



2024:DHC:9011-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21.11.2024

+ W.P.(C) 15608/2024

DHIRENDRA KUMAR PANDEY

.....Petitioner

Through: Ms. Saahila Lamba, Adv.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Tanveer Ahmed Ansari,
SPC with Mr. Hilal Haider,
Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner challenging the Order dated 25.10.2024 issued by the respondents to the extent that the name of the petitioner has been kept in a sealed cover for the purpose of promotion to the rank of Inspector (Ministerial). The petitioner prays for the sealed cover to be opened and if found fit, the respondents to grant promotion to the petitioner to the rank of Inspector (Ministerial) with effect from the date on which the batchmates of the petitioner were promoted to the said post, along with all consequential service benefits.

2. It is the case of the petitioner that the petitioner was appointed as Head Constable (Ministerial) in the Sashastra Seema Bal (SSB) on



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04.08.2007. Claiming that the petitioner had submitted a false Leave Travel Concession (LTC) claim, a Court of Inquiry was conducted, based whereon the SSB made a complaint to the Central Bureau of Investigation (CBI). The CBI registered an FIR, being FIR No. 18/2020, under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code, 1860 (IPC) against one SI/Min Milan Kharkatary and others.

3. On 12.08.2024, the Pers-III (BN) Force Headquarters, New Delhi issued a signal to the concerned units, requiring them to provide the Departmental Enquiry (DE) and Vigilance Clearance Certificate/Integrity Certificate/latest Medical Shape report in respect of the eligible Sub-Inspectors (Ministerial) for their promotion to the rank of Inspector (Ministerial) for the vacancy years 2023 and 2024. The name of the petitioner was forwarded, along with the required documents including the DE/Vigilance Clearance Certificate, which clearly certified that no DE/Vigilance case was pending or contemplated against the petitioner as on 09.08.2024.

4. In spite of the above, the Departmental Promotion Committee (DPC), which was held on 06.09.2024 for recommending promotions to the rank of Inspector (Ministerial), kept the name of the petitioner in a sealed cover.

5. Pursuant to the recommendations of the DPC, the Competent Authority, by an Order dated 04.10.2024, approved the promotion of 34 officials for the vacancy year 2023; and 06 officials for the vacancy year 2024, to the rank of Inspector (Ministerial), denying the said promotion to the petitioner.



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6. The respondents, however, cancelled the recommendation of the said DPC, and instead, convened a fresh DPC on 24.10.2024, based on the earlier signal dated 12.08.2024. Again, the name of the petitioner was kept in a sealed cover, and based on the recommendation of the DPC, *vide* order dated 25.10.2024, the Competent Authority approved the promotion of 24 officers for the vacancy year 2024 to the rank of Inspector (Ministerial).

7. The petitioner, being aggrieved of the same, approached this Court by way of the present petition.

8. The learned counsel for the petitioner submits that as on the date of the DPC, neither any DE nor any charge sheet in the criminal case had been filed against the petitioner, therefore, the DPC erred in resorting to the sealed cover procedure. She submits that this would be a violation of the Office Memorandum dated 14.09.1992. In support of her case, she places reliance on the Judgment of this Court in *Neeraj Kumar Pandey v. Union of India & Ors.*, 2024 SCC OnLine Del 6448.

9. On the other hand, the learned counsel for the respondents submits that the respondents have been informed that a charge sheet is about to be filed against the petitioner. He submits that, therefore, no fault can be found in the DPC resorting to the sealed cover procedure.

10. We have considered the submissions made by the learned counsel for the parties.

11. In *Neeraj Kumar Pandey* (supra), a Division Bench of this Court, which included one of us, that is, Hon'ble Ms. Justice Shalinder Kaur, on considering the Department of Personnel and



Training's (DoPT's) OM dated 14.09.1992, and has held as under:-

“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.”

12. In view of the above clear position in law, we are of the opinion that the DPC erred in resorting to the sealed cover procedure in the case of the petitioner. Merely because the respondents are of the opinion or have been informed that a charge sheet may be filed against



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the petitioner in the future, the DPC could not have resorted to the sealed cover procedure as contemplated and allowed in the DoPT's OM dated 14.09.1992.

13. Accordingly, we allow the present writ petition by directing the respondents to open the sealed cover containing the recommendations made by the DPC dated 25.10.2024, and to process the case of the petitioner for promotion to the post of Inspector (Ministerial) in accordance with law. In case, the petitioner is found entitled to grant of the promotion, he shall be promoted with all consequential benefits on a notional basis from the date his batchmates were granted the said promotion. However, he shall be entitled to pay only from the date he is actually promoted to the said post. The entire exercise must be completed within a period of six weeks from today.

14. The petition is, accordingly, disposed of with the above directions.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 21, 2024/ss/sk/SJ

Click here to check corrigendum, if any