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

+ **W.P.(C) 12911/2024**

E SSHA RATNAM

.....Petitioner

Through: Mr. Satwik Misra, Ms. Devashree and
Ms. Gunjan Dogra, Advocates.

versus

UNION OF INDIA AND ANR.

.....Respondents

Through: Ms. Avshreya Pratap Singh Rudy,
Senior Panel Counsel with Mr. Kaushal Kait and
Ms. Usha Jamnal, Advocates for Respondent
No.1/UIO.

Mr. Digvijay Rai, Mr. Archit Mishra, Mr. Rohit
Kumar Munjral and Mr. Raghav Ali Khan,
Advocates with Mr. Yatinder Choudhary, Law
Officer, for Respondent No.2/AAI.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

13.09.2024

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CM APPL. 53781/2024

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 12911/2024 and CM APPL. 53782/2024

3. Present writ petition has been filed by the Petitioner under Articles 226/227 of the Constitution of India seeking directions to Respondent No.2/Airports Authority of India ('AAI') to open the sealed cover containing recommendations of the Departmental Promotion Committees ('DPCs') qua the Petitioner for promotions to the post of Assistant General Manager (Engg.-Civil) w.e.f. 05.06.2012, Deputy General Manager (Engg.-Civil) w.e.f. 30.06.2020 and Joint General Manager (Engg.-Civil) w.e.f.



01.05.2023, i.e., the dates when the immediate juniors were promoted to the said posts and grant all consequential benefits.

4. Petitioner joined AAI on 16.08.1995 at the post of Junior Engineer (Civil) after a regular process of selection. Her name was at Serial No. 62 in the combined seniority list in respect of Assistant General Manager/Senior Manager (Engg.-Civil) published on 01.11.2016, however, her case was not considered for promotion to the post of Assistant General Manager w.e.f. 05.06.2012 while her junior at Serial No. 63 namely, Ms. Sindhu P.T., was considered and promoted from the said date.

5. It is averred in the petition that CBI registered RC0152008A0022 against the Petitioner under Section 7 of the Prevention of Corruption Act, 1988 ('PC Act') on 11.09.2008 for allegedly demanding illegal gratification of Rs.5,000/- from the complainant. Petitioner was arrested on 12.09.2008 and released on bail on 15.09.2008. Pursuant thereto, Petitioner was placed under suspension on 23.09.2008 on account of her detention, in terms of Regulation 23(2) of the Airports Authority of India Employees' (Conduct, Discipline & Appeal) Regulations, 2003 ('2003 Regulations').

6. It is further averred that AAI approved the promotion of the Petitioner to the grade of Senior Manager (Engg.-Civil) vide order dated 22.05.2009. Sanction order was issued by AAI on 15.06.2009 under Section 19(1)(c) of PC Act for prosecution of the Petitioner for offences punishable under Sections 7 and 13(2) read with Section 13(1)(d) of PC Act. Petitioner was at Serial No. 62 in the seniority list dated 02.11.2016 but was not considered for promotion to the post of Assistant General Manager (Engg.-Civil) and higher posts, on account of pending criminal prosecution.



7. Petitioner states that criminal proceedings were closed by order of the learned Special Judge, CBI-II, Bhubaneswar dated 26.08.2019 in T.R. No.12 of 2009, as the prosecution failed to prove the charges and Petitioner was acquitted in terms of Section 248(1) Cr.P.C. Petitioner represented to AAI on 04.11.2019 to promote her to the grade of Assistant General Manager (Engg.-Civil) and higher posts from the date of eligibility with consequential benefits and this was followed by a reminder on 05.11.2019. By order dated 30.06.2020, AAI approved the promotion of several juniors of the Petitioner to the post of Deputy General Manager (Engg.-Civil) including her immediate junior w.e.f. 30.06.2020, however, Petitioner was not considered despite being at Serial No. 55 in the seniority list dated 01.01.2018 and despite being acquitted in the criminal case. Not getting any relief from AAI, Petitioner has filed the present writ petition.

8. Learned counsel for the Petitioner submits that based on the excellent and unblemished service record of the Petitioner, she was promoted to the post of Senior Manager in 2009. In the hierarchy of posts, next promotion is to the post of Assistant General Manager (Engg.-Civil) and thereafter to Deputy General Manager (Engg.-Civil) and Joint General Manager (Engg.-Civil) and criteria for promotion is seniority-cum-merit, subject to rejection of unfit. Petitioner was not considered for promotion to the said posts on account of the criminal proceedings pending against her but Petitioner stands acquitted vide judgment dated 26.08.2019, passed by the learned Special Judge, CBI and therefore, AAI is under an obligation to open the sealed covers containing recommendations of the DPCs held in the meantime. It is fairly conceded by counsel for the Petitioner that against the judgment of acquittal, CBI has filed an appeal on 27.10.2020 in the High



Court of Orissa but there is no stay. It is argued that even the pendency of the appeal cannot come in the way of promotions of the Petitioner, if the DPC has recommended her, in view of DoPT O.M. dated 14.09.1992 issued pursuant to the judgment of the Supreme Court in ***Union of India and Others v. K.V. Jankiraman and Others, (1991) 4 SCC 109***. It is urged that DoPT has issued another O.M. dated 19.01.2017 which provides that where recommendation of DPC is kept in a sealed cover solely on account of pendency of the criminal case, sealed cover may be opened in case of acquittal of the Government servant provided it has not been stayed by a superior Court *albeit* in such a case, in the order of promotion a mention will be made that promotion is provisional and subject to outcome of the appeal that may be filed against the acquittal. In case the Government servant is convicted in the appeal, provisional promotion will be deemed to be *non-est* and he will be reverted. Therefore, even though appeal against acquittal of the Petitioner is pending, sealed covers are to be opened and in case, Petitioner is recommended by the DPCs, she should be given promotion though provisional and subject to outcome of the appeal, but AAI cannot refuse to open the sealed covers on account of the pendency of the appeal against acquittal.

9. Issue notice.

10. Ms. Avshreya Pratap Singh Rudy, learned Senior Panel Counsel accepts notice on behalf of Respondent No.1.

11. Mr. Digvijay Rai, learned counsel accepts notice on behalf of Respondent No.2/AAI and, on instructions, submits that Petitioner's representations are pending before the Competent Authority for opening the sealed covers and grant of consequential reliefs and the same shall be



disposed of within the time granted by this Court.

12. Having heard learned counsels for the parties and in light of the *binding dictum* of the Supreme Court in ***K.V. Jankiraman (supra)*** as well as the letter and spirit of DoPT O.Ms. dated 14.09.1992 and 19.01.2017, this writ petition is disposed of with a direction to AAI to dispose of the pending representations of the Petitioner within six weeks from the date of receipt of this order. Additionally, present writ petition will be treated as a supplementary representation and the Competent Authority shall examine the factual and legal issues flagged by the Petitioner therein. It is further directed that while considering the representations, AAI will also consider the applicability of DoPT OMs mentioned above and if the OMs are applicable, decision will be taken keeping in backdrop the aim and objective of OM dated 19.01.2017, which protects the interest of an employee and provides for opening of the sealed cover on acquittal in criminal proceedings, despite the pendency of an appeal against acquittal provided there is no stay by the superior Court, considering that disposal of an appeal may take a long time. At the same time, interest of the employer is also safeguarded by providing that in case of pendency of an appeal, the promotion order would indicate that promotion is provisional and subject to outcome of the appeal and in case the employee is convicted by the Appellate Court, promotion order shall be deemed to be *non-est* and the employee will be reverted.

13. It is further directed that if the Competent Authority is of the view that the sealed cover is to be opened, it shall do so and give effect to the recommendations of the DPCs held during the pendency of the criminal proceedings qua the Petitioner. In case, the decision is taken otherwise, 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 in that event, Petitioner will be at liberty to take recourse to legal remedies, if so advised.

14. Pending application also stands disposed of.

JYOTI SINGH, J

SEPTEMBER 13, 2024

B.S. Rohella/shivam