

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.751 OF 2016.

Shri Shamba M. Sawant,
son of M. Sawant, aged 59 years,
Indian National, Deputy
Superintendent of Police,
resident of House No. 896,
Vijay Nagar, Alto Torda,
Porvorim, Bardez-Goa.

... Petitioner.

Versus

(1) State of Goa,
Through its Chief Secretary,
having Office at Secretariat,
Porvorim, Bardez-Goa.

(2) The Director General of
Police, Government of Goa,
having office at Police
Headquarters, Panaji-Goa.

... Respondents.

Shri D. Pangam, Advocate for the petitioner.

Shri D. Shirodkar, Addl. Government Advocate for the
respondents.

Coram:-F. M. REIS,
NUTAN D. SARDESSAI, JJ.

Date:-30th March, 2017.

ORAL JUDGMENT (Per F. M. REIS, J)

Heard Shri D. Pangam, learned Advocate appearing
for the petitioner and Shri D. Shirodkar, learned Addl.

Government Advocate General appearing for the respondents.

2. Rule.

3. Heard forthwith with the consent of the learned Counsel appearing for the parties.

4. The learned Addl. Govt. Advocate waives notice on behalf of the respondents.

5. The above petitioner inter alia prays for a direction to open the sealed cover in terms of the Office Memorandum dated 2.11.2012 and if the petitioner is held to be fit for promotion the respondent be directed to promote the petitioner to the post of Superintendent of Police (Senior Grade Officer).

6. Briefly the facts of the case are that the petitioner came to be appointed to the post of Police Sub Inspector somewhere on 2.2.1981. Thereafter the petitioner was promoted to the post of Police Inspector on 6.8.1993 and subsequently promoted to the post of Deputy Superintendent

of Police in the Goa Police Department on 12.4.2002. It is further contended by the petitioner that the Departmental Promotion Committee ("DPC" for short) met to consider Ad-hoc promotion to the post of Senior Scale Officer (Superintendent of Police) in Goa Police Department on 15.12.2015 and the case of the petitioner was kept in sealed cover by the DPC at the meeting dated 15.12.2015. The respondents promoted the Juniors to the post of the Superintendent of Police on Ad-hoc basis. The probation of such persons came to be lifted somewhere on 28.2.2009. Thereafter as the sealed cover was not open the petitioner made a representation to the concerned Ministry and the Chief Secretary of State of Goa against the denial of the promotion to the petitioner. As no action was being taken, the petitioner filed the above petition inter alia seeking the aforesaid reliefs. The respondents in reply contended that the DPC had kept the case of the petitioner in sealed cover essentially on the ground that the concerned Department was contemplating to issue a chargesheet against the petitioner. It is further pointed out by the learned Addl. Govt. Advocate that in fact the chargesheet was filed against the petitioner on 19.10.2016 and as such, according to the respondents, the

respondents are justified to keep the case of the petitioner in sealed cover. The learned Addl. Govt. Advocate for the respondents further points out that as the chargesheet has already been filed, the question of opening the sealed cover would not at all be arisen. It is further pointed out that the vigilance clearance has been withheld and as such the respondents are justified in keeping the case of the petitioner in sealed cover.

7. Shri Pangam, learned Counsel appearing for the petitioner points out that in terms of the Office Memorandum dated 2.11.2012, there are only three situations wherein the case of the officer can be kept in sealed cover and the vigilance report be withheld. The learned Counsel further points out that merely because the respondents intended to issue a chargesheet cannot be a ground to withhold the promotion which the petitioner is otherwise entitled. The learned Counsel further points out that the alleged chargesheet has been filed only after the above Writ Petition came to be filed before this Court and as such, according to him, no action can be taken by the respondents on the said chargesheet as the whole exercise of the respondents is to

deprive the petitioner of his promotion before his retirement which took place on 31.1.2017. The learned Counsel as such points out that grave injustice has occasioned to the petitioner and as such the respondents are liable to be directed to open the sealed cover and examine the eligibility of the petitioner for promotion and accordingly proceed to grant the promotion in accordance with law. In support of his submissions learned Counsel has relied upon the judgment reported in **2007(6) SCC 704** in the case of **Union of India and others Vs Sangram Keshari Nayak**.

8. On the the other hand, Shri D. Shirodkar, learned Addl. Govt. Advocate for the respondents has pointed out that though the chargesheet has been filed after the case of the petitioner was in sealed cover, nevertheless, at present the chargesheet is in place and as such the petitioner is not eligible to be promoted. Learned Addl. Govt. Advocate further points out that there is no bar to keep the case of the petitioner in sealed cover until the final decision on such chargesheet and as such the DPC was justified to keep the case of the petitioner in sealed covered, as according to him, the vigilance report was withheld at the relevant time. The

learned Addl. Govt. Advocate thereafter pointed out that as a final decision has not been arrived at in connection with the chargesheet served on the petitioner, the petitioner is not entitled for any relief in the above petition. In support of his submission he relied upon the Apex Court judgment reported in **AIR 2000 SC 2337** in the case of **Union of India Vs. R. S. Sharma**. The learned Addl. Govt. Advocate, as such submits that the petition be accordingly rejected.

9. We have duly considered the submissions of the learned Counsel for the respective parties and with their assistance we have also gone through the records.

10. Admittedly, the case of the petitioner was kept in a sealed cover on 15.12.2015 and the Chargesheet was issued against the petitioner on 19.10.2016. This clearly discloses that as on the date when the sealed cover procedure was adopted by the DPC with regard to the petitioner there was no chargesheet issued to the petitioner. In this connection the said office memorandum dated 2.11.2012 clearly provides thus:-

"Instructions issue vide O. M.
No.22012/1/99-Estt.(D) dated

25.10.2004 based on the O.M. No.22011/4/1991-Estt.(A) dated 14.09.1992 (issued on the basis of procedure laid down by Supreme Court in K. V. Jankiraman case AIR 1991 SC 2010) makes it clear that vigilance clearance for promotion may be denied only in following three circumstances:-

- (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.

Withholding of vigilance clearance to a Government servant who is not under suspension or who has not been issued a charge sheet and the disciplinary proceedings are pending or against whom

prosecution for criminal charge is not pending may not be legally tenable in view of the procedure laid down in the aforesaid O.Ms.”

11. On plain reading of the said Memorandum, there are three different situations when the vigilance clearance for promotion can be denied. Admittedly all the three conditions are not satisfied in the present case. There was no chargesheet which was served on the petitioner nor any criminal proceedings initiated against the petitioner nor the petitioner was under suspension at the relevant time. As such, we find that the action of the respondents in keeping of the case of the petitioner in sealed cover is not at all justified.

12. In this connection the Apex Court has observed in case **Sangram Keshari Nayak** (supra) at paragraphs 13 and 14 thus:-

“Whereas paragraph 6 of the said circular letter provides for a sealed cover procedure to be adopted by the DPC, the same has to be taken recourse to only in the event

circumstances mentioned in paragraph 2 thereof arise after the recommendation of the DPC. The recommendations of the DPC, therefore, can be refused to be given effect to only inter alia when one or the other conditions mentioned in paragraph 2 of the said circular stand satisfied which in the instant case would mean that as against the respondent a chargesheet had been issued or, in other words, a disciplinary proceeding was pending. Admittedly, a chargesheet was issued as against him only on 24.09.1999.

Thus, there was no bar in promoting the respondent during the period 14.01.1999 to 27.08.1999. No material was placed before the DPC to take recourse to the sealed cover procedure. In fact, none existed at the material time. Paragraph 2 of the said circular specifically refers to submission of chargesheet as the cut-off date when a departmental proceeding can be said to have been initiated. Even otherwise such a meaning had been

given thereto by this Court in K.V. Janakiraman (supra) holding:

"16 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. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are

initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure"

13. Taking note of the said observations of the Apex Court, we find that the action of the respondents in adopting the sealed cover procedure adopted by the DPC is not at all justified. The judgment of the Apex Court relied upon by the learned Addl. Govt. Advocate is not at all applicable to the peculiar facts of the present case. In fact the said judgment has been considered by the Apex Court in the subsequent judgment in the case of **Sangram Keshari Nayak** (supra).

14. In such circumstances, we find that the petitioner is entitled for a direction to the respondents to open the sealed cover and thereafter consider his eligibility for promotion and proceed to act on the recommendation therein.

15. In view of the above, we pass the following:-

ORDER

(i) The respondents are directed to open the sealed cover and thereafter consider the petitioner's eligibility for promotion and proceed to act in the recommendation therein by notional promotion and grant the benefits and reliefs in accordance with law.

(ii) Rule is made absolute in the aforesaid terms.

(iii) Petition stands disposed off with no order as to costs.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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