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

+ **CONT.CAS(C) 135/2023 & CM APPL. 29797/2024**

SURENDER KUMAR

..... Petitioner

Through: Mr. M.K. Bhardwaj with Mr. M.D.
Jangra, Advocates.
(M): 9213781975
Email: maheshkb75@gmail.com

versus

GARIMA GUPTA

..... Respondent

Through: Mr. Parvinder Chauhan with Ms.
Aakriti Garg, Advocate for
respondent/DUSIB.
(M): 8077154576
Email: parvinderchauhan.adv@gmail.com

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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17.05.2024

CM APPL. 29797/2024

1. The present is an application filed on behalf of the petitioner seeking for early hearing of the present petition.
2. Considering the submissions made in the present application, the present application is allowed and the petition is taken up for hearing today itself.
3. With the aforesaid directions, the present application is disposed of.

CONT.CAS(C) 135/2023

4. The present petition has been filed alleging willful disobedience of the



judgment dated 13th December, 2022 passed in W.P. (C) No. 17000/2022, wherein, this Court had directed the respondent to decide the representations of the petitioner, in accordance with law.

5. Learned counsel appearing for the petitioner has drawn the attention of this Court to the order dated 07th February, 2023 passed in the present proceedings, wherein, it has been recorded as under:-

“1. Learned counsel for the Petitioner states that after the filing of the present petition, the Petitioner has been served with a copy of the order dated 01.02.2023, the operative portion reads as under:-

“The DPC considered the Vigilance Report dated 11.01.2023. As per vigilance reports, he has been acquitted in CBI case No. RC 2(A)2009- ACU-VI CBI New Delhi but Regular Disciplinary Action has been initiated against him as per orders of the Disciplinary Authority. Charges are grave in nature. It is found that the official is not clear from the vigilance angle. After considering all the facts and circumstances of the case, the DPC recommended that the case of Sh. Surender Kumar, JE(C) to be continued in sealed cover.”

(Emphasis supplied)

2. *He states on instructions that no notice of the disciplinary action has been served upon the Petitioner till date.*

3. *He relies upon the judgement of the Supreme Court in Union of India and Ors. Vs. Anil Kumar Sarkar; (2013) 4 SCC 161 and more specifically under para 20 therein, which reads as under:-*

“20. In Coal India Ltd v. Ananta Saha this Court held as under: (SCC p. 155, para 27)

“27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide Union of India v. K.V. Jankiraman and UCO Bank v. Rajinder Lal Capoor.)”

(Emphasis supplied)

4. *He states that in view of the settle legal position only after a chargesheet is served upon a delinquent employee, a disciplinary*



proceeding can be set to have commenced. He states that in these circumstances, no cognizance could have been taken by the DPC of any proposed disciplinary proceedings for resorting to sealed cover. He states that the order dated 01.02.2023 is therefore not in compliance with the order dated 13.12.2022, which is the subject matter of compliance in the present proceedings.

5. *Learned standing counsel who appears on advance service, accepts notice and seeks time to take instructions.*

6. *List on 21.03.2023.”*

6. By reference to the aforesaid order, learned counsel appearing for the petitioner submits that order dated 01st February, 2023 has been passed by the respondent, purportedly, in compliance of the judgment dated 13th December, 2022. He further submits that by the said order passed by the respondent, it has wrongly been held that the case of the petitioner herein, is to be continued to be kept in a sealed cover.

7. Learned counsel appearing for the petitioner submits that during the pendency of the present petition, the respondent has already taken a legal opinion with respect to opening of the sealed cover of the case of the petitioner.

8. Per contra, Mr. Parvinder Chauhan, learned counsel appearing for the respondent, submits that the respondent has already complied with the judgment dated 13th December, 2022. He submits that the order dated 01st February, 2023 has been passed by the respondent, compliance of the aforesaid judgment.

9. I have heard learned counsels for the parties and have perused the record.

10. This Court notes that by judgment dated 13th December, 2022, the only directions that had been passed by the Court was to decide the representations of the petitioner dated 22nd July, 2022 and 12th October,



2022. The judgment dated 13th December, 2022 passed in W.P. (C) No. 17000/2022, reads as under:-

“xxx xxx xxx

3. Present writ petition has been filed by the Petitioner to declare the action of the Respondents in delaying the promotion of the Petitioner to the post of AE (Civil) and EE (Civil) on regular basis, as illegal and arbitrary. A writ of mandamus is sought directing the Respondents to open the sealed cover and promote the Petitioner to the post of AE (Civil) and EE (Civil) from the date of promotion of his juniors with all consequential benefits including arrears of pay from the due date.

4. It is the case of the Petitioner that he was recruited on 16.03.2000, to the post of JE (Civil) in Slum & JJ Department of the erstwhile MCD, currently DUSIB. Petitioner was implicated in a false case in 2003 and a criminal case was registered, on account of which when the Respondents convened a DPC in 2017, for regular promotion to the post of AE (Civil), while the juniors of the Petitioner were promoted, in case of the Petitioner they resorted to a sealed cover procedure. It is also pointed out that as it is the said DPC was convened after a long period of 10 years.

5. It is stated in the writ petition that vide judgment dated 11.07.2022, Petitioner was acquitted in the criminal case, pursuant to which he made a representation to the Respondents on 19.07.2022, to open the sealed cover and give effect to the recommendations of the DPC. Not getting any response, Petitioner had no option but to file the present writ petition.

6. Mr. Bhardwaj, learned counsel for the Petitioner, at the outset, on instructions, submits that since the Petitioner has already made a representation, he would be satisfied if direction is issued to the Respondents to decide the representation within a time bound frame, as the case of the Petitioner is squarely covered by the judgment of the Supreme Court in **Union of India v. K.V. Jankiraman, (1991) 4 SCC 109** and the provisions of the DoPT O.M. dated 14.09.1992.

7. In view of the aforesaid, the writ petition is allowed to the extent of directing the Respondents to decide the representations of the Petitioner dated 22.07.2022 and 12.10.2022, positively within a period of six weeks from today.

8. Needless to state that the representations will be decided in accordance with law.

9. Accordingly, the writ petition stands disposed of”

11. Learned counsel appearing for the petitioner, at this stage, submits



that he does not wish to press the present petition, as the respondent is already in the process of opening the sealed cover of the case of the petitioner.

12. However, the said statement is disputed by learned counsel for the respondent.

13. Be that as it may, in case, the petitioner has any grievance with respect to any sealed cover procedure, being resorted to by the respondent, the petitioner is at liberty to challenge the same in appropriate proceedings, in accordance with law.

14. With the aforesaid directions, the present petition is disposed of.

15. The next date of hearing of 31st July, 2024, stands cancelled.

MINI PUSHKARNA, J

MAY 17, 2024

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