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

\+ W.P.(C) 8212/2018, CM APPL. 13924/2023

KALYAN SINGH .....Petitioner

Through: *Appearance not given.*

versus

LD. DISTRICT AND SESSION JUDGE, HQ DELHI .....Respondent

Through: Mrs. Avnish Ahlawat, SC for GNCTD Services with Mr. N.K. Singh, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **16.02.2026**

1. This petition under Article 226 of the Constitution questions only the effective date of the Petitioner's promotion to the post of Judicial Assistant (Group 'C', Non-Gazetted). The Petitioner does not dispute that promotion has been granted. The dispute is about whether the notional promotion could, or should, be antedated to 18th December, 2008 (the date on which the Petitioner claims eligibility matured), instead of 1st July, 2012 (the date from which the promotion order extends effect).

Facts

2. The Petitioner joined the Respondent establishment on 18th December, 2003 as Junior Judicial Assistant. As per the Petitioner, the next promotion to Judicial Assistant became due on completion of the prescribed residency period, and therefore fell due on 18th December, 2008.

3. Promotion in the cadre must be seen against the backdrop of restructuring instructions issued by the Government of India. An Office

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Memorandum dated 16th October, 1979 restructured the LDC and UDC posts in a 40:60 ratio with effect from 1st October, 1979. That ratio was later modified to 50:50 with effect from 1st April, 1994 by Office Memorandum dated 20th March, 1994. A judgment of this Court dated 22nd March, 2010 in W.P.(C) No. 907/1996 directed the concerned authorities to sanction and implement the upgradation of posts in terms of the said memoranda.

4. Pursuant to the above directions, a Selection Committee was constituted. A promotion order dated 23rd August, 2017 was issued, in which the Petitioner's name appeared (serial no. 284) and the promotion was made effective from 1st July, 2012.

5. The controversy turns materially on disciplinary proceedings initiated against the Petitioner. A memorandum dated 19th August, 2006 was issued to him relating to issuance of bailable warrants in a matter where he was discharging the function of 'Alhmad'. The proceedings culminated in an order dated 23rd October, 2009 imposing the minor penalty of withholding of two increments without cumulative effect. As a result, the Petitioner did not receive the increments that fell due on 1st July, 2010 and 1st July, 2011. Later, on 1st July, 2012, the Petitioner received three increments, including restoration of the two withheld increments.

6. The Respondent contend that the effective date of promotion must necessarily follow the expiry of the penalty's operative period. According to them, although the penalty was minor in nature, its consequences continued until 1st July, 2012, when the withheld increments stood restored. The Petitioner, therefore, could not have been granted promotion with effect from 18th December, 2008 so long as the penalty remained in currency. The Petitioner disputes this position.

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Petitioner's submissions

7. Counsel for the Petitioner makes the following submissions in support of the reliefs sought:

7.1. The grievance of the Petitioner is that the Respondent have erroneously fixed the effective date to 1st July, 2012, although the Petitioner had completed the qualifying service much earlier and, on the Respondent' own case, the promotion flowed from a cadre restructuring exercise which stood judicially mandated.

7.2. As regards the Respondent' justification founded on the imposition of penalty, it is argued that the penalty was "withholding of two increments without cumulative effect". The punishment, by its own description, was confined to increments. It did not contain any direction withholding promotion, nor could a collateral "promotion embargo" be read into it when the disciplinary authority did not impose such a consequence.

7.3. A minor penalty does not, by itself, make an employee ineligible for consideration for promotion. While the actual operation of promotion may be regulated during the currency of a penalty, the penalty itself does not extinguish the employee's claim to placement in the promotional hierarchy from the date of eligibility. In this context, reliance is placed on ***Ram Pal Singh v Union of India & Ors.,***[1] ***D.H.B.V.N.L. & Ors. V. Yashvir Singh Gulia***[2]***, Jagan Narain v. Food Corporation of India & Ors.***[3]***, and State Bank of India & Ors. V. C.K. Karunakaran***[4] which accept that a minor penalty cannot be treated as an automatic and rigid disqualification for

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[1] 2011:DHC:4740-DB
[2] (2013) 11 SCC 173
[3] (2010) 4 SCC 558
[4] CIVIL APPEAL NO.6821/2009 decided on 30th September, 2021

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promotional progression, particularly where the post is non-selection and the promotion is seniority-based. The Petitioner draws support from the reasoning that where only a minor penalty is ultimately imposed, it ought not to block promotion as a matter of course.

7.4. Where an employee is denied promotion for reasons that do not amount to a statutory bar, the corrective relief often involves restoration of the proper placement and consequential benefits, subject to lawful limitations.

7.5. Even assuming that promotion could not operate during the currency of the penalty, the punishment stood exhausted upon the withholding of the second increment on 1st July, 2011. The grant of three increments on 1st July, 2012 merely restored the pay position and did not extend the life of the penalty. Consequently, the Respondent could not have deferred the effective date of promotion beyond 1st July, 2011, and fixation from 1st July, 2012 is legally unsustainable.

7.6. It is further contended that similarly situated employees, including certain juniors, were granted promotion from an earlier effective date despite the imposition of minor penalties. The Petitioner submits that denial of similar treatment to him is arbitrary and violative of Articles 14 and 16 of the Constitution.

Respondent submissions

8. On the other hand, Counsel for the Respondent, opposes the petition on the following grounds:

8.1. The Petitioner has no vested right to promotion from a particular date. At best, he has a right to be considered, and the timing and effect of promotion depend upon the existence of vacancies, completion of the

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selection process, and the outcome of suitability assessment as per the applicable rules.

8.2. The Petitioner's name appeared at serial no. 284 in the promotion list and the promotion was granted by order dated 28th August, 2017 with effect from 1st July, 2012. The effective date was fixed on an objective application of policy governing promotions and the impact of penalties, and not on any ad hoc discretion.

8.3. The Petitioner was issued a charge memorandum on 19th August, 2006, and upon culmination of the disciplinary process, a punishment of withholding of two increments without cumulative effect was imposed by order dated 23rd October, 2009. Although the penalty is described as "minor", it remains a punishment for misconduct, and the administration is entitled, indeed obliged, to factor it into promotional decisions in order to preserve discipline and institutional standards.

8.4. Reliance is placed upon the DoPT Office Memorandum bearing no. 22011/4/2007-Estt.(D) dated 28th April, 2014, which consolidates the approach towards promotions where penalties have been imposed. The governing policy framework recognises two distinct propositions. First, withholding of increment does not, by itself, make an employee ineligible for consideration, because the specific penalty of withholding promotion has not been imposed. Second, even where the DPC considers the officer fit, the officer should not be actually promoted during the currency of the penalty. This precisely answers the Petitioner's claim for effect of promotion from 2008.

8.5. The promotion having been given effect from 1st July, 2012 already reflects a balanced approach, because it ensures the Petitioner receives

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promotion after the penalty's operative period, while respecting the discipline-related implications of the misconduct.

Analysis and findings

9. The Petitioner's claim proceeds on the premise that mere completion of the eligibility period confers an enforceable right to promotion from a particular date. Such a premise is not supported by settled principles of service jurisprudence. Eligibility is a threshold.

10. The Petitioner suffered a minor penalty of withholding two increments without cumulative effect by order dated 23rd October, 2009. That penalty did not remain confined to a paper entry. It operated through the withholding of increments due on 1st July, 2010 and 1st July, 2011, and the withheld increments were restored only when the next increment became due on 1st July, 2012. The DoPT instructions on the working of such a penalty treat the increment as restored after the period of withholding ends, without carrying forward a lasting reduction in pay.

11. In terms of Para 2 of the Office Memorandum dated 28th April, 2014, withholding of increment does not render an officer ineligible for consideration for promotion, since the specific penalty of withholding promotion has not been imposed. The same paragraph, read with Para 3 thereof, makes it explicit that even where the DPC finds the officer suitable, the promotion is not to be given effect during the currency of the penalty and may operate only upon its expiry.

12. Once this principle is applied, the Petitioner's prayer for an effective date of 18th December, 2008 confronts an immediate difficulty. If promotion were to be granted from 18th December, 2008, the Petitioner would be treated as occupying the higher post throughout the period when the penalty

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was operating in real terms on increments (2010 and 2011) and until restoration (1st July, 2012). That is precisely what the instructions caution against. The governing approach is not to deny promotion forever, but to ensure that the promotion does not operate during the penalty's currency.

13. The principle reflected in the Office Memorandum also stands judicially recognised. In ***Union of India v. K. Krishnan***[5] the Supreme Court held that denial of promotion during the currency of a penalty is not a second punishment but a logical and consequential effect of the disciplinary action, and does not offend Articles 14 or 16. The Court observed that a government servant suffering a penalty cannot, at the same time, claim promotion to a higher cadre. Similarly, in ***Union of India v. A.N. Mohanan***[6] it was reiterated that where a penalty has been imposed, promotional benefits cannot be given retrospective effect in disregard of the disciplinary consequence. These authorities reinforce the policy that while consideration may proceed, the actual operation of promotion must await the expiry of the penalty's currency.

14. The Petitioner characterises the Respondent' decision as an additional punishment. That argument would have carried weight if the Respondent had continued to deny promotion even after the penalty's operative period had ended. However, promotion has been granted with effect from 1st July, 2012, which is the very date on which, on the Petitioner's own case, the withheld increments were restored and the penalty's operative consequences ceased.

15. This Court is also mindful that courts have intervened where

[5] 1992 Supp (3) SCC 50
[6] (2007) 5 SCC 425

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administrative action denies promotional benefits in a manner inconsistent with rules, especially when an employee stands cleared, or when the denial flows from an unlawful continuation of adverse consequences. For instance, in ***Ram Pal Singh***, it was held that where the applicable Railway Board instructions expressly provided that a minor penalty would not impede promotion to a non-selection post, such penalty could not be treated as a bar. However, that decision turned on the specific language of the governing circular applicable in that case. The present matter is governed by the DoPT Office Memorandum dated 28th April, 2014, which, while permitting consideration despite withholding of increments, expressly stipulates that promotion is not to take effect during the currency of the penalty. The distinction in the governing policy framework is decisive.

16. Similarly, in ***Jagan Narain,*** the 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. The decision turned on the interpretation of those circulars. The factual and regulatory framework is thus materially distinct.

17. Far from assisting the Petitioner, ***C.K. Karunakaran,*** affirms that where disciplinary proceedings culminate in the imposition of a minor penalty, the recommendation kept in sealed cover cannot be given effect retrospectively, and the employee can only be considered for promotion prospectively after conclusion of the proceedings. The principle that promotional benefits do not operate during the subsistence of disciplinary consequences stands reinforced therein.

18. The alternative submission that the penalty stood exhausted upon the withholding of the second increment on 1st July, 2011 also cannot be

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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.

19. The plea of discrimination also does not advance the Petitioner's case. Apart from a general assertion that certain other employees were granted promotion from an earlier date despite the imposition of minor penalties, no specific details have been placed on record regarding the identity of such employees, the nature of the penalties imposed upon them, the duration of their currency, or the circumstances in which their promotions were effected. A claim of parity in service matters must rest on demonstrated similarity in material particulars. In the absence of such foundational material, the allegation of unequal treatment cannot be sustained.

20. For the reasons recorded above, the writ petition is dismissed. Pending applications, if any, also stand disposed of.

SANJEEV NARULA, J

FEBRUARY 16, 2026/*nk*

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