



\$

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment reserved on: 12.03.2026

Judgment delivered on: 07.05.2026

Judgment uploaded on: *As per Digital Signature~*

+

W.P.(C) 2563/2024

JAGDISH PRASAD MANDAWRA

.....Petitioner

versus

UNION OF INDIA AND ORS.

.....Respondents

Advocates who appeared in this case

For the Petitioner : Mr Ganesh A Khemka, Mr Shreenath A Khemka, Ms Vidhi Gupta, Mr Sarthak Sharma, Advs.

For the Respondents : Ms. Avshreya Pratap Singh Rudy, (CGSC), Mr. Ankit Khatri, Ms. Usha Jamnal, Ms. Nyasa Sharma, Advs.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****V. KAMESWAR RAO, J.**

1. This petition has been filed by the petitioner with the following prayers:

“A. Writ of Mandamus directing the Department to open the sealed-cover regarding the DPC Recommendation dated 18.04.2018 concerning the Petitioner’s promotion to the post of Executive Engineer (Civil), and thereby promote the Petitioner w.e.f. the date his juniors were promoted i.e. 24.04.2018 (Annexure P-4), and consequentially restore his seniority and grant him arrears of difference of salary, along with interest @



12% p.a.

B. Any other Order this Court may deem fit, ex aequo at bono.”

2. In effect, the petitioner is seeking a direction from this Court to the respondents to open the sealed cover in respect of recommendations made by Departmental Promotion Committee (DPC) on 18.04.2018 for petitioner's promotion to the post of Executive Engineer (Civil) and thereby to promote him on the said post with effect from 24.04.2018 when officers junior to the petitioner were promoted and consequentially restore his seniority and grant him arrears of difference of salary with interest at 12% per annum.

3. The case of the petitioner as noted from the record and also contended by the learned counsel for the petitioner is that, he is working as an Assistant Executive Engineer in Border Roads Organisation (BRO). On 07.11.2017, he was issued a charge-sheet. On 18.04.2018, when the charge-sheet was still under consideration, a DPC was convened, which considered all the officers in the Zone Of Consideration for promotion to the post of Executive Engineer (Civil). According to the petitioner, thirty-two officers were promoted on 24.04.2018 which included officers junior to the petitioner, but not the petitioner.

4. Insofar as the petitioner is concerned, the recommendations of the DPC were kept in a sealed cover. On 01.10.2021, the petitioner was exonerated in the charge-sheet issued on 07.11.2017. It is his case, that in view of the exoneration, the sealed cover ought to have been opened and the recommendations given effect to. The respondents did not open the sealed cover. According to them, the same is in view of the pendency of the second



charge-sheet dated 25.03.2021 issued to the petitioner before the exoneration of the petitioner on 01.10.2021. The learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of *Delhi Jal Board v. Mahinder Singh (2000) 7 SCC 210* to contend the pendency of second charge-sheet shall not be an impediment to open the sealed cover and promote the petitioner if found fit. The learned counsel for the petitioner has also relied upon the judgments in the case of *Union of India v. Doly Loyi, 2024 SCC OnLine SC 2613*, *Union of India v. K V Jankiraman 1991 (4) SCC 109* and *Sunil Chaurasia v. District & Sessions Judge (HQS) 2023 SCC OnLine Del 826*, for a similar proposition.

5. On the other hand, the learned counsel for the respondents would submit that the petitioner while serving as a Paying Officer in 109 Road Construction Company (RCC) was found by Central Bureau of Investigation (CBI) to be involved in a case of false mustering with the help of medical examination form in connivance with OC 109 RCC. The CBI, Srinagar recommended taking regular departmental action against the petitioner for major penalty. According to the respondents while functioning as paying officer in 109 RCC, the petitioner was alleged to have been involved in another case of fake and forged mustering.

6. Accordingly, the first charge sheet was issued on 07.11.2017. The promotion to the post of Executive Engineer (Civil) fell due and as per the DPC recommendations, thirty two officers were promoted. The petitioner was not promoted and his case was kept in a sealed cover. In the meanwhile on 25.03.2021, a second charge sheet was issued to the petitioner. That on 01.10.2021, the petitioner was exonerated in respect to the first charge-sheet.



The second charge-sheet issued on 25.03.2021, has resulted in the order dated 09.11.2023, whereby a penalty of reduction of pay to a lower stage in the time scale by one stage for a period of three and a half years with cumulative effect and it will have the effect of postponing future increments of his pay was imposed on the petitioner.

7. The submission of the learned counsel for the respondents is that the petitioner shall not be entitled to the benefit of the opening of the sealed cover, as on the date when the petitioner was exonerated in the first charge-sheet, the second charge-sheet was pending which has resulted in a penalty. Hence the prayer sought cannot be granted.

8. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration is whether the sealed cover whereby the recommendations of the DPC dated 18.04.2018 were kept, need to be opened.

9. The case of the learned counsel for the petitioner primarily relies upon the judgment of the Supreme Court in the case of *Delhi Jal Board (supra)*. In the said judgment, the Supreme Court was considering the case wherein the recommendations of the DPC pertaining to the respondent therein were kept in a sealed cover as a charge sheet was issued to him. He was exonerated of the charges however by the time he was exonerated, the second charge sheet had been issued to him. In view of this factual situation, the department therein did not give effect to the DPC recommendation. The Supreme Court held that once the first inquiry has resulted in exoneration, the benefit of the DPC recommendation, lying in the sealed cover, cannot be denied to the respondent therein for the reason on the date of DPC, the



respondent was not under the cloud for the second charge-sheet.

10. The said judgment of the Supreme Court in *Delhi Jal Board (supra)* clearly applies to the facts of this case. In this regard, we may reproduce the relevant conclusion of the Supreme Court in paragraphs 5 and 6 of the judgment as under:

“5. The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection. There is, therefore, no question of referring the matter to a larger Bench.

6. In this SLP, we have not thought it fit to send the matter back to the Division Bench which had dismissed the appeal as time-barred and on the ground that the advocate was not present. In our view, this is not a fit case to remand the matter to the High Court because the only argument addressed by the learned Additional Solicitor General before us is that the earlier



judgments of this Court cited above and relied upon by the learned Single Judge require reconsideration and that question cannot obviously be raised before the Division Bench of the High Court. We have therefore considered the correctness of the judgment of the learned Single Judge on merits.”

11. So, in view of the above position, the respondents are required to open the sealed cover wherein the recommendations of the DPC dated 18.04.2018 in respect of promotion of the petitioner to the post of Executive Engineer (Civil) are kept so as to give effect to the same. In other words, the issue of the second charge sheet which resulted in a penalty on the petitioner of which a reference is made above shall not have a bearing on the sealed cover, which procedure was adopted in respect of a charge sheet of which the petitioner has been exonerated and also the petitioner, on the date of DPC was not under cloud for the second charge-sheet. At this stage, we may state that in terms of the instructions related to ‘Sealed Cover Procedure’ updated by the DoPT as on 30.08.2022 wherein, paragraph 6.2 of OM dated 24.02.2003 states that the penalty which has been imposed on the petitioner shall be modified and effected with reference to the promoted post, the same has been reproduced as under:

“6.2 In case the subsequent proceedings (commenced after the promotion of the junior) results in the imposition of any penalty before the exoneration in the first proceedings based on which the recommendations of the DPC were kept in sealed cover and the Government servant concerned is promoted retrospectively on the basis of exoneration in the first proceedings, the penalty imposed may be modified and effected with reference to the promoted post. An indication to this effect may be made in the promotion order itself so that there is no ambiguity in the matter.”

12. Insofar as, the Office Memorandum dated 19.04.1989 issued by the



DoPT has relied upon the by learned counsel for the respondent, is concerned, the same shall have no applicability in view of the clear determination of the issue by the Supreme Court in the case of *Delhi Jal Board (supra)*.

13. It is directed, the respondents shall open the sealed cover wherein the recommendations of the DPC in respect of promotion of the petitioner to the post of Executive Engineer (Civil) are kept. If the petitioner is found fit for promotion, the respondents shall take consequential action, inasmuch as, the petitioner shall be promoted to the post of Executive Engineer (Civil) from the date his juniors were promoted and the penalty imposed *vide* order dated 09.11.2023 shall be implemented *qua* the pay on the post of Executive Engineer (Civil) in the manner stated above. The consequential benefits in the form of arrears of difference of salary be given with interest at the rate of 6% per annum. The directions shall be implemented within eight weeks from the date of receipt of copy of the order.

14. This petition is disposed of.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

MAY 07, 2026

rt