**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT**

**JAIPUR**

S.B. Civil Writ Petition No.18074/2018

Sandeep Kumar Berar son of Shri Mangtu Ram, aged about 36 years, resident of Village Fatulhi, District and Tehsil Sriganganagar (Raj.), at present is posted at Jaipur in the office of DIG stamp Jaipur

----Petitioner

Versus

1. State of Rajasthan thorough Secretary, Department of personnel, Government Secretariat, Jaipur.

2. Board of Revenue Rajasthan, Ajmer through its Registrar.

----Respondents

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For Petitioner(s) : Mr. Manoj Bhardwaj
For Respondent(s) : Mr. Pradeep Kalwania, GC

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**HON'BLE MS. JUSTICE REKHA BORANA**

**Order**

**31/03/2022**

The brief facts of the case are as under:-

After being successful in the RAS examination 2003, the petitioner was appointed as Nayab Tehsildar on 15.05.2006. The seniority list of the Nayab Tehsildars was issued by the Department on 30.11.2007 whereby the petitioner stood at serial No.323. In the year 2011, a decision was taken by the Department to promote the Nayab Tehsildars as Tehsildars on urgent temporary basis. On 10.10.2011, the persons junior to the petitioner were promoted but he was not accorded promotion. Upon inquiring, it was found that as a criminal proceeding was pending against the petitioner, he was not promoted.

It has been submitted in the writ petition that the petitioner was married on 27.10.2007 to one of his batchmates and the marriage was a love marriage. On 08.04.2008, an F.I.R. was registered by the wife of the petitioner against him for the offences under Sections 498-A and 406 of the Indian Penal Code. After the investigation, a charge-sheet was filed against the petitioner and even charges were framed on 16.07.2012. It has been stated that the wife of the petitioner had, just to harass him, lodged the said F.I.R and also filed three other complaints whereby either a negative report was filed or the complaint was disposed of in favour of the petitioner.

An application was moved by the wife of the petitioner even to the Board of Revenue requesting for a disciplinary action to be taken against the petitioner. The said complaint too was concluded to be a fake one by the Board of Revenue.

When the petitioner was not afforded promotion, he preferred a writ petition being **S.B. Civil Writ Petition No.9875/2013 (Sandeep Kumar Berar vs. State Revenue Department)** which was disposed of vide order dated 03.11.2015. The petitioner was directed to address a comprehensive representation to the respondent-authorities and the respondents were directed to decide the same by a detailed and speaking order. In pursuance to the said directions, the petitioner moved a representation on 23.11.2015 but the same remained undecided at that stage and therefore, the petitioner preferred a contempt petition before this Court. During the pendency of the contempt petition, the representation of the

petitioner was dismissed on 19.01.2017 on the ground that the case of the petitioner for promotion has already been considered in the DPC meeting held on 31.08.2016 qua the year 2012-13 and result of the same had been kept in a sealed cover. Because of the representation of the petitioner being decided as aforesaid, the contempt petition was disposed of. The petitioner then again, on 23.06.2017 and 08.05.2018 moved a representation to the respondent-authorities. On the said representation being served on the respondent authorities, it was informed vide communication dated 23.05.2018 that as the criminal proceedings against the petitioner are pending, the sealed cover bearing the result of the promotion of the petitioner as Tehsildar would be opened only after his acquittal in the said proceedings in terms of Clause 12.7 of the circular dated 04.06.2008 issued by the Department of Personnel.

In the said circumstances, aggrieved of the inaction of the respondent-authorities in not granting promotion to the petitioner, the present writ petition has been preferred on the following grounds:

(i) Merely registration of an F.I.R. cannot debar the petitioner from being promoted. The petitioner has neither been arrested nor been convicted in the said proceedings and therefore, he could not be denied promotion.

(ii) The complaints lodged by the wife of the petitioner were just with an intention to harass the petitioner and were fake, the fact which has been admitted by the Board of Revenue also.

(iii) So many IPS Officers had been granted promotions despite criminal cases being pending against them. To name a few, the petitioner relied upon the cases of:

1. *Shri Dinesh M.N., IPS*
2. *Shri K.V. Janaki Raman, IPS*

wherein Orders were passed by the Department and the cases of:

1. ***Kailash Chand Bohra Vs. State (Home Department) & Anr.; S.B. Civil Writ Petition No.17238/2015*** (decided on 16.05.2017).
2. ***Banshi Lal Vs. State of Rajasthan; S.B. Civil Writ Petition No.15429/2019*** (decided on 18.02.2021).
3. ***Khan Mohammed Vs. State of Rajasthan & Ors.; S.B. Civil Writ Petition No. 15788/2019*** (decided on 18.02.2021).
4. ***Ravindra Kumar Yadav Vs. State of Rajasthan & Ors.; S.B. Civil Writ Petition No. 15499/2019*** *(decided on 18.02.2021).*

Therein the Court had interfered in the similar circumstances and the respondents were directed to open the sealed cover of the result of the promotion of the petitioners therein.

(iv) The persons junior to him have been promoted as SDOs now whereas the petitioner still remains a Nayab Tehsildar even after 16 years of his service.

Per contra, counsel for the respondents submitted that:

(i) The promotion of the petitioner has been kept on hold not only because an F.I.R. has been lodged against him but

even a challan has been filed and the charges have been framed against him. The criminal proceedings against the petitioner are pending before the competent Court and in terms of the circular dated 04.06.2008, he could not be promoted unless and until he is discharged of the criminal offences.

(ii) The petitioner has already been considered for promotion in the DPC meeting dated 31.08.2016 against the vacancies of year 2012-13 and his result has been kept in a sealed cover awaiting result of the criminal proceedings pending against him.

(iii) In the earlier writ petition filed by the petitioner, a direction was issued by this Court to decide the representation of the petitioner and the same has been decided by the respondent-authorities vide a detailed and speaking order. The said order dated 19.01.2017 and the further communication dated 23.05.2018 not being under challenge, the present writ petition cannot be held to be maintainable.

(iv) The persons alleged by the petitioner to be similarly situated and promoted, are not governed by the similar set of Rules by which the petitioner is governed. The petitioner is governed by the Rajasthan Tehsildar Service Rules, 1956 and in terms of Rule 29 A (4) of the Rules of 1956 the result of the promotion of the petitioner has been kept in a sealed cover.

During the pendency of the writ petition, an application had

been moved on behalf of the petitioner whereby certain orders pertaining to the similarly situated persons have been placed on record. All the orders as placed on record are the orders pertaining to the police officials who had not been granted promotion because of the pendency of some criminal proceeding against them. In all the matters, this Court had interfered with and directed the respondent Department to open the sealed cover containing the result of the petitioners therein. Further, in all the matters, it had been directed to grant promotion to the incumbents therein subject to decision of the criminal case. The orders as placed on record are as under:-

1. ***Kailash Chand Bohra Vs. State (Home Department) & Anr.; S.B. Civil Writ Petition No.17238/2015*** (decided on 16.05.2017).
2. ***Banshi Lal Vs. State of Rajasthan; S.B. Civil Writ Petition No.15429/2019*** (decided on 18.02.2021).
3. ***Khan Mohammed Vs. State of Rajasthan & Ors.; S.B. Civil Writ Petition No. 15788/2019*** (decided on 18.02.2021).
4. ***Ravindra Kumar Yadav Vs. State of Rajasthan & Ors.; S.B. Civil Writ Petition No. 15499/2019*** (decided on 18.02.2021).

Orders dated 23.01.2015 issued by the Government of Rajasthan granting promotion to Shri Dinesh M.N., IPS dated 02.01.2017; granting promotion to Shri Hemant Priyadarshi, IPS and Shri Sanjay Agarwal, IPS dated 25.01.2017; granting

promotion to Shri A. Ponnuchamy, IPS dated 02.11.2018; granting promotion to Shri Kailash Chand Bohra, Police Inspector have also been placed on record, wherein the promotions to the officials had been granted subject to the outcome of the pending criminal proceedings against them.

A reply to the said application had been preferred on behalf of the respondents and passing of the orders as mentioned above has not been denied. The only averment raised was that the cases of the incumbents therein were different from that of the petitioner. How was the case of the petitioner different from those officials has nowhere being stated in the reply. Further, it has been averred that in terms of Circular dated 04.06.2008 issued by the State, the result of the petitioner has been kept in a sealed cover.

Heard learned counsel for the parties and perused the material available on record.

From a bare perusal of the record, it is clear that the present one is a case of clear discrimination between the employees of the Department. It is clear on record that a number of police officials against whom the criminal proceedings are pending have been promoted subject to the decision of the pending criminal proceedings. Why the same relief cannot be granted to the petitioner has not been explained or clarified by the Department.

A vague averment has been made on behalf of the respondents that the persons who have been alleged to be similarly situated by the petitioner were in fact not governed by the same set of Rules as that of the petitioner. By what Rules the

petitioner was governed and how were the same different from the other employees has not been clarified or submitted. Such vague pleadings without being supported or corroborated by any documentary evidence would find no force to conclude that the petitioner is not entitled to the similar relief as granted to the persons of whom the orders have been placed on record.

The relevant portion of the judgment as passed in ***Kailash Chand Bohra's*** case (supra) is reproduced as under:

> *"Undeniably, petitioner's case was considered for promotion by the DPC, but the result has been kept in sealed cover as has been informed by the counsel for the State-respondents. The sealed cover has not been opened only owing to pendency of the criminal proceedings against the petitioner. It is also not denied that identically situated employee namely Shri Hanuman Ram Bishnoi, who is a co-accused along with the petitioner, in the same crime pending trial before the jurisdictional Court, has been accorded promotion. No reasons have been put forth for not according same treatment to the petitioner.*
>
> *Learned counsel for the State-respondents neither in response to the writ application nor to the additional affidavit, detailed any reason as to why a differential treatment has been accorded in the matter of petitioner. Similarly placed persons, have been accorded benefit of promotion subject to outcome of criminal proceedings against them. There is no reason why the petitioner cannot be allowed similar treatment.*
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> *For the reasons and discussion aforesaid, the writ application succeeds and is hereby allowed.*

*Respondents are directed to open the sealed cover and proceeded accordingly.*

*In case, the petitioner has been recommended for promotion, he would be accorded all consequential benefits on notional basis, subject to outcome of criminal proceedings pending against him.*

*No costs."*

Similar orders passed by the Department in the case of Shri Dinesh M.N., IPS and Shri A. Ponnuchamy, IPS are also reproduced for ready reference:-

*"Shri Dinesh M.N., IPS (RJ:1995), Managing Director, RAJSICO is hereby promoted in the Selection Grade (Pay Band-4: Rs.37400-67000; plus Grade Pay Rs.8700). Grade of the Deputy Inspector General of Police (Pay Band: Rs.37400-67000 plus Grade Pay Rs.8900) and Grade of the Inspector General of Police (Pay Band: Rs.37400-67000 plus Grade Pay Rs.10000) of Indian Police Service with effect from 09.05.2014. The said scales/grades are granted subject to the outcome of all pending criminal proceedings against him."*

*"Shri A. Ponnuchamy, IPS (RJ:1991) is hereby promoted in the Grade of Additional Director General of Police (HAG Rs. 67000-79000) of Indian Police Service with effect from 27.10.2016 i.e. date of reinstatement in service subject to the outcome of all pending criminal proceedings against him."*

In view of the above mentioned orders, it is clear that it has been a regular practice of the Department to promote the police officials subject to the decision of the criminal proceedings pending against them. Therefore, on the sole ground of

discrimination, the present writ petition of the petitioner deserves to be allowed.

For the reasons discussed above, the writ petition succeeds and is hereby allowed. The respondents are directed to open the sealed cover pertaining to the recommendation of the screening meeting qua the petitioner. If the petitioner has been recommended for promotion, he be accorded promotion which shall be subject to the outcome of the criminal proceedings pending against him. The required orders be passed within a period of one month from the date of receipt of the copy of the present order.

All the pending applications also stand disposed of.

**(REKHA BORANA)J.**

Ashutosh