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

+ **W.P.(C) 17219/2024**

DALIP SINGH

....Petitioner

Through: Mr. Rishi Sehgal, Ms. Vaishnavi and
Mr. Midhun Aggarwal, Advocates.

versus

GOVT OF NCT OF DELHI AND ORS

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar Singh, Ms. Aliza
Alam and Mr. Mohnish Sehrawat, Advocates for
R-2/D&SJ.

Mr. Anil Kumar Saxena, SPC with Mr. Rajendra
Rawat, Government Pleader for R-3/UOI.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

13.12.2024

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1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India laying a challenge to order dated 13.08.2024 passed by the Selection Committee of Respondent No. 2, rejecting the case of the Petitioner for promotion with consequential benefits as also to grant him promotion to the post of Senior Judicial Assistant in PB-II with Grade Pay of Rs.5400/- in Pay Level 10 and consequentially in Grade Pay of Rs.6600/- at Pay Level 11 amongst other reliefs.
2. Petitioner was selected and appointed to the post of Lower Division Clerk ('LDC') on temporary basis vide order dated 02.09.1996 w.e.f. 06.08.1996. On 23.10.2007, Respondent No. 2 published a list of 179



officials working as LDC/Ahlmad/Assistant Ahlmad in the pay scale of Rs.3050-4590, who were promoted to the post of UDC/Reader in the pay scale of Rs.4000-6000 with immediate effect. The list included Petitioner's batchmates and juniors but the name of the Petitioner was not included. By letter dated 25.10.2007, Petitioner sought reasons for non-inclusion of his name in the promotion list as there was no charge sheet against him and nor his ACRs had any adverse remarks. Petitioner was informed on 21.11.2007 that his consideration was deferred due to a vigilance report, copy of which he subsequently sought by letter dated 22.12.2007.

3. Petitioner avers that on 07.01.2008, Petitioner was informed that vide order dated 27.11.2004, disciplinary proceedings were directed to be initiated against him and the matter was put up before the Disciplinary Authority to approve the charge sheet, however, vide order dated 12.07.2005, an FIR was directed to be lodged against the Petitioner, which was registered as FIR No.401/2005. By a judgment dated 22.03.2010, this Court in *W.P. (C) 5686/1998* titled *Shri Jagdish Rana & Ors. v. Government of NCT of Delhi & Ors.*, directed Respondent No.1 to sanction the upgradation of posts of LDCs to UDCs, which were eventually upgraded. On 20.11.2010, disciplinary proceedings were initiated against the Petitioner in respect of a lost record of arbitration proceedings. It is stated that another list of 48 officials was published on 17.08.2012 promoting them as Assistants/Readers but name of the Petitioner was not included. On 02.12.2013, the Delhi District Courts Establishment (Appointment & Conditions of Service) Rules, 2012 were notified by Respondent No. 1.

4. It is stated that the inquiry initiated with respect to lost record of the arbitration proceedings in case titled *M/s. Bindra Builders v. Shekhar*



Dey & DDA’, in Suit No. 185/2009, culminated in a minor penalty of withholding two increments without cumulative effect. Thereafter, again on 16.08.2017, a promotion list was published but Petitioner’s name did not figure therein. On 18.09.2017, the stated vigilance proceedings were closed and a fact finding inquiry held that no responsibility could be fixed on any official. On 31.07.2018, Respondent No. 2 granted promotion to the Petitioner from Junior Judicial Assistant/Ahlmad to the post of Judicial Assistant in PB-II with Grade Pay Rs.4600/- w.e.f. 01.07.2016 *albeit* Petitioner was entitled for promotion from 23.10.2007 and Petitioner therefore made representations for the said relief. Petitioner was discharged by the Trial Court on 14.11.2018 in respect of FIR No. 401/2005 and again represented several times not only for ante-dating his promotion but also financial upgradation under the MACP Scheme. As per the letter dated 13.08.2024 received by the Petitioner, his case was considered by the Selection Committee on 22.07.2024 for grant of promotion as Judicial Assistant from 25.10.2007 but was rejected solely on the ground that there were pending departmental proceedings against him.

5. Learned counsel for the Petitioner submits that impugned rejection of Petitioner’s case for retrospective promotion is flawed in law as the only ground of rejection is that departmental inquiries were pending against him. Petitioner had vide his representation dated 18.01.2022 brought to the notice of Respondent No. 1 that he was discharged in the criminal case and the vigilance inquiry proceedings had been closed with a finding that no responsibility could be fixed on the Petitioner and the disciplinary proceedings culminated in a minor penalty of withholding two increments without cumulative effect years ago, yet his case has been arbitrarily



rejected overlooking these crucial facts.

6. Issue notice.

7. Mrs. Avnish Ahlawat, learned Standing Counsel accepts notice on behalf of Respondent No.2 and argues that the Petitioner is not entitled to antedating of his promotion as a Judicial Assistant and/or financial upgradation under the MACP Scheme.

8. Mr. Anil Kumar Saxena, learned Senior Panel Counsel accepts notice on behalf of Respondent No.3/Union of India.

9. After hearing the counsels for the parties and looking into the impugned minutes, this Court does find merit in the contention of the Petitioner that the case of the Petitioner has been rejected without taking into consideration that the vigilance inquiry was closed without fixing any responsibility on him and Petitioner has been discharged in the criminal case. The disciplinary proceedings culminated only in a minor penalty. Therefore, it was obligatory for the Selection Committee to have minutely examined the dates from which the Petitioner became eligible for promotion as Judicial Assistant and for financial upgradations under the MACP Scheme vis-à-vis initiation of the disciplinary/criminal proceedings, in light of the law that if on the date an employee's case comes up for consideration for promotion, he is neither under suspension nor any charge sheet has been issued and there is no criminal prosecution, his case will have to be considered accordingly, as also the impact of subsequent proceedings.

10. Accordingly, without entering into merits of the case, this writ petition is disposed of with a direction to Respondent No.2 to place the case of the Petitioner before the Selection Committee for a reconsideration in light of the aforesaid developments with respect to the cases pending against



him and the law on the subject. The decision will be taken by the Selection Committee as expeditiously as possible and not later than two months from the date matter is placed before it for consideration. The decision will be communicated to the Petitioner within one week from the date of decision and in case of any surviving grievance, Petitioner will be at liberty to take recourse to legal remedies.

JYOTI SINGH, J

DECEMBER 13, 2024/shivam