



CNR: KAHC020080242023

NC: 2026:KHC-D:15325
WP No. 103388 of 2023

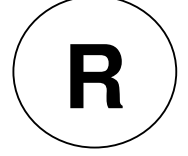
IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 15TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT PETITION NO.103388 OF 2023 (S-PRO)



BETWEEN:

SRI M.N. KHAJA HUSSAIN
S/O. NAZEER AHMED, AGED ABOUT 49 YEARS,
OCC. SENIOR HEALTH INSPECTOR,
TOWN MUNICIPAL COUNCIL,
KUSHTAGI-583277, TQ. KUSHTAGI, DIST. KOPPAL.

...PETITIONER

(BY SRI B SHARANABASAWA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
URBAN DEVELOPMENT DEPARTMENT,
4TH FLOOR, VIKASA SOUDHA,
BENGALURU-560001,
REP. BY ITS SECRETARY.

2. THE UNDER SECRETARY,
URBAN DEVELOPMENT DEPARTMENT,
4TH FLOOR, VIKASA SOUDHA,
BENGALURU-560001.

3. THE DIRECTOR OF MUNICIPAL ADMINISTRATION,
9TH FLOOR, VV TOWER, DR. AMBEDKAR STREET,
BENGALURU-560001.

...RESPONDENTS

(BY SMT. SUNITHA J.SEQUEIRA, AGA FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A)





ISSUE A WRIT IN THE NATURE OF MANDAMUS DIRECTING THE RESPONDENT AUTHORITIES TO CONSIDER THE REPRESENTATIONS DATED 16.07.2019 VIDE ANNEXURE-F, 16.02.2020 VIDE ANNEXURE-F1, 16.05.2020 VIDE ANNEXURE-F2, 28.01.2021 VIDE ANNEXURE-F3, 08.02.2021 VIDE ANNEXURE-F4, 28.01.2022 VIDE ANNEXURE-F5, 20.02.2022 VIDE ANNEXURE-F6, 14.07.2022 VIDE ANNEXURE-F7, 14.11.2022 VIDE ANNEXURE-F8, 24.12.2022 VIDE ANNEXURE-F9, 30.01.2023 VIDE ANNEXURE-F10 AND 27.03.2023 VIDE ANNEXURE-F11 MADE BY THE PETITIONER, AND B) ISSUE A WRIT IN THE NATURE OF MANDAMUS DIRECTING THE RESPONDENT AUTHORITIES TO PROVIDE PROMOTION BY MERGING THE POST OF THE PETITIONER FROM THE POST OF SENIOR HEALTH INSPECTOR TO THE POST OF KMAS CHIEF OFFICER, GRADE-II FROM 01.07.2019 AND TO THE POST OF KMAS CHIEF OFFICER, GRADE-I FROM THE DATE IT FELL DUE AND TO PROVIDE ALL CONSEQUENTLY SERVICE BENEFITS FROM 01.07.2019 TILL THE SAME IS PAID TO THE PETITIONER, ALONG WITH INTEREST @24% P.A. AND C) ISSUE, SUCH OTHER WRIT, ORDER OR DIRECTION AS THIS HON'BLE COURT DEEMS FIT IN THE CIRCUMSTANCES OF THE CASE.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE T.M.NADAF



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ORAL ORDER

The captioned Writ Petition is filed seeking following reliefs:

- a) *Issue a Writ in the nature of Mandamus directing the respondent authorities to consider the representations dated 16.07.2019 vide Annexure-F, 16.02.2020 vide Annexure-F1, 16.05.2020 vide Annexure-F2, 28.01.2021 vide Annexure-F3, 08.02.2021 vide Annexure-F4, 28.01.2022 vide Annexure-F5, 20.02.2022 vide Annexure-F6, 14.07.2022 vide Annexure-F7, 14.11.2022 vide Annexure-F8, 24.12.2022 vide Annexure-F9, 30.01.2023 vide Annexure-F10 and 27.03.2023 vide Annexure-F13 made by the petitioner and*
- b) *Issue a writ in the nature of Mandamus directing the respondent authorities to provide promotion by merging the post of the petitioner from the post of Senior Health Inspector to the post of KMAS Chief Officer, Grade-II from 01.07.2019 and to the post of KMAS Chief Officer, Grade-I from the date it fell due and to provide all consequently service benefits from 01.07.2019 till the same is paid to the petitioner, along with interest @ 24% p.a., and*
- c) *Issue, such other writ, order or direction as this Hon'ble Court deems fit in the circumstances of the case.*



2. Facts germane to file the present Writ Petition are as under:

2.1 The petitioner joined the services with the Municipal Department on 30.11.2000 as Second Division Assistant. Thereafter, he was promoted as Senior Health Inspector on 22.09.2011. He was working as Senior Health Inspector at Kushtagi Town Municipal Council.

2.2 Respondent No.3 in the year 2016, prepared Seniority List of the persons who were working as Senior Health Inspectors and eligible to be promoted to the post of KMAS Chief Officer, Grade-II. The name of the petitioner finds place at Sl.No.07 in the said list and his seniority is at Sl.No.235.

2.3 Though the service records of the petitioner has been sent from the office of the TMC, Kushtagi along with proposal to respondent No.3 to consider petitioner's name for the said merger/ promotion, the said



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proposal as well as request of the petitioner was not considered by the respondents.

2.4 Respondent No.3 published the Notification/ Circular by publishing the Provisional Seniority List as on 2019, wherein the name of the petitioner found at Sl.No.235. In the proposal sent on 15.09.2018, the name of the petitioner was shown at Sl.No.14. However, the petitioner was not accorded promotion, but his juniors who were at Sl.No.237 to 250 were merged in the said post. No reasons have been stated by the respondent Authorities with respect to non-consideration of the case of the petitioner for promotion or denial.

2.5 Thereafter, several representations came to be filed by the petitioner to consider his permission at least from the date of promotion of his juniors. However, the same were not considered. The Juniors who have been promoted to Chief Officer, Grade-II, now also



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been promoted to Chief Officer, Grade-I, however this time too, the petitioner's case was not considered for promotion. The representations given were also not considered and the reasons were not made known to the petitioner.

2.6 Aggrieved by the inaction, the petitioner is before this Court seeking Writ of Mandamus, directing the respondents to consider his representation stated in the prayer and accord him promotion at least from the date of promotion accorded/ granted to his Juniors who are at Sl.No.237 to 250 and grant all necessary service benefits.

2.7 The respondent authorities have filed their objection, reasoning the non-consideration of the representation in terms of Annexures-R1 and R2.

2.8 Annexure-R1 is the Communication from the Police Inspector, Anti Corruption Bureau, Koppal to the Directorate of Municipalities, Bengaluru, which states



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that a complaint has been received in respect of appointment of the petitioner that, he has procured the appointment on the basis of false/fake documents; and Annexure-R2 is the Communication, from Project Director, Urban Development Department, Koppal to Directorate of Municipalities, Bengaluru on the allegation made against the petitioner. However, so far, no action has been contemplated on the said communications/ intimations/ correspondences.

3. Heard, Sri.B.Sharanabasawa, learned counsel appearing for the petitioner and Smt.Sunitha J.Sequeira, learned Additional Government Advocate appearing for the respondents.

4. It is not in dispute that the petitioner was earlier considered for promotion in the Provisional List, showing his name at Sl.No.235. However, he was not accorded promotion, whereas his juniors who stood at



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Sl.No.237 to 250 were accorded promotion as Chief Officer, Grade-Ii and now been promoted as Chief Officer, Grade-I. This aspect of the matter is not denied by the State.

5. The reason for non-consideration of the representations submitted by the petitioner, perhaps been the contents of Annexures-R1 and R2. However, the fact remains that, nothing has been placed on record as to, what action has been contemplated on the said complaint/ communication.

6. In Service Law, while granting promotion from one post to next higher post, the service particulars of an employee would be called and after perusal of the remarks in the said record, decision would be taken, whether that employee is entitled for promotion or not. In the case on hand, there is nothing adverse found in the service records. However, for no reasons, the petitioner was not given promotion. Over more, in the Provisional List,



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against the name of petitioner, it is clearly stated that, no departmental enquiry contemplated against the petitioner, so also it is clearly and categorically stated that he is eligible for promotion. Despite the same, his case was not considered. This inaction on the part of the respondent authorities caused hardship on the petitioner, who is now due for retirement.

7. As per Rule 8 of the Karnataka Civil Services (Classification, Control and Appeal), 1957, withholding of promotion is exclusively listed as a minor penalty that can be imposed following a duly proved misconduct in a departmental enquiry. The Appointing Authority withhold the promotion of a particular employee of the Government under a Sealed Cover procedure, but only under the circumstances, i.e., if a formal charge sheet in a Criminal Case or articles of charge/charge memo in a Departmental Inquiry has been formally served before the Department of Promotion Committee meets. The employee can also be not eligible for promotion, if he refuses the promotion, but



for a specific block period of his subsequent promotion chances. He can also be denied promotion if his Annual Performance Report states that, he is unfit by the competent Department Promotion Committee due to below benchmark annual performance reports or missing mandatory service/ educational qualifications is superseded.

8. This Court as well as the Hon'ble Supreme Court, in catena of cases, repeatedly held and ruled that, mere contemplation or preliminary investigation of a Criminal or Departmental case without having been issued a formal charge sheet on the date of the DPC, cannot illegally block the promotion or warrant a Sealed Cover procedure.

9. The Hon'ble Supreme Court in the case of ***UNION OF INDIA Vs. K.V.JANKIRAMAN¹***, ruled that

¹ 1991 (4) SCC 109



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when an employee is due for promotion, increment etc, cannot be denied, but for disciplinary/criminal proceedings are pending against him at the relevant time. Even if there are any proceedings stated afore are pending, the findings of his entitlement to such benefits are kept in a sealed cover, to be opened after the proceedings in question are over. In the event, he is exonerated from the disciplinary inquiry or acquitted from the charges in the Criminal proceedings, the cover must be opened and the recommendations of the DPC are acted upon. In the event the officer is to be promoted earlier, he is promoted to the post which is idled on an officiating basis, officiating arrangement being terminated and on promotion, the employee or officer is entitled for all the benefits of Seniority and fixation of pay on notional basis with reference to the date on which he would have been promoted in the normal course, but for the pending disciplinary/Court proceedings. However, no arrears of salary are paid in respect of period prior to the date of



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actual promotion. The relevant paragraphs of the Judgment (supra), reads as under:

"32. In this case, no charge-sheet was served on the respondent employee when the DPC met to consider the respondent's promotion. Yet, the sealed cover procedure was adopted. The Tribunal has rightly directed the authorities to open .the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits. The Tribunal has further stated in the impugned order that its order would not mean that the disciplinary proceedings instituted against the respondent-employee should not go on. We see no reason to interfere with this order. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs.

33. xxxxx

34. In this case, the respondent-employee's case was considered for promotion by the DPC in August 1982. However, the result was kept in a sealed cover in view of the pending disciplinary proceedings against him. According to the employee, on October 11, 1985 the



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disciplinary proceedings ended in complete exoneration. Thereafter, a DPC was again constituted in March 1986 which, after consideration of the employee's case, recommended him for promotion w.e.f. July 26, 1986. This was obviously contrary even to the instructions contained in the Memorandum. He was entitled to promotion from the date his immediate junior was promoted in or after August 1982 if he was in August 1982 found fit for promotion by the DPC, The Tribunal has, therefore, rightly directed the appellant to open the sealed cover and if the DPC in 1982 had found him fit for promotion, to give him the promotion from the date on which his immediate junior was promoted. However, while doing so, the Tribunal has' also directed arrears of salary to be paid for intervening period along with all consequential benefits. Since we have held disagreeing with the decision of the Full Bench of the Tribunal that the .benefit of the arrears of salary will not flow automatically but will depend upon the circumstances in each case, we modify the said order to the extent it directs the payment of arrears of salary, and direct the appellant-authority to consider whether the employee in the circumstances of the case was entitled to any arrears of salary and to what extent. The authority will, of course give reasons for denial of the whole or part of the arrears of salary. The appeal is,



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there- fore, allowed partly with no order as to costs."

10. The Division Bench of this Court in the case of **SMT.JAYASHREE VS. STATE OF KARNATAKA AND OTHERS²**, following the Judgments of the Hon'ble Supreme Court in the case of K.V.Janakiraman (*supra*) and **UNION OF INDIA VS. ANIL KUMAR SARKAR³**, held that, the material on record indicates that as on the date of DPC Meeting, neither Charge Sheet had been filed nor Articles of Charge had been issued to the petitioner. Under those circumstances, there was no warrant for the respondents to adopt Sealed Cover procedure and deny promotion to the petitioner in its meeting, particularly in the absence of either the Articles of Charge being issued or the Charge Sheet being filed against the petitioner. The relevant paragraphs of the order read as under:

"3. A perusal of the material on record will indicate that the petitioner is working as a Village Accountant with the respondent from 16.03.2005

² W.P.NO.103388/2023, disposed of on 15.09.2026

³ (2013) 4 SCC 161



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onwards. On the basis of a complaint, criminal proceedings in Crime No.34/2017 were instituted as against the petitioner. Subsequently, on 20.12.2021, a Departmental Promotion Committee (DPC) Meeting was held to consider the candidates for promotion including the petitioner herein. However, the petitioner was denied promotion on the ground that the aforesaid criminal case in Crime No.34/2017 was pending against him. A charge sheet was filed subsequently on 01.02.2022 in the aforesaid Crime No.34/2017 after the said DPC Meeting was held wherein the petitioner was denied promotion. So also, the request of the petitioner by way of representation dated 13.05.2022 having been rejected by respondent No.2 vide impugned endorsement dated 05.07.2022, the petitioner approached the Tribunal in the instant application which was contest by the respondents, and dismissed by the Tribunal which passed the impugned order, which is assailed in the present petition.

4. *In addition to reiterating various contention urged in the petition and referring to the material on record, the learned counsel for the petitioner submits that in the light of the judgment of the Apex Court in the case of **UNION OF INDIA VS. K.V.JANAKIRAMAN** and in the case of **UNION OF INDIA VS. ANIL KUMAR SARKAR**, mere pendency of criminal proceedings cannot be made the basis or come in the way of the promotion of a person who is otherwise eligible. It is also pointed out that on 14.03.1993 itself, the State Government has*



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issued a Circular which inter alia states that as on the date of DPC Meeting if charge sheet is not filed or if the Articles of Charge is not issued, mere pendency of criminal proceedings in the absence of charge sheet being issued, the sealed cover procedure cannot be adopted and the same can be adopted only after issuance of Charge Sheet or Articles of Charge. It is, therefore, submitted that despite the aforesaid judgments of the Apex Court and the State Government Circular, the respondents have adopted the sealed cover procedure and denied promotion to the petitioner which has been incorrectly upheld by the Tribunal and as such, the petitioner is before this Court by way of the present petition.

5. *Per contra, the learned Government Advocate for the respondent-State would support the impugned order passed by the Tribunal and submit that there is no merit in the petition and that the same is liable to be dismissed.*

6. *As rightly contended by the learned counsel for the petitioner, a perusal of the State Government circular dated 14.07.1993 will indicate that the procedure of maintaining a sealed cover and refusing promotion can be adopted by the respondent only in case where charge sheet has already been filed or Articles of Charge has already been issued as against the alleged delinquent official as on the date of DPC Meeting. In the case on hand, the material on record indicates that as on the date of DPC Meeting which was held on 20.12.2021,*



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*neither Charge Sheet had been filed nor Articles of Charge had been issued to the petitioner, and the charge sheet was filed subsequently on 01.02.2022. Under these circumstances, there was no warrant for the respondents to adopt a sealed cover procedure and deny promotion to the petitioner in its meeting held on 20.12.2021 particularly in the absence of either the Articles of Charge being issued or the Charge Sheet being filed against the petitioner. The learned counsel for the petitioner is also correct in his submission that the impugned order passed by the Tribunal is contrary to the judgments of the Apex Court in **K.V.JANAKIRAMAN's** case and in **ANIL KUMAR SARKAR's** (supra) and on this ground also the impugned order passed by the Tribunal deserves to be set aside and the application filed by the petitioner deserves to be allowed."*

11. In the case on hand, as stated afore, nothing has been placed on record as to, what action has been contemplated against the petitioner on the basis of the complaint forwarded by the Police Inspector, Anti Corruption Bureau Directorate of Municipalities, Bengaluru dated 01.10.2018, so also on the correspondence by the Project Director, Urban Development Department, Koppal



to Directorate of Municipalities, Bengaluru dated 14.11.2018.

12. In that view of the matter, withholding the promotion of the petitioner who is otherwise eligible for promotion as per the Provisional List prepared is against the settled position of Service Law. A mere intimation by the police or correspondence, without the same resulting in any enquiry as contemplated in the Law, cannot be a circumstance to deny the petitioner, the promotion for which he is otherwise entitled.

13. In view thereof, the respondents are directed to consider the representations submitted by the petitioner and shall accord promotion to him, at least from the date of promotion accorded/ granted to his juniors who were at Sl.No.237 to 250 and shall grant him all service benefits, for which he is entitled in law, in view of settled position of law laid down by the Hon'ble Supreme Court as well as the Division Bench of this Court (supra), within a period of



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eight (08) weeks from today. Accordingly, the Writ Petition is ***disposed of***.

14. To report compliance, list this matter on 25.11.2026.

**Sd/-
(T.M.NADAF)
JUDGE**

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