



2026:AHC:10274

**HIGH COURT OF JUDICATURE AT ALLAHABAD
WRIT - A No. - 317 of 2026**

Anil Kumar Singh

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Hritudhwaj Pratap Sahi, Samarath Singh
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Samarath Singh, learned counsel for the petitioner and Sri Gaurav Singh, learned Standing Counsel, who appears for State-respondents.

2. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits thus with the consent of the parties, writ petition is being decided at the fresh stage.

3. The writ petitioner had earlier approached this Court while filing Writ-A No. 16178 of 2025, which came to be disposed of on 04.11.2025, order whereof is quoted hereinunder:

"1. Heard Sri Samarath Singh, learned counsel for the writ petitioner and Sri Gaurav Singh, learned Standing Counsel for the State.

2. A joint statement has been made by learned counsel for the parties that they do not propose to file any affidavit and the writ petition be decided at the fresh stage.

3. With the consent of the parties, this Court is deciding the present petition at the fresh stage without calling for the affidavits.

4. The case of the writ petitioner is that the writ petitioner was appointed as a Constable in Civil Police on 18.12.1991, however, an FIR came to be lodged against the writ petitioner being Case Crime no.31 of 2010 on 15.02.2010 under Sections 302, 323, 504 IPC. A promotion exercise stood conducted for promotion of the Constables to the post of Head Constables in the year 2018, however, owing to the fact that against the writ petitioner, a criminal case was pending, thus the case of the writ petitioner was kept in sealed cover in terms of the Government Order dated 28.05.1997. However, the writ petitioner in the said criminal case came to be acquitted in Case Crime no.31 of 2010, under Sections 323, 506, 302 IPC, State vs. Vinod Kumar Dubey in Sessions Trial No.1290 of 2014 by the Court of Addl. District & Sessions Judge, Court No.2, Special Judge (Gangster Act), Prayagraj on

30.10.2024.

5. Since according to the writ petitioner in the wake of the fact that criminal proceedings were pending against the writ petitioner and the case of the writ petitioner was kept under sealed cover and the juniors to the writ petitioner had been promoted on the post of Head Constable and Sub-Inspector so the writ petitioner preferred Writ-A No. 10032 of 2025, Anil Kumar Singh vs. State of U.P, which came to be disposed of requiring the fourth respondent to decide the claim of the writ petitioner, pursuant where to, now the order impugned has been passed by the Senior Superintendent of Police, Mirzapur on 19.09.2025 negating the claim of the writ petitioner.

6. Questioning the same, the present petition has been preferred.

7. Learned counsel for the writ petitioner has sought to argue that the consideration which weighed the authority in rejecting the claim of the writ petitioner cannot be sustained even for a single moment. Submission is that once a fetter by way of a criminal case stood flagged in the service book of the writ petitioner and the said criminal case resulted in acquittal, then it would be presumed under law that no criminal case is pending against the writ petitioner.

8. Contention is that though the yardsticks might be different in the case where selection and appointment to a post is to be made wherein what is to be seen is the fact that whether there is any disclosure of the pendency of the criminal case and the import and the impact of acquittal, but in the present case, there is slight distinction that writ petitioner is already inducted in service and is performing the duties as Constable and he seeks promotion on the post of head Constable and Sub-Inspector. He submits that the considerations which weighed the authorities while negating the claim on the premise that the criminal appeal against the acquittal is stated to be pending cannot be said to be a valid ground. Argument is that mere pendency cannot stay or erase the import and the impact of the acquittal order, as the same still holds the fields and in view of the Government Order dated 28.05.1997, the writ petitioner is entitled to be considered for promotion and the para-7 of the Government order has been misinterpreted in that regard.

9. Reliance has also been placed upon a decision of the coordinate Bench of this Court in Writ-A no.8151 of 2022, Neeraj Kumar Pandey vs. State of U.P. and 5 others, decided on 26.05.2022, wherein the Government Order dated 28.05.1997 and the subsequent Government Order dated 09.01.2018 came to be considered.

10. Sri Gaurav Singh, learned Standing Counsel on the other hand submits that whatever might be once the government appeal is itself pending, then it cannot be said to be a clear case of acquittal, however, according to him, there is no positive order passed in the Appeal itself. According to him the matter needs to be revisited in that

regard.

11. *I have heard the submissions so raised across the Bar and perused the records carefully.*

12. *The facts are not an issue. It is not an issue that the writ petitioner's claim for promotion was considered on the post of Head Constable from the post of Constable in the year 2018, However, owing to lodging of a criminal case, the case of the writ petitioner was kept in a sealed cover. Thereafter the order of acquittal came to be passed and the writ petitioner staked its claim while approaching this Court for a direction for consideration for promotion, in pursuance whereof, the impugned order came to be passed. The order impugned depicts that the consideration which weighed the authority while negating the claim of the writ petitioner is pendency of a government appeal against the acquittal. In the opinion of the Court, mere pendency of appeal cannot be said to be a ground to ignore the order of acquittal, as the position might crystalize in future either by way of dismissal of the Government Appeal or allowing of the appeal. However, as on date, the writ petitioner is acquitted. There happens to be a distinction wherein an appointment being sought to be claimed in the wake of the pendency of the criminal case or acquittal in the criminal case, but here there is a slight difference that the writ petitioner is already employed and working on the post of Constable and thus it might not be a ground to forestall the claim of the writ petitioner for promotion in the wake of the fact that the Government Appeal against acquittal is pending. Moreover, a situation akin to what is before this Court was a subject matter in HCP 47 Sukhendra Singh vs. State of U.P. and others, in Writ-A no.37684 of 2016 decided on 13.02.2020, wherein the following was observed: -*

"10. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

11. To resolve the the controversy involved, Clause 10 of the Government Order dated 28.5.1997 is being quoted hereinbelow:

"10. चयन समिति द्वारा प्रथम बार आरोपित कार्मिक की प्रोन्नति पर विचार करने एवं मुहबन्द लिफाफे की प्रक्रिया अपनाये जाने के बाद एक वर्ष की अवधि बीत जाने पर भी इस अवधि में ऐसी अवधि आरोपित नहीं की जायेगी जिसमें अपचारी कार्मिक द्वारा असहयोग के कारण जांच प्रक्रिया में विलम्ब हुआ। यदि आरोपित कार्मिक के विषय में प्रशासनाधिकरण की जाँच/विभागीय / 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 बंचित रखा जाना उपर्युक्त / जनहित में होगा।

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

(ग) प्रशासनाधिकरण की जाँच / विभागीय कार्यवाही / अभियोजन में हो रहे विलम्ब के लिए प्रत्यक्ष या परपरोक्ष 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 प्रभावित तो नहीं करेगा।

(ङ) यदि सक्षम प्राधिकारी उपरोक्त खण्ड (क), (ख), (ग) एवं (घ) के आधार पर विचारोपरान्त आरोपित कार्मिक को तदर्थ आधार पर प्रोन्नत करना उपर्युक्त समझते हैं तो इस दशा में विभागीय चयन समिति के सामने मामले को रखा जायेगा जो आरोपित कार्मिक के सम्पूर्ण अभिलेखों के आधार पर उसके कार्य का मुल्यांकन करेगी तथा तदर्थ रूप से प्रोन्नति देने 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 परमर्श भी इस बिन्दु (तदर्थ आधार पर प्रोन्नति देने) पर प्राप्त किया जायेगा।

(छ) उपर्युक्त प्रक्रिया के उपरान्त आरोपित कार्मिक को 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 पर प्रत्यावर्तित किया जा सकता है जिस पद से उसे प्रोन्नत किया गया था।

(ज) तदर्थ आधार पर प्रोन्नत आरोपित कार्मिक के विरुद्ध चल रहा प्रशासनाधिकरण की जाँच / विभागीय कार्यवाही अभियोजन आदि के अन्तिम परिणाम प्राप्त हो जाने पर इसके विषय में उसकी प्रकार अग्रिम कार्यवाही की जायेगी जैसे कि की जाती है यदि उसे सह तदर्थ प्रोन्नति न दी गयी होती।

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

12. On perusal of above extracted provisions, it is evident that in case criminal case is pending against the petitioner/ employee, the matter of promotion shall be considered, but it shall be kept in sealed cover for the period of one year and after one year, claim of an employee can be considered for ad hoc promotion and provided, if there is delay on the part of the employee, then the matter for grant of promotion on ad hoc basis shall be deferred.

Here, in the present case, the petitioner has availed remedy by filing application under Section 482 Cr.P.C. before this court, wherein upon examination of the material on record, this Court granted interim order staying further proceedings. Therefore, it cannot be said that delay is on the part of the petitioner in conclusion of criminal proceedings and the petitioner cannot be held to be at fault for obtaining interim order staying further proceedings. It is open to the petitioner to avail appropriate remedy available under law against the allegations levelled. Therefore,

the reason assigned in the impugned order that there is delay on the part of the petitioner, cannot be sustained.

13. *I have considered the judgement rendered in the case of Union of India v. K.V. Janki Raman and others (supra). Relevant paragraphs 16 and 17 of the judgment are being quoted hereinbelow:*

"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 chargesheet 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/chargesheet. 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:

"(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;

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before.

17. *There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be*

read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions."

14. On perusal of the judgment rendered in the case of Union of India (supra), the Hon'ble Supreme Court held that process of sealed cover procedure can be resorted when a charge-memo in a disciplinary proceeding or a charge-sheet in a criminal prosecution is issued to the employee. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. It has further been held that if the charges are serious, the authorities have power to suspend the employee under the relevant Rules and the suspension by itself permits a resort to the sealed cover procedure and finally it has been held that conclusion no.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the petitioner.

15. After having considered the Government Order dated 28.5.1997 and the judgment relied upon by learned counsel for the petitioner, I am of the opinion that the Government Order permits for consideration of claim of an employee against whom the criminal proceeding is pending and to grant ad hoc promotion during pendency of the criminal case.

There is only embargo that in case the employee is at fault in conclusion of criminal proceeding, the said benefit can be denied at this ground.

16. On perusal of the material on record, it is evident that the petitioner, in availability of remedy, has approached this Court by filing 482 Cr.P.C. application challenging the charge-sheet and cognizance taken thereon, wherein further proceedings has been stayed by this Court. It does not mean that only to delay the conclusion of the trial, the petitioner has filed 482 Cr.P.C. application before this Court. It is the legal remedy which is available to the petitioner. After due consideration, this Court granted interim order staying further proceedings. Therefore, at this score, the benefit of Government Order dated 28.5.1997 cannot be denied to the petitioner.

17. There is an another Government Order issued by the State Government on 6.7.2005 and taking into consideration, the said Government Order, the name of the petitioner was recommended by the Superintendent of Police on prescribed proforma for promotion to the next higher rank of Sub-Inspector (Special Category), but no order whatsoever has been passed by the respondent no.2 for the grant of promotion to the petitioner of the rank of Sub-Inspector (Special category).

18. *Sri Bhoop Singh and Sri Sukhendra Singh, who were also accused in the aforesaid criminal case, filed Writ Petition No.1917 of 2006 before this Court for issuance of a writ in the nature of Mandamus commanding the respondents to consider the case of the petitioner to provide promotion to the rank of Sub-Inspector (special category) as per the Government Order dated 6.7.2005 as well as some other Government orders wherein counter affidavit was filed and during pendency of the writ petition, Sri Bhoop Singh and Sri Sukhendra Singh have been granted promotion as Sub-Inspector (special category) but the claim of the petitioner has been rejected vide the impugned orders.*

19. *Once Sri Bhoop Singh and Sri Sukhendra Singh were also found involved in the same criminal case and their claim was considered for the grant of promotion on the post of Sub-Inspector. The claim of the petitioner would have also been taken into consideration and appropriate order would have been passed by the respondents. The act and action granting promotion to the aforesaid two persons who are also involved in the same criminal case create discrimination with the petitioner Therefore, the action of the respondent is violative of Article 14 of the Constitution.*

20. *In view of the reasons assigned above, the orders dated 17.2.2015 and 26.9.2015 passed by respondent no.3 cannot be sustained and are hereby set aside.*

21. *Accordingly, writ petition succeeds and is hereby allowed. However, the matter is remanded back to respondent no.3 i.e. Deputy Inspector General of Police (Establishment), U.P. Police Headquarter, Allahabad to reconsider the claim of the petitioner in the light of the observations made above and to pass appropriate order in accordance with law within a period of six weeks from the date of production of a certified copy of this order.*

25. *Needless to say that while passing the order, the respondent shall afford full opportunity of hearing to the petitioner."*

13. *Since the aforesaid aspects of the matter have not been considered and adverted to in the order impugned, and there is also an allegation that one Vinod Kumar Dubey, who was also criminally proceeded and who was an accused in the criminal trial has been accorded benefit.*

14. *Accordingly, the writ petition is disposed of. The order dated 19.09.2025 is set aside. The matter stands remitted back to the authorities to pass a fresh order in accordance with law within two months."*

4. *Thereafter Superintendent of Police, Mirzapur, respondent no. 4 has proceeded to negate the claim of the writ petitioner vide order dated 10.12.2025 in direct teeth of the observations made by this Court in the earliest spell of litigation i.e. Writ A No. 16178 of 2025.*

5. Questioning the same, the writ petitioner has been filed the present writ petition.

6. Learned counsel for the writ petitioner has submitted that the only basis for passing the impugned order is that a Government appeal is pending. He submits that once an acquittal order has been passed and the same has not been set aside then it will be presumed in the eyes of law then the writ petitioner who is an accused has been acquitted. He submits that the criminal appeal may take umpteen number of years for decision, however, in view of the Government order dated 24.05.1997, the writ petitioner is entitled to be considered for promotion, particularly, when he has to his credit an order of acquittal with regard to the criminal case.

7. Learned Standing Counsel on the other hand submits that the matter needs to be revisited.

8. I have heard learned counsel for the parties and gone through the records carefully.

9. Facts are not in issue. It is not in issue that the writ petitioner stakes promotion from the post of Constable to Head Constable and then Sub Inspector. The only legal impediment which could be a criminal case, however, the Court finds that the writ petitioner stands acquitted and a criminal Government appeal is pending.

10. In the opinion of the Court, mere pendency of an appeal, cannot be a ground to denude the writ petitioner the benefit. Since the said aspect has not been considered in a correct perspective. Thus the order impugned cannot be sustained.

11. Accordingly, the writ petition is being decided in the following manner:

(a). The impugned order dated 10.12.2025 passed by the Senior Superintendent of Police, Mirzapur is set aside.

(b). The matter stands remitted back to pass fresh order strictly in accordance with law bearing in mind the order dated 04.11.2025 passed in Writ A No. 16178 of 2025, proceed to decide the claim of the petitioner within a period of six weeks from the date of presentation of the certified copy of the order.

12. Accordingly, the writ petition stands **disposed of**.

January 16, 2026
A. Prajapati

(Vikas Budhwar,J.)