



2024:DHC:7026-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 11.09.2024***

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**W.P.(C) 15719/2023 & CM APPL. 63067/2023 –Int. dir.
NEERAJ KUMAR PANDEY****.....Petitioner****Through: Mr. Ankur Chhibber, Mr. Anshuman
Mehrotra, Mr. Nikunj Arora and Mr. Pranjal
Marwah, Advs.****versus****UNION OF INDIA AND ORS****.....Respondents****Through: Mr. Ripudaman Bhardwaj, CGSC
with Mr. Kushagra Kumar and Mr. Abhinav
Bhardwaj, Advs. with Ajay Pal from CRPF.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****REKHA PALLI, J (ORAL)**

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner who is serving as a Commandant in the Central Reserve Police Force ('CRPF') has approached this Court being aggrieved by the decision taken by the Departmental Promotion Committee (DPC) in April, 2023 to adopt the sealed cover procedure in respect of the recommendations made qua the petitioner for his promotion to the post of Deputy Inspector General ('DIG'). Consequently, the petitioner seeks a direction for opening of the sealed cover containing the recommendations made after considering



his case for promotion to the post of DIG, and if found fit for promotion, to promote him with all consequential benefits.

2. Before dealing with the rival submissions of the parties, we may note the brief factual matrix as emerging from the record.
3. The petitioner having joined the CRPF as an Assistant Commandant on 01.12.1994, was promoted to the post of Deputy Commandant on 28.04.2001. This was followed by his promotion to the post of Second-in-Commandant on 25.05.2007, whereafter he was promoted as a Commandant on 27.07.2010, which post he is presently holding. In 2023, upon accrual of 18 anticipated vacancies for the post of DIG, the respondents, vide their signal dated 14.02.2023, called up for drawal of a panel for promotion of Commandants to the rank of DIG, wherein the petitioner, who was placed at serial no. 13 in the gradation list of Commandants issued on 01.01.2023, found his name in this panel for promotion. However, before he could be considered by the DPC for promotion, an FIR under the Prevention of Corruption Act, 1988 was lodged against the petitioner on 16.03.2023, pursuant thereto a search and raid was conducted at the house of the petitioner, but no arrest was made. As a result of this FIR registered against him, the DPC which was convened on 17.04.2023 to consider the names of eligible officers for promotion to the rank of DIG, placed the petitioner's name in a sealed cover.
4. Based on the DPC's recommendations, 16 Commandants including some officers junior to the petitioner were promoted between 18.04.2023 to 30.11.2023. Upon queries being made to respondent no. 2 by the petitioner, he was informed that due to the pendency of the



FIR, his name had been placed in a sealed cover by the DPC and, therefore, he could not be promoted during subsistence of the FIR. Since, till date, no chargesheet has been filed against him, the petitioner has approached this Court by way of the present petition.

5. In support of the petition, learned counsel for the petitioner begins by submitting that the impugned order dated 17.04.2023 vide which the petitioner's name has been directed to be kept in a sealed cover by the DPC solely on account of an FIR registered against him by the CBI is unsustainable in law. The respondents, he submits, have failed to appreciate that the DPC could have kept the petitioner's name in a sealed cover only if his case fell under any of the three situations envisaged under the DoPT's OMs dated 14.09.1992 and 02.11.2012. The petitioner, he contends, falls under none of the three clauses of these OMs as on the date of the DPC, he was neither under suspension nor were any disciplinary proceedings pending against him nor was he facing any criminal prosecution on the date of the DPC. By placing reliance on the decisions of the Apex Court in *Union of India vs. K.V. Janakiraman*: (1991) 4 SCC 109 & *Union of India vs. Anil Kumar Sarkar*: (2013) 4 SCC 161, he submits that since till date no chargesheet has been filed by the CBI or nor any charges have been framed against the petitioner by the Court, it could not be said that he was facing any criminal prosecution when the DPC met. The DoPT's O.M. dated 14.09.1992 and 02.11.2012, clearly lay down that prosecution for a criminal charge can be stated to be pending only on the date when the Magistrate takes cognizance of the complaint or report filed by the police. In the present case, since admittedly,



neither any chargesheet has been filed by the CBI nor any charges have been framed against the petitioner till date, the petitioner's name could not have been kept in a sealed cover by the DPC.

6. Mr. Chhibber further relies on a decision of this Court in ***Union of India & Anr. Vs. Suresh Chandra* 2013 SCC OnLine Del 3395**, wherein this Court while dealing with an identical situation, had, after considering the decision of the Apex Court in ***K.V. Jankiraman***, (*supra*) as also the DoPT's O.M.s dated 14.09.1992 and 02.11.2012, categorically held that the clause "prosecution in respect of criminal charge is pending" will be applicable only when a chargesheet has been filed by the investigating agency in the Court dealing with the case registered against the Government servant. He, therefore, prays that the impugned order be set aside and the respondents be directed to open the sealed cover containing the recommendations of the DPC held in April, 2023 and in case, the petitioner is found fit for promotion, he be promoted as DIG with all consequential benefits.
7. On the other hand, Mr. Bhardwaj seeks dismissal of the writ petition and submits that the DPC had adopted the sealed cover procedure in respect of recommendations qua the petitioner as once an FIR has been registered against him; his conduct would remain under a cloud, till he is acquitted by the competent Court. Merely because till date no chargesheet has been filed by the CBI against him, it cannot be presumed that the petitioner is innocent. Further, he submits that since the petitioner's name has been included in the list of suspect officers, no vigilance clearance could have been accorded to him. He, therefore, prays that the writ petition be dismissed.



8. Having considered the submissions of learned counsel for the parties and perused the record, we find that the issue raised in the present petition is squarely covered by this Court's decision in **Suresh Chandra (supra)** relied upon by the petitioner. In the said case, this Court was dealing with an exactly similar question as to whether an employee can be said to be facing criminal prosecution, even when no chargesheet has been filed against him. We are of the view that instead of once again analysing the DoPT's OM dated 14.09.1992 and 2.11.2012, which continue to hold the field; it would be apposite to note in extenso the extracts of the said decision itself. The same read as under:

"2. The 'sealed cover procedure' is adopted when an employee is due to be considered for promotion, increment etc. but departmental disciplinary/criminal proceedings are pending against him and hence the recommendation of the Departmental Promotion Committee (hereinafter referred to as the 'DPC') pertaining to the employee are kept in a sealed cover requiring the cover to be opened after the proceedings in question are over.

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6. In the decision reported as (1991) 4 SCC 109 Union of India v. K.V. Jankiraman a three-Judge Bench of the Supreme Court examined the legality of the Office Memorandum dated January 30, 1982 and some other aspects connected thereto. Amongst others one question which had arisen before the Court was: 'what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee'? which question was answered in the following words :-

"16. On the first question, viz., as to when for the purposes of sealed cover procedure the disciplinary/criminal proceeding 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 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 appellant-authorities that when there are serious allegations and it takes time to collect 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. The authorities are thus 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. These 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 to only after a charge memo is serviced on the



concerned official or the charge-sheet is filed before the criminal court and not before.

17. There is no doubt that there is seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

18. We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal.” (Emphasis Supplied)

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11. In the instant case, the respondent Suresh Chandra, was working on the post of Deputy Director (Sugar Technical) in the Directorate of Sugar, Ministry of Consumer Affairs, Food and Public Administration since the year 1996. The next promotional post as claimed by him was the post of Director (Sugar Technical).

12. In the year 2003 an FIR bearing No. 320/2003 under Sections 420/466/468/473/474/476/120-B IPC was registered against the respondent and other persons regarding some financial irregularities allegedly committed by them. On October 29, 2003, the police filed a charge sheet in the aforesaid FIR recording therein that the investigation has revealed that the evidence collected during investigation pertaining to the financial irregularities justified a trial.

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20. As evident from the aforesaid conspectus of facts, the controversy which has arisen in the present case relates to the expression ‘prosecution in respect of criminal charge is pending’ occurring in paragraph 2.3 of the Office Memorandum dated September 14, 1992. Whereas learned counsel for the



department contended that a 'prosecution in respect of criminal charge is pending' would mean when a charge sheet (challan) is filed by the investigating agency in the criminal court dealing with a case registered against the Government servant; learned counsel for the respondent contended that a 'prosecution in respect of criminal charge is pending' only after the charge is framed by the criminal court. Learned counsel for the department in support of his contention relied upon a decision rendered by a Division Bench of this Court in W.P. (C) Nos. 3793/2011 and 1470/2011 titled as Union of India v. Inspector Jawahar Lal and Union of India & Binod Shahi respectively decided on December 02, 2011. While learned counsel for the respondent relied upon the decision of the Supreme Court reported as (1979) 2 SCC 179 Ratilal Bhanji Mithani v. State of Maharashtra

21. What is meant by the expression 'prosecution in respect of criminal charge is pending' occurring in paragraph No. 2(iii) of the Office Memorandum dated September 14, 1992? When can it be said that 'prosecution in respect of criminal charge is pending' against a Government servant?

22. A careful reading of paragraph Nos. 16 and 17 of the decision of the Supreme Court in Jankiraman's case (supra) noted by us in the foregoing paragraphs reveals that the answers to the aforesaid question(s) are contained in said paragraphs. In Jankiraman's case (supra), one of the questions which had arisen for consideration before the Supreme Court was: 'what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee'? After examining the Office Memorandums dated January 30, 1982 and January 12, 1988 the Supreme Court approved the ratio of law laid down by the Full Bench of the Tribunal that departmental proceedings/criminal prosecution is initiated against the employee only when a charge-memo in disciplinary proceedings and charge-sheet in criminal prosecution is filed. The Court further stated in categorical terms that the sealed cover procedure should be resorted to only when a charge memo is served on the concerned official or the charge-sheet is filed before the criminal court and not before.

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24. There is another reason which compels us to hold that the 'prosecution in respect of criminal charge is pending' when a



charge sheet is filed by the investigating agency in the criminal court dealing with a case registered against the Government servant, which reason is contained in the Office Memorandum issued by the Department of Personnel and Training, Government of India on November 02, 2012, the relevant portion whereof reads as under : -

“8. As regards the stage when prosecution for a criminal charge can be stated to be pending, the said O.M. dated 14.9.92 does not specify the same and hence the definition of pendency of judicial proceedings in criminal cases given in Rule 9(6)(b)(i) of CCS (Pension) Rules, 1972 is adopted for the purpose. The Rule 9(6)(b)(i) of CCS (Pension) Rules, 1972 provides as under : -

“(b) judicial proceedings shall be deemed to be instituted -

(i) in case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made.”
(Emphasis Supplied)

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32. In view of the above discussion, we hold that the department was completely justified in not promoting the respondent to the post of Director (Sugar Technical) for the reason ‘prosecution for a criminal charge was pending’ when the respondent became eligible to be promoted to said post in the year 2007 inasmuch as the police had filed a charge sheet in the criminal court dealing with the FIR registered against the respondent in the year 2003. There was no need to hold any DPC because there was no eligible candidate to be considered and thus it would be useless for a DPC to meet and keep the recommendation in a sealed cover. A question may be put:

What would happen if the respondent would be ultimately acquitted?

The answer then would be that in said situation a DPC akin to a review DPC would be required to be held to consider respondent’s candidature as of the year of the vacancy and his eligibility.”

9. From a perusal of the aforesaid observations, especially the



observations made in para 24 of the decision, it is clear that till a chargesheet is filed in a criminal case against an employee, it cannot be said that 'any prosecution in respect of a criminal charge' in terms of DoPT's O.Ms dated 14.09.1992 and 02.11.1992, is pending against him. In the present case, when the respondents do not deny that even though the FIR against the petitioner was registered on 16.03.2023, no chargesheet before the competent Court has been filed against him till date. We, therefore, have no hesitation in accepting the petitioner's plea that not only on the date when the DPC was convened but even as on date, it cannot be said that any prosecution in respect of a criminal charge is pending against him.

10. We have also considered the respondent's plea that the petitioner's name having been included in the list of suspect officers, he cannot be granted any vigilance clearance. Taking into account the respondent's own stand that the petitioner's name was kept in a sealed cover only on account of the pending FIR registered against him we are of the view that this issue would not be germane for determining the *lis* in the present case. It is, however, made clear that if the respondents are, as per law, entitled to withhold the vigilance clearance against the petitioner, it will be open for them to take appropriate steps, in which eventuality, the petitioner would be at liberty to seek legal recourse as permissible in law.

11. For the aforesaid reasons, we allow the writ petition by directing the respondents to open, within six weeks, the sealed cover containing the recommendations made by the DPC qua the petitioner in April 2013 with further directions that in case he is found fit for promotion



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to the post of DIG, he be granted promotion with all consequential benefits on notional basis from the date his batchmates were granted the said promotion. We however make it clear that the petitioner will be entitled to the pay of a DIG only from the date he is actually promoted to the said post.

12.The writ petition, alongwith the pending application, stands disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 11, 2024

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