



2025:DHC:669-DB



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

Date of decision: 28.01.2025

+ W.P.(C) 17926/2024

NEERAJ KUMAR PANDEY

.....Petitioner

Through: Mr.Ankur Chhibber,
Mr.Anshuman Mehrotra,
Mr.Nikunj Arora, Mr.Prahil
Sharma, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr.Mukul Singh, CGSC,
Mr.Gokul Sharma, GP, Ms.Ira
Singh, Mr.Aryan Dhaka, Advs.

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, praying for quashing of the Signal dated 05.12.2024 whereby the respondents have communicated to the petitioner that he has been declared 'unfit' for promotion to the post of Deputy Inspector General (in short, 'DIG') by the Departmental Promotional Committee (in short, 'DPC') held on 28.03.2023.

2. It is the case of the petitioner that the petitioner was promoted to the post of Commandant in the Central Reserve Police Force (in short, 'CRPF') on 27.07.2010. In the year 2023, there were 18 vacancies for the post of DIG that were likely to be created. Accordingly, the respondents, *vide* Signal dated 14.02.2023, called for



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the drawing of a panel for the promotion from the post of Commandants to the rank of DIG for the vacancy year 2023. The petitioner was at Sl. No.13 of the gradation list of Commandant as of 01.01.2023, therefore, his name was also included in the said list.

3. Before the DPC could consider the case of the petitioner, an FIR under Section 13(2) read with Section 13(1)(e)(b) of the Prevention of Corruption Act, 1988 was lodged against the petitioner by the Central Bureau of Investigation (in short, 'CBI') on 16.03.2023.

4. The DPC was convened on 28.03.2023 and placed its recommendations with respect to the petitioner in a sealed cover.

5. Aggrieved of the same, the petitioner approached this Court by way of a Writ Petition, being W.P.(C). 15719/2023, titled ***Neeraj Kumar Pandey v. Union of India & Ors.***, claiming therein that the conditions for resorting to the sealed cover procedure had not been satisfied in the present case, as no departmental proceedings had been initiated against the petitioner, nor any charge-sheet in the criminal case filed, and the petitioner had also not been placed under suspension.

6. Taking note of the above submission, which had not been denied by the respondents, this Court by its Judgment dated 11.09.2024 passed in the abovementioned writ petition, held that the resort to the sealed cover procedure was contrary to the Office Memorandums dated 14.09.1992 and 02.11.1992, as well as the Judgment of the Supreme Court in ***Union of India & Ors. v. K.V.***



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Janakiraman, (1991) 4 SCC 109. This Court, therefore, allowed the writ petition by directing the respondents to open the sealed cover containing the recommendations made by the DPC *qua* the petitioner.

7. Pursuant to the above directions, the sealed cover containing the recommendation of the DPC was opened on 03.12.2024. However, the petitioner was found to have been declared ‘unfit’ for promotion by the DPC on the ground that the FIR mentioned hereinabove had been registered by the CBI against him for possession of the assets of Rs.5,61,94,065/- which is disproportionate to his known source of income. The DPC records that considering the general service record and the grave nature of charges in the above FIR, the petitioner was deemed ‘unfit’ for promotion to the rank of DIG (GD) in the CRPF. The DPC notes that in terms of DoP&T Guidelines, it enjoys full discretion to devise its own method and procedures for the objective assessment of the suitability of the candidates who are to be considered by them, including those officers on whom penalties have been imposed.

8. The petitioner, not knowing the reason why he has been declared ‘unfit’ for promotion, approached this Court by way of the present petition.

9. This Court, by its Order dated 24.12.2024, took note of the submissions of the learned counsel for the petitioner that the petitioner had consistently been graded as “very good” and “excellent” in the APARs and, has been in the Shape-I Medical Category, passed his promotional course, including his Duty Battalion Course, and that



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there was no reason why he has been declared 'unfit' for promotion. This Court, therefore, called upon the respondents to produce the record of the concerned DPC.

10. These records were duly produced before us by the respondents on 27.01.2025, wherein the abovementioned observation of the DPC for declaring the petitioner 'unfit' for promotion was discovered and communicated to the learned counsel for the petitioner.

11. The learned counsels for the parties then prayed for time to make submissions on the challenge of the petitioner to the decision of the DPC.

12. Today, the learned counsel for the petitioner has placed reliance on the Office Memorandum No.22012/1/99-Estt (D) dated 25.11.2004, to submit that it is only in terms of the Office Memorandum dated 14.09.1992 and the Judgment of the Supreme Court in *Union of India vs. K.V. Janakiraman* (supra), and where the conditions mentioned therein are applicable, that the vigilance clearance for the candidates being considered for promotion can be withheld, and the DPC can be informed that a sealed cover procedure has to be followed for the candidates concerned. He submits that the underlying details of such cases should not be informed to the DPC, lest it would colour the judgment while considering the case of the candidates.

13. He submits that in the present case, the Vigilance Department had granted the vigilance clearance to the petitioner for being considered for promotion as none of the conditions mentioned in the



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OM dated 14.09.1992 had arisen. He submits that, therefore, the DPC could not have considered the underlying allegations against the petitioner that had formed the basis of the registration of the FIR.

14. He submits that in any case, the CBI has since filed a Closure Report on 07.12.2024 in connection with the said FIR.

15. He also placed reliance on the Judgment of this Court in ***Hemant Kumar Sahu v. Union of India & Ors.*** 2019:DHC:2115-DB, to submit that although the DPC can devise its own procedure, it cannot base its decision on extraneous considerations. He submits that once the OM dated 25.10.2004 clearly states that the underlying allegations forming part of the FIR cannot be disclosed to the DPC, there was no justification for the DPC to consider the same while declaring the petitioner unfit for promotion.

16. On the other hand, the learned counsel for the respondents submits and reiterates that the DPC has full discretion to devise its own method and procedure for the objective assessment of the suitability of the candidates. He submits that in the present case, though the vigilance clearance had been given to the petitioner, the DPC was not debarred from considering the underlying allegation on which the FIR has been registered against the petitioner. Placing reliance on the Judgment of the Supreme Court in ***Union of India & Anr. v. S.K. Goel***, (2007) 14 SCC 641, he submits that, the DPC having considered the relevant factors and having full discretion to devise its own method and procedure for the objective assessment of the suitability of the candidates, the decision of the DPC cannot be



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faulted.

17. We have considered the submissions of the learned counsels for the parties.

18. From the above narration of facts, it would be evident that the petitioner had been granted vigilance clearance for being considered by the DPC, convened for filling up the post of DIG (GD) in the CRPF for the anticipated vacancies for the year 2023. In its meeting held on 28.03.2023, the DPC decided to keep its recommendation with respect to the petitioner in a sealed cover. Pursuant to the Order dated 11.09.2024, passed by this Court in W.P.(C) 15719/2023, the said sealed cover was directed to be opened. This Court further directed as under:

“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 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.”

19. In compliance with the said order, the sealed cover of the petitioner was opened on 03.12.2024, and he was declared unfit for promotion. The DPC, in its recommendations, has observed as under:

“2. As per DoP&T guidelines, the DPCs enjoy full discretion to devise their own



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methods and procedure for objective assessment of the suitability of candidates who are to be considered by them, including those officers on whom penalty has been imposed.

3. *After going through the record of service of **Shri Neeraj Kumar Pandey, Commandant (IRLA-4009)**, the DPC has observed that a FIR No. RC0062023A0008 dated 16/03/2023 has been registered by CBI, ACB Lucknow against him in connection with possession of assets of Rs.5,61,94,065/-, which is disproportionate to his known source of income. Therefore, considering general service record and grave nature of charge in above FIR, the DPC graded **Shri Neeraj Kumar Pandey, Commandant (IRLA-4009)** as 'UNFIT' for promotion to the rank of DIG (GD) in CRPF,"*

20. At the outset, we agree with the submission of the learned counsel for the respondents that an employee has no right to promotion but only a right to be considered for promotion. Further, the DPC enjoys full discretion to devise its own method for the objective assessment of the comparative merit of eligible officers [refer **S.K. Goel** (supra)]. It is also well settled that the High Court, under Article 226 of the Constitution of India, cannot sit in an appeal over the assessment made by the DPC, however, if the assessment made by the DPC is perverse, or not based on the record, or influenced by extraneous circumstances, it is always open to the High Court to remit the matter back to the DPC for reconsideration.

21. In the present case, the DPC, in declaring the petitioner unfit for promotion, has placed reliance on the FIR registered against him. The learned counsel for the petitioner, placing reliance on the Office



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Memorandum dated 25.10.2004, has submitted that even where the vigilance clearance is rejected to a candidate (though, in the present case, the petitioner had been granted the vigilance clearance) on the ground of the pendency of a disciplinary case or criminal prosecution proceedings, only a bare statement to this regard is to be communicated to the DPC and no other details regarding the pending inquiry or the nature of charges, etc. are to be furnished to the DPC, lest these details weigh with the DPC in making its recommendations. We reproduce the relevant extracts from the Office Memorandum dated 25.10.2004 as under:

“OFFICE MEMORANDUM

Subject:- Cases of persons whose conduct is under investigation or against whom a charge sheet is pending - consideration for promotion - clarification regarding.

*The undersigned is directed to refer to the Department of Personnel and Training Office Memorandum No.22011/4/91-Estt-A dated 14th September, 1992 (copy enclosed) which has been issued pursuant to the judgment of the Hon'ble Supreme Court in the case of Union of India vs. K.V. Janakiraman etc. (AIR 1991 SC 2010), and is in supersession of all previous instructions on the subject, and to say that para 2.1 of the said Office Memorandum provides that the DPC shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned in para 2 of the Office Memorandum, along with other eligible candidates, **without** taking into consideration the disciplinary case/criminal prosecution pending. Therefore, it is made clear that only a bare statement that case of an employee in the*



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*zone of consideration/extended zone of consideration is covered by any of the three situations indicated in para-2 of the said Office Memorandum is to be furnished to the DPC to enable it to place its recommendations in the sealed cover. **No other details about the pending inquiry or the nature of charges etc. are to be furnished to the DPC lest these details weigh with the DPC in making its recommendations, which are to be placed in the sealed cover.***

2. Considerable doubts also persist about the furnishing of the vigilance clearance and integrity certificate to the DPC. It is clarified that the DPC is required to consider the cases of all persons who are otherwise eligible in terms of the Recruitment Rules as on the relevant crucial date and are in the zone of consideration. If, however, case of an employee in the zone of consideration is covered by any of the three situations, only this fact is to be furnished to the DPC so that the recommendations could be placed in sealed cover. Where none of the three situations has arisen, a simple vigilance clearance would need to be furnished. Vigilance clearance/status would have no other significance and would not be a factor in deciding the fitness of the officer for promotion on merit.

3. It is also clarified that there is no requirement of furnishing a separate integrity certificate to the DPC. In terms of the judgment of the Hon'ble Supreme Court in the case of Union of India vs. K.V. Janakiraman etc. (AIR 1991 SC 2010), no promotion can be withheld merely on the basis and of suspicion or doubt or where the matter is under preliminary investigation has not reached the stage of issue of charge sheet etc. If in the matter of corruption/dereliction of duty etc., there is a serious complaint and the matter is still under investigation of CBI or otherwise,



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the Government is within its right to suspend the official. In that case, the officer's case for promotion would automatically be required to be placed in the sealed cover.

4. If the conditions indicated in para-2 of DoPT Office Memorandum dated 14th September, 1992, arise only after the DPC has made its recommendations and therefore, the recommendations could not be placed in the sealed cover, para-7 of the said Office Memorandum provides that the recommendations of the DPC shall be deemed to have been placed in the sealed cover and he shall not be promoted until he is exonerated of the charges. Therefore, after the recommendations of DPC have been approved by the competent authority, it is necessary to again seek the status position from the concerned vigilance division before issuing promotion order in respect of any officer included in the approved panel of names to ensure that there is no hindrance in issuing the promotion order in respect of the concerned officer."

22. A reading of the above Office Memorandum would clearly show that even where the vigilance clearance is withheld, the DPC has to assess the suitability of the government servant along with other eligible candidates 'without taking into consideration the disciplinary case/criminal prosecution proceedings'. These proceedings are relevant to the DPC only for the purpose of placing its recommendations regarding such a candidate in a sealed cover. The Office Memorandum expressly prohibits the details about the pending inquiry or the nature of charges to be furnished to the DPC, lest these details weigh with the DPC in making its recommendations, which are



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to be placed in the sealed cover.

23. The reasons for the above instructions are not far to seek. In case the candidate is later found guilty in the disciplinary inquiry or in the criminal proceedings, the consequences thereof on the promotional aspect of such candidate shall follow in accordance with the law. However, if the candidate is exonerated in such departmental proceedings and/or criminal proceedings, such candidate cannot be denied promotion only on the ground that such departmental proceedings or criminal proceedings were pending against him. The case of the candidate is, therefore, to be considered remaining uninfluenced by the pendency of such departmental proceedings and/or the criminal proceedings. If the details of the departmental proceedings or the criminal proceedings are allowed to influence the decision of the DPC, it would amount to the DPC prejudging and punishing the candidate without any inquiry or opportunity of hearing; it would be a decision taken by the DPC in violation of the principles of natural justice with far reaching civil consequences on the candidate. The same would, therefore, vitiate the decision of the DPC, making it unsustainable in law.

24. The consequence of an FIR being registered against the candidate for possessing disproportionate assets may also be used to place such candidate in the 'Agreed List', which may entail denial of the vigilance clearance or denial of placement of such candidate in sensitive/corruption-prone areas, however, this also cannot influence the DPC while considering the case of the candidate on its own merit



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while remaining uninfluenced by such proceedings.

25. In ***K.V. Janakiraman*** (supra), the Supreme Court cautioned that, in many instances, preliminary investigations or FIRs do not even result in the issuance of a charge sheet or charge memo. The employee therefore, cannot be condemned only on basis of issuance of a charge-sheet or a charge memo. However, keeping in view the seriousness of the charge, the employer has the power to suspend the employee under the relevant rules, which would result in resort to the sealed cover procedure. In such a case, the employee would not get a promotion unless he/she is exonerated in such inquiry or criminal proceedings. This would bring about a balance in protecting the interest of the employer while at the same time ensuring that an employee is not condemned without substance. We may quote from the Judgment of ***K.V. Janakiraman*** (supra) 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 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



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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. 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: (ATC p. 196, para 39)

“(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 served on the concerned official or the charge-sheet



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filed before the criminal court and not before;

17. There is no doubt that there is a 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."

26. In the facts of the present case, as noted hereinabove, the vigilance clearance had been granted to the petitioner for being considered for promotion. Though the petitioner had been placed in the "Agreed List", the allegations forming the basis of the FIR against him, should not have been brought to the notice of the DPC, which should have considered the case of the petitioner on the basis of his Annual Confidential Reports, medical condition, and other relevant circumstances. While the DPC could surely have devised its own procedure for an objective assessment of the comparative merit of eligible officers, having placed reliance on the allegations on the basis of which the FIR was registered against the petitioner, it has, taken note of extraneous circumstances which has clouded its decision. The same, therefore, cannot be sustained.

27. We may also note that the respondents have admitted that they have been informed that the CBI has since filed a closure report in the



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FIR.

28. In view of the above, the present petition is allowed. The DPC recommendation dated 28.03.2013 *qua* the petitioner, is hereby set aside. The respondents are directed to convene the Review DPC to assess the suitability of the petitioner for promotion to the post of DIG in the CRPF in accordance with the law within a period of six weeks from today.

29. In case the petitioner is declared fit for promotion to the post of DIG, he shall be granted promotion with all consequential benefits on a notional basis from the date of his batchmates' promotion and placed one step ahead of his immediate junior. We, however, make it clear that the petitioner shall be entitled to the pay of the DIG rank only from the date when he actually assumes the rank, however, the notional fixation of his pay shall be determined based on the notional date of his appointment.

30. The petition is disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 28, 2025/Arya/sg/DG

Click here to check corrigendum, if any