

CWP-5059-2024 &
CWP-9901-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) CWP-5059-2024
Date of Decision:07.05.2024

LAKHWINDER SINGH Petitioner

Versus

STATE OF PUNJAB AND OTHERS Respondents

2) CWP-9901-2024

TEJINDER PAL SINGHPetitioner

Versus

STATE OF PUNJAB AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Rahul Bhargava, Advocate
for the petitioner in CWP-5059-2024.

Mr. L.S. Sidhu, Advocate
for the petitioner in CWP-9901-2024.

Mr. Aman Dhir, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-5059-2024 and CWP-9901-2024 are disposed of since issue involved in both the petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-5059-2024.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 13.02.2024 (Annexure P-1) whereby respondent has ordered to



adopt sealed cover procedure *qua* petitioner with respect to his promotion from the post of Inspector to Deputy Superintendent of Police (for short 'DSP').

3. The petitioner is working with respondent as Inspector of Police. He is entitled to promotion to the post of DSP. Claim of petitioner alongwith other Inspectors was put up before the Departmental Promotion Committee (for short 'DPC'). The DPC considered claim of the petitioner, however, kept his matter in abeyance while adopting sealed cover procedure as contemplated by circular dated 27.02.1998 (Annexure P-2) issued by Department of Personnel & Administrative Reforms, State of Punjab.

4. The petitioner was implicated in FIR No.188 dated 09.12.2019, under Section 306 of IPC Police Station Mattaur, District SAS Nagar Mohali. The police after completing investigation filed cancellation report which was not accepted by trial Court. The complainant has filed CRM-M-33938 of 2021 before this Court seeking transfer of investigation to an independent agency. This Court vide order dated 01.08.2022 has directed the police not to file fresh report under Section 173 Cr.P.C. till fresh report of FSL is obtained.

5. Mr. Rahul Bhargava, Advocate submits that respondent could adopt sealed cover procedure had police after completing investigation filed its report under Section 173 Cr.P.C. whereas police in the case in hand has filed cancellation report, thus, sealed cover procedure could not be adopted.

6. Per contra, learned State counsel submits that respondent has followed procedure as contemplated by circular dated 27.02.1998



(Annexure P-2). He concedes that police after completing investigation filed cancellation report in aforesaid FIR and till date no *challan* against the petitioner has been presented.

7. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

8. The conceded position emerging from the record is that petitioner is posted as Inspector with respondent. He is eligible to promotion and his claim was put up before DPC. The said Committee considered case of petitioner alongwith other similarly situated officers. The matter of petitioner, adopting sealed cover procedure, has been kept in abeyance because he is involved in FIR No.188 dated 09.12.2019, under Section 306 of IPC Police Station Mattaur, District SAS Nagar Mohali.

9. The entire controversy revolves around reading of circular dated 27.02.1998 (Annexure P-2). For the sake of convenience and better appreciation, the relevant extracts of said circular are reproduced as below:

“Subject:- Promotion of Government employees against whom disciplinary/court proceedings are pending or whose conduct is under investigation procedure and guidelines to be followed.

Sir/Madam,

I am directed to invite your kind attention towards circular letter No. 4/3/95-3PP1/1150, dated 20.1.94 vide which it was interalia decided that at the time of consideration for promotion of the cases of government employees, the details of the employees being considered for promotion under the following categories should be specifically brought to the notice of the Departmental Promotion Committee or the



Competent Authority for assessing their suitability alongwith other candidates without taking into consideration, the disciplinary/ criminal prosecution pending against them and the assessment/recommendation of the Departmental Promotion Committee or the Competent Authority, as the case may be, kept in a 'sealed cover':-

- (i) Government employees under suspension;*
- (ii) Government employees in respect of whom charge-sheet have been issued and the disciplinary proceedings are pending; and*
- (iii) Government employees in respect of whom prosecution for criminal charge is pending.*

2. Further vide circular letter No.3/14/96-3PPI/12639, dated 22.7.1996, it was decided that an employee against whom a prima-facie case of serious nature is alleged but the charge-sheet has not been served upon him due to administrative reasons upto the date of consideration of his case for promotion, his case may also be kept in 'sealed cover' and similar procedure adopted.

3. The aforesaid procedure has been reviewed by the government keeping in view the latest judicial pronouncements and it has been decided that the 'sealed cover' procedure may henceforth be adopted in the following circumstances only:-

- (i) When an employee is under suspension;*
- (ii) When a chargesheet 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.”

10. From the perusal of paragraph 3 (iii), it is evident that respondent has to adopt ‘sealed cover’ procedure where prosecution for a criminal charges is pending against an employee or a charge is framed i.e. report under Section 173 Cr.P.C. is prepared and put up before the Court. The respondent is misreading aforesaid clause. Prosecution is called as ‘pending’ when charges are framed. The respondent by said circular has expanded the scope of aforesaid clause. The respondent has considered filing of report under Section 173 Cr.P.C. equal to framing of charge. At the cost of repetition, the expression used in aforesaid clause is reproduced as below:

“xxxx xxxx xxxx xxxx
*a charge is framed i.e. report u/s 173 Cr.P.C. prepared and
put up to the court;”*

11. Though it is not relevant at this stage, yet to clarify, this Court finds it appropriate to observe that filing of report under Section 173 Cr.P.C. can never be treated at par with framing of charge. Filing of report under Section 173 Cr.P.C. falls within the realm of an Investigating Officer whereas charges are framed by Trial Court after considering *prima facie* material on record. The Trial Court is not bound to frame charge on the basis of report filed under Section 173 Cr.P.C.

12. In any case, in the case in hand, till the date of meeting of DPC, the police had not filed its report under Section 173 Cr.P.C. whereas a cancellation report was filed which was not accepted by the Trial Court and Investigating Officer was asked to conduct further investigation. Meaning thereby, at present matter is pending at the stage of investigation. The afore-cited clause provides for ‘sealed cover’



procedure where the report under Section 173 Cr.P.C. for a criminal charge is filed. In the absence of filing of report under Section 173 Cr.P.C. against the petitioner, he could not be deprived from his valuable right of promotion.

13. In the wake of above discussion and findings, the present petitions deserve to be allowed and accordingly allowed. The impugned order dated 13.02.2024 (Annexure P-1) is hereby quashed and respondents are directed to consider claim of petitioners without following ‘sealed cover’ procedure.

(JAGMOHAN BANSAL)
JUDGE

07.05.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>