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

+ **W.P.(C) 12865/2024**

CHETAN DAYAL

.....Petitioner

Through: Mr. Prince Bansal, Advocate.

versus

THE DISTRICT AND SESSIONS JUDGE (HQ)Respondent

Through: Ms. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar Singh,
Ms.Laavanya Kaushik, Ms. Aliza Alam and
Mr.Mohnish Sehrawat, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

13.09.2024

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1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking promotion to the post of Judicial Assistant w.e.f. 08.04.2014 with all consequential benefits including 100% back wages as well as for implementation of order of the Appellate Authority dated 23.01.2023.

2. As per the chronology of dates and events set out in the writ petition, Petitioner joined the Respondent as Lower Division Clerk on 08.04.2009. On 08.08.2012, Petitioner represented to the Respondent to take on record his provisional graduation degree and final year mark sheet, which was not accepted by the Respondent and dispute continued between the parties on this aspect. On 23.07.2012, Petitioner sought permission to pursue 3 year LL.B. degree course from a University in Meerut, Uttar Pradesh. Permission was granted by the Respondent on 30.08.2012. On 02.12.2013, Delhi District Courts Establishment (Appointment & Conditions of Service) Rules,



2012 were published in the Official Gazette. On 22.09.2015, Petitioner requested for addition of his LL.B. qualification in the official record but was informed that the same could not be taken on record in the absence of original degree and mark sheet.

3. It is averred in the petition that meeting of the Selection Committee for filling up the vacancies of Judicial Assistant (Group-B) was convened on 19.08.2017 and several persons were promoted. Petitioner was suspended on 12.07.2018, in contemplation of disciplinary proceedings and was found guilty of the charges levelled against him in an inquiry, resulting in penalty of dismissal from service on 13.07.2022. On an appeal filed against the penalty order, the Appellate Authority vide order dated 23.01.2023, set aside the dismissal order and directed reinstatement of the Petitioner, modifying the penalty to reduction to the lower stage in the time scale of pay by one stage for a period of one year without cumulative effect and without adverse effect on his pension. Armed with this order, Petitioner represented to the Respondent seeking promotion as per applicable rules. Representation was rejected by the Respondent vide order dated 23.04.2024.

4. Learned counsel for the Petitioner submits that Petitioner was eligible for promotion in 2014 and at that stage, Petitioner was neither under suspension nor a charge sheet had been issued against him and he is thus entitled to be considered for promotion to the post of Judicial Assistant w.e.f. 08.04.2014 in terms of judgment of this Court in ***Inderjeet Dabas v. The District and Sessions Judge (Headquarters), 2021 SCC OnLine Del 1978***, wherein the Court has held that if an employee is not under a cloud on the date the DPC is convened for promotion, he cannot be denied consideration for promotion on account of a subsequent event of suspension



and/or charge sheet, subject however, to the nature of penalty imposed. In order to place the case of an employee in a sealed cover, either of the three conditions must exist on the date when the DPC is convened i.e., suspension, charge sheet or a criminal prosecution. In ***Inderjeet Dabas (supra)***, the Court held the Petitioner therein entitled to promotion w.e.f. 05.07.2008 for the reason that the charge sheet was issued later in 2009 and the disciplinary proceedings had culminated into a penalty of stoppage of one increment without cumulative effect. It is further argued that by representation dated 20.03.2023, Petitioner had brought to the notice of the Respondent that the Appellate Authority had reduced the penalty from dismissal and therefore Petitioner was entitled for promotion from 08.04.2014, however, Respondent has disposed of the representation by a sketchy and non-speaking order with no reason in the order, indicating why the representation merited rejected.

5. Issue notice.

6. Ms. Avnish Ahlawat, learned Standing Counsel accepts notice on behalf of the Respondent.

7. Having perused the order dated 23.04.2024 passed by the Respondent rejecting the representation of the Petitioner, this Court finds merit in the contention of the Petitioner that the representation has been rejected by a non-speaking and unreasoned order. The order indicates no reason why the Competent Authority found no merit in the case of the Petitioner and/or what factors weighed against the Petitioner meriting rejection of his representation. Petitioner was no doubt awarded penalty of dismissal, but it was set aside by the Appellate Authority and penalty was modified to reduction to the lower stage in time scale of pay by one stage for a period of



one year, without cumulative effect. This fact was brought to the notice of the Competent Authority and on this basis, Petitioner sought promotion to the post of Judicial Assistant. Petitioner also contends that he was eligible for promotion on 08.04.2014 to the post of Judicial Assistant and on this date he was not under a cloud as neither he was under suspension nor the charge sheet was issued against him and is entitled for promotion in light of the judgment of this Court in *Inderjeet Dabas (supra)*. Order of rejection of the representation does not show if any of these factors were even looked into by the Respondent. The least that is expected of an authority deciding representations and dealing with rights and careers of employees is to indicate in the order the factor(s) that weighed against the employee, disentitling him to the relief sought, so that he/she is able to effectively contest the case later and this would also enable the Court to effectively judge the legality of the order.

8. Therefore, at this stage, this writ petition is disposed of, without entering into the merits of the case, directing the Respondent to re-consider the representation of the Petitioner in light of the penalty imposed on him by the Appellate Authority and the judgment of this Court in *Inderjeet Dabas (supra)*. Decision shall be taken by the Competent Authority within a period of eight weeks from the date of receipt of this order. Needless to state that a reasoned and speaking order shall be passed, which shall be communicated to the Petitioner within one week from the date of the decision and it will be open to the Petitioner to take recourse to legal remedies, in case of any surviving grievance.

JYOTI SINGH, J

SEPTEMBER 13, 2024/B.S. Rohella/DU