

(2020) 07 SHI CK 0378

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3257 Of 2019

Vidya Sagar

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 03-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 14
Motor Vehicles Act, 1988 — Section 185
Indian Penal Code, 1860 — Section 279, 337

Citation : (2020) 07 SHI CK 0378

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Ranjana Parmar, Karan Singh Parmar, Ashok Sharma, Vinod Thakur, Desh Raj Thakur, Bhupinder Thakur

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The petitioner has been denied promotion to the post of Sub-Inspector as recommendations of the DPC have been kept in a sealed cover in view of a criminal case pending against him. Aggrieved thereby, the petitioner has filed the instant petition for grant of the following relief:

"That action of respondents to deny promotion to the post of Sub Inspector to the petitioner from due date by keeping the recommendations of the DPC in sealed cover may be declared illegal and void ab initio with further direction to respondents to open the sealed cover and act upon the recommendations of the DPC which resulted in promotion order dated 16.9.2019 with all consequential benefits."

2. It is not in dispute that FIR No.181/2018 has been registered against the petitioner on 28.12.2018 at Police Station, Majra, District Sirmaur, H.P. under sections 279, 337 IPC and 185 of the Motor Vehicles Act wherein the challan was

filed on 20.05.2019 and was fixed for consideration of charges on 12.06.2020.

3. In the interregnum, the DPC met on 16.09.2019 to consider the names of ASIs, who were on promotion list E-1 and awaiting promotion to the post of Sub-Inspector. The Committee examined/scrutinized the service particulars in respect of 49 qualified ASIs including the petitioner, but did not recommend his name in view of the pendency of aforesaid criminal case.

4. It is vehemently argued by Ms. Ranjana Parmar, Senior Advocate assisted by Mr. Karan Singh Parmar, Advocate, for the petitioner that the action of the respondents in keeping the recommendations of the DPC qua the petitioner in a sealed cover is illegal, wrong, unjust and against Article 14 of the Constitution of India as the right to be considered to the next higher post is a fundamental right. It is further urged that since the criminal proceedings have not been commenced till date, therefore, the mere pendency thereof cannot be a ground to deny promotion in view of the instructions contained in Handbook on Personnel Matters in para 16.32 read with Standing Orders circulated vide order dated 18.12.2018 till the outcome of the criminal case.

5. We have heard the learned counsel for the parties and have gone through the material placed on record.

6. Normally, it is only when a charge-memo in disciplinary proceedings or a charge-sheet in a criminal case is issued to the employee that it can be said that the departmental proceedings/criminal proceedings have been initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. However, this is subject to there being any rules, standing orders, instructions etc. to the contrary.

7. Standing Order dated 18.12.2018 clearly provides that the DPC, in case of personnel against whom DEs and criminal investigations are pending, should continue the procedure of keeping the recommendation in sealed cover, subject to the condition that in case of DEs, the Summary of Allegations should have been served to the personnel concerned as per PPR on the date of DPC. In case the summary has not been served, the personnel concerned should be considered for promotion.

8. This would be evidently clear from Note b) appearing under the head eligibility criteria and reads as under:

"b) The DPC, in case of personnel against whom DEs and criminal investigations are pending, should continue the procedure of keeping the recommendation in sealed cover, subject to the condition that in case of DEs, the Summary of Allegations should have been served to the personnel concerned as per PPR on the date of DPC. In case the summary has not been served, the personnel concerned should be considered for promotion."

9. Standing orders issued by the respondents are binding on the parties, more particularly, when the constitutionality or validity thereof has not been challenged

by the petitioner.

10. Having said so, we find no merit in this writ petition and the same is accordingly dismissed, leaving the parties to bear their own costs. Pending application(s), if any, also stand disposed of.