

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.3991 of 2023
DECIDED ON: 04.07.2023

Jagtar Singh

.....Petitioner

VERSUS

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMAPresent: Mr.Baltej Singh Sidhu, Sr. Advocate,
with Mr. Himmat Singh Sidhu, Advocate,
for the petitioner.Mr. D.K.Singal, Addl. A.G.Punjab
*******SANJEEV PRAKASH SHARMA, J (ORAL)**

1. The petitioner, by this writ petition, has prayed for issuance of a writ in the nature of Certiorari to call for and set aside the proceedings of Departmental Promotion Committee dated 11.11.2022 whereby nine Block Development and Panchayat Officers have been promoted as District Development and Panchayat Officers (Group A), who are junior to the petitioner and case of the petitioner has been kept in a 'sealed cover' due to pendency of FIR No.14 dated 25.06.2018, under Section 7, 13(2) of the Prevention and Corruption Act, 1988 and under Section 120-B IPC, registered at Police Station Vigilance Bureau Bathinda (Annexure P/3), being contrary to the Punjab Govt. Circular/Instructions dated 27.02.1998 (Annexure P-1) and being contrary to the law laid down by the Hon'ble Supreme Court of India in Union of India v. K.V.Jankiraman 1991 AIR(Supreme Court) 2010.

A further prayer for issuance of a writ in the nature of Mandamus directing the respondents to consider and promote the petitioner to the post of

District Development and Panchayat Officer with effect from the date, the persons junior to him have been promoted and to grant all consequential benefits to the petitioner including seniority, pay and increments etc. along with interest @ 18% per annum.

2. Learned senior counsel appearing for the petitioner submits that the petitioner was arrested in a case registered under Section 7 and 13(2) of the Prevention and Corruption Act, 1988 on basis of a complaint registered by one Mandeep Singh, Sarpanch, against whom the petitioner had filed an FIR on 14.09.2012 under Sections 409, 408 and 120-B IPC.

3. Learned counsel submits that although the petitioner was arrested on 25.06.2018, he was released on 03.08.2018 and was working thereafter. The competent authority refused to grant sanction on 07.01.2022 (Annexure P-4). No charge sheet was filed upto the date when the sealed cover procedure was adopted. Learned counsel submits that on 29.11.2022 (Annexure P-5) the case of the petitioner was considered for promotion to the post of District Development and Panchayat Officer. However, 'sealed cover procedure' was adopted in violation of the Procedure and guidelines issued by the Department of Personnel dated 27.02.1998 (Annexure P-1) which required adoption of 'sealed cover procedure' only in four circumstances as laid down therein.

4. Learned counsel submits that none of the four circumstances consisted on the date when the case of the petitioner was being considered for promotion, the adopting of 'sealed cover procedure' was legal and the petitioner was entitled to be considered and granted promotion as per his entitlement. Learned counsel has also relied upon judgment passed by the Apex Court in **Union of India v. K.V.Jankiraman 1991 AIR (Supreme Court) 2010**, as well as subsequent judgments of **Harsh Kumar Sharma vs.**

State of Punjab and another 2017 AIR (Supreme Court) 124 and State Bank of Patiala v. O.P.Latka 1995(3) SCT 465.

5. *Per contra*, learned counsel appearing for the State pointed out that the petitioner was dragged in a case of bribery and a sum of Rs.1,49,000/- was recovered from his house. Learned counsel also submits that the charge is *prima facie* of the serious nature of corruption and bribery and, therefore, petitioner cannot be awarded promotion and the procedure of adopting 'sealed cover' cannot be faulted. It is further submitted that the sanction which was refused earlier on 07.01.2022 (Annexure P-4) was revised and charge sheet has been now submitted by the Vigilance Bureau in the competent Court on 16.05.2023. Copy of the charge sheet has also been placed on record before this Court. It is also informed that departmental charge sheet has been issued on 05.05.2023 to the petitioner.

6. I have considered the submissions.

7. In **Union of India v. K.V.Jankiraman's case (supra)**, the Supreme Court had an occasion to examine the aspects regarding adopting of the 'sealed cover procedure' and had framed following questions:-

(1) what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee?

(2) What is the course to be, adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal?

(3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?'

On the first question, the Apex Court has observed as under:-

“ The Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet 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/chargesheet. 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. 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."

8. The said judgment has been followed consistently by the subsequent judgments of the Apex Court and this Court in **State Bank of Patiala v. O.P.Latka's case (supra)** while following the judgment, noticed the

cut off date as on the date when the charge sheet was issued or not to the concerned delinquent.

9. In the present case, the petitioner was arrested on 25.06.2018 and he remained in judicial custody after 03.08.2018. He would thus, be deemed to be under suspension after the period during which he remained in jail. In view of the observations of the Apex Court, since the petitioner was under suspension for the period adopting of 'sealed cover procedure' on account of the remaining under suspension would have to be examined whether the same can be adopted even though after he was released, he rejoined his duties and continued to serve.

10. In the opinion of this Court, the period spent in judicial custody would be treated as period spent under suspension and therefore, the factum of remaining in suspension though for a particular period can be a sufficient ground to keep the case of an employee under 'sealed cover' and merely because the charge sheet was not filed in the criminal proceedings or that departmental inquiry was also not issued on the relevant date would not be an impediment to adopt the sealed cover. This Court further observes that a person who has been found to be involved in a case of corruption / bribery cannot be awarded promotion to a higher post.

11. So far as the question regarding refusal of sanction to prosecute ordered vide order dated 07.01.2022 (Annexure P-4) and subsequent granting of sanction is concerned, the same is not a matter to be examined in the present case. Question still have to be examined independently in the competent proceedings before the criminal Court. Leaving it open for the petitioner to contest the said aspect, fact remains that he remained under suspension, it means suspended during the period of arrest from 25.06.2018 to 03.08.2018 which was sufficient to adopt 'sealed cover procedure'.

12. Accordingly, no case for grant of relief is made out.
13. Petition is dismissed.

04.07.2023
mamta

(SANJEEV PRAKASH SHARMA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No