

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition (S/S) No. 1910 of 2013**

Divan Singh Rawal

... Petitioner

Versus

State of Uttarakhand & others

..... Respondents

**Present:**

Mr. Vishwa Deepak Bisen, Advocate present for the petitioner.  
Mr. T.P.S. Takuli, Brief Holder, present for the State.

**Hon'ble Sudhanshu Dhulia, J.**

1. The petitioner before this Court is a Sub-Inspector in the Uttarakhand Civil Police. He has been denied promotion to the next higher post of Inspector. Hence, the present writ petition.

2. One of the criteria for promotion to the post of Inspector is seniority subject to the rejection of unfit. The petitioner having come under the zone of consideration faced the interview of the Departmental Promotion Committee (*in short "DPC"*) on 16.12.2011. The promotion was to be made for the vacancies to the year 2010-2011. For the reasons best known to the DPC, it adopted a sealed cover procedure in the case of the petitioner. This matter has been challenged by the petitioner in a writ petition (WPSS No. 1275 of 2013) before this Court which was allowed vide order dated 12.11.2013 by the learned Single Judge of this Court by passing following order:-

“Petitioner is working as Sub Inspector in Civil Police. Petitioner was considered for promotion on the post of Inspector, however, his result was kept in a seal cover and not declared.

Learned Standing Counsel for the State submits that as per Government Notification dated 23.09.2004, only such Sub Inspectors shall be considered for promotion on the post of Inspector, who have served for 10 years on the post of Sub Inspector and are having satisfactory service record and do not have any adverse entry for the last three years; since petitioner was awarded censure entry within 3 years, therefore, his result was directed to be kept in a seal cover.

I have carefully perused the Government Notification dated 23.09.2004. There is no such provision of keeping the result in a seal cover. If any

adverse entry is awarded to the petitioner for last three years, he ought not to have been considered for promotion and his candidature could have been rejected. However, keeping the result in a seal cover seems to be unjustified, therefore, present petition is disposed of with a direction to the respondents to declare the result of the petitioner within two weeks from today.”

3. The envelope was sealed on 15.07.2013 and it was opened on 21.11.2013 and it was found that though the petitioner was found eligible and under the zone of consideration but he was not promoted, as there was a “censure entry” dated 30.12.2012 against him. Hence, the petitioner was not promoted to the post of Inspector. This is now in the impugned order dated 21.11.2013, which is presently under challenge before this Court.

4. The main ground for challenge the impugned order by the petitioner is that the vacancies of Inspector were of the year 2010-2011 when the DPC had met to appreciate the candidature of the petitioner for the aforesaid post. At that time, there was no departmental enquiry pending against the petitioner, therefore adoption of sealed cover procedure is itself wrong.

5. Learned counsel for the petitioner has relied upon a decision of Hon’ble Apex Court in **Union of India Vs Dr. Smt. Sudha Salhan** (Civil Appeal No. 4266 of 1991 decided on 07.01.1998) of which para 6 reads as under:-

“The question, however, stands concluded by a Three Judge decision of this Court in Union of India and Ors. v. K.B. Jankiraman and Ors., 1991(4) SCC 109 : (1991(5) SLR 602 (SC) in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to the higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the “sealed cover” procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a “sealed cover” only if on the date of consideration of the name for

promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to.”

6. In view of the above fact as well as considering the decision of Hon’ble Apex Court, the writ petition succeeds. The impugned order dated 21.11.2013 passed by respondent No. 3 is quashed. A mandamus is issued to the respondents to promote the petitioner to the post of Inspector. It is also made clear that the promotion of the petitioner shall be effective from the date it has been made effective in case of other candidates who have been promoted in the selection process.

**(Sudhanshu Dhulia,J.)**

31.10.2014

Nitesh