respondent therefore rightly invoked DOPT O.M. dated 28.04.2014, which provides that a Government servant on whom penalty of withholding increment etc. has been imposed should be considered for promotion by the DPC which meets after the imposition of the penalty and in case he is considered fit for

promotion, effect be given to the promotion after the expiry of the currency of the penalty. The judgements relied upon by the Petitioner are sought to be distinguished on the ground that in the case of the Petitioner it cannot be urged that he was not under a cloud in 2008 on account of the show cause notices and memos issued to him.

12. I have heard the learned counsels for the parties and examined their rival contentions.

13. Claim of the Petitioner for promotion is with effect from 24.05.2008, when his immediate junior Shri Ravi Shanker was promoted notionally. In order to decide the controversy that arises in the present petition as to whether the Petitioner is entitled to the benefit of promotion from the date his immediate junior had been promoted, three dates would be relevant i.e. the date of the charge sheet, the date of the meeting of the Selection Committee and lastly, the date of the penalty imposed on the Petitioner and its currency. The dates are not in dispute. The charge sheet was issued on 19.06.2009, the meeting of Selection Committee for considering the case of the Petitioner was convened on 08.11.2017 and the penalty was imposed *vide* order dated 19.07.2011 *albeit* the Selection Committee to consider the case of immediate junior of the Petitioner was held on 19.08.2017 and he was given promotion w.e.f. 24.05.2008 notionally, with reference to the said vacancy year. It is not disputed by the Respondent that Petitioner was eligible for same vacancy year as Ravi Shanker and thus even in the case of the Petitioner the clock would have to go back in point in time to the same vacancy year. Once the consideration of the Petitioner is transposed back to the said year, the next issue that requires examination as to whether the Petitioner can be stated to be under a cloud in that year and this would determine the relief sought by the Petitioner.

14. This position of law emanates from the law propounded by the Supreme Court in ***Delhi Jal Board v. Mahinder Singh, (2000) 7 SCC 210***. In the said case, the Supreme Court was considering a case where the recommendations of the DPC pertaining to the Respondent were kept in a sealed cover as a charge sheet had been issued against him. He was exonerated of the charges, however, by the time this event occurred, a second charge sheet had been issued against him. Premising its case on the second charge sheet, the Department did not give effect to the DPC recommendations. The Supreme Court held in favour of Mahinder Singh that once the first inquiry had resulted in exoneration, benefit of the DPC recommendations lying in the sealed cover could not be denied to him on account of the second charge sheet as prior to the issuance of the second charge sheet, on the relevant date, Petitioner was not under a cloud.

15. The aforesaid principle was followed by a Division Bench of this Court in ***Union of India & Ors. v. Mahavir Prasad, 2013 SCC OnLine Del 2855***, where a similar situation had arisen. Petitioner in the said case was empanelled in the select list for the vacancy year 2002-03 pursuant to DPC recommendations. However, since a charge sheet was served on him on 09.09.2008 for major penalty proceedings, resulting in a penalty order on 07.02.2011 of stoppage of one increment for two years without cumulative effect, he did not reap the fruits of empanelment. The sole ground to defend the action, taken by the Government, was that until the disciplinary proceedings concluded, effect could not be given to the empanelment. *Per contra*, the stand of the Petitioner was that the vacancy year in question was 2002-03 for which he had been recommended for empanelment and therefore the determining year in question was 2002-03 in which year there was no charge sheet against him. The Division Bench, agreeing

with the Petitioner and relying on the judgment in *Delhi Jal Board (supra)*, held that legal rights and liabilities have to be considered with reference to the facts in existence on the date on which the rights have to be considered. It was further held that the penalty imposed upon the Petitioner on 07.02.2011 pertained to a charge sheet issued on 09.09.2008 and it cannot be transposed back to the year 2002-03.

16. Relying on the aforesaid judgements, the Division Bench of this Court in *Renuka Tyagi (supra)*, held that the DPC had wrongly taken into account the penalty imposed upon Respondent No.1 therein while considering her for promotion even though the penalty was of a year much later than the vacancy year. The DPC should have considered the record only to the extent which it could have done if it would have met in 2003-04. The order of the Tribunal holding that since the charge sheet was issued and punishment was inflicted after the occurrence of the vacancy in the year 2003-04, it could not have been taken as a ground to deny promotion to Respondent No.1, was upheld by the Division Bench.

17. In my view, the aforesaid judgements squarely cover the case of the Petitioner. Looking at the three crucial dates, it is apparent that in the year 2008 there was no charge sheet against the Petitioner. The argument of the Respondent that Petitioner was under a cloud is unacceptable in law inasmuch as it is a settled position that it is only in three circumstances that it can be said that an employee is under a cloud: (a) Government servant is under suspension; (b) Charge sheet has been issued and disciplinary proceedings are pending; and (c) Prosecution for a criminal charge is pending. [Ref.: DOPT OM dated 14.09.1992]. This position of law embodied in the OM emanated from the law propounded by the Supreme Court in *Union of India and Others v. K.V. Jankiraman and Others, (1991) 4 SCC 109*.

Therefore, the Petitioner is right in contending that he ought to have been given promotion to the post of Judicial Assistant w.e.f. 24.05.2008, the date from which his immediate junior Ravi Shanker was given notional promotion.

18. Insofar as the reliance of the Respondent on the OM dated 28.04.2014 is concerned, in my view, the stand is completely misconceived. It is clear from a bare reading of the OM dated 28.04.2014 that it deals with Guidelines on treatment of effect of penalties on promotion and prescribes that promotion is to be given effect after expiry of currency of the penalty imposed on the delinquent employee. The OM does not even remotely suggest that the penalty can be given a retrospective effect from a period when the employee was not under a cloud and none of the three conditions as aforementioned, provided under the DOPT OM dated 14.09.1992 existed in the said year. This Court in *Sushant (supra)* has so held while interpreting this OM and is reiterated.

19. For all the aforesaid reasons, this Court sees no impediment in the reckoning of the promotion of the Petitioner to the post of Judicial Assistant w.e.f. 24.05.2008, the date his immediate junior, namely, Ravi Shanker was given notional promotion.

20. Writ petition is accordingly allowed, issuing a mandamus to the Respondent to grant promotion to the Petitioner to the post of Judicial Assistant notionally w.e.f. 24.05.2008 within six weeks from today, with all consequential benefits.

21. Writ petition is allowed accordingly.

JYOTI SINGH, J

FEBRUARY 03, 2023/kks