

[2023 (176) FLR 197]
(ALLAHABAD HIGH COURT)

NEERAJ TIWARI, J.

Civil Misc. Writ Petition No. 7917 of 2022

September 9, 2022

Between

UMESH PRATAP SINGH

and

STATE OF U.P. and others

**Promotion—Denial of on ground of pendency of criminal proceeding—
Legality—Mere pendency of criminal case coupled with the fact that the
petitioner was permitted to continue in service and also granted promotion—
Cannot be ground for denying promotion—Subsequent service record of
petitioner—Found excellent, unblemished, without any punishment—Same
should have been additional ground to grant him promotion—Impugned
order not sustainable—Set aside—Petition allowed, directing respondent No. 1
to take necessary action to open sealed cover envelope and grant promotion to
petitioner.** [Paras 12 to 16]

Counsel for the Petitioner : Ms. Atipriya Gautam, Devesh Mishra, Rishabh Kesarwani and Vijay Gautam.

Counsel for the Respondent : C.S.C.

JUDGMENT

NEERAJ TIWARI, J.—Heard Sri Vijay Gautam, learned Senior Counsel assisted by Ms. Atipriya Gautam, learned counsel for petitioner and learned standing counsel for State-respondents.

2. Pleadings have been exchanged between the parties, with the consent of the parties, the instant writ petition is being finally decided at the admission stage.

3. By way of present petition, petitioner is seeking following reliefs :

"(ii) issue, a writ order or direction, in the nature of *certiorari*, quashing the impugned order dated 12.08.2021, passed by respondent No. 1, enclosed as Annexure-1, to the writ petition.

(iii) issue, a writ, order or direction, in the nature of *mandamus*, commanding the Respondent Authorities, to open the Seal Cover Envelop and promote the petitioner on the post of Dy. S.P. in pursuance of the Government Order No. 13/21/89-Ka-1-1997, dated 28.5.1997, & Government Order No. 1/2018-13(6)/2017/Ka-1-2018, dated 9.1.2018, with all consequential benefits.

(v) issue, a writ, order or direction, in the nature of *mandamus*, commanding the Respondent Authorities, to consider the claim of the petitioner for *Ad-hoc* promotion on the post of Dy. S.P., in pursuance of the Government Order No. 13/21/89-Ka-1-1997, dated 28.5.1997 & Government Order No. 1/2018-13(6)/2017/Ka-1-2018, dated 9.1.2018, with all consequential benefits."

4. Learned Senior Counsel appearing for petitioner submitted that petitioner was appointed on the post of Sub-Inspector in Civil Police Department on 17.09.1990. While petitioner was posted at Jaunpur, an F.I.R. has been lodged by one Chhedi Lal against three persons namely Jagarnath Chaudhary, Asha Devi and mother of Asha Devi namely Babana Devi, which was registered as Case Crime No. 172 of 1999 under sections 302, 201, 506 IPC at Police Station Jaunpur, District Jaunpur on 05.06.1999, in which petitioner was not named. Ultimately, charge-sheet was submitted in the year 1999, in which petitioner was also charge-sheeted under sections 217, 218, 201 & 120-B IPC whereas against other accused, charge-sheet has been submitted under sections 302, 201, 506, 217, 218, IPC. Feeling aggrieved by the said charge-sheet, petitioner has filed Criminal Misc. Application No. 6323/2003 (under section 482, Cr.P.C.), in which this Court *vide* order dated 10.09.2003 was pleased to stay the further proceedings, which continued upto year 2020.

5. It is further submitted that during the pendency of the said criminal proceeding, petitioner was given out of turn promotion on 14.09.2006 on the post of Inspector, till then he is performing his duty to the full satisfaction of the authorities and no other disciplinary or criminal proceeding has ever been initiated against him. It is next submitted that meeting of Departmental Promotion Committee (in short, 'DPC') was held on 01.01.2018 for promotion on the post of Deputy Superintendent of Police, in which case of petitioner was also considered, but due to pendency of criminal proceeding, his name was kept in a sealed cover envelop and juniors to petitioner were granted promotion. Thereafter, meeting of DPC was also held in the years 2020 & 2021 and other juniors to petitioner have also been promoted.

6. It is next submitted that when the name of petitioner was kept in a sealed cover envelop, petitioner has filed Writ Petition No. 7758 of 2019, which was disposed of by this Court *vide* order dated 07.02.2020 directing respondent No. 1 to decide the representation of petitioner. Thereafter, comments were called from the Additional Director General of Police, Administration (hereinafter referred to as "ADGP, Administration") and *vide* communication dated 20.08.2020, comments were sent to Secretary Home (Police Services), Secretariat U.P.,

Lucknow and in the comments, it is mentioned that since last ten years, petitioner was awarded excellent entries and never been penalized either major or minor penalty. It was also stated in the comments that character role of petitioner is excellent and after promotion on the post of Inspector, upto 17 years, petitioner has never misused his post, but without considering the comments, impugned order has been passed rejecting the claim of petitioner on two grounds; first of all, petitioner has helped the accused and secondly, offence against the petitioner is serious in nature. It is also stated in the impugned order that petitioner was charge-sheeted in Case Crime No. 172 of 1999, under sections 217, 218 & 120-B, IPC.

7. He firmly submitted that comments so given by ADGP, Administration had not been considered while passing the impugned order. He further submitted that trial of main accused has been concluded and ultimately, they have been convicted *vide* order dated 02.09.2014 passed by Additional Session Judge, Court No. 2, Jaunpur under section 304, IPC, which itself shows that petitioner is not guilty for any charges coupled with this fact that petitioner has excellent service record and also he has been promoted on the post of Inspector during the pendency of criminal proceeding. He further placed reliance upon the Government Order No. 13/21/89-Ka-1-1997, dated 28.05.1997 and submitted that para-10 is having specific provision that after considering the promotion of first time charged employee and keeping his name in a sealed cover envelop, after completion of one year, the same shall be considered for *ad hoc* promotion. Again in Government Order No. 1/2018-13(6)/2017/Ka-1-2018, dated 09.01.2018, it is stated that in case of pendency of criminal case in different courts, cases has to be examined for further proceeding subject to final decision of the cases pending before the Court. After examination, if it is found proper, further proceeding should have been ensured. In support of his contention, he has placed reliance upon the judgment of this Court passed in *Neeraj Kumar Pandey v. The State of U.P. and others*, Writ-A No. 8151 of 2022, and submitted that on the similar set of facts where the name of petitioner was kept in a sealed cover envelop, Court after considering the Government Orders dated 28.5.1997 & 9.1.2018 directed to open the same to grant promotion. Therefore, under such facts of the case, Court may please to quash the impugned order and issue necessary direction for promotion of petitioner.

8. Learned standing counsel, on the basis of counter affidavit, has vehemently opposed the submissions made by learned counsel for petitioner, but could not dispute the factual as well as legal submissions made by learned Senior Counsel appearing on behalf of petitioner.

9. I have considered rival submissions advanced by learned counsels for parties and perused the records.

10. Facts of the case are undisputed. Petitioner was appointed on the post of Sub-Inspector in Civil Police Department in the year 1990 and charge-sheet was submitted against him in the year 1999. Thereafter, he was promoted on the post of Inspector in the year 2006 and first DPC for promotion on the post of Deputy Superintendent of Police was also held on 01.01.2018, in which name of petitioner was considered, but due to pendency of criminal proceeding, his name was kept in a sealed cover envelop and juniors to him have been granted promotion. Further, as per comments of ADGP, Administration dated 20.08.2020, several excellent entries were given to the petitioner in last ten years of his service coupled with this fact that no punishment, either minor or major was awarded to the petitioner and after promotion, he has never misused his post in any way.

11. I have also perused the judgment of this Court passed in *Neeraj Kumar Pandey* (supra). In the said judgment, after DPC, name of petitioner was kept in sealed cover envelop denying the promotion. Court has considered this fact that even after pendency of criminal proceeding, petitioner has continued in service, directed the State to open the envelop to grant promotion. While allowing the petition, Court has also considered the Government Orders dated 28.5.1997 & 9.1.2018.

12. So far as case of petitioner is concerned, it is on better footing than the case of *Neeraj Kumar Pandey* (supra). Undisputedly, even after initiation of criminal proceeding, petitioner was granted promotion on the post of Inspector on 14.09.2006 upon which he is still working without any misuse of post. Further, petitioner was granted excellent entries for last 10 years as mentioned in the comments of ADGP, Administration dated 20.08.2020. Not only this, even the criminal proceeding so initiated against the petitioner along with other co-accused, trial of co-accused was completed and Additional Session Judge *vide* order dated 2.9.2014 awarded the punishment under section 304, IPC for seven years only, which also shows that petitioner was not at fault in the said criminal proceeding so initiated against him. Relevant paragraphs of judgment passed in *Neeraj Kumar Pandey* (supra) is quoted below :

"17. Having heard the learned counsel for petitioner, the learned standing counsel for State-respondents and upon perusal of record, the Court finds that it is an undisputed fact that irrespective of pendency of criminal case, petitioner has been allowed to continue. Therefore, mere pendency of a criminal case, *prima facie*, cannot be taken as a ground to deny promotion of petitioner. The Competent Authority cannot withhold the claim of petitioner indefinitely on the ground of having adopted Sealed Cover Procedure, due to the pendency of criminal case.

18. In view of the discussion made above this writ petition is disposed of finally with a direction to the Competent Authority to consider the claim of petitioner for opening the Sealed Cover within a period of two months from the date of production of a certified copy of this order in the light of observations made herein-above."

13. After considering the entire facts of the case as well as law laid down by this Court in *Neeraj Kumar Pandey* (supra), this Court is of the firm view that mere pendency of a criminal case coupled with this fact that petitioner has been permitted to continue in service and also granted promotion, cannot be a ground for denying promotion. Further, additional fact may be taken into consideration *i.e.* subsequent service record of petitioner while opening the sealed cover envelop and in case subsequent service record of petitioner is found excellent, unblemished, without any punishment, the same should have been an additional ground to grant him promotion.

14. Therefore, under such facts and circumstances, impugned order dated 12.8.2021 passed by respondent No. 1 is contrary to the provisions of Government Orders dated 28.5.1997 & 9.1.2018 as well as law laid down by this Court in the matter of *Neeraj Kumar Pandey* (supra), which is not sustainable and hereby set aside.

15. Accordingly, the writ petition is allowed. No order as to costs.

16. Respondent No. 1 is directed to take necessary action to open the sealed cover envelop and grant promotion to the petitioner maximum within six weeks from the date of production of certified copy of this order with all consequential benefits.