



2026:AHC:8362

## HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 19327 of 2025

Vijay Prakash Yadav

.....Petitioner(s)

Versus

The State Of U.P. And 4 Others

.....Respondent(s)

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|---------------------------|------------------------------------------------------------------|
| Counsel for Petitioner(s) | : Arya Gautam, Atipriya Gautam, Sr. Advocate, Vinod Kumar Mishra |
| Counsel for Respondent(s) | : C.S.C.                                                         |

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**Court No. - 33**

**HON'BLE VIKAS BUDHWAR, J.**

1. Heard Sri Vijay Gautam, learned Senior Counsel assisted by Ms. Vaishnavi Srivastava holding brief of Ms. Arya Gautam, learned counsel for the writ petitioner and Sri Pramod Kumar Srivastava, learned Additional Chief Standing Counsel for the State.

2. Sri Pramod Kumar Srivastava, learned Standing Counsel has made a statement at bar that he is well equipped with the instructions and he is in a position to argue the matter and the writ petition be decided on the basis of the documents available on record. With the consent of the parties, the writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that the writ petitioner was appointed on the post of Police Constable on 01.08.1994 thereafter, he was appointed on the post of Sub Inspector in the year 2013 after qualifying the departmental ranker Examination-2011. The writ petitioner staked his claim for being promoted on the post of Inspector from the post of Sub Inspector based upon his seniority position in the seniority list issued on 08.06.2001. On 28.06.2023 total 18 Sub Inspectors are being granted promotion on the post of Inspector, however, the writ petitioner's case has been kept in sealed cover on 20.07.2023 on the ground that there happens to be a criminal case being Case Crime No. 344 of 2018 under Sections 217, 218, 201, 166A IPC read with Section 21 of POCSO Act. Learned counsel for the writ petitioner submits that a departmental charge sheet came to be issued based upon the criminal case on 24.01.2023 which was

subject matter of challenge in Writ-A No. 15009 of 2024 in which an interim order has been accorded on 24.09.2024 alleging the stand taken by the respondents in not opening the seal cover, the writ petitioner preferred Writ-A No 14214 of 2024 in which the following orders were passed.-

*"1. Heard Shri Vijay Gautam, learned Senior Advocate assisted by Shri Ambuj Maurya, learned counsel for petitioner and Shri Rahul Malviya, learned Standing Counsel.*

*2. By means of this petition filed under Article 226 of the constitution petitioner seeks direction to the respondent No. 4 to open sealed cover in which candidature of the petitioner for promotion was placed on the basis of recommendation made by the Departmental Promotion Committee (28.06.2023) on 22.07.2023 in the light of the provisions contained in paragraph 10 of the Government Order dated 28.05.1997.*

*3. It is contended that earlier a criminal case was instituted against the petitionenr in which a final report has been submitted on 09.10.2019 but till date no final decision has been taken by the learned Magistrate whereas the final report is pending consideration. It is further contended that a departmental proceeding was sought to be instituted against the petitioner by serving upon him a charge sheet on 24.01.2023, which upon being challenged before this Court by means of a writ petition being Writ A No. 15009 of 2024, has come to be stayed by this Court vide order dated 24.09.2024. In the circumstances, it is contended now that candidature placed in sealed cover can be opened and ad hoc promotion can be given to the petitioner in the light of the Government order. Paragraph 10 of the Government runs as under:*

चयन समिति द्वारा प्रथम बार आरोपित कार्मिक की प्रोन्नति पर विचार करने एवं मुहर बन्द लिफाफे की प्रक्रिया अपनाये जाने के बाद एक वर्ष की अवधि बीत जाने पर भी इस अवधि में ऐसी अवधि आगणित नहीं की जायेगी जिसमें अपचारी कार्मिक द्वारा अवध्यान के कारण जाँच प्रक्रिया में विलम्ब हुआ। यदि आरोपित कार्मिक के विषय में प्रशासनाधिकरण की जाँच विभागीय कार्यवाही अभियोजन का अन्तिम परिणाम प्राप्त न हुआ हो, तो ऐसे कार्मिकों के विषय में, जो निलम्बित नहीं है। चयन समिति द्वारा निम्नलिखित प्रतिबन्धों के साथ तदर्थ आधार पर प्रोन्नति के सम्बन्ध में विचार किया जायेगा।

(क) आरोपित कार्मिक के विरुद्ध लगाये गये आरोप क्या इतने गम्भीर है कि उनके आधार पर उसे भविष्य में भी प्रोन्नति से वंचित रखा जाना उपयुक्त। जनहित में होगा।

(ख) क्या प्रशासनाधिकरण की जाँच विभागीय कार्यवाही अभियोजन के अन्तिम परिणाम प्राप्त होने में काफी समय लगेगा।

(ग) प्रशासाधिकरण की जाँच / विभागीय कार्यवाही अभियोजन में हो रहे विलम्ब के लिए प्रत्यक्ष या परोक्ष रूप से आरोपित कार्मिक तो दोषी नहीं है।

(घ) आरोपित कार्मिक को तदर्थ प्रोन्नति दिये जाने पर वह अपने पद का दुरुपयोग अथवा जाँच को कुप्रभावित तो नहीं करेगा।

(ङ) यदि सक्षम प्राधिकारी उपरोक्त खण्ड (क) (ख) (ग) (घ) के आधार पर विचारोपरान्त आरोपित कार्मिकों की तदर्थ आधार पर प्रोन्नत करना उपयुक्त समझते है तो उस दशा में विभागीय चयन समिति के सामने मामले को रखा जायेगा जो आरोपित कार्मिक के सम्पूर्ण अभिलेखों के आधार पर उसके कार्यों का मूल्यांकन करेगी तथा तदर्थ रूप से प्रोन्नति देने के अथवा न देने के विषय में अपनी संस्तुति देगी।

(च) यदि जाँच प्रशासनाधिकरण आदि किसी अन्य एजेन्सी द्वारा कराई जा रही हो तो उस दशा में उस एजेन्सी का परामर्श भी इस बिन्दु तदर्थ आधार पर प्रोन्नति देने पर प्राप्त किया जायेगा।

(छ) उपरोक्त प्रक्रिया के उपरान्त आरोपित कार्मिक का तदर्थ रूप से प्रोन्नति किये जाने के आदेशों में यह स्पष्ट किया जायेगा कि प्रोन्नति अग्रिम आदेशों तक के लिए की जाती है और शासन को उक्त तदर्थ प्रोन्नति को कभी भी समाप्त कर देने का अधिकार है तथा तदनुसार ऐसे कार्मिक को उस पद पर प्रत्यावर्तित किया जा सकता है जिस पद से उसे प्रोन्नत किया गया था।

(ज) तदर्थ आधार पर प्रोन्नत आरोपित कार्मिक के विरुद्ध चल रही प्रशासनाधिकरण की जाँच / विभागीय कार्यवाही अभियोजन आदि के अन्तिम परिणाम प्राप्त हो जाने पर उसके विषय में उसी प्रकार अग्रिम कार्यवाही की जायेगी, जैसी की जाती ही यदि उसे तदर्थ प्रोन्नति न दी गयी होती।

(झ) यदि न्यायालय द्वारा किसी तदर्थ रूप से प्रोन्नत कार्मिक को तकनीकी आधार पर (गुणावगुण के आधार पर नहीं) दोषमुक्त किया जाता है और न्यायालय के निर्णय के विरुद्ध अपील या उसी आरोप के लिए विभागीय कार्यवाही का प्रस्ताव है तो उस दशा में समक्ष प्राधिकारी इस बिन्दु पर विचार करेंगे कि आरोपित कार्मिक को तदर्थ प्रोन्नति पर बनाये रखा जाय अथवा नहीं।"

*4. On the contrary it is argued by learned Standing Counsel submits that the claim of petitioner can be directed to be considered in the light of Government order dated 28.05.1997 particularly paragraph-10 thereof provided petitioner makes fresh representation.*

*5. In view of the above this petition stands disposed of with the direction to the petitioner to move a fresh representation before the respondent concerned within a period of four weeks from today, and in the event any such representation is moved, the same shall be disposed of by the concerned authority within a further period of two months."*

4. Now the order impugned has been passed by respondent no. 4, fourth respondent, DIG Karmik/Establishment, DGP, Headquarters, Police Bhawan, Shaheed Path, Signature Building, Gomti Nagar Extension, U.P., Lucknow negating the claim of the writ petitioner.

5. Questioning the said order, the present writ petition has been preferred.

6. On 19.12.2025, the following orders were passed.-

*"1. Contention of the learned Senior Counsel for the writ petitioner is that the writ petitioner seeks promotion on the post of Inspector from the post of Sub Inspector, however, with respect to a criminal case, the final report has been submitted but the competent court has not taken cognizance and so far as the departmental charge sheet has concerned has been stayed by this Court. Learned counsel for the writ petitioner submits, thus, in view of the Government Order dated 28.05.1997, he is entitled for ad hoc promotion while opening the seal cover.*

*2. Sri Jitendra Prasad, learned Standing Counsel prays for and is granted time to obtain instructions.*

*3. Put up this case on 13.01.2026, as fresh."*

7. Learned Senior Counsel for the writ petitioner has sought to argue that the order impugned cannot be sustained for the simple reason that already departmental charge sheet which was issued in terms of the same allegations which was with respect to the criminal case has been stayed by this Court and further final report has been submitted in the criminal case on 09.10.2019, thus, the writ petitioner is entitled to be considered barely by opening the seal cover. He seeks to rely upon the Government Order dated 28.05.1997.

8. Learned Standing Counsel submits that whatever might be matter needs to be reconsidered in this regard.

9. I have heard the submissions so made across the bar and perused the record.

10. Facts are not in issue. The writ petitioner claims promotion from the post of Sub Inspector to Inspector, there happens to be a criminal case

lodged against the writ petitioner in which final report has been submitted. With respect to departmental charge sheet, it has been stayed by this Court. Thus, clause 10 of the Government Order dated 28.05.1997 will come into play.

11. At this stage, Sri P.K. Srivastava submits that the case of the writ petitioner needs to be re-visited.

12. Accordingly, the writ petition is being decided in the following terms.-

(a) the order dated 14.11.2025 passed by fourth respondent, DIG Karmik/Establishment, DGP, Headquarters, Police Bhawan, Shaheed Path, Signature Building, Gomti Nagar Extension, U.P., Lucknow is set aside; (b) matter stands remitted back to the authority to pass a fresh order within a period of three months.

13. Instructions filed today are taken on record and marked as Appendix 'A'.

**(Vikas Budhwar,J.)**

**January 13, 2026**

Rajesh