



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.7099 of 2023

Date of Decision: 03.09.2025

Bir Singh

.....Petitioner

Versus

State of Himachal Pradesh & others

... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner: Mr. Kashmir Singh Thakur, Senior Advocate with Mr. Vijay Thakur, Advocate.

For the Respondents: Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C.Verma, Additional Advocate Generals, with Mr. Ravi Chauhan, Deputy Advocate General.

Sandeep Sharma, Judge(oral):

By way of instant petition, petitioner has prayed for following main relief:-

"Issue appropriate writ, orders or directions to the respondent Nos. 1 and 2 to promote the petitioner as Honorary Assistant Sub Inspector of Police from due date with all consequential benefits."

2. Precisely, the facts of the case as emerge from the pleadings adduced on record by the respective parties, are that FIR bearing No.347 of 2011, dated 21.06.2011 under Sections 409 and 120-B of IPC, came to be registered at police Station, Kullu, District Kullu, Himachal Pradesh against the petitioner, who at present is

¹Whether the reporters of the local papers may be allowed to see the judgment?

working as Honorary Head Constable alongwith other seven co-accused. FIR No. 266 of 2002, dated 24.12.2002 under NDPS Act was registered against the Chande Ram at police Station, Manali on account of recovery of one quintal seven kilograms and five hundred grams of Cannabis/charas from one shed. Learned trial Court on the basis of evidence adduced on record by the respective parties held above named Chande Ram guilty and accordingly, convicted and sentenced him to undergo rigorous imprisonment of 20 years and pay fine to the tune of Rs. 20,000/-.

3. Above named Chande Ram being aggrieved and dissatisfied with the judgment of conviction and order of sentence approached this Court by way of an appeal. While hearing the appeal, Division Bench of this Court called upon the prosecution to produce the locks, which were allegedly put on the door of the shed from where huge quantity of charas was recovered. Though, in terms of direction passed by Division Bench of this Court, prosecution produced two locks, which were kept in the malkhana, but since those could not be opened with the keys produced alongwith the locks, Division Bench of this Court directed Director General of Police to hold an inquiry against all the persons, who remained In-charge of malkhana during the relevant time. In the aforesaid background, FIR No.347 of 2011, dated 21.06.2011 under Sections 409 and 120-B of

IPC came to be registered against eight persons including the petitioner, who also remained In-charge of malkhana during relevant time. Besides above, police Department also initiated departmental proceedings against all the accused, named in the FIR, including the petitioner, but they were exonerated vide inquiry report dated 02.04.2012 (Annexure P-3).

4. In criminal case, though repeatedly Investigating agency filed untraced reports, but fact remains that those were not accepted by the Court of learned Chief Judicial Magistrate, Lahaul & Spiti at Kullu, Himachal Pradesh. Lastly, matter was listed on 20.07.2023, on which date, Court concerned being not satisfied with the untraced report, directed the police to further investigate the matter. Since on account of pendency of criminal case and despite there being exoneration of the petitioner in the Departmental proceedings, he is not being considered for promotion to the post of HASI, he has approached this Court in the instant proceedings, praying therein for the relief, as has been reproduced hereinabove.

5. It is apt to take note of the fact that other similarly situate persons, who were also named in the FIR, as detailed hereinabove, approached this Court by way of CWPOA No.612 of 2019, titled as **Rajinder Kumar vs. State of Himachal Pradesh and others** and CWPOA No.5526 of 2019, titled as **Om Parkash vs. State of**

Himachal Pradesh and others. Co-ordinate Bench of this Court vide judgments dated 03.05.2024 and 09.04.2025 allowed their petitions with the direction to the respondents to grant promotion, if any, and release all the retiral benefits, otherwise permissible under rules, including the leave salary, commutation, Death-cum- Retirement etc.

6. Petitioner herein, who is very much in service and at present, is working as Honorary Head Constable ~~is~~ aggrieved on account of his non- promotion to the post of Honorary ASI.

7. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Kashmir Singh Thakur, learned Senior counsel duly assisted by Mr. Vijay Thakur, Advocate, is that once petitioner stands exonerated in Departmental proceedings and on three occasions police has filed untraced report in criminal proceedings, he cannot be denied promotion on account of pendency of criminal case, which otherwise for all probabilities is likely to fail.

8. While inviting attention of this Court to judgments dated 09.04.2025 and 03.05.2024 passed by Co-ordinate Bench of this Court in **Om Parkash and Rajinder Kumar's** cases (supra), Mr. Thakur, states that petitioner being similarly situate is also entitled to same relief, as has been extended in favour of aforesaid two persons, who are otherwise co-accused with the petitioner in the FIR pending

adjudication before the learned Chief Judicial Magistrate, Lahaul & Spiti at Kullu, Himachal Pradesh. Mr. Thakur, also invited attention of this Court to the Standing Order No.02 of 2021, issued by Director General of Police, Himachal Pradesh annexed with the rejoinder, to state that otherwise also in terms of Clause 3 of the Standing Order, DPC, in case of personnel against whom DEs or criminal investigation are pending, should continue and at best their promotion orders, if any, can be kept in sealed cover, but in no eventuality, employee, named in the FIR, can be denied promotion, especially when no charge is framed. He also invited attention of this Court to the judgment passed by Hon'ble Apex Court in **Union of India & others vs. K.V Jankiraman & others, AIR 1991 Supreme Court 2010**, wherein it has been categorically ruled that till the time charge sheet is not issued in a criminal case, an employee against whom criminal case is registered cannot be denied promotion, rather in that situation, sealed cover proceedings is required to be resorted to.

9. I have heard learned counsel for the parties and gone through the record carefully.

10. Reply filed by the respondents, if perused in its entirety, nowhere disputes the facts as have been recorded hereinabove. An attempt has been made to refute the claim of the petitioner on the ground that criminal case is still pending adjudication. It is fairly

admitted in the reply that petitioner herein alongwith other accused, named in the FIR, stand exonerated in the Departmental inquiry.

11. Question, which needs to be determined in the case at hand is “whether on account of pendency of criminal case, wherein charge sheet is yet to be filed, petitioner herein can be denied promotion to the post of Honorary ASI or not?.

12. Law with regard to aforesaid point is well settled. Hon'ble Apex Court in **Jankiraman case** (supra) has held that it is only when a charge sheet is served upon the concerned officials or charge sheet filed before the criminal Court, sealed cover procedure can be resorted. In the case at hand, admittedly no charge sheet has been served upon the petitioner, rather on three occasions investigating agency has filed untraced report, but Magistrate concerned being not satisfied with the untraced report has ordered for further investigation. Though Magistrate concerned is well within his /her right to order further investigation, but such fact, if any, cannot be a ground for the respondents to deny promotion to the higher post, especially when charge has been not framed till date. At this stage, it would be profitable to reproduce relevant para of aforesaid judgment herein below:-

“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;”

13. At this stage, it would be apt to take note of Clause 3 of the SOP issued by Director General of Police, Himachal Pradesh herein below:-

3. Sealed Cover Procedure:-

The DPC, in case of personnel against whom Des or criminal investigation 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 and in case of criminal investigation charges should have been framed against the concerned personnel on the date of the DPC. In case the Summary of Allegations has not been served or charges have not been framed, sealed cover should be opened and the personnel concerned should be considered for promotion."

14. It is apparent from the aforesaid Clause that in Police department sealed over procedure is required to be resorted to in case of person against whom departmental inquiry or criminal investigation is pending.

15. Similarly, it is also well settled that once an employee stands exonerated in Departmental proceedings, he/she is required to be considered for promotion to the higher post, subject to his eligibility. In similar facts and circumstances, Co-ordinate Bench of this Court in **Rajinder Kumar and Om Parkash cases (supra)**, who are co-accused with the petitioner, have already directed the respondents to consider the petitioners in those cases for promotion to the post of ASI and release retiral benefits, if not already released.

16. At this stage, it would be profitable to take note of para No. 14 to 16 of the judgment passed by Co-ordinate Bench of this Court in **Rajinder Kumar's case** (supra) herein below:-

14. As regards the pendency of criminal cases in FIR No. 347 of 2011 already untraced report has been filed and in FIR

No. 242 of 2012, the charges have been framed on 24.12.2018 and the trial is pending before the learned Judicial Magistrate 1st Class, Kullu. The pendency of aforesaid cases cannot be a ground to deny the right of consideration of petitioner to promote, more particularly when the outcome of both the FIRs is not clear after more than twelve years of their registration.

15. Learned counsel for the petitioner has placed on record a copy of order dated 6.4.2022, whereby officials namely SI Jasbir Singh and SI Jai Lal of Police Department have been promoted to the next post despite of pendency of criminal cases against them with the rider that the promotions shall be subject to the outcome of criminal cases. In such view of the matter, there cannot be any reason to consider the case of petitioner on different parameters.

16. In light of above discussion, the petition is allowed. The respondents are directed to consider the petitioner for promotion to the post of ASI from due date when his immediate junior was promoted after passing of intermediate course by the petitioner. The balance of salary for the period dated 22.11.2012 to 19.7.2014 be also released in favour of the petitioner. The entire exercise shall be done within six weeks from the date of passing of this judgment."

17. Consequently, in view of the above, this Court finds merit in the present petition and accordingly same is allowed. The respondents are directed to consider the case of the petitioner for promotion to the post of Honorary ASI from due date when his immediate juniors were promoted. Needless to say, petitioner on account of his promotion shall be entitled to all consequential benefits. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

September 03, 2025
(shankar)