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

+ W.P.(C) 2947/2022 & CM APPLs. 38302/2023, 11072/2025

VIMAL KUMAR

.....Petitioner

Through: Mr. Dushyant Chaudhary,
Advocate with petitioner.

versus

THE DIRECTOR INTELLIGENCE BUREAU
AND ORS

.....Respondents

Through: Mr. Jagdish Chandra, Mr.
Shubham Kumar Mishra,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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03.04.2025

1. At the time of filing of this writ petition, the petitioner was working as an Assistant Central Intelligence Officer-II in the Foreigner Regional Registration Officer's office. In the writ petition, the petitioner seeks a direction upon the respondents to grant him promotion in respect of which the sealed cover procedure was adopted *vide* memorandum dated 20.01.2016.

2. The petitioner was in the service of the respondent-Intelligence Bureau, when an FIR was registered against him and his son, by the family of his daughter-in-law [FIR No. 1057/2014, PS – Narela, dated 18.08.2024] under Sections 498A, 304B, and 34 of the Indian Penal Code, 1860.



3. Consequent upon institution of criminal proceedings, the petitioner was suspended by the respondent *vide* order dated 21.11.2014. His suspension was extended from time to time, but finally revoked by an order dated 13.11.2015.

4. It is the admitted position that, during the period of the petitioner's suspension, he he had been due for consideration for promotion for the post of Assistant Central Intelligence Officer – I. However, in view of the petitioner's suspension, the recommendations of the Departmental Promotional Committee ["DPC"] with regard to his promotion, remained in sealed cover since April, 2015.

5. After revocation of the suspension, the petitioner addressed a representation dated 07.01.2016 to the respondent, seeking promotion. The respondent declined to entertain the petitioner's representation by Memorandum dated 20.01.2016. It is recorded therein that he was considered for promotion in the DPC 2015-16, but the recommendation was kept in a sealed cover due to his suspension and a criminal case pending against him. The respondent referred to an Office Memorandum dated 14.09.1992, and stated that the sealed cover recommendation would be acted upon only after exoneration of the petitioner from all the charges.

6. By an order of the Trial Court dated 20.08.2019, the petitioner was discharged in the criminal proceedings. It has been held that the accusations against the petitioner in the complaint do not make out offence on any of the provisions invoked against him. Pursuant to the order of discharge, the petitioner made a further representation dated 25.11.2019, and followed up with several reminders.



7. However, the respondent has not yet opened the sealed cover and processed the petitioner's case, which has led to filing of this writ petition.

8. The only contention taken in the reply filed on behalf of the respondent, is that the discharge order dated 20.08.2019 is the subject matter of a revision petition filed before this Court [CRL.REV.P. No. 1098/2019], and the discharge has thus not attained finality.

9. Alongwith the counter affidavit filed by the respondent, certain Office Memorandums have been filed. The Office Memorandum issued by the Department of Personnel & Training dated 19.01.2017, deals specifically with the course of action in respect of the sealed cover procedure in cases where a government servant has been acquitted, but an appeal is contemplated or pending. As far as this aspect is concerned, the Office Memorandum reads as follows:

"The undersigned is directed to refer to this Department's O.M. No. 22011/4/91-Estt.A dated 14.09.1992 issued in the light of the Judgement dated 27.08.1991 of the Hon'ble Supreme Court in the case of Union of India vis K.V. Jankiraman etc. (AIR 1991 SC 2010). References have been received seeking clarification with regard to the course of action in cases where the Government servant is acquitted by trial court but an appeal against the judgment. is either contemplated or has been filed. This issue have been examined in the light of various court judgements including Bank of India and another vs. Degala Suryanarayana, Appeal (Civil) 3054-54 of 1997, (1999) 5 SCC 762 in consultation with Department of Legal Affairs and it is clarified as following:

i. Where the recommendation of DPC has been kept in sealed cover solely on account of pendency of the criminal case, the sealed cover may be opened in case of acquittal of the Government servant provided it has not been stayed by a superior court.

ii. In the order of promotion a mention may however be made that the promotion is provisional subject to the outcome of appeal that may be filed against the acquittal of the Government servant. The



promotion thus will be without prejudice to the action that may be taken if the judgement of the trial court acquitting the Government servant is set aside.

iii. In case on appeal the Government servant stands convicted, following action will be taken:

a. The provisional promotion shall be deemed non est, and the Government servant shall stand reverted;

b. In case of the Government servant being sentenced to imprisonment exceeding 48 hours, he will be deemed to be under suspension in terms of rule 10(2)(b) from the date of conviction.

c. Action under rule 19 (i) of the CCS(CCA) Rules, 1965, read with OM No.1 1012/11 /85-Estt (A) dated the 11th November, 1985 and 4th April, 1986 shall be taken.”

[Emphasis supplied.]

10. It is clear from the reading of the aforesaid Office Memorandum that, even in cases of acquittal, where an appeal is pending or contemplated, if the recommendations of the DPC have been kept in sealed cover solely on account of pendency of a criminal case, the sealed cover is required to be opened, unless the acquittal has been stayed by a superior Court. Any resultant order of promotion may, however, be made provisional, subject to the outcome of the appeal.

11. On the facts of the present case, it is not disputed that the sealed cover procedure was adopted only on account of the pendency of the criminal proceedings, and no disciplinary proceedings were instituted against the petitioner. However, after revocation of his suspension, when he applied for opening of the sealed cover, the respondents stated that the sealed cover recommendations would be acted upon only after exoneration of the government employee from all charges. He has since been discharged. No argument has been advanced that a discharge is to be treated differently from an acquittal for this purpose, instead the Office



Memorandum dated 19.01.2017 has been filed by the respondent itself.

12. The pendency of a revision petition is not *per se* a ground for denying the petitioner the benefit of the judgment of the Trial Court. It is not contended in any event that the order of discharge has been stayed by this Court. The Office Memorandum dated 19.01.2017, makes the position clear that the sealed cover should be opened upon acquittal, unless the order is stayed, and I see no reason why the said procedure has not been followed in this case.

13. This being the position, the petition is allowed. The respondent is directed to open the sealed cover within four weeks from today, and take further steps in terms of the recommendations of DPC and prevailing Office Memorandums, within a period of four weeks thereafter. As the petitioner has retired on 31.01.2024, during the pendency of the writ petition, if any financial benefits arise as a result, they may be remitted to him within three months from today, subject to the result of the revision petition.

14. All pending applications also stand disposed of.

PRATEEK JALAN, J

APRIL 3, 2025

“Bhupi/AD”/