



\$~50

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

%

Date of Decision: 22.05.2026

+ **LPA 403/2026**

KALI KALYAN NATH @ KALYAN SINGHAppellant

Through: Mr. Krishna Chandra Dubey, Ms.
Lenyin Taggin & Ms. Uma Tarafdar,
Adv.

Versus

LD. DISTRICT AND SESSION JUDGERespondent

Through: Ms. Avnish Ahlawat, Mr. N.K. Singh,
Ms. Aliza Alam & Mr. Mohnish
Sehrawat, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TEJAS KARIA

TEJAS KARIA, J (Oral)

CM No.35457/2026

1. Having heard the learned Counsel for the Appellant and perused the averments made in the Application, the delay of 47 days in filing the present Appeal is condoned.

2. The Application stands disposed of.

CM No.35458/2026

3. Exemption is allowed, subject to all just exceptions.

4. The Application stands disposed of.



LPA 403/2026

5. The present *intra-court* Appeal has been filed by the Appellant challenging the order dated 16.02.2026 (“**Impugned Order**”) passed by the learned Single Judge in W.P.(C) 8212/2018 (“**Writ Petition**”), whereby the Writ Petition was dismissed.

6. The brief facts leading to the filing of the present Appeal are as under:

- 6.1. The Appellant joined the Respondent institution as a Junior Judicial Assistant on 18.12.2003. According to the Appellant, he became eligible for the next promotion on 18.12.2008 upon completion of the prescribed residency period.
- 6.2. By Office Memorandum dated 16.10.1979, the posts of Lower Divisional Clerks and Upper Divisional Clerks were restructured in the ratio of 40:60 with effect from 01.10.1979, which was subsequently revised to 50:50 by Office Memorandum dated 20.03.1994 with effect from 01.04.1994. Thereafter, this Court, *vide* judgment dated 22.03.2010 in W.P.(C) 907/1996, directed the competent authorities to carry out the upgradation of posts in terms of the aforesaid memoranda.
- 6.3. Pursuant thereto, a Selection Committee was constituted and a promotion order dated 23.08.2017 came to be issued. Although the Appellant’s name was included therein for promotion, such promotion was made effective only from 01.07.2012.
- 6.4. The present controversy substantially arises from the fact that the Appellant was denied the increments due on 01.07.2010 and



01.07.2011 on account of disciplinary proceedings initiated against him, wherein, *vide* order dated 23.10.2009 disposing of the departmental inquiry, a penalty of withholding the aforesaid increments was imposed upon him.

- 6.5. The Respondent contends that the Appellant's promotion could be given effect only upon expiry of the operative period of the aforesaid penalty and that, consequently, the promotion was rightly granted with effect from 01.07.2012 rather than from 18.12.2008, being the date on which the Appellant allegedly became eligible for promotion.
- 6.6. Accordingly, the Appellant instituted the Writ Petition, *inter alia*, seeking a direction to the Respondent to grant him promotion with effect from 18.12.2008 instead of 01.07.2012, together with all consequential benefits. By the Impugned Order, the learned Single Judge dismissed the Writ Petition.
- 6.7. Aggrieved thereby, the Appellant has preferred the present Appeal assailing the Impugned Order.

7. Learned counsel for the Appellant submitted that the pendency of disciplinary proceedings does not disentitle an employee from being considered for promotion, provided he is otherwise eligible therefor. It was contended that, since the Appellant became due for promotion on 18.12.2008, there existed no legal impediment to granting him promotion from the said date.

8. Learned counsel for the Appellant further submitted that it is well settled in law that the imposition of a minor penalty does not render an



employee ineligible for promotion. In support of the said submission, reliance was placed on the decision of the Hon'ble Supreme Court in **Jagan Narain v. Food Corporation of India**, (2010) 4 SCC 558, wherein it was held as under:

“8. Seen in the background of the two circulars dated 13-12-2001 and 19-12-2001, it is evident that the promotion of the petitioner by order dated 24-1-2005 was not the result of any oversight. It should be noticed that as on 24-1-2005, the minor penalty proceeding had come to an end by levying penalty of Rs 5000. Even as on 8-11-2004 what was pending was only a minor penalty proceeding. Therefore, having regard to the circulars dated 13-12-2001 and 19-12-2001, neither the pendency of minor penalty proceedings nor the imposition of minor penalty by way of recovery of Rs 5000 would come in the way of the employee being considered for promotion or being promoted. It therefore, follows that there was no justification for cancelling the said promotion dated 24-1-2005. If the appellant was thus entitled to promotion and the cancellation of the promotion was not warranted, the case of the appellant being considered again for the very same promotion and adoption of sealed cover procedure in view of the pendency of subsequent disciplinary proceedings will not arise (vide Delhi Jal Board v. Mahinder Singh [(2000) 7 SCC 210 : 2000 SCC (L&S) 897]).”

9. Learned counsel for the Appellant submitted that, in any event, the Appellant ought to have been granted promotion with effect from 01.07.2011, being the date on which the minor penalty of withholding increment imposed upon him came to an end. It was further contended that the date of restoration of increment is immaterial for the purposes of determining the Appellant's entitlement to promotion.

10. We have heard learned counsel for the Appellant and perused the material placed on record.



11. As noted in the Impugned Order passed by the learned Single Judge, the Appellant's contention that he ought to have been promoted with effect from the date on which such promotion allegedly fell due, namely 18.12.2008, proceeds on the assumption that completion of the eligibility period for promotion confers an enforceable right to promotion from the said date.

12. The Appellant further contended that the minor penalty imposed upon him did not render him ineligible for promotion during the currency of the said penalty. In support of this contention, reliance was placed on the judgment of the Hon'ble Supreme Court in **Jagat Narain** (supra).

13. The learned Single Judge, in the Impugned Order, has examined the said submission and held that in **Jagat Narain** (supra), the Hon'ble Supreme Court was concerned with cancellation of promotion on account of pendency of minor penalty proceedings in the context of specific FCI circulars, which did not treat such pendency as a bar to promotion.

14. In this regard, it is also apposite to refer to the Office Memorandum dated 28.04.2024, which governs the Appellant's case. A conjoint reading of paragraph nos. 2 and 3 thereof reveals that a government official upon whom a minor penalty of withholding increment has been imposed may be considered for promotion by the Departmental Promotion Committee; however, such promotion can be given effect only upon expiry of the currency of the penalty. Accordingly, in view of the position that emerges from the said Office Memorandum, the Appellant could be promoted only upon expiry of the penalty of withholding increments imposed upon him.



15. The Appellant has further contended that in any event, the penalty imposed upon the Appellant came to an end on 01.07.2011 when the second increment was withheld. In this respect, the learned Single Judge in the Impugned Order has held as under:

“18. The alternative submission that the penalty stood exhausted upon the withholding of the second increment on 1st July, 2011 also cannot be accepted. The penalty imposed was not merely the act of withholding two increments in isolation, but the consequence of operating with a depressed pay position for the period during which those increments remained withheld. The service record shows that the withheld increments were restored only on 1st July, 2012. Until such restoration, the financial consequences of the penalty continued to operate. The expression “currency of the penalty” in the governing Office Memorandum must be understood in this practical sense, namely, the period during which the penalty’s consequences remain operative. On that understanding, the Respondent were justified in giving effect to the promotion only from 1st July, 2012.”

16. The aforesaid extract of the Impugned Order holds that the penalty imposed upon the Appellant was not confined merely to the withholding of two increments in isolation, but continued to operate until restoration of the withheld increments on 01.07.2012, inasmuch as the Appellant remained on a depressed pay scale as a consequence thereof until the said date.

17. We accordingly concur with the conclusion arrived at by the learned Single Judge that the penalty of withholding two increments continued to remain in force until 01.07.2012. The Respondent was, therefore, justified in granting promotion to the Appellant with effect from 01.07.2012, being the date on which the operative consequences of the penalty ceased, and the withheld increments stood restored.



18. As it is settled position of law that there is not vested right to be promoted, the Appellant's claim that he was entitled to promotion on 18.12.2008, merely because his promotion allegedly fell due on that date, is untenable, contrary to the settled position in law, and liable to be rejected.

19. In view of the foregoing discussion, we find no infirmity in the Impugned Order passed by the learned Single Judge warranting interference in the present Appeal. The Appeal is, accordingly, dismissed. There shall be no order as to costs.

TEJAS KARIA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 22, 2026

St/ap