

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: August 05, 2013*  
*Judgment Pronounced on: September 03, 2013*

+ **W.P.(C) 335/2012**

UNION OF INDIA & ANR. ....Petitioners  
Represented by: Mr.Rajesh Katyal, Advocate

versus

SURESH CHANDRA .....Respondent  
Represented by: Mr.A.K.Behera, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR.JUSTICE V.KAMESWAR RAO**

**PRADEEP NANDRAJOG, J.**

1. The controversy involved in the present case relates to, what in service jurisprudence has come to be known as '*sealed cover procedure*'.
2. The '*sealed cover procedure*' is adopted when an employee is due to be considered for promotion, increment etc. but departmental disciplinary/criminal proceedings are pending against him and hence the recommendation of the Departmental Promotion Committee (hereinafter referred to as the 'DPC') pertaining to the employee are kept in a sealed cover requiring the cover to be opened after the proceedings in question are over.
3. On January 30, 1982, the Department of Personnel and Training, Government of India, issued an Office Memorandum on the subject of '*sealed cover procedure*'. As per the Memorandum, cases of Government

servants: (i) who are under suspension or (ii) against whom disciplinary proceedings are pending or a decision has been taken by the competent authority to initiate disciplinary proceedings or (iii) against whom prosecution has been launched in a court of law or sanction for prosecution has been granted, are to be considered for purposes promotion by the DPC at the appropriate time but the recommendations of the DPC are to be kept in a sealed cover; to be opened after the conclusion of the disciplinary/court proceedings.

4. On January 12, 1988, the Department of Personnel and Training, Government of India, issued another Office Memorandum on the subject. As per the said Memorandum, cases of officers (i) who are under suspension or (ii) in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings or (iii) in respect of whom prosecution for criminal charge is pending or sanction for prosecution has been granted or a decision has been taken to accord sanction for prosecution or (iv) against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise are to be kept in a sealed cover.

5. On July 31, 1991, the Department of Personnel and Training, Government of India, issued a third Office Memorandum on the subject as per which condition No.(iv) in the OM dated January 12, 1988 i.e. ‘*against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise*’ was deleted.

6. In the decision reported as (1991) 4 SCC 109 Union of India & Ors v K.V.Jankiraman & Ors a three-Judge Bench of the Supreme Court examined

the legality of the Office Memorandum dated January 30, 1982 and some other aspects connected thereto. Amongst others one question which had arisen before the Court was: 'what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee'? which question was answered in the following words:-

*“16. On the first question, viz., as to when for the purposes of sealed cover procedure the disciplinary/criminal proceeding 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 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 appellant-authorities that when there are serious allegations and it takes time to collect 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 are thus 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. These 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*

*(2) ....*

*(3) ....*

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

*17. There is no doubt that there is 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.*

*18. We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal.” (Emphasis Supplied)*

7. Be it noted here that the OM dated January 12, 1988 was also taken into account by the Supreme Court in Jankiraman’s case (supra).

8. It needs to be highlighted that on the subject of promotion to be effected when a penalty is levied, in Jankiraman’s case (supra) the Supreme Court observed as under:-

*“29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an*

*imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty of short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests....” (Emphasis Supplied)*

9. In view of the decision in *Jankiraman*'s case (supra) on September 14, 1992 the Department of Personnel and Training, Government of India issued an Office Memorandum on the subject of 'sealed cover procedure', the relevant portion whereof reads as under:-

*“Sub: Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation – Procedure and guidelines to be followed. Cases of Government servants to whom Sealed Cover Procedure will be applicable. Procedure to be followed by the DPC in respect of Government servants under cloud. Procedure by subsequent DPCs. Action after completion of disciplinary case/criminal prosecution. Six Monthly review of 'Sealed Cover' cases. Procedure for ad-hoc promotion. Sealed cover procedure for confirmation. Sealed cover procedure applicable to officers coming under cloud after holding of DPC but before promotion.*

*The undersigned is directed to refer to Department of Personnel & Training OM No.22011/2/86-Estt.(A) dated 12<sup>th</sup> January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been*

*reviewed carefully. Government have also noticed the judgment dated 27.08.1991 of the Supreme Court of India in Union of India etc. vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of review and in supersession of all the earlier instructions on the subject (.....), the procedure to be followed in this regard by the authorities is laid down in the subsequent paras of this OM for their guidance.*

2. *At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:-*

- (i) Government servants under suspension;*
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending and*
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.*

*2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover....Not to be opened till the termination of the disciplinary case/criminal prosecution...." (Emphasis Supplied)*

10. The afore-noted Office Memorandum dated September 14, 1992 holds the field on the subject of 'Sealed Cover Procedure' till date but with a clarification on the subject by another Office Memorandum dated November 02, 2012, contents whereof we would be noting hereinafter at the relevant stage of our opinion.

11. In the instant case, the respondent Suresh Chandra, was working on the post of Deputy Director (Sugar Technical) in the Directorate of Sugar, Ministry of Consumer Affairs, Food and Public Administration since the year 1996. The next promotional post as claimed by him was the post of Director (Sugar Technical).

12. In the year 2003 an FIR bearing No.320/2003 under Sections 420/466/468/473/474/476/120-B IPC was registered against the respondent and other persons regarding some financial irregularities allegedly committed by them. On October 29, 2003, the police filed a charge sheet in the aforesaid FIR recording therein that the investigation has revealed that the evidence collected during investigation pertaining to the financial irregularities justified a trial.

13. As per the respondent he became eligible to be considered for promotion to the post of Director (Sugar Technical) in the year 2007.

14. In the year 2008 the respondent filed an application under Section 19 of the Administrative Tribunals Act, 1985 pleading therein that the department had committed an illegality in not promoting him to the post of Director (Sugar Technical) despite the fact that he is fully eligible to be promoted to the said post and that a vacancy had arisen to the post of Director (Sugar Technical) with effect from December 31, 2007.

15. Per contra, the stand taken by the department before the Tribunal was that:- (i) the sole post of Director (Sugar Technical) in the Directorate of Education stood abolished in the year 2001 and (ii) prosecution in respect of criminal charge is pending against the respondent inasmuch as the police had filed a charge sheet in respect of FIR registered against him and thus the

respondent could not be granted promotion in view of the paragraph 2(iii) of the Office Memorandum dated September 14, 1992.

16. Vide impugned judgment and order dated August 30, 2011 the Tribunal has allowed the application filed by the respondent on the ground that: (i) the department is not correct in contending that the post of Director (Sugar Technical) stands abolished inasmuch as the Recruitment Rules of said post show that the post of Director (Sugar Technical) is very much in existence and (ii) mere sanction of the criminal prosecution against the respondent would not be an impediment to consider him for promotion to a higher post.

17. A perusal of the impugned judgment and order dated August 30, 2011 goes to show that the Tribunal has not adverted to the aspect of filing of a charge sheet by the police in the Court dealing with the FIR registered against the respondent probably because said fact was not brought to the notice of the Tribunal inasmuch as said fact does not find mention in the reply filed by the department before the Tribunal.

18. Aggrieved by the impugned judgment and order dated August 30, 2011 the department has filed the above captioned petition under Article 226 of Constitution of India.

19. As agreed to by learned counsel for the parties arguments were advanced only on the subject whether a sealed cover procedure was required to be followed while considering the entitlement of the respondent for being promoted upon the assumption that a post of Director (Sugar Technical) existed. Thus we had heard arguments only on the subject of sealed cover procedure to be followed.

20. As evident from the aforesaid conspectus of facts, the controversy which has arisen in the present case relates to the expression '*prosecution in respect of criminal charge is pending*' occurring in paragraph 2.3 of the Office Memorandum dated September 14, 1992. Whereas learned counsel for the department contended that a '*prosecution in respect of criminal charge is pending*' would mean when a charge sheet (challan) is filed by the investigating agency in the criminal court dealing with a case registered against the Government servant; learned counsel for the respondent contended that a '*prosecution in respect of criminal charge is pending*' only after the charge is framed by the criminal court. Learned counsel for the department in support of his contention relied upon a decision rendered by a Division Bench of this Court in W.P. (C) Nos.3793/2011 and 1470/2011 titled as Union of India vs. Inspector Jawahar Lal & Ors and Union of India & Binod Shahi respectively decided on December 02, 2011. While learned counsel for the respondent relied upon the decision of the Supreme Court reported as (1979) 2 SCC 179 Ratilal Bhanji Mithani vs. State of Maharashtra & Ors.

21. What is meant by the expression '*prosecution in respect of criminal charge is pending*' occurring in paragraph No.2(iii) of the Office Memorandum dated September 14, 1992? When can it be said that '*prosecution in respect of criminal charge is pending*' against a Government servant?

22. A careful reading of paragraph Nos.16 and 17 of the decision of the Supreme Court in Jankiraman's case (supra) noted by us in the foregoing paragraphs reveals that the answers to the aforesaid question(s) are contained in said paragraphs. In Jankiraman's case (supra), one of the

questions which had arisen for consideration before the Supreme Court was: ‘what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee’? After examining the Office Memorandums dated January 30, 1982 and January 12, 1988 the Supreme Court approved the ratio of law laid down by the Full Bench of the Tribunal that departmental proceedings/criminal prosecution is initiated against the employee only when a charge-memo in disciplinary proceedings and charge-sheet in criminal prosecution is filed. The Court further stated in categorical terms that the sealed cover procedure should be resorted to only when a charge memo is served on the concerned official or the charge-sheet is filed before the criminal court and not before.

23. In view of aforesaid dictum of law laid down in Jankiraman’s case (supra), more particularly the fact that the Office Memorandum dated September 14, 1992 was issued by the Government after taking into account the ratio of law laid down in Jankiraman’s case as recorded in the said Memorandum, we have no difficulty in holding that ‘*prosecution in respect of criminal charge is pending*’ when a charge sheet is filed by the investigating agency in the criminal court dealing with a case registered against the Government servant.

24. There is another reason which compels us to hold that the ‘*prosecution in respect of criminal charge is pending*’ when a charge sheet is filed by the investigating agency in the criminal court dealing with a case registered against the Government servant, which reason is contained in the Office Memorandum issued by the Department of Personnel and Training, Government of India on November 02, 2012, the relevant portion whereof reads as under:-

*“8. As regards the stage when prosecution for a criminal charge can be stated to be pending, the said O.M. dated 14.9.92 does not specify the same and hence the definition of pendency of judicial proceedings in criminal cases given in Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 is adopted for the purpose. The Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 provides as under:-*

*“(b) judicial proceedings shall be deemed to be instituted –*

*(i) in case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made.” (Emphasis Supplied)*

25. Thus, in view of the OM dated November 02, 2012 nothing further survives for consideration.

26. The matter can also be viewed from another viewpoint. The object behind the ‘sealed cover procedure’ is that an employee whose integrity has come under a cloud should not be promoted till the time such cloud is removed. Prior to the decision of the Supreme Court in Jankiraman’s case (supra), the sealed cover procedure was resorted even in cases where investigation/preliminary inquiry was being conducted into the allegations leveled against an employee or a decision has been taken to initiate the departmental action or sanction has been accorded to launch a (criminal) prosecution against the employee. In Jankiraman’s case (supra), the Supreme Court frowned upon the aforesaid practice as it was causing injustice to the employees who were being denied promotion for years together because of pendency of investigation or in contemplation of initiation of departmental proceedings/criminal prosecution. However, at the same time, the Supreme Court emphasized that an employee has no right to promotion and public interest requires that promotion should be granted to the employees having ‘unblemished record’. (See paragraph 29 of

Jankiraman' case (supra) noted by us in the foregoing paras). Balancing interests of the employees on one hand and public interest on the other, the Supreme Court concluded that sealed cover procedure should be resorted to only when a charge memo is served on the concerned official (in case of a departmental proceeding) or the charge-sheet is filed before the criminal court (in case of a criminal prosecution) and not before. Now, the moment a charge-memo is issued to an employee in a departmental proceeding or charge-sheet is filed by the investigating agency in the criminal court dealing with a case registered against an employee, the integrity of concerned employee comes under a cloud for the issuance/filing of charge-memo/charge-sheet implies that the department/investigating agency has found some truth in the allegations leveled against the employee after having conducted preliminary inquiry/investigation into such allegations. In view thereof, grant of promotion to the employee in respect of whom charge-memo/charge-sheet is issued/filed would not only defeat the object of 'sealed cover procedure' but would also be contrary to the ratio of law laid down by the Supreme Court in Jankiraman's case (supra).

27. In this regards, it would also be most apposite to note the decision of the Supreme Court reported as (2006) 13 SCC 252 State, CBI vs. Sashi Balasubramanian & Anr. In said case, amongst other aspects, the Court was dealing with clause (iii) of Section 95 of Finance Act, 1995 which prescribes that the provisions of Section 95 shall not apply to any person in respect of whom *prosecution* for certain specified offences or for purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration. In said context, one of the questions which had arisen for consideration before the Court was that '*when does a prosecution start*', which question was answered in following terms:-

*“The First Information Report in regard to the offences committed, as indicated hereinbefore, was lodged on 02.03.1995. The investigation started immediately thereafter. The investigation was being carried out by the Central Bureau of Investigation (Economic Offences Wing). Only at a much later stage, namely, more than three years thereafter, i.e. on 31.12.1998, declarations were filed. Charge-sheet in the criminal case was filed on 12.04.1999. It is in the aforementioned context, interpretation of word ‘prosecution’ assumes significance. The term ‘prosecution’ would include institution or commencement of a criminal proceeding. It may include also an inquiry or investigation. The term ‘prosecution’ and ‘cognizance’ are not interchangeable. They carry different meanings. Different statutes provide for grant of sanction at different stages.*

*‘In initio’ means in the beginning. The dictionary meaning of ‘initiation’ is cause to begin. Whereas some statutes provide for grant of sanction before a prosecution is initiated, some others postulate grant of sanction before a cognizance is taken by Court. However, meaning of the word may vary from case to case. In its wider sense, the prosecution means a proceeding by way of indictment or information, and is not necessarily confined to prosecution for an offence.*

*The term ‘prosecution has been instituted’ would not mean when charge-sheet has been filed and cognizance has been taken. It must be given its ordinary meaning.” (Emphasis Supplied)*

28. The above-noted observations made by the Supreme Court in *Sashi*’s case (supra) are to the effect that prosecution would begin when a person is accused of having committed an offence i.e. before the filing of charge sheet by the investigating agency. Be that as it may. One thing is clear from the above observations that the prosecution would definitely be pending when the charge sheet is filed by an investigating agency in the criminal court.

29. Lastly, we note the following observations made by the Supreme Court in Mithani's case (supra) relied upon by the counsel for the respondent:-

“28. ....*The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry.*”

30. The aforesaid observations relates to ‘*commencement of trial*’ and do not relate to commencement/pendency of prosecution. Furthermore, the observations to the effect that the proceedings before framing of charge by the criminal court are only inquiry would not be of any help to the respondent for even an inquiry into an offence may come within the purview of term ‘*prosecution*’ as held by the Supreme Court in Sashi's case (supra).

31. Before bringing curtains down, we note that a similar view i.e. ‘*prosecution for a criminal charge is pending*’ when the charge sheet is filed by the investigating agency in a court of law was taken by a Division Bench of this Court in W.P. (C) Nos.3793/2011 and 1470/2011 titled as Union of India vs. Inspector Jawahar Lal & Ors and Union of India & Binod Shahi respectively decided on December 02, 2011.

32. In view of the above discussion, we hold that the department was completely justified in not promoting the respondent to the post of Director (Sugar Technical) for the reason ‘*prosecution for a criminal charge was pending*’ when the respondent became eligible to be promoted to said post in the year 2007 inasmuch as the police had filed a charge sheet in the criminal court dealing with the FIR registered against the respondent in the year 2003. There was no need to hold any DPC because there was no eligible candidate to be considered and thus it would be useless for a DPC to meet and keep the recommendation in a sealed cover. A question may be put:

What would happen if the respondent would be ultimately acquitted? The answer then would be that in said situation a DPC akin to a review DPC would be required to be held to consider respondent's candidature as of the year of the vacancy and his eligibility.

33. As a necessary corollary to the above, the impugned judgment dated August 30, 2011 passed by the Tribunal is set aside and O.A. No.1853/2011 filed by the respondent is dismissed.

34. No costs.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(V.KAMESWAR RAO)**  
**JUDGE**

**SEPTEMBER 03, 2013**

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