

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 11363 of 2018 (O&M)
Date of Decision: 11.12.2018**

Balwant Ram

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Jatinderpal Singh, Advocate
for the petitioner.

Mrs. Ishneet Kaur, Assistant Advocate General, Punjab
for the respondents/State.

JASWANT SINGH, J.

1. Present writ petition involves the question “*whether the mere registration of First Information Report and at the stage of preliminary investigation*” is determinative for denial and withholding of promotion to a Government Employee who is otherwise qualified, eligible and found fit/suitable for promotion.

The petitioner (Balwant Ram), by way of instant writ petition, is seeking directions to the respondents to promote him to the post of ‘Naib Tehsildar’ which has been withheld by respondents on the ground that there is FIR registered against him and has also challenged the validity of the Order dated 26.04.2018 (**Annexure P-10**) vide which promotion of the petitioner to the post of ‘Naib Tehsildar’ has been withheld/kept under sealed cover on account of registration of FIR against him; while his juniors have been promoted to the post of ‘Naib Tehsildar’.

2. The brief facts of the case are that the petitioner was appointed as 'Patwari' in the Department of Revenue on 16.02.1982 governed under the Punjab Revenue Patwaris Class-III Service Rules, 1966. During the course of service, the petitioner was further promoted as 'Kanungo' on 13.05.1997. The petitioner cleared the requisite Departmental Examination for the post of Naib Tehsildar by 22.06.2017 and was eligible and is suitable for promotion to the post of 'Naib Tehsildar' in consonance with 'The Punjab Naib Tehsildars (Class-III) Service Rules, 1984' because the Annual Confidential Reports (ACRs) of the petitioner (**Annexure P-7**), are 'Outstanding' for the preceding five years i.e. relevant period for consideration at the time of promotion.

3. The petitioner was in the zone of consideration for promotion as 'Naib Tehsildar', based on his seniority. The Office of Deputy Commissioner, Fazilka (Respondent No. 4) vide letter No. SK/Nsk-1/2018/1001 dated 11.04.2018 forwarded the names of such eligible incumbents to the office of Commissioner, including the name of petitioner alongwith the integrity certificate and the certificate regarding non involvement in disciplinary/criminal proceedings. In the Certificate regarding Vigilance / Police / Court case it was mentioned that FIR No. 69 dated 22.08.2016 under Section 420/465/467/468/471/120-B IPC is registered against the petitioner. It was further mentioned in the said certificate that the Senior Superintendent of Police, Ferozepur vide its letter No. 23447 dated 08.09.2017 has informed that petitioner has been declared innocent during the enquiry conducted in the matter. It was also mentioned that there is a complaint filed against the petitioner which is under preliminary inquiry by the Department.

In this regard, it is uncontroverted on record that the cancellation report stands prepared by the investigation agency in the aforesaid FIR and on date of consideration of name of petitioner for promotion to the post of Naib Tehsildar, neither any charge-sheet was issued to petitioner nor report under Section 173 Cr.P.C. /Challan was filed in the Court against the petitioner.

4. In the course of events, vide order dated 26.04.2018 (**Annexure P-10**), the office of Commissioner promoted six officials to the post of 'Naib Tehsildar' on regular basis, including juniors to the petitioner, in consonance with 'The Punjab Naib Tehsildars (Class-III) Service Rules, 1984' (**Annexure P-1**). However, the promotion of the petitioner (Balwant Ram) was kept in abeyance for further action to be taken after the receipt of the report from the Deputy Commissioner, Fazilka, in respect of FIR No. 69 dated 22.08.2016 registered against the petitioner. Accordingly two (02) posts, including one for petitioner, were kept reserved in the said order itself.

The petitioner, aggrieved against such action of the respondents has filed the instant writ petition contending that mere registration of FIR provides no legal basis for denying promotion and furthermore, that apart petitioner on completion of investigation has been found innocent and cancellation report prepared.

5. The respondents have filed their reply by way of affidavit dated 18.10.2018 of Sh Manpreet Singh Deputy Commissioner cum District Collector Fazilka in compliance with the directions issued by this Court vide order dated 07.05.2018. A perusal of reply dated 18.10.2018 shows that

referring to the registration of the FIR and the declaring of the petitioner to be innocent, the claim of petitioner for promotion to the post of 'Naib Tehsildar' with effect from the date his juniors have been promoted is declined on the grounds that the petitioner is not yet been absolved of the charges for which case has been registered against him. It is mentioned that the case of promotion of the petitioner to the post of 'Naib Tehsildar' is kept pending final order / verdict in the criminal case registered against the petitioner. It is stated that the post of Naib Tehsildar has been kept reserved awaiting the final adjudication of criminal case to safeguard the interest of the petitioner. The respondents have taken the stand that criminal case against the petitioner relates to act in performance of his official capacity, hence plea of public interest is taken for declining the case of petitioner for promotion to the post of 'Naib Tehsildar'.

6. In the background of the aforestated facts, the petitioner places reliance upon instructions dated 04.08.1982 (**Annexure P-12 collectively**) issued by Department of Personnel and Administrative Reforms, addressed to all the concerned administrative branches, contemplating the procedure to be followed in cases, where the turn of the officer / official whose conduct is subject to an enquiry comes up for retirement or promotion to the higher post, it is envisaged therein that preliminary enquiries will not affect promotion / pension etc. and only regular enquiries where Charge-sheets have been served or Challans have been put-up in a Court of law should be taken into consideration for withholding the promotion/pension of the concerned employee. The relevant part of instructions dated 04.08.1982 (**P-12 colly**) reads as under:-

“The matter has been considered further and it has now been decided by the Government that preliminary enquiries will not affect promotion/pension etc. and only regular enquiries where Charge-sheets have been served or Challans have been put-up in a Court of law should be taken into consideration for withholding the promotion/pension of the concerned employee.”

Further reliance is placed upon instructions dated 20.01.1994 (Annexure P-12 collectively), wherein revised policy has been laid down by the State contemplating procedure and guidelines to be followed while dealing with cases of promotion of Government employee against whom disciplinary/Court proceedings are pending or whose conduct is under investigation. The relevant Para-4 of the instructions dated 20.01.1994 (P-12 colly) is reproduced herein under :-

“4. At the time of consideration of the cases of the Government employees for promotion, details of Government employees in the consideration zone of the promotion falling under the following Categories should be specifically brought to the notice of the Departmental Promotion Committee or the Competent Authority, as the case may be:-

- i. Government employees under suspension;*
- ii. Government employee in respect of whom charge-sheet has been issued and disciplinary proceedings are pending; and*
- iii. Government employees in respect of whom prosecution for a Criminal charge is pending”*

Accordingly on strength of aforesaid Clause 4(iii) of above instructions, it is submitted that withholding of promotion by the Competent Authority/ ‘Seal Cover’ Procedure by the Departmental Promotion Committee is justified only when Criminal case is pending at the stage of prosecution for a criminal charge, meaning thereby, a Charge is framed i.e.

report under Section 173 Cr.P.C. prepared & put up to the Court.

The petitioner during the course of proceedings has placed on record, Instructions dated 27.02.1998 (**Annexure P-18**) wherein the Department of Personnel reviewed the aforesaid procedure in light of various judicial pronouncements and accordingly in terms of Clause 3 of the Circular dated 27.02.1998 (**P-18**), it is stated to be decided that 'seal cover' procedure may hence forth be adopted in the circumstances as under:-

"3. The aforesaid procedure has been reviewed by the government keeping in view the latest judicial pronouncements and it has been decided that the 'Seal Cover' Procedure may hence forth be adopted in the following circumstances only:-

- i. When an employee is under suspension;*
- ii. When a charge-sheet has been issued to a Government employee and disciplinary proceedings are pending;*
- iii. When a prosecution for a criminal charge is pending against an employee, a charge is framed i.e. report u/s 173 Cr.P.C. prepared and put up to the Court: and*
- iv. If a prima facie case of serious nature involving grave misconduct, corruption or bribery is established against an employee and the competent authority decides to Charge-sheet him for imposition of a major penalty even if the Charge-sheet has not yet been issued."*

The petitioner on strength of aforementioned instructions, has argued that the respondents in withholding the promotion of petitioner to the post of 'Naib Tehsildar' from the rank of 'Kanungo' have acted in illegal and arbitrary manner and the respondents in their pleadings have not disputed that the case of the petitioner falls in none of the circumstances as mentioned above so as to stall / withhold the promotion of the petitioner as 'Naib Tehsildar' from the date due. Though learned State Counsel during

the course of submissions has argued that the case of petitioner falls within the ambit of Clause 3(iv) of the aforestated Instructions dated 27.02.1998 (P-18) justifying the act of withholding of promotion, yet the State Counsel failed to point out or demonstrate any decision of the Competent Authority on file to chargesheet the petitioner for any major penalty. Rather the respondents have conceded the factum that the petitioner has been declared innocent in the investigation conducted on the allegations in the FIR.

7. In support of his contentions, counsel for the petitioner has placed reliance upon decision of Hon'ble Supreme Court in case of '**Union of India vs. K.V. Jankiraman**', (SC) 1991(3) S.C.T. 317. The petitioner has further relied on the decision of this Court in case of '**Joga Singh Vs. State of Punjab & Ors.**' in CWP No. 18632 of 2015 decided on 09.05.2017 (Annexure P-13), wherein while dealing with similar question regarding the justification of withholding of promotion in the pendency of criminal case/FIR, it was held that :-

“the facts are not in dispute in the present case and the short question that arises for consideration is that whether mere registration of an FIR, in which an employee has been kept in column No. 2 at the time of submission of final inquiry report by the Investigating Agency, would justify the action on part of the respondents to withhold the claim of petitioner or not. The answer to said question is no more res-integra. This Court in Jasdeep Singh Ghuman's case (supra) has already held, after discussing the entire law on the aforementioned subject that even a mere registration of an FIR cannot be a ground for doubting the character of the employee and consequently, sit over the case of the employee for promotion. The present case is on a better footing as the petitioner has been kept in Column No. 2 by the investigating agency at the time of presentation of challan. Meaning thereby, technically there is

no such criminal proceeding pending against the petitioner at present.”

The petitioner has also placed reliance upon decision of this Court in case of ‘**Hari Chand, Sub Inspector, Indo-Tibetan Border Police Versus Union of India & Others**’ in CWP No. 13432 of 1998 decided on 01.02.2018; ‘**Inspector Baljeet Singh Versus State of Haryana & Ors**’ in CWP No. 1328 of 2011 decided on 01.08.2013; ‘**Atma Ram Bhadu Vs. State of Haryana**’ CWP 5743 of 2015, decided on 09.03.2017.

So far as the case of the petitioner is concerned, the case of the petitioner is covered by the instructions issued by the Government of Punjab and applicable to the petitioner. The respondents have withheld / kept in abeyance the promotion of the petitioner as Naib Tehsildar in arbitrary and illegal manner and against the settled law on the subject.

8. Since the issue of the registration of the First Information Report and its effect on promotion keeps coming for consideration before the Authorities, the law on the same is required to be assimilated. There are two aspects of the registration of First Information Report which has relevance in the service jurisprudence on a person in relation to service. The **First aspect** is the effect and impact of the Registration of First Information Report on a candidate who is seeking employment under the Government towards the recruitment and the **Second aspect** is the effect and impact of the registration of First Information Report on the Government service and his service progression by way of promotion etc.

9. Though not relevant in the facts of the case in hand, a brief gist of the law on the effect and impact of the Registration of First Information Report on a candidate who is seeking employment under the Government

towards his recruitment is summarized towards the summing up the law on the subject. In ***Delhi Admn. versus Sushil Kumar***, (1996) 11 SCC 605 at page 605, the Hon'ble Supreme Court dealt with desirability of appointment of the person (in this case in Delhi Police – a Disciplined Force) based on his antecedents records found in the verification of the character and antecedents. In Para 3 of the Judgment, the Hon'ble Supreme Court held as under :

3. *This appeal by special leave arises from the order of the Central Administrative Tribunal, New Delhi made on 6-9-1995 in OA No. 1756 of 1991. The admitted position is that the respondent appeared for recruitment as a Constable in Delhi Police Services in the year 1989-90 with Roll No. 65790. Though he was found physically fit through endurance test, written test and interview and was selected provisionally, his selection was subject to verification of character and antecedents by the local police. On verification, it was found that his antecedents were such that his appointment to the post of Constable was **not found desirable**. Accordingly, his name was rejected. Aggrieved by proceedings dated 18-12-1990 culminating in cancellation of his provisional selection, he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with Section 34 IPC and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? **It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was***

found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service.

The Hon'ble Supreme Court in "**Commissioner of Police v. Mehar Singh**, (2013) 7 SCC 685, again dealing with the case of recruitment in the disciplined Force has endorsed the view taken by the Hon'ble Supreme Court in Sushil Kumar Case (supra) and at page 703 in Para 35 held as under :

35. *The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that*

*acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, **we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand.***

The Hon'ble Supreme Court a recent judgment passed on 17.03.2011 in Civil Appeal No.1430 of 2007 titled '**Commissioner of Police & Ors. Vs. Sandeep Kumar**' reported as (2011) 4 SCC 644, has dealt with the question and controversy as regarding the involvement of a candidate in a criminal case and higher in degree where such candidate concealed information regarding the pendency of the criminal proceedings. In the said case while holding in agreement with the decision of the Delhi High Court that the cancellation of the candidature of the petitioner therein as illegal, the Hon'ble Supreme Court made the following observations :

“ When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. **After all, youth will be youth.** They are not

expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.

The modern approach should be to reform a person instead of branding him as a criminal all his life. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

“I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show – and to show to all students everywhere – that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land – and I speak both for England and Wales – they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students

and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards – of the poets and the singers – more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong – very wrong – in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed.”

[Vide : Morris Vs. Crown Office, (1970) 2 Q.B. 114]

In our opinion, we should display the same wisdom as displayed by Lord Denning.

As already observed above, youth often commit indiscretions, which are often condoned.

It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified.

At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.”

The Hon'ble Supreme Court has laid down the law that the pendency of the proceedings or even acquittal in the criminal proceedings upon a candidate has a bearing on the decision of the Employer Government regarding the desirability of selection of candidate with antecedent records especially in employment of Disciplined forces. Further, the Government / its Selection – Screening Committees should remain open to the nature and gravity of charges so leveled and the involvement of the concerned candidate in such cases.

It is very important in this regard to give reference to the observations made by a Hon'ble Division Bench of High Court of Delhi in a judgment delivered on 25th August, 2010 in **W.P.(C) No. 2068/2010** reported as **2010 SCC OnLine Del 2891** titled “**Govt of NCT of Delhi & Anr. versus Robin Singh**” as under:-

19. *A criminal record is a record of a person's criminal history, generally used by potential employers to assess the candidate's trustworthiness. The information included in a criminal record varies between countries and even between jurisdictions within a country. In most cases it lists all non-expunged criminal offenses and may also include traffic offenses such as speeding and drunk-driving. In some countries the record is limited to actual convictions (where the individual has pleaded guilty or been declared guilty by a qualified court) while in others it also includes arrests, charges dismissed, charges pending and even charges of which the individual has been acquitted. The latter policy is often argued to be a human rights violation since it works contrary to the presumption of innocence by exposing people to discrimination on the basis of unproven allegations.*

20. *It is unfortunate that in India we are not marching ahead in the comity of nations and prefer to be governed by the recruitment processes which are a legacy of the British era; ignoring that the purpose of governance then was to rule and the purpose of governance now is to serve.*
21. ***We have prefaced our decision with the statement whether pendency of a criminal proceeding or for that matter a conviction by a competent court of law may justify eyebrows to be raised, but would it justify the shutting of one's eye?***
22. *Now, a man can be booked for the offence of over-speeding and perhaps may be convicted for parking his motor vehicle in a non-parking area. Would this man be of a character, compelling in public interest and for public good, not to induct him in public service? The answer would be in the negative. As against that, a man has committed murder or has broken into a departmental store and stolen cash. Would this man be of a character, compelling in public interest and for public good, not to induct him in public service. The answer would be in the affirmative.*
23. *Not to induct persons with a criminal background in public service, is based on the premise that considerations of public policy, concern for public interest, regard for public good would justify a prohibition. Thus, the primary consideration is, whether public interest and public good would be jeopardized if a person with a criminal background is inducted in public service. And this takes us straight to the core of the issue, whether brush with penal law would justify the eyes to be closed against the offender or only such brush with penal law which is of a higher degree of criminality. If the answer is in the negative, the further question: what should be the higher degree of criminality which would justify the eyes being shut to such person needs to be addressed.*

X x x x

25. *A look at the penal laws in India would show that most of the penal offences can be categorized under two broad categories i.e. felony and misdemeanour. A further look at the sections stipulating penalties would show that felonies are treated as more grave vis-à-vis misdemeanours. Further, by classifying offences as cognizable and non-cognizable, higher and lower degrees of criminality to the offences can be discerned. Further, by classifying offences as bailable and non-bailable, the degree of criminality can be further discerned.*
26. ***The civil concept of an offence being of a depraving character is to look at whether the act complained of suffers from the tag of a moral turpitude or not.***
27. *We do not intend to make a catalog of reported decisions as to what misdemeanours should normally attract the penalty of removal or dismissal from service. We may simply state that with respect to conviction for grave and serious offences alone, on the anvil of public interest and for public good, Courts have held that the offender has rendered himself unfit to continue in office and in extreme cases summary dismissal or removal from service by invoking Article 311 of the Constitution is also held justified.*
28. *Thus, we have a guideline of serious and grave offences being the touchstone in case of the door being shown to the government servant.*
29. *Looking through the prism of case law pertaining to when can the door be shown to a government servant and by doing reverse engineering we can safely say that what is good for the door to be shown, is good for prohibiting entry through the door, and thus while denying public employment with respect to the offence committed by a person, it can be said, and we say so, that it may be a serious violation of the constitutional right of a citizen to be fairly treated in the matter of*

public employment if trivial offences committed by the citizen would justify the State shutting its eyes and denying employment.

X x x x

36. *Life is too precious to be staked over petty incidents and the cruel result of conviction for petty offences being the end of the career, the future and the present, of young and inexperienced persons cannot blast their life and their dreams.*
37. *In a growing democracy, where the systems are failing and the weak and the downtrodden are hardly given the opportunity to sharpen their intellect thereby diminishing the ability of their consciousness to act as a mirror to their acts and actions, **it is high time that the executive brings into place a policy where summary/ordinary conviction should not be treated as a conviction for entry or retention in government service.***
38. *Till then, it would be the duty of the Court to interpret the law by harmonizing human sufferings and human wants, delinquencies and criminal tendencies; conscious of the fact that passengers on Spaceship Earth are the rich and the poor, the needy and the well-off, the hungry and the well-fed, the educated and the uneducated.*

Based on the these observations, the Administration of Delhi, the Central Government (in respect of the Central Armed Police Forces) have formulated detailed policies for delineating the conduct and allegations which would render a Government servant unfit for entry and retention in service and also required to be followed by the State of Punjab, Haryana and the Chandigarh Administration on the similar lines and on the aforestated guidelines.

10. Now coming to the present aspect of the registration of First Information report against the employee who is already in service and its effect on the career progression like promotion etc in respect of such employee. In this regard Para 16 of the judgment of Hon'ble Supreme Court in case of '**Union of India versus K.V. Jankiraman**', (SC) 1991(3) S.C.T. 317, wherein it was observed 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. **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 would not take much time to collect the relevant evidence and finalize 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.** The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows;*

- “(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;*
- (2)*
- (3)*
- (4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;”*

Further in **Union of India versus Sudha Salhan (Dr), (1998) 3**

SCC 394, at page 396 the Hon'ble Supreme Court observed as under:

*"6. The question, however, stands concluded by a three-Judge decision of this Court in **Union of India versus K.V. Jankiraman** in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to*

a higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted."

The same view was reiterated in **Bank of India versus Degala Suryanarayana, (1999) 5 SCC 762**, at page 769 :

*" However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well-established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary / criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see **Union of India versus K.V. Jankiraman SCC** at pp. 114- 115 : AIR at p. 2013). As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended in acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3-12- 1991. In the year 1986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986."*

The Division Bench of this Court in “**Ramesh Chander versus State of Punjab**”, (P&H) (DB) reported at 1999(2) S.C.T. 209 dealt with a similar issue and facts as of the case of the petitioner and dealt with the provisions of the Instructions dated 20.01.1994 (**P-12 colly in instant case**) and held in Para 7 as under :

7. *It is well made out from clause (iii) of paragraph 4 of the Government instructions dated 20.1.1994 (Annexure P-2), as reproduced in the earlier part of this order, that it is only when a charge is framed, which is obviously when a report under section 173, Criminal Procedure Code, is prepared and put up to the Court that the said clause (iii) shall come into operation. Mere registration of a case, by virtue of an FIR coming into existence, would not attract clause (iii) of paragraph 4 of instructions Annexure P-2. The caption of instructions Annexure P-2 also makes it abundantly clear that it is only when the matter is in the Court that the "sealed cover procedure" can be adopted. In the present case, a period of more than six years have gone by and the case has not been put up to the Court. We are, therefore, of the view that clause (iii) of paragraph 4 of Government instructions dated 20.1.1994 (Annexure P-2) was wholly inapplicable to the case of the petitioner.....”*

Therefore, based on the above legal principles, mere registration of the First Information Report and the initiation of the preliminary inquiry / investigation unless any of the stage as laid down in Para 3 (iii) of the instructions dated 27.02.1998 (**P-18**) is reached i.e. a challan / report under Section 173 Cr.P.C. arraying as an accused is presented or charge framed under any contingency, as such has no bearing on the denial - withholding of the promotion if the employee is otherwise found fit for promotion.

11. In the light of the above, the only conclusion possible in the peculiar facts is that the denial of consideration of the case of the petitioner for promotion on the ground of pendency of the proceedings upon the registration of the First Information Report case though declared innocent in the inquiry, was unjustified and illegal.

12. Accordingly, this writ petition is “Allowed”. It is directed that the promotion of the petitioner be made within a period of one month from the date of receipt of certified copy of this order alongwith the necessary consequential benefits from the date the juniors of the petitioner are promoted as ‘Naib Tehsildar’ as on the date the earlier consideration was done pursuant whereto Promotion Order dated 26.04.2018 (P-10) was passed.

The necessary financial benefits due to the petitioner alongwith the arrears be paid to the petitioner within a period of two weeks thereafter failing which all the benefits in the rank of Naib Tehsildar will be paid alongwith interest @ 8 % p.a. from the date due till date of realization and the same shall be borne by the officer found responsible for delay in sanction and disbursal of such amount due.

The respondents are burdened with costs of ₹ 10,000/- (Ten Thousand only) which shall be deposited in the Registry of this Court for appropriation in the Juvenile Justice Welfare Fund within two months.

13. There is another aspect, which requires consideration of this Court. The petitioner by way of miscellaneous application bearing CM No. 13098 of 2018 regarding which notice for reply was issued on 18.09.2018, has placed on record documents Annexure P-14 to P-16 to show that one

the recommendations of same Commissioner, Ferozepur (respondent No. 3) vide order dated 16.05.2018 (**P-14**) by giving him a clean chit by way of the Integrity Certificate dated 07.05.2018 (**P-15**) stating there is no complaint / inquiry / charge sheet pending inspite of the fact that said Paramjit Singh Brar having been summoned as an accused under Section 319 of Cr.P.C. was already charged for the commission of offence under Section 302, 120-B & 34 of the Indian Penal Code by the Court of Additional Sessions Judge, Faridkot vide order dated 20.04.2017 (**P-16**).

The only explanation given by the Commissioner Ferozepur Division, on his personal appearance in this Court, is that the factum of aforestated Paramjit Singh Brar facing a criminal trial was not brought to his notice while recommending his case for promotion as Tehsildar. It is further brought to notice that in **C.M. No. 17216 of 2018**, the letter/communication dated 09.11.2018 (**P-17**) has been passed by the office of Financial Commissioner/Competent Authority (Respondent No. 1) wherein relying upon its amended instructions dated 27.02.1998 (**P-18**), it has been stated that the case of Paramjit Singh is not covered under the above instructions by completely ignoring that said employee is charged for the commission of offence under Section 302, 120-B & 34 of the Indian Penal Code by the Court of Additional Sessions Judge, Faridkot by the Order dated 20.04.2017 (**P-16**) much prior to his consideration and promotion as Tehsildar. The same is apparent overlooking of the relevant instructions especially Para 3 (iii) of the instructions dated 27.02.1998 (**P-18**). Such act / omission of the Officer / Official dealing with the promotion of Tehsildars at relevant time is such an infarction of justice which needs the issuance of mandamus to the

responsibility for such dereliction of duty regarding non reporting / consideration of the pendency of criminal proceedings against said Paramjit Singh Brar and place the report of the inquiry and the action taken against such responsible person in due process of law before this Court.

14. Before parting with the judgment, based on the observations made in the conclusive part of Para 9 above, *qua* direct recruitment / retention in service in the States of Punjab, Haryana and the Chandigarh Administration are directed to formulate detailed policies for delineating the conduct and allegations which would render a candidate / employee unfit for entry and retention in service and place the same on record for perusal of this Court.

The case be listed for compliance report of Chief Secretaries of the States of Punjab and Haryana and the Administrator of UT Chandigarh on **20.11.2019**.

December 11, 2018

'dk kamra'

**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>