



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

224

CWP-11702-2022 (O&M)
Date of decision: 02.12.2025

Gurdial Kumar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. J.S. Maanipur, Advocate
for the petitioner.

Mr. Satnampreet Singh Chauhan, DAG, Punjab.

Ms. Harpreet Kaur, Advocate
for respondent No.3.

NAMIT KUMAR, J. (ORAL)

1. The instant petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking a writ of certiorari for quashing order dated 06.05.2022 (Annexure P-5), whereby his case for promotion has been kept in a sealed cover on the ground that a criminal case is pending against him.

2. Learned counsel for the petitioner submits that the petitioner initially joined service in the respondent department as Agriculture Development Officer on 05.10.2000. Next promotion from the said post is to the post of Agriculture Officer. His name was placed at Sr.No.637 in the seniority list circulated vide letter dated 19.06.2019. He was implicated in FIR No.124 dated 22.07.2016 under Section 384 of IPC and Section 13(2) of the Prevention of Corruption Act, 1988,

registered at Police Station Civil Lines, Bathinda, along with two other officers of the department in which he was arrested and released on bail after one month. On that ground, he was put under suspension vide order dated 17.08.2016, however, in the said criminal case neither final report under Section 173 of Cr.P.C. has been filed nor charges have been framed against the petitioner till date and no disciplinary proceedings have been initiated. Even the suspension was also revoked vide order dated 21.02.2018 and the petitioner was reinstated. Vide order dated 17.09.2021, while considering the case of the petitioner for promotion to the post of Agriculture Officer, his name was kept in a sealed cover and various persons junior to him were promoted. He further submits that since neither any disciplinary proceedings were pending against the petitioner as no charge sheet was issued to him nor final report under Section 173 of Cr.P.C. was filed before the trial Court in the said criminal case and no charges have been framed, therefore, he was entitled to be promoted and his case has wrongly been kept in a sealed cover. The said action of the respondents is in violation of the law laid down by the Hon'ble Supreme Court in ***Union of India Vs. K.V. Jankiraman : 1991(3) SCT 317***, which has been further reiterated by the Hon'ble Supreme Court in ***Union of India and others Vs. Anil Kumar Sarkar : 2013(2) SCT 753***. In the said judgment, it was held as under:-

*“13. It is not in dispute that an identical issue was considered by this Court in ***Union of India and Others v. K.V. Jankiraman and Others, 1991(3) S.C.T. 317 : (1991)4 SCC 109***. The common questions involved in all those matters were:*

(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? and (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?. Among the three questions, we are concerned about question No.1. As per the rules applicable, the “sealed cover procedure” is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Inasmuch as we are concerned about the first question, the dictum laid down by this Court relating to the said issue is as follows:-

“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 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 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 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.

In para 17, this Court further held:

17. ... 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."

After finding so, in the light of the fact that no charge sheet was served on the respondent-employee when the DPC met to consider his promotion, yet the sealed cover procedure was adopted. In such circumstances, this Court held that "the Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date of his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits..We see no reason to interfere with this order. The appeal, therefore, stands dismissed." The principles laid down with reference to similar office memorandum are applicable to the case on hand and the contrary argument raised by the appellant-Union of India is liable to be rejected.

14. In *Coal India Limited & Ors. v. Saroj Kumar Mishra*, AIR 2007 Supreme Court 1706, this Court, in para 22, has held that a departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued.

15. In *Chairman-cum-Managing Director, Coal India Limited and Others v. Ananta Saha and Others*, (2011) 5 SCC 142, this Court held as under:

*"27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide **Union of India v. K.V. Jankiraman**, (1991) 4 SCC 109 and **UCO Bank v. Rajinder Lal Capoor**, 2007(3) S.C.T. 529: 2007(4) Recent Apex Judgments (R.A.J.) 40: (2007) 6 SCC 694)"*

We also reiterate that the disciplinary proceedings commence only when a charge sheet is issued. Departmental proceeding is normally said to be initiated only when a charge sheet is issued."

3. It has not been disputed in the written statement filed by the respondents that final report under Section 173 of Cr.P.C. has not been filed in the criminal case and, therefore, charges have not been framed against the petitioner nor the petitioner has been issued any charge sheet, therefore, it can be concluded that no disciplinary or criminal case was pending against the petitioner when his case for promotion was kept in a sealed cover.

4. In this view of the matter, the action of the respondents in keeping the name of the petitioner in a sealed cover is not permissible in law and is against the dictum of the Hon'ble Supreme Court in *K.V. Jankiraman* and *Anil Kumar Sarkar's cases (supra)*.

5. In view of the above, the present petition is allowed and the respondents are directed to consider the case of the petitioner for promotion to the post of Agriculture Officer with effect from the date the persons junior to him have been promoted, with all consequential benefits, within a period of three months from the date of receipt of certified copy of this order.

6. Pending applications, if any, stand disposed of.

02.12.2025

Vinay

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No