

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

CWP No.12235 of 2011(O&M)
Date of decision: June 30, 2015

Sudesh Kumar

----Petitioner

Versus

State of Punjab and others

----Respondents

CORAM: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.H.S.Dhindsa, Advocate for the petitioner.

Mr.Ajaib Singh, Addl. AG, Punjab.

Mr.Bhuwan Luthra, Advocate for respondent No.2.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order dated 1.6.2011 (Annexure P-6), whereby, respondent No.3 has been promoted to the post of District Manager ignoring the petitioner.

The petitioner is working as Senior Assistant in the office of Punjab State Scheduled Castes Land Development and Finance Corporation. Vide order dated 13.02.2002 five colleagues of the petitioner were placed under suspension on account of allegations of cheating and misappropriation of records concerning purchase of plots for 210 beneficiaries in District Ferozepur and disciplinary proceedings were also initiated against them. The petitioner was not one of them. Later, FIR No.38 dated 6.7.2006 under Sections 409/120-B/420 IPC read with section 13(1)(d), 13(2) of Prevention of Corruption Act, 1988, Police Station Vigilance Bureau, Ferozepur

was registered against various officials of the respondent-corporation including the petitioner. However, challan was not presented nor any departmental proceedings initiated against the petitioner.

The promotion of the petitioner to the post of District Manager became due on 10.4.2011 and he represented to the department that he be promoted. In his representation, it was stated that as no show cause notice or charge sheet has been issued to the petitioner and in the FIR no challan has been presented, hence, he could not be denied promotion. Reference was made to instructions of the Punjab Government dated 6.3.2000 as per which:-

“the Vigilance enquiry shall not affect promotion, pension etc. unless the office/official involved in the charge sheet or challan has been put in the Court of Law.”

However, disregarding the case of the petitioner, respondent No.3 who is junior to the petitioner, was promoted on 10.6.2011. The promotion order specifically mentions that the case of the petitioner will be considered only after he is given clean chit in the vigilance case.

It is contended that the action of not considering the case of the petitioner for promotion merely on account of the pendency of vigilance case is illegal. Further discrimination has been pleaded by referring to the case of one Shri Gurdarshan Singh JA who has been promoted despite departmental proceedings pending against him.

In the written statement filed on behalf of respondent No.2, it has been stated that vide order dated 18.5.2010 sanction to prosecute the petitioner in case FIR No.38 dated 6.7.2006 has been

accorded by the competent authority. Hence, the petitioner could not be considered for promotion.

Regarding Gurdarshan Singh, it has been stated that at the time when he was promoted only inquiry was pending against him and sanction to prosecute him had not been granted. Moreover, his promotion is conditional subject to the outcome of the criminal case.

As regards the petitioner having not been charge-sheeted or departmental proceedings having not been initiated against him, it is stated that no charge-sheet or departmental proceedings were initiated as the matter was referred directly to the Vigilance to investigate the matter and take action in accordance with law. It is stated that it is for the prosecuting agency to prove the charges against the petitioner and therefore respondent No.2 is not in a position to say as to whether there is any incriminating material against the petitioner or not.

I have heard Learned counsel for the parties and perused the record.

Learned counsel for the petitioner relies on **Union of India v. K.V. Jankiraman, (1991) 4 SCC 109** to contend that promotion of an employee cannot be withheld merely on account of registration of a criminal case. It is contended that as per this judgment which has since been followed by the Hon'ble Supreme Court in later cases as well, it has been held that after duly considering the case of a Government servant for promotion by the

DPC or other competent authority, the result thereof may be kept in a sealed cover only in cases where Government servant is under suspension or a charge-sheet has been issued and the disciplinary proceedings are pending; or prosecution for criminal charge is pending. In the absence of these three circumstances, the Government servant cannot be denied promotion.

On the other hand, Learned counsel for the respondent -Corporation contends that as per Regulation 26 of the Punjab Scheduled Castes Land Development & Finance Corporation(Staff) Regulation, 1971, all promotions to posts under the Corporation are to be made on the basis of seniority-cum-merit and no person shall have a right to be promoted to any post on the basis of seniority alone. He contends that even otherwise the petitioner does not have an automatic right for promotion merely on the basis of seniority and the petitioner was rightly not considered for promotion on account of the pendency of the criminal case and the sanction for prosecution granted against him.

The record reveals that the petitioner was not considered for promotion merely on account of the vigilance case pending against him and the sanction for prosecution granted therein. In this regard the relevant extract from the record pertaining to the consideration of the petitioner for promotion as annexed with the written statement, is as under:-

“Shri Ram Lubhaya Assistant District Manager may be promoted to the post of District Manager against the post of District Manager which is going to fall vacant because

a case of misappropriation in the subsidy in respect of plots is already registered against Sudesh Kumar who is senior to Ram Lubhaya alongwith others and the corporation has already given sanction for prosecution to the vigilance bureau, Ferozepur, holding him accused, although the employee has stated in his representation under consideration that there is no case pending in the court against him but the corporation has already given sanction to prosecute the employee in the case in the court beside this the Hon'ble Punjab and Haryana High Court vides its decision dated 17.4.2011 published in English Tribune has held that pending the investigation with the vigilance, no promotion can be made hence the representation made by the employee deserves to be filed. The promotion of Shri Ram Lubhaya is subject to the acquittal of Shri Sudesh Kumar, who will then be reverted back to his earlier posting."

In **Union of India v. K.V. Jankiraman, (1991) 4 SCC**

109, it has been observed:

"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. 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 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.”

In **Union of India v. Sudha Salhan (Dr)**, (1998) 3 SCC

394, at page 396 the Hon'ble Supreme Court observed as under:

“6. The question, however, stands concluded by a three-Judge decision of this Court in Union of India v. K.V. Jankiraman 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 a 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.”

The same view was reiterated in **Bank of India v.**

Degala Suryanarayana, (1999) 5 SCC 762, at page 769 :

“However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well-established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India v. K.V. Jankiraman SCC at pp. 114-115 : AIR at p. 2013). As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended in acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 be withheld for

the DE proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986.”

In the light of the above, the only conclusion that is possible, is that the denial of consideration of the case of the petitioner for promotion on the ground of pendency of the vigilance case and the grant of prosecution sanction therein, was unjustified and illegal.

Accordingly, this writ petition is allowed. It is directed that the case of the petitioner for promotion be considered as on the date the earlier consideration was done pursuant whereto promotion order Annexure P-6 was passed. If he is otherwise found suitable for promotion, then the pendency of the vigilance case and the prosecution sanction granted therein, will not be an impediment to his promotion which be granted to him retrospectively w.e.f., 1.6.2011 i.e., the date the order Annexure P-6 was issued. The petitioner would also be entitled to all consequential benefits.

June 30, 2015

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**(HARINDER SINGH SIDHU)
JUDGE**