



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(238)

CWP No. 14926 of 2021
Date of Decision : 30.07.2024

Dalbir Singh Teji

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.S. Dadwal, Advocate for the petitioner.
Mr. Swapan Shorey, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance being raised by the petitioner is that though, he was found fit by the Departmental Promotion Committee (DPC) for further promotion keeping in view the recommendations dated 08.01.2018, the respondents are under obligation to open the sealed cover and grant the petitioner the benefits keeping in view the recommendation of the said DPC dated 08.01.2018.
2. Certain facts need to be mentioned for the correct appreciation of the issue in hand.
3. The petitioner joined the service of the Jail Department in the year 1987. He was promoted as Deputy Superintendent of Police (Prison Grade-II) in the year 2004 and thereafter, he was promoted as Deputy Superintendent of Police (Prison Grade-I) and was posted as a Superintendent of Central Jails/AIG Jails in the year 2012. The next avenue of promotion in



case of the petitioner was to the post of Superintendent of Central Jails/AIR Jails keeping in view the Punjab State Jail Department, Class-I Rules, 1979 (hereinafter referred to as '1979 Rules'). As per the 1979 Rules, the post of Superintendent Central Jails as well as AIG Jails is to be filled from the amongst Superintendent District Jails, District Superintendent Grade-I, Chief Welfare Officers and Chief Vigilant Officer.

4. By the time the petitioner became eligible for the said promotion, an FIR No. 15 dated 31.01.2017 was registered against the petitioner. Thereafter, under the Punjab Civil Services (Punishment and Appeals) Rules, 1970 (hereinafter referred to as '1970 Rules'), the departmental proceedings were also initiated against the petitioner. During the pendency of the FIR as well as the departmental proceedings, the DPC met on 08.01.2018 for considering of the claim of the eligible employees for further promotion to the post of Superintendent, Central Jails/AIG Jails. The petitioner's name was kept in the sealed cover keeping in view the departmental proceedings as well as the registration of FIR.

5. Thereafter, the petitioner was imposed punishment in the departmental proceedings, which punishment was challenged by the petitioner by filing CWP No. 2109 of 2019 titled as ***Dalbir Singh Teji Vs. State of Punjab and others*** and Co-ordinate Bench of this Court vide order dated 27.11.2020 set-aside the said proceedings including the punishment imposed with the direction that consequential benefits be also given to the petitioner. Despite the fact that the disciplinary proceedings came to an end after the judgment of the Co-ordinate Bench of this Court but the petitioner was not being given the benefit of opening of the sealed cover so as to



consider the claim of the petitioner for promotion to the post of Superintendent, Central Jails/AIG Jails.

6. Learned counsel for the petitioner argues that the benefit is not being extended to the petitioner on the ground that FIR No. 15 dated 31.01.2017 is still pending against the petitioner.

7. Learned counsel further argues that as per the judgment of the Hon'ble Supreme Court of India in ***Union of India Vs. K.V. Jankiraman, (1991) 4 SCC 109***, it is only in case, the charges are framed in the criminal proceedings, the criminal proceedings can be deemed to be pending against that employee to put the claim of an employee in a sealed cover qua promotion whereas, in the FIR No. 15 dated 31.01.2017 charges have not been framed even as of now and on the date of consideration of the claim of the petitioner on 08.01.2018, no charges in the criminal proceedings in respect of the FIR No. 15 dated 31.01.2017 had been framed, hence, putting the claim of the petitioner in sealed cover due to the pendency of an FIR is contrary to the settled principle of law settled in ***K.V. Jankiraman's case (supra)***.

8. Learned State counsel submits that at the time when the DPC met on 08.01.2018, even the departmental proceedings were pending and FIR No. 15 dated 31.01.2017 is still pending though, there is an interim order in favour of the petitioner qua the stay on the said criminal proceedings. Learned State counsel further submits that till the criminal proceedings are pending, the sealed cover cannot be opened so as to decide whether the petitioner is eligible for promotion or not.



9. I have heard learned counsel for both the parties and have gone through the record with their able assistance.

10. From the facts, it transpires that on the date when the DPC met on 08.01.2018, the disciplinary proceedings were pending against the petitioner and even an FIR was also registered against the petitioner. On the basis of the said proceedings, the DPC decided to put the claim of the petitioner in the sealed cover. Thereafter, by a judgment of the Co-ordinate Bench of this Court dated 27.11.2020 passed in CWP No. 2109 of 2019, the disciplinary proceedings were set-aside and direction was given to the respondents to grant the petitioner the consequential benefits, hence, in the year 2020, the disciplinary proceedings came to an end causing no prejudice to the petitioner.

11. The only question which arises is whether, due to the pendency of the FIR No. 15 dated 31.01.2017, the respondents are within their jurisdiction to keep the claim of the petitioner for promotion under the sealed cover. As per the judgment of the Hon'ble Supreme Court of India in ***K.V. Jankiraman's case (supra)***, it is only in case the charges are framed in the criminal proceedings, the criminal proceedings are deemed to be pending and not before the said stage of the criminal proceedings. The relevant paragraph No. 16 of the said judgment is 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 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/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 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.”

12. Learned State counsel conceded the fact that even as of now the charges have not been framed in the criminal proceedings in respect of the FIR No. 15 dated 31.01.2017 and there is no other impediment against the petitioner qua any departmental proceeding or any other criminal proceeding. That being so, the continuance of the petitioner’s claim for promotion under the sealed cover is contrary to the judgment of the Hon’ble Supreme Court of India in ***K.V. Jankiraman’s case (supra)***, hence the respondents are directed to open the sealed cover keeping in view the recommendation of the DPC dated 08.01.2018 and take appropriate action in accordance with law as required keeping in view the recommendation made therein. Let the order be complied with within a period of eight weeks of the receipt of copy of this order.

13. Petition is allowed in above terms.

14. Pending miscellaneous application, if any, also stands disposed of.

July 30, 2024
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No