

**Court No. - 33**

**Case :-** WRIT - A No. - 1789 of 2022

**Petitioner :-** Ranbir Singh

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** S.M.Faraz I. Kazmi, Sr. Advocate

**Counsel for Respondent :-** C.S.C., M.N. Singh

**Hon'ble Jaspreet Singh, J.**

Heard Sri Anoop Trivedi, learned Senior Counsel along with Sri S.M.Faraz I. Kazmi. learned counsel for the petitioner as well as the learned Standing Counsel for the State-respondents.

By means of the instant petition, the petitioner prays for the following reliefs which read as under:-

*"(i) Issue a writ, order or direction in the nature of Mandamus directing the respondents to grant promotion to the petitioner to the post of Deputy Collector w.e.f. 23.08.2018, to which the officers junior to petitioner were promoted.*

*"(ii) Issue a writ, order or direction in the nature of Mandamus directing the respondents to grant him all consequential benefits admissible to him."*

The submission of learned Senior Counsel for the petitioner is that the petitioner joined the services of the State of Uttar Pradesh as Nayab Tehsildar in the year 1996.

Considering his service record, he was promoted as Tehsildar on 30.08.2013. The petitioner has rendered more than 22 years of service and has been an outstanding officer as reflected from his service records.

It has further been submitted that as per the prescribed procedure for promotion from the post of Tehsildar to the post of Deputy Collector, a report is prepared and sent by the Board of Revenue to the Appointments and Personnel Department, Government of U.P. which in turn forwards the same to the State Public Service Commission and thereafter the proposal is placed before the Departmental Promotion Committee constituted by the Public Service Commission. The recommendations of the Departmental Promotional Committee and the Public Service Commission culminate in the promotion orders as issued by the Department concerned.

It is urged that in the instant case, meeting of Departmental Promotion Committee to consider the promotion of Tehsildars to Deputy Collector was held on 02.08.2018 and 03.08.2018 at

the level of Public Service Commission. The petitioner was eligible at the relevant time for being considered for promotion to the post of Deputy Collector and accordingly the name of the petitioner was also in the list at Serial No. 120 which was part of the proposal.

On 23.08.2018, the recommendation made by the DPC and the Public Service Commission released the list of Tehsildars promoted to the post of Deputy Collector, however, shocking to the petitioner, his name did not find place in the said list. Upon making inquiries, it was informed that the petitioner's case has been withheld and has been put in a sealed cover as the petitioner was suspended on 01.08.2018 i.e. the date before the meeting of the DPC, although, no charge sheet against the petitioner on the date of the meeting of the DPC was served.

It has further been submitted that on the basis of a frivolous complaint, the petitioner had been placed under suspension in respect of same allegations made to the Chairman of Yamuna Expressway Industrial Development Authority in respect of certain purchase of 57.149 hectares of land for the development by the Authority in District Mathura.

It has further been submitted that though the petitioner was suspended but the departmental chargesheet was served on the petitioner only on 15.03.2021 i.e. after more than 2 and half years and that too in compliance of the order dated 06.08.2021 passed by this Court in Writ-A No. 1396 of 2021. It is also pointed out that in respect of same allegations for which the departmental charge sheet was issued, criminal proceedings were also initiated on 25.09.2019 in the Court of Special Judge, Court No. 2, Meerut where the petitioner was enlarged on bail on 31.10.2019 and though the trial is still pending and out of 27 witnesses only one witness has been examined.

The crux of the submission of learned Senior Counsel for the petitioner is that in view of the law laid down by the Apex Court in the case of ***Union of India and others Vs. K.V. Jankiraman and others*** reported in (1991) 4 SCC 109 which has been followed by this Court in the case of ***Neeraj Kumar Pandey Vs. State of U.P. and others*** in Writ-A No. 8151 of 2022 decided on 26.05.2022, the respondent-authorities are not justified in keeping the matter of the petitioner pending. The persons junior to the petitioner have been promoted and only on the basis of the case which is pending against the petitioner, his case has been placed under sealed cover and even though the criminal trial may take time, yet, the promotion of the petitioner cannot be deferred or kept in abeyance indefinitely. In view of the aforesaid, it is submitted that the writ petition deserves to be

allowed.

The record indicates that the petitioner had filed a Special Leave Petition, Diary No. 32890 of 2022 wherein the Apex Court expedited the proceedings before this Court by means of order dated 08.12.2022. The record further indicates that the pleadings have been exchanged as State has filed counter affidavit dated 08.09.2022 and the petitioner has also filed his response in shape of a rejoinder affidavit.

The learned counsel for the State-respondents while refuting the aforesaid submissions has urged that the petitioner was involved in serious irregularities and for the aforesaid reasons was suspended on 01.08.2018.

It is also urged that prior to the date of DPC, the petitioner had been suspended and in view of the Government Order dated 28.05.1997, it is urged that any person who is put under suspension, his case regarding the recommendations will be placed in a sealed cover.

It is also urged that the petitioner has also involved and implicated in criminal proceedings where the CBI has given approval for prosecution. The petitioner is facing charges in Case Crime No. 421 of 2018. It has also been pointed out that apart from the aforesaid, permission has also been given for prosecuting the petitioner in Case Crime No. 209 of 2019 and as such the case of the petitioner is squarely covered in terms of the Government Order dated 28.05.1997 and therefore it cannot be said that keeping the recommendations of the petitioner in sealed cover is bad in law, accordingly, the petition deserves to be dismissed.

The learned Senior Counsel for the petitioner in rejoinder affidavit has urged that on the date of DPC dated 02.08.2018, no charge sheet or criminal proceedings were pending against the petitioner and as such his recommendations ought not to have been placed in sealed cover.

It has also been urged that filing of a chargesheet subsequent to the date of DPC may not have any adverse impact as the date when the case of the petitioner was to be considered by the DPC is of importance and on that day no proceedings were pending. The emphasis is that even the Government Order which is relied upon by the respondent-State does not create any impediment as on the date of the DPC, there was no criminal proceedings or the charge sheet was issued nor the departmental proceedings were pending. It is thus submitted that the petitioner has been deprived and by keeping the matter

pending, the illegality is being perpetuated.

Having heard the learned counsel for the parties and from the perusal of the material on record, it is not disputed that on the given date i.e. 02.08.2018, no departmental proceedings were pending against the petitioner nor the criminal proceedings.

It is also not disputed that the charge sheet in the departmental proceedings was served on the petitioner on 15.03.2021 and in the criminal proceedings, the charge sheet was filed on 25.09.2018 i.e. subsequent to the date of DPC. In so far as the sealed cover procedure is concerned, the law is well settled and the Apex Court in the case of **K.V. Jankiraman (Supra)** has held as under:-

*"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point....."*

*17. There is no doubt that there is seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge sheet has already been issued to the employee. Thus, read, there is no inconsistency in the two conclusions. "*

This issue has also been considered by this Court in **Km. Maya (Mahila Constable Vs. State of U.P. and others) (2011) 5 ADJ 818** and relevant paragraph 19 of the said report reads as under:-

*"19. The concept of "sealed cover" is normally applicable when conduct of an employee is under investigation, as to whether such person is guilty of misconduct warranting any kind of punishment which may dis-entitle him any promotion on higher post and during such period of suspended animation the authority keeps the matter of promotion in sealed cover so as to take a decision in this regard later on in accordance with the result of inquiry held against such person. But in cases where the incumbent has been considered for promotion in accordance with rules according to zone of consideration and field of eligibility and has been found ultimately selected therein, the question of keeping his result in a sealed cover is nothing but a flimsy pretext inasmuch as result of selection is already known to every body. Mere pendency of the matter of cadre allocation or if*

*for any reason the incumbent is not relieved for joining in Uttaranchal State, it ought not to have caused any hindrance in the matter of carrier advancement of such persons since for such pendency the incumbent concerned cannot be said to be at fault."*

Having considered the aforesaid submissions and the dictum of the Apex Court in the case of ***K.V. Jankiraman (supra)*** and this Court in the case of ***Km. Maya (Supra)***, the fact that irrespective of the pendency of the criminal case, the petitioner has continued to serve and mere pendency of the criminal case cannot be taken as a ground to deny the promotion to the petitioner nor the Competent Authority can withhold the recommendation of the petitioner indefinitely on the ground of adopting the sealed cover procedure during the pendency of the criminal case. It is also relevant to notice that the respondent-authorities are also required to take note of the Government Orders dated 28.05.1997 and 09.01.2018 which apparently has not been taken note of.

Accordingly, in view of the aforesaid, the present petition is finally disposed of with a direction to the Competent Authority to consider the claim of the petitioner for opening the sealed cover within a period of eight weeks from the date, a copy of this order is placed before the Authority concerned in light of the observations made herein above taking note of the decisions of the Apex Court in the case of ***K.V. Jankiraman (supra)***, ***Km. Maya (Supra)*** as well as the two Government Orders dated 28.05.1997 and 09.01.2018.

With the aforesaid, the petition stands disposed of.

**Order Date :- 8.2.2023**

Asheesh