

# Ramneesh Paul Rajesh Kumar ..... vs Is By Relying Upon A Document At Page 89 ... on 8 April, 2021

**Author: V. Kameswar Rao**

**Bench: V. Kameswar Rao**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 11532/2019, CM No. 47388/2019  
+ W.P.(C) 11533/2019, CM No. 47389/2019

RAMNEESH PAUL  
RAJESH KUMAR

..... Petitioner(s)

Through:

Mr. Rajat Aneja, Ms. Rajula and  
Ms. Chandrika Gupta, Advs.

versus

THE DISTRICT & SESSIONS JUDGE (HEADQUARTERS)  
THE DISTRICT & SESSIONS JUDGE (HEADQUARTERS)

..... Respondent(s)

Through: Mrs. Avnish Ahlawat, Standing  
Counsel with Mrs. Tania Ahlawat,  
Mr. N.K. Singh and Ms. Palak  
Rohmetra, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO  
ORDER

% 08.04.2021

1. As a common issue arises in both the writ petitions; they have been heard together and are being decided by this common order. The facts in each of the writ petitions shall be narrated separately:

W.P.(C) 11532/2019

2. The petitioner was appointed as an LDC in the Office of the District and Sessions Judge on October 06, 2006. While working so, he on January 8, 2010, was charge sheeted under the Service Rules having failed to prepare the monthly statement for the month of July 2009 while working on the post of Ahlmad. The said charge sheet resulted in a penalty of stoppage of one increment without cumulative effect vide order dated October 25, 2012. On August 23, 2017 the respondent passed an office order promoting / upgrading 868 Junior Judicial Assistants (LDCs) to the higher post of Judicial Assistants. The petitioner was promoted w.e.f. July 01, 2014, whereas it is his case that he should have been promoted on completion of five years (October 6, 2011) as Junior Judicial Assistant as has been done in respect of similarly placed persons. He made a representation dated December 07, 2017 which was followed by reminder dated November 13, 2018. The same were rejected vide letter dated February 07, 2019, whereby it was stated that the delay in the promotion

of the petitioner was because of the penalty imposed on him which remained in operation from July 01, 2013 to June 30, 2014 and he was immediately promoted w.e.f. July 01, 2014. W.P.(C) 11533/2019

3. The petitioner herein was appointed in the respondent office as LDC on July 01, 2003. On January 01, 2006 a charge sheet was issued to him for illegally handing over to the counsel, the photocopy of a case record pending in the Court of the then Civil Judge, Delhi. The said charge sheet resulted in a penalty of withholding of one increment for one year without cumulative effect vide order dated September 06, 2008. On August 23, 2017 the respondent issued an office order promoting 868 Junior Judicial Assistants (LDCs) to the higher post of Judicial Assistants. The petitioner was granted the promotion w.e.f. July 01, 2010. It was the case of the petitioner in his representation dated August 30, 2017 and reminder dated June 18, 2018 that his promotion must relate back to July 01, 2008. The representation of the petitioner was rejected on the same ground on which the representation of the petitioner in W.P.(C) 11532/2019 was rejected.

4. The submission of Mr. Rajat Aneja, learned counsel for the petitioner is by relying upon a document at page 89 Annexure-P6 that where Officers whose increments have been withheld or who has been reduced in a lower stage in the time scale cannot be considered on that account to be ineligible for promotion to the higher grade as specific penalty of withholding of promotion has not been imposed on him. The suitability of the officer for promotion should be assessed by the DPC as and when occasion arise for such assessment. In assessing the suitability, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and the fact of the imposition of the penalty, he should be considered suitable for promotion.

5. That apart, it is his submission that the effect of grant of promotion to the petitioners w.e.f. July 01, 2014 and July 01, 2010 is that the petitioner's seniority now shall be determined w.e.f. that dates and not from October 6, 2011 and July 01, 2008. In other words, grave prejudice is being caused to the petitioners because of shifting of the date of promotion. He relied upon the judgment of the Coordinate Bench of this Court in the case of Pradeep Kumar v. The District and Sessions Judge (Headquarters) W.P.(C) 2219/2018 wherein the petitioner who was similarly placed like the petitioners herein has been granted the relief of promotion despite penalty. He qualifies his submission by stating that the pendency of charge sheets on October 6, 2011 and July 1, 2008 is not be an impediment for grant of promotion to the petitioners from that dates instead of July 1, 2014 and July 01, 2010 from which date the petitioners have been granted promotion. Mr. Aneja submits that the said judgment has been implemented by the respondent in favour of the petitioner inasmuch as his promotion has been antedated from the date of eligibility.

6. Ms. Ahlawat, learned Standing Counsel for the respondent states that the petitioners are not entitled to the promotion on the completion of five years as Junior Judicial Assistant (LDC), i.e., w.e.f. October 06, 2011 / July 01, 2008 as sought for by them for the simple reason that on the dates they had completed five years eligibility period, charge sheets issued to them were pending which resulted in imposition of penalty on them. It is immediately after the penalty ceased to have the effect the petitioners were granted the promotion.

7. She states that the judgment on which reliance has been placed by Mr. Aneja though implemented is not the correct interpretation of the instructions issued by the Government of India and also the position of law as laid down by the Supreme Court. She relied upon the Judgment of the Full Bench of the Punjab and Haryana High Court in the case of The High Court of Punjab and Haryana, Chandigarh v. Jaswant Singh, LPA 1852/2016, decided on September 3, 2019.

8. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the petitioners are entitled to promotion w.e.f October 06, 2011 and July 01, 2008, the dates when they attained the eligibility. There is no dispute that charge sheets were issued to the petitioners on January 8, 2010 and January 1, 2006 respectively. In other words, the dates from which the petitioners are seeking promotion, the charge sheets were pending against them.

9. The charge sheets resulted in imposition of penalty of stoppage of one increment for one year without cumulative effect. The penalties ceased to have the effect in the case of the petitioners on June 30, 2014 and June 30, 2010 respectively. Concedingly, the petitioners have not challenged the issuance of charge sheet nor the penalty imposed on them in any proceedings. They have also gone through / suffered the penalty imposed on them. The promotion has been given to the petitioners w.e.f July 1, 2014 and July 1, 2010. They are seeking the promotion from dates much anterior to the dates from which they have been given.

10. From time to time the Government of India has issued instructions governing the promotion of government servants against whom disciplinary / criminal proceedings are pending, or whose conduct is under investigation. One such Office Memorandum is dated September 14, 1992. Para 2, 2.1, 3 and 3.1 states as under:

"2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of all Departmental Promotion Committee:-

i) Government servants under suspension;

ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and

iii) Government servants in respect of whom prosecution for a criminal charge is pending.

2.1 The departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the disciplinary case / criminal prosecution pending. The assessment of the DPC, superscribed Finding regarding suitability for promotion to the grade / post of .....in respect of Shri .....(name of the Government Servant). Not to be opened till the termination of the disciplinary case / criminal prosecution against Shri..... The proceedings of

the DPC need only contain the note „The findings are contained in the attached sealed cover . The authority competent to fill the vacancy should be DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

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3. On the conclusion of the disciplinary case / criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover / covers and with reference to the date of promotion of his next junior - most officiating person. He may be promoted notionally with reference to the date of promotion of his junior preceding the date of actual promotion, and if so to what extent, will be decided by the appointing authority by taking into consideration all the facts and circumstances of the disciplinary proceedings / criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part it may become necessary. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. These are only some of the circumstances where such denial can be justified."

3.1 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings are if he is found guilty in the criminal prosecution against him, the findings of the sealed cover / covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

11. In normal circumstances, the pendency of charge sheets would result in keeping the recommendation of the DPC in a sealed cover and if the Government Servant is found guilty in the charge sheets, the recommendation of the DPC would not be acted upon.

12. The circumstances are not normal in these cases, as the promotion was given to the petitioners in the year 2017, but from back dates. So, the position as existing on the dates of their eligibility has to be seen. There is no denial that charge sheets were pending against them on the said dates, which finally culminated in penalty. Before the order of promotion was issued, the petitioners had already gone through the penalty. So, they had to be given promotion, which necessarily has to be from the date when there is no impediment / bar that is the date immediately after the penalty ceased to operate, i.e., July 1, 2014 and July 1, 2010 respectively. This position is clear from OM's dated September 14, 1992 and April 28, 2014 of DoP&T.

13. The plea of Mr. Aneja that the petitioners are entitled to promotion from the date of eligibility by relying upon the judgment in the case of Pradeep Kumar (supra) is not appealing. Suffice to state the Office Memorandum dated April 28, 2014 of which reference has been made in the Judgment do state if a penalty is imposed the recommendation of DPC in sealed cover shall not be acted upon and

the Government Servant's case shall be considered in next DPC. This position is conceded by Mr. Aneja as well. The OM in para 7(f), (g) and (i) reads as under:

"f) If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he/she is found guilty in the criminal prosecution against him/her, the findings of the sealed cover/covers shall not be acted upon.

His/her case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him/her (para 3.1 of DoPT OM dated 14.9.92).

g. In assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether In the light of general service record of the officer and the fact of imposition of penalty, the officer should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as 'unfit' for promotion. However, where the DPC considers that despite the penalty the officer is suitable for promotion, the officer will be actually promoted, only after the currency of the penalty is over (para 13 of DoPT OM dated 10.4.89).

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i) While there is no illegality in denying promotion during the currency of the penalty, denying promotion in such cases after the period of penalty is over would be in violation of the provisions of Article 20 of the Constitution."

14. If the promotion is given from the date of eligibility it shall mean, de hors, the charge sheet and penalty when the petitioners were under cloud, the petitioners shall get the promotion. It is not the purport of the instructions and the law laid down by the Supreme Court in the Judgments of which reference is made below.

15. A Bench of three Judges of the Supreme Court in *Union of India v. K.V. Jankiraman*, (AIR at p. 2018, para 8) considered thus: (SCC p. 123, para 29) "According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated

differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal."

(emphasis supplied)

16. In State of T.N. v. Thiru K.S. Murugesan and others, MANU/SC/0664/1995: (1995) 3 SCC 273 the employee was working as Assistant Statistical Officer. The State of Tamil Nadu had initiated proceedings against him for misconduct in the year 1978. By order dated 6- 12-1982 punishment of stoppage of three increments without cumulative effect was imposed on him. On appeal the punishment was set aside in August 1984 and re-inquiry was directed. On fresh inquiry, the same punishment was imposed by proceedings dated 6-9-1984. The respondent was not considered for promotion to the post of Deputy Director during the year 1983-84. He filed OA No. 138 of 1991 before the Administrative Tribunal, Madras. The OA was allowed by the order dated 16-6-1993. It directed reconsideration of his case for promotion with effect from 1983-84. Accordingly, his case was considered and he was promoted with effect from 31-8-1988.

17. The only question before the Supreme Court was whether non- consideration of the respondent's promotion for the year 1983-84 was legal. The Tribunal had held that promotion could not be withheld on account of imposition of the penalty of punishment of stoppage of three increments as it would amount to "double jeopardy".

18. Allowing the appeal of the State of T.N. the Supreme Court held as under:

"5. We find no substance in the contentions. It is already seen that on 6-12-1982, the punishment of stoppage of two increments was imposed and it was in vogue on 6-11-1984, when the list was approved by the Government. The punishment was reiterated after fresh inquiry. Rule 3 of the Rules provides that "promotion to the posts of Director of Statistics, Deputy Director of Statistics shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal". In other words, the claim of Assistant Statistical Officer for promotion to Deputy Director shall be considered on grounds of merit and ability alone. Unless the seniority is approximately equal, seniority has no role to play and

needs to be relegated to the background.

6. A Bench of three Judges of this Court in *Union of India v. K.V. Jankiraman* [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : AIR 1991 SC 2010] , (AIR at p. 2018, para 8) considered thus: (SCC p. 123, para 29) "According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal."

19. Similar is the ratio in the case of *L. Rajaiah v. Inspector General of Registration and Stamps, Hyderabad* 1996 (8) SCC 246; *UOI v. B. Radhakrishna* 1997 (II) SCC 698 and *Union of India v. K. Krishnan*, MANU/SC/0364/1992: 1992 Supp (3) SCC 50.

20. Suffice to state, the judgment relied upon by Mr. Aneja in the case of *Pradeep Kumar* (supra) is clearly overlooking the provisions of Office Memorandum dated April 28, 2014 and the Judgments

of the Supreme Court and as such is per incuriam. The question is in view of the Judgment in Pradeep Kumar (supra) whether this matter is required to be referred to a Division Bench for adjudication of the issue. On a deeper consideration and in view of the Judgment of the Supreme Court in the case of M/s Hyder Consulting (UK) Ltd. v. State of Orissa 2015 2 SCC 189 that prior decision on identical facts and law binds the Court on the same points of law in a later case. In exceptional circumstances, where owing to obvious inadvertence or oversight, a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. The aforesaid principle was also noticed by the Supreme Court in the case. Furest LawDawson v. Jindal Exports, (2001) 6 SCC 356.

21. The Supreme Court has also in the case of State of Assam v. Ripa Sarma, 2013 (3) SCC 63 held that any judgment rendered in ignorance of earlier judgments of the facts of co-equal strength render the same per incuriam and the same cannot be elevated to the status of precedence.

22. In view of the aforesaid position of law I am of the view that the Judgment in the case of Pradeep Kumar (supra) cannot have precedential value and is not binding on this Court. The petitions have to be decided in terms of OM's dated September 14, 1992 and April 28, 2014 and the law laid down by the Supreme Court as noted above. It must be held that the petitioners have been rightly given promotion as Judicial Assistants w.e.f July 1, 2014 and July 1, 2010 respectively.

23. Insofar as the plea of Mr. Aneja that the seniority of the petitioners has got shifted to July 1, 2014 and July 1, 2010 to their prejudice as many of their juniors scored march over them is also not appealing. Suffice to state, seniority on promotion on a higher post is relatable to the date of promotion. The dates of promotion in the case of the petitioners being July 1, 2014 and July 1, 2010 the seniority of the petitioners shall be from the said dates only. The delayed promotion is the effect of pendency of chargesheets and the resultant penalty imposed on the petitioners, which remained unchallenged. Ms. Ahlawat is justified in relying upon the judgment of the Full Bench of the Punjab and Haryana High Court in The High Court of Punjab and Haryana, Chandigarh v. Jaswant Singh, MANU/PH/1279/2019, wherein the Court by referring to all the above Judgments has held that the punishment shall always be prospective and not retrospective from the date of misconduct.

24. In view of my discussion above, the petitions filed by the petitioners are devoid of merit and the same are dismissed.

CM No. 47388/2019 in W.P.(C) 11532/2019 CM No. 47389/2019 in W.P.(C) 11533/2019 Dismissed as infructuous.

V. KAMESWAR RAO, J APRIL 08, 2021/aky/jg