

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

% **Reserved on : 6th July, 2022**
Pronounced on: 22nd September, 2022

+ W.P.(C) 1617/2013

ERINA MICHAEL Petitioner

Through: Mr. R.K. Saini and Mr. Sunil
Beniwal, Advocates

versus

LIFE INSURANCE CORPORATION OF INDIA AND ANR

...Respondents

Through: Mr. Mohinder Singh and Mr.
Ankur Goel, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant civil writ petition is filed by the Petitioner under Article 226 of the Constitution of India seeking the following reliefs.

“A writ of Mandamus or any other writ or direction in the nature thereof, thereby to promote the petitioner to next Higher grade Or grades with all financial and non financial benefits with retrospective effect with consequential relief(s).”

FACTUAL MATRIX

2. The Petitioner joined office of the Respondents as an Assistant (a class III employee) at Delhi Branch on 19th March 1997 vide appointment

letter dated 18th March 1997. She had passed a departmental test and was promoted to 'Higher Grade Assistant' in the year 2001.

3. The Petitioner used to sit at the cash counter on rotation basis and used to receive cheques and deposit the same in the account of Respondents after proper approval of the competent authority. The Respondents had filed a case for financial indiscipline/fraud committed by the officers and employees of the Respondents with the Central Bureau of Investigation (hereinafter referred to as "CBI") as case No.9234 in the year 2003. Many Class-I and Class-III employees were called by the CBI for interrogation.

4. The Petitioner has been called for promotion test since 2006 onwards but was denied promotion. On enquiry it was revealed that her result was kept in a sealed cover on account of a pending vigilance case against her.

5. The Respondents called for explanation of the Petitioner vide letter dated 6th December 2006 qua the irregularities committed in the Branch Unit 11C, Khan Market, Delhi, where the Petitioner was posted at the relevant time. The Petitioner submitted her reply vide letter dated 11th December 2006.

6. The Petitioner repeatedly represented her request to the Respondents for consideration of her promotion vide letters dated 10th December 2010, 19th July 2011, 20th January 2012 and 26th March 2012, but no action was taken by the Respondents.

7. Being aggrieved by the refusal of the promotion and other benefits by the Respondents, the Petitioner has approached this Court by way of filing the instant writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

8. Learned counsel appearing on behalf of the Petitioner submitted that as per the circular dated 18th May 2005 issued by the Personnel & Administration Department of Respondents, the procedure for sealed cover is very specific. The promotion result shall be kept under sealed cover in following circumstances:

- a. Employee under suspension.
- b. Employee in respect of whom a charge sheet has been issued for the pending vigilance/disciplinary cases.
- c. Employee in respect of whom prosecution for criminal charge is pending.

The petitioner does not fall within the purview of any of above conditions, hence it was submitted that the denial of promotion is contrary to the aforesaid circular.

9. It was further contended that the management of the Life Insurance Corporation (hereinafter referred to as "LIC") cannot discriminate between Class-I and Class-III employees on the pretext of vigilance case pending against them without giving an opportunity to defend the same, as though the vigilance case was pending against both the category of employees but Class-I employees had already been promoted with the exception of only one employee and none of the Class-III employees were promoted. The Petitioner was only given a letter on 6th December 2006 to which the Petitioner had submitted her reply on 11th December 2006 and thereafter no further disciplinary action was initiated until the

filing of the present writ petition which shows that the reply to the letter was to the utmost satisfaction of the Respondent.

10. Learned counsel for the Petitioner also submits that no case of either vigilance/disciplinary/criminal was pending against the Petitioner on records till the filing of the present writ petition. Even if any vigilance case was pending against the Petitioner, the Respondents have not given her an opportunity to defend the vigilance case. The long delay in not taking decision on the representations of the petitioner is nothing but a tool of harassment and same is itself sufficient to draw an adverse inference, that the intention of the Respondents against the Petitioner is malicious.

11. It was also argued that when the Class-I Officers can be promoted to the higher cadre then why the Class-III employees cannot be promoted, though both were called for explanation. Therefore, the Respondents have violated the principle of equality among equals as they cannot discriminate among employees on the same footing.

12. Lastly, learned counsel for the Petitioner submitted that the Petitioner has been denied her legitimate rights by the Respondents for more than ten years without any fault of the Petitioner. The Respondents' acts are based on surmises, conjectures and contrary to the settled law on disciplinary proceedings. Moreover, the representations and grievances of the Petitioner have fallen on the deaf ears of the Respondents as they have not mended their adamant attitude.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

13. *Per Contra*, learned counsel appearing on behalf of the Respondents relied on Rule 9 of 'Instructions for Implementation of Life Insurance Corporation of India Class III & Class IV Employees Rules 1987', (hereinafter referred to as the "Employee Rules") which provides that:-

"9. Employees who are not to be considered for promotion: An employee shall not be promoted, if any time during the one year preceding the date of publication of promotion a penalty has been imposed on him/her under Regulation 39 of the Staff Regulations. Where any disciplinary proceedings have commenced or is under contemplation the employee may be allowed to compete for promotions and in case found suitable for promotion his name shall not be published in the ranking list, but the result of the candidate shall be kept in a sealed cover and an entry shall be made in the ranking list that his case for promotion shall be considered only on the conclusion of the disciplinary proceedings. If on conclusion of the disciplinary proceedings the employee is acquitted honorably, he/she shall be promoted with effect from the date on which he/she would have been promoted but for the disciplinary proceedings. This procedure shall be followed during the whole pendency of the disciplinary proceedings."

14. He has submitted that accordingly, the case of Petitioner has also been dealt with in accordance with the promotion rules applicable to her and the result of Petitioner for promotion was kept under sealed cover subject to clearance of the disciplinary/vigilance action against her.

15. It was further submitted that as per Rule 9 of the Employee Rules, "an employee shall not be promoted, if any time during the one year preceding the date of publication of promotion a penalty has been imposed on him/ her under Regulation 39 of the LIC of India (Staff)

Regulations, 1960 (hereinafter referred to as the “Staff Regulations”)). In the instant case the penalty of ‘Censure’ was imposed on the Petitioner in the year 2013, therefore, the Petitioner cannot be considered for promotion.

16. On the same lines, it was further argued that the vigilance enquiry in vigilance case no. 9234 was concluded and a penalty of ‘Censure’ was imposed on the Petitioner by the disciplinary authority vide order dated 2nd August 2013 under Regulation 39(1)(a) of the Staff Regulations and hence, the Petitioner could not be promoted therefore, the instant writ petition is devoid of merits and is liable to be dismissed.

17. In rejoinder, learned counsel for the Petitioner submitted that the Petitioner was not imposed with any penalty under Regulation 39 of Staff Regulations till the filing of the present writ petition even though the explanation letter was sought in the year 2006. Therefore, the Respondents are making an attempt to mislead this Hon'ble Court by issuing an order of ‘Censure’ on 2nd August 2013 to justify their illegal and after-thought act.

18. It was further argued that the Petitioner was never considered a part of vigilance case No.9234 as the Petitioner was never called for investigation by the CBI and was never given an opportunity to defend the vigilance/disciplinary enquiry pending against her.

19. Learned counsel for the Petitioner also contended that the Respondents were sleeping on the subject and now to justify their illegal acts of victimization and discrimination they have passed the said orders on 2nd August 2013 without affording the Petitioner to meet the charges

against her and therefore, the Respondents have put side to all set of rules & regulations pertaining to domestic enquiry and natural justice.

20. Lastly, learned counsel for the Petitioner has vehemently argued that the Petitioner was neither charge-sheeted nor any enquiry has been conducted so far. The Respondents are trying to mislead this Hon'ble Court by issuing an order of 'Censure' on 2nd August 2013 to justify their illegal and after thought act.

FINDINGS AND ANALYSIS

21. Heard learned counsel for the parties and perused the record. I have given my thoughtful consideration to the submissions made by the parties.

22. It is pertinent to mention that in the year 2014 vide Officer Order No. REF: PXIR/DESK-I/14-15/PO-72 dated 25th October 2014, the Respondents have approved the promotion of the Petitioner to the AAO cadre, and she was posted in the Jodhpur Division. Therefore, the prayer of the Petitioner so far as it pertains to issue a writ of mandamus to the Respondents to promote the Petitioner has become infructuous.

23. The Respondents have pleaded a specific case that the promotion of Petitioner was kept in a sealed cover, *first*, due to pendency of a disciplinary inquiry against her and *secondly*, due to the penalty of 'Censure' being imposed on her. Therefore, this court has adjudicated the present writ petition for the limited purpose to decide the following question:

- I. Whether the Respondents were justified to withhold the promotion of the Petitioner from the year 2006 in the facts**

and circumstances of the present case? If no, whether the Petitioner is entitled to any financial and/or non-financial benefits with retrospective effect and any other consequential relief(s)?

24. The Chairman of the LIC in exercise of the powers vested in him under Regulation 4 of the Staff Regulations and the Promotion Rules, 1987 issued the 'Instructions for Implementation of the said Promotion Rules, 1987'.

25. Admittedly, Petitioner is a Class III employee. On a careful perusal of the above Instruction, it becomes clear that a Class III or Class IV employee shall not be promoted in two circumstances:

Circumstance 1- If any time during one year preceding the date of publication of promotion a penalty has been imposed on the candidate under Regulation 39 Staff Regulations or;

Circumstance 2- When disciplinary proceedings have commenced or is under contemplation then in that case the employee may be allowed to compete for promotions and in case found suitable for promotion his name shall not be published but the result of the candidate shall be kept in a sealed cover.

26. The case of the Petitioner does not fall within the first circumstance as a penalty of 'Censure' was imposed on the Petitioner only in the year 2013. This has been admitted by the Respondents in their counter affidavit. The relevant portion has been reproduced below:

“It is submitted that the vigilance enquiry in Vigilance Case No. 9234 has now been concluded and penalty of "Censure" has been imposed upon the petitioner by the Disciplinary Authority vide order dated 02.08.2013 under Regulation 39(l)(a) of the LIC Staff Regulations, 1960.”

27. So, for withholding the promotion of Petitioner from the year 2006, either there should have been a disciplinary proceeding pending against the Petitioner or it must be under contemplation. It is the case of the Petitioner that she was called for promotion test/interview since 2006 onwards but was denied promotion to AAO. In the counter affidavit, the Respondents have termed these allegations of the Petitioner as incorrect, The relevant portion is reproduced below:

“I say that the contents of para 3(c) of the writ petition are wrong and incorrect, hence denied. It is submitted that petitioner is an employee of respondent organization and is presently employed in Class III cadre. It is submitted that promotion of employees belonging to Class III and IV cadre are governed by LIC of India Class III and IV Promotion Rules, 1987 and the instructions issued there under from time to time. Accordingly, the case of petitioner has also been dealt with in accordance with the Promotion Rules applicable to her.

As per the said rules, as per Rule 6, for promotion to Asst Administrative Officer (AAO) from the post of Higher Grade Assistant (HGA), a panel of all eligible candidates is to be prepared on the basis of total marks gain on three counts i.e. seniority, qualification and work record. From these panel candidates in the order of merit equal to 5 times the number of vacancies are to be called for interview purposes.

As such, in the first instance, calling for interview in accordance with the provisions of rules does not imply that the candidate is to be promoted. So long as a candidate is an HGA and falls within the Eligibility zone on the basis of

three criteria i.e. seniority, qualification and work record, he/she would be called for interview. It is submitted that the promotion committee interviews the eligible candidates and then prepare the ranking list. The ranking list of candidates recommended for promotion purposes is to be prepared in the order of merit on the bases of total marks gain on the following criteria,

(1)seniority (maximum 20 marks)

(2)qualification (maximum 10 marks)

maximum 25 marks for both

(3)work record (maximum 25 marks), and

(4) interview (maximum 25 marks)

Therefore, the allegation of petitioner that she was called for interview, but denied the promotion is merit less. It is further wrong to suggest that the petitioner has been commenced or is being discriminated against by the respondents. No other similarly situated person as petitioner has been given benefit of promotion by the respondents. It is further submitted that even otherwise, it is a settled law that there cannot be any equality in illegality. No benefit can be drawn by petitioner on the said account.

It is submitted that the result of petitioner for promotion has been kept under sealed cover subject to clearance and disciplinary / Vigilance action against her.”

28. In the rejoinder affidavit, the petitioner has replied to the above-quoted counter in the following manner:

“....The fact is the respondents kept Petitioners’ promotion in sealed cover on the pretext of pending vigilance case. It is needless to place before this Hon'ble Court that the petitioner was neither charge sheeted nor subject matter of any enquiry till date. Respondents are trying to justify their discriminatory and illegal acts by submitting lame excuses.”

Therefore, it has been admitted by the Respondents that a disciplinary/vigilance inquiry was initiated against the Petitioner which culminated in the imposition of penalty of 'Censure' on the Petitioner.

29. The sealed cover procedure has been provided by the LIC of India in a circular dated 18th May 2005. The relevant portion of the sealed cover procedure has been reproduced below:

“The following procedure and guidelines are to be followed in the matter of promotion of LIC employees against whom vigilance/disciplinary/criminal proceedings are pending.

1, The Assisting Committee (AC) for promotion should assess the suitability of all the employees in the zone of selection without taking into consideration the vigilance/disciplinary/criminal proceeding pending against any employee. The Personnel Department of the office shall bring the cases of employees falling under following three categories to the notice of AC:

- 1. Employees under suspension*
- 2. Employees in respect of whom a charge sheet has been issued for the pending vigilance/disciplinary cases*
- 3. Employees in respect of whom prosecution for criminal charge is pending*

No other details about the pending inquiry or the nature of charges is to be furnished to the AC lest these details weigh with the AC in making its recommendations.

2. If, after making the selection, the AC finds that the name of an employee recommended for selection falls in any of the three categories mentioned above, the recommendation of AC should be kept in a sealed cover. The cover should be superscribed with the following remark.....”

30. The case of the Petitioner does not fall in any of the abovementioned three categories, i.e.,

- I. Employees under suspension.
- II. Employees in respect of whom a charge sheet has been issued for the pending vigilance/disciplinary cases.
- III. Employees in respect of whom prosecution for criminal charge is pending.

31. Another category of case wherein the sealed cover procedure could be resorted to by the Respondents was when disciplinary proceedings have commenced or is under contemplation by the concerned authority. Therefore, it is now to be considered whether any disciplinary proceedings were initiated by the Respondents against the Petitioner or not? It is relevant here to reproduce Regulation 39 of the Staff Regulations, 1960:

“Penalties:

39. (1) Without prejudice to the provisions of other regulations, [any one or more of] the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed [by the disciplinary authority specified in Schedule-I]* on an employee who commits a breach of regulations of the Corporation, or who display negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct –*

(a) Censure;

**(b) Withholding of one or more increments either permanently or for a specified period;*

(c) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of order;

(d) reduction to a lower service, or post, or to a lower time scale, or to a lower stage in a time-scale;

- (e) compulsory retirement;*
- (f) removal from service which shall not be a disqualification for future employment;*
- (g) dismissal.*

****(2) No order imposing on an employee any of the penalties specified in clauses (b) to (g) of sub-regulation (1) supra, shall be passed by the disciplinary authority specified in Schedule I without the charge or charges being communicated to him in writing and without his having been given a reasonable opportunity of defending himself against such charge or charges and of showing cause against the action proposed to be taken against him.***

(3) The disciplinary authority empowered to impose any of the penalties, (b),(c),(d),(e),(f) or (g) may itself enquire into such of the charges as are not admitted or if it considers it necessary so to do, appoint a board of enquiry or an enquiry officer for the purpose.

(4) Notwithstanding anything contained in sub-regulations (1) and (2) above

(i) where a penalty is imposed on an employee on the grounds of conduct which had led to a conviction on a criminal charge; or

(ii) where the authority concerned is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in this regulation; or circumstances of the case and pass such orders thereon as it deems fit.

Explanations: 1. For the purpose of this regulation, an employee shall be deemed to have abandoned his post if he absents himself from duty without leave or over stays his leave for a continuous period of ninety days without any intimation therefor in writing.

2. All communications under this regulation and copies of orders passed there under may be delivered personally to the employee if he is attending office; otherwise, they shall be sent by registered post to the address noted in the service record. Where such communications or copies of orders cannot be served on him personally or by registered post, copies thereof shall be affixed on the notice board of the office in which the employee is employed, and on such affixing such communications and orders shall be deemed to have been properly served on him.”

32. The Respondents vide their letter dated 2nd August 2013 have imposed a penalty of ‘Censure’ in terms of Regulation 39(1)(a) of the Staff Regulations. As already reproduced, Staff Regulation 39 pertains to Penalties which can be imposed after following the procedure as has been provided under Staff Regulation 39(2). From the bare reading of Regulation 39 it becomes immensely clear that a penalty can be imposed only after meeting certain quintessential requirements which are:

- i) The charges must be communicated to the Employee in writing;
- ii) The Employee must be given a reasonable opportunity of defending himself against such charges;
- iii) The Employee must be given a reasonable opportunity of showing cause against the action proposed to be taken.

33. In the present case only a letter dated 6th December 2006 seeking explanation of the Petitioner was issued to the Petitioner. The exact contents of the letter are reproduced below:

“Re-irregularities in Branch Unit IIC. Khan Market, Delhi

It is observed that during your tenure in Branch Office 11C you, while working as cashier, created following Block BOC in the name of Paying Authority in gross violation of rules-

<i>S.NO.</i>	<i>BOC NO. & DATE</i>	<i>NAME</i>	<i>AMOUNT (RS.)</i>	<i>RELATED CHEQUE NO. & DATE</i>
<i>01</i>	<i>2344 23.10.2000</i>	<i>MCD</i>	<i>15250.00</i>	<i>874130 19.10.2000</i>

You are hereby directed to explain in writing your position in respect of the above within seven days of receipt of this letter.”

34. On a perusal of the contents of the above letter it can be said that though the charges were communicated to the Petitioner but at no stretch it can be said that the Petitioner was given a reasonable opportunity of defending herself against such charges. The principles of natural justice have not been followed in the present enquiry and the entire process has been made an engine of harassment.

35. This conclusion is fortified by taking route to Staff Regulation 39(4) which provides exception to the procedure envisaged in Staff Regulation 39(2). The only recognised exceptions are that:

- i) where a penalty is imposed on an employee on the grounds of conduct which had led to a conviction on a criminal charge; or
- ii) where the authority concerned is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in this regulation; or

iii) where an employee has abandoned his post, the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit.

36. It becomes pertinent here to reproduce the letter dated 4th July 2008 issued by the Secretary, Central Vigilance Commission, Government of India to the Respondents. The relevant portion of the letter has been reproduced below:

“Re: Irregular adjustment of Salary Saving Scheme (SSS) Premium at Branch Unit 11-C, Khan Market, New Delhi.”

This has reference to your letter Ref.No.004/INS/123-13173 dated nil received by us on 17th June, 2008 regarding the above subject. We had vide our letter ref;Vig/NZ/9234 dated 17.6.2008 forwarded to you papers in connection with ten Class III employees and other allied documents for according Commission's First Stage Advice.

XXX

We also give below Recommendations of Disciplinary Authority along with our Recommendations in respect of 3 employees whose names were not in CBI report but figured in our internal investigational enquiry.

<i>Sr. No.</i>	<i>Name of Employee</i>	<i>Designation</i>	<i>Recommendation of SDM</i>	<i>Recommendation of CVO</i>
<i>1</i>	<i>Erina Ekka</i>	<i>HGA</i>	<i>Minor Penalty</i>	<i>Minor Penalty</i>

”

37. It is not the case of Respondents that a penalty was imposed on the Petitioner on the grounds of conduct which had led to a conviction on a criminal charge nor did the Petitioner abandon her post. Therefore, the case of Petitioner does not fall within the first as well as the third exception to the procedure laid down under Regulation 39(2). It becomes clear from the letter dated 4th July 2008 issued by the Secretary, Central Vigilance Commission, Government of India to the Respondents as well as the order dated 2nd August 2013 by virtue of which penalty of ‘Censure’ was imposed on the Petitioner that the Respondents did not exercise their powers under Staff Regulation 39(4)(ii) as neither the order has been issued in the exercise of such powers nor any reasons were recorded to justify the exercise of such powers. Therefore, the case of Petitioner does not fall within the second exception to the procedure laid down under Staff Regulation 39(2). The relevant portion of the order dated 2nd August 2013 has been reproduced below:

“Re: Irregularities in Branch Office 11C, Khan Market, New Delhi

This has reference to your explanation dated 11.12.2006 regarding creation of Block BOCs. Your explanation is not found satisfactory.

You, while working as Officiating Cashier in Branch Office 11C, Delhi Divisional Office I, issued a BOC No.2344 on 23.10.2000 for Rs.15,250/- against cheque No.874130 dated 19.10.2000 in favour of MCD from SSS collection amount received towards renewal premium instead of accounting the same in SSS collection account.

Although the same could be viewed seriously, looking into the overall facts of the case and after considering all the related documents, I hereby order that the penalty of

“CENSURE” in terms of Regulation 39 (1)(a) of LIC of India (Staff) Regulations, 1960 be and is hereby imposed upon Ms. Erina Michael, S.R. No.111301, HGA (OS), LIC of India, Zonal Office, New Delhi.

Dated at New Delhi this 2nd day of August 2013.”

38. The compliance of principles of natural justice are not an empty formality but a mandatory requirement. In ***Chamoli District Co-operative Bank Ltd. & Anr. vs. Raghunath Singh Rana &Ors., Civil Appeal No. 2265 of 2011***, the Hon’ble Supreme Court held that:

“19. The compliance of natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rule requiring observance of natural justice, the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry.....”

39. The Apex Court in ***Sur Enamel and Stamping Works Pvt. Ltd. v. Their Workmen, (1964) 3 SCR 616***, has laid down following:-

“4.An enquiry cannot be said to have been properly held unless,

- (i) the employee proceeded against has been informed clearly of the charges levelled against him,*
- (ii) the witnesses are examined – ordinarily in the presence of the employee – in respect of the charges,*
- (iii) the employee is given a fair opportunity to cross-examine witnesses,*
- (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and*
- (v) the inquiry officer records his findings with reasons for*

the same in his report....”

40. The Apex Court again in ***State Bank of India Vs. R.K. Jain and Ors., reported in (1972) 4 SCC 304*** held that if an inquiry is vitiated by violation of principles of natural justice or if no reasonable opportunity was provided to the delinquent to place his defence, it cannot be characterized as a proper domestic inquiry held in accordance with the rules of natural justice. In paragraph 23, the following was laid down:-

“23.As emphasised by this Court in Ananda Bazar Patrika (P) Ltd. v. Its Workmen, (1964) 3 SCR 601, the termination of an employee's service must be preceded by a proper domestic inquiry held in accordance with the rules of natural justice. Therefore, it is evident that if the inquiry is vitiated by violation of the principles of natural justice or if no reasonable opportunity was provided to a delinquent to place his defence, it cannot be characterized as a proper domestic inquiry held in accordance with the rules of natural justice...”

41. The Hon'ble Supreme Court in ***State of Uttaranchal &Ors. Vs. Kharak Singh, (2008) 8 SCC 236*** had occasion to examine various contours of natural justice which need to be specified in a departmental inquiry. It is useful to refer to paragraph 15:-

“15. From the above decisions, the following principles would emerge:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

XXX.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.”

42. From the propositions of law, as enunciated by Apex Court as noted above, and the facts of the present case, it is not disputed that:

- I. The Respondents have called for the explanation of the Petitioner/workman vide letter dated 6th December 2006 about the irregularities committed in the Branch Unit 11C, Khan Market, Delhi.
- II. The Petitioner has submitted her reply vide letter dated 11th December 2006 denying her knowledge about any discrepancy which has crept in during her working at cash counter.
- III. In the year 2013, only after lapse of 7 years the Respondents imposed a penalty of ‘Censure’ upon the Petitioner under Staff Regulation 39(1)(a). This was despite the fact that the Secretary, Chief Vigilance Commission, Government of India had recommended minor penalty against the Petitioner in the year 2008 vide letter dated 4th July 2008 and had also admitted that the name of the Petitioner did not figure in the CBI Report but was figured in

the internal investigational enquiry. The relevant portion of the recommendation is reproduced below:

“We also give below Recommendation of Disciplinary Authority alone with our Recommendations in respect of 3 employees whose names were not in CBI Report but figured in our internal investigation enquiry.

<i>Sr. No.</i>	<i>Name of Employee</i>	<i>Designation</i>	<i>Recommendation of SDM</i>	<i>Recommendation of CVO</i>
<i>1</i>	<i>Erina Ekka</i>	<i>HGA</i>	<i>Minor Penalty</i>	<i>Minor Penalty</i>

43. No evidence has been led by the Respondents before imposing a penalty of ‘Censure’ on the Petitioner leave alone the opportunity of cross-examination. No copy of enquiry report as well as the supporting materials have been made available to the Petitioner. The entire law on the subject has been looked with a blind eye in the present case.

CONCLUSION

44. The present case is a textbook example of how procedure has been twisted to suit the unruly actions of the Respondents. Since, the disciplinary proceedings are not under challenge in the present writ petition, no order is required to be passed for testing the validity of the disciplinary proceedings.

45. No enquiry in the real sense has been conducted against the Petitioner and even if any enquiry has been conducted the same is illegal as the Respondents have given a blind eye to the principles of natural

justice as well as the procedure laid down to conduct an enquiry. Petitioner has been made to suffer without giving her any opportunity to enter into her defence. Even otherwise, there has been no justification as to why the penalty has been imposed on the Petitioner after a lacuna of around 5 years even after the Central Vigilance Commission had recommended minor penalty of 'Censure' against the Petitioner in the year 2008.

46. This Court does not find any force in arguments of the Respondents that the promotion of the Petitioner could be withheld as her result was kept in a sealed cover. Therefore, the denial of promotion to the Petitioner on the ground that the result of the Petitioner was kept in a sealed cover cannot be sustained in law, as the case of the Petitioner did not fall within the ambit of the sealed cover procedure as has been delineated above.

47. In view of the aforesaid observations as well as the law settled by the Hon'ble Supreme Court, the Petitioner is entitled to be considered for promotion from the year when her promotion was due and consequently entitled to be considered for all the benefits retrospectively, including financial benefits, from that year itself.

48. Accordingly, the writ petition is allowed with direction to the Respondents to consider the claim of the Petitioner for all benefits, including financial benefits, from the date when her promotion was due and her result was kept in sealed cover, in accordance with the observations made hereinabove and pass a detailed order within a period of three months from the date of receipt of the certified copy of this judgment.

49. Pending applications, if any, also stand disposed of.
50. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

September 22, 2022
Dy/mg

