

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.12501 of 2013(O&M)
Date of decision: June 30, 2015

Sohan Lal

----Petitioner

Versus

Union of India and others

----Respondents

CORAM: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Girish Agnihotri, Sr. Advocate assisted by
Mr.Balwinder Singh, Advocate for the petitioner.

None for respondent No.1 – Union of India.

Mr.Arvind Mittal, Advocate for respondents No.2 to 5.

HARINDER SINGH SIDHU, J.

The petitioner joined respondent No.2 as Development Officer on 27.3.1987. He was promoted as Assistant Area Manager in 1992 and, thereafter as Area Manager in the year 1997, which post was subsequently designated as Deputy Manager. In 2001, he was promoted as Manager (Marketing) and was further promoted to the post of Senior Manager (Marketing) in the year 2005. In the year 2008, he was promoted as Chief Manager (Marketing). The next promotion, which is available to the petitioner as per the applicable Rules, is that of Deputy General Manager (Marketing), (hereinafter referred to as “DGM”) The respondent authorities initiated the process of adjudging the suitability of the candidates for the post of

DGM in the month of October, 2012. Selection for the said post is made on the basis of merit, which is adjudged by giving separate marks on the basis of Annual Confidential Reports, qualification, experience and performance at the interview before the Departmental Promotion Committee. A panel of 18 candidates was to be prepared for promotion to the post DGM as per the anticipated vacancies till 1.6.2013 and the selected candidates were to be promoted as per this panel, as and when a vacancy arose. As the petitioner was eligible and qualified for being considered for the post of DGM, he was called to appear before the DPC for consideration for the post of DGM on 14.10.2012. As per the Seniority List, the petitioner's name figures at No.32 and the candidates upto Sr.No. 55 in the said list were within the zone of consideration.

The petitioner appeared before the DPC on 14.10.2012. But he was not promoted. On enquiry, he was informed that out of recommended panel of 18 candidates for promotion to the post of DGM, 17 had already been given promotion, whereas, the case of the petitioner had been kept in a sealed cover due to communication received from the Vigilance Department dated 12.10.2012, wherein, it had been mentioned that a vigilance case is contemplated against the petitioner.

The petitioner has filed this writ petition challenging the decision of the authorities for keeping his name in sealed cover in view of the communication from the vigilance department.

It is contended that in terms of the decision of the Hon'ble

Supreme Court in **Union of India v. K.V. Jankiraman, (1991) 4 SCC 109** and the instructions of the Department of Personnel & Training (DOPT) in the office memorandum dated 14.9.1992 (Annexure R-1), which have been reiterated by the office memorandum dated 25.10.2004 and the still subsequent memorandum dated 2.12.2012, sealed cover procedure can be adopted only in cases where on the date of the consideration of the case for promotion by the DPC the Government servant is under suspension or a charge-sheet has been issued and the disciplinary proceedings are pending; or prosecution for criminal charge is pending. It is urged that as on the relevant date of consideration of his case by the DPC, none of these three conditions existed, the action of the respondents in adopting the sealed cover procedure was illegal.

In the written statement filed on behalf of the respondents No.2 to 5, it has been stated that the petitioner was ordered to be charge-sheeted by the competent authority on 28.12.2011, which is much prior to the meeting of DPC on 14.10.2012. Reliance has been placed on the decision of the Hon'ble Supreme Court in **Union of India vs. Kewal Kumar and others, (1993) 3 SCC 204** and **Union of India and another vs. R.S.Sharma (2000)4 SCC 394** to contend that when decision to initiate disciplinary proceedings or criminal prosecution has been taken prior to the DPC, in that event also, the sealed cover procedure can be adopted. Further reliance has been placed on paragraph No.7 of the office memorandum dated 14.9.1992, as per which, if any of the circumstances, mentioned in

paragraph 2 of the said memorandum arise after the recommendation of the DPC, but before the actual promotion, the case would be considered as if placed in sealed cover by the DPC and the government servant shall not be promoted till completely exonerated of the charges against him. It is argued that even if the charge-sheet be presumed to have been issued after the DPC, even then the petitioner's case is required to be kept in sealed cover because the charge-sheet was in fact issued to the petitioner before his actual promotion.

It has been explained that a complaint was received against the petitioner, upon which a preliminary investigation was undertaken, wherein, it was found that official vehicle had been misused with the approval of the petitioner. Consequently, he and some other persons were ordered to be charge-sheeted on 28.12.2011. However, one Shri Sahdev Sahore, who was also ordered to be charge-sheeted along with the petitioner, moved a representation to be granted an opportunity before charge-sheeting and also deposited the amount for the misuse of the vehicle. However, after granting him due opportunity, the concerned authorities again found the petitioner and others charged along with him to be guilty and again ordered that they be charge-sheeted on 5.7.2012 and file was sent to the vigilance department for necessary action. The vigilance department again issued notice to the petitioner and others and after hearing them, again recommended to the competent authority that disciplinary proceedings be initiated against

the petitioner and the other persons involved, which was finally approved on 27.12.2012. However, once again Shri Sahdev Sahore moved another representation giving further details vide his letter dated 14.1.2013, which was considered by the appropriate authorities and it was finally decided on 17.5.2013 to charge-sheet the petitioner and others. This decision was approved by the CMD on 30.5.2013 and charge-sheet was finally issued on 21.6.2013. Based on these facts it is stated that the decision to charge-sheet the petitioner was taken much prior to the holding of DPC and hence, the decision to put the case of the petitioner in a sealed cover is as per law.

I have heard Ld. Counsel for the parties and perused the record.

In my view, the decision of the respondents to adopt the sealed cover procedure in the case of the petitioner cannot be sustained.

The meeting of DPC, wherein, the name of the petitioner was considered for promotion was held on 14.10.2012. The charge sheet was issued to him on 21.6.2013, though. it has been asserted on behalf of the respondents that the petitioner along with others was ordered to be charge sheeted on 28.12.2011.

It is not denied that the case of the petitioner for promotion is to be considered in terms of the Government of India instructions dated 14.9.1992. The relevant paragraphs 2 and 7 which have been relied upon are reproduced below:

*"No. 22011/4/91-Estt(A) Government of India ,
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training
North Block, New Delhi 110 001*

Dated: 14-9-1992

OFFICE MEMORANDUM

Subject: Promotion of government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation- Procedure and guidelines to be followed.

The undersigned is directed to refer to the Department of Personnel & Training O.M. No. 22011/2/86-Estt.(A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be 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 27.8.1991 of the Supreme Court of India in Union of India Vs. K.V. Jankiraman etc. (AIR 1991 SC 2010) . As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin). The procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this O.M. for their guidance.

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2 Cases of government servants to whom sealed cover procedure will be applicable.—*At the time of consideration of the cases of government servants for empanelment 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;*
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.*

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7. Sealed cover procedure applicable to officers coming under cloud holding of DPC but before promotion.—A government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in Para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until the conclusion of disciplinary case/criminal proceedings and the provisions contained in this letter will be applicable in his case also.”

The Ld. Counsel for the petitioner has stated that on the date of consideration of the case of the petitioner for promotion by the DPC i.e, 14.10.2012 none of the three conditions as mentioned in paragraph 2 of in the O.M. dated 14.9.1992 was in existence namely the petitioner was not under suspension, charge-sheet for disciplinary proceedings had not been issued nor was a prosecution for criminal charge pending against him. He further relies on the decision of the Hon'ble Supreme Court in **K.V. Jankiraman's case** (*supra*) in support of his contentions. He states that a mere decision

to charge sheet the petitioner would be of no avail in view of the clear provision in the O.M. dated 14.9.1992 and the clear enunciation of law by the Hon'ble Supreme Court in the above case and that a mere decision to initiate disciplinary proceedings without the issuance of a chargesheet before the date of DPC would be of no consequence.

Ld. Counsel for the respondents on the other hand has relied on paragraph 7 of the O.M. to contend that if any of the circumstances mentioned in paragraph 2 thereof arise after the recommendations of the DPC are received, but before he is actually promoted, in such event also, the case has to be considered as if placed in a sealed cover by the DPC and has to await the conclusion of the disciplinary/ criminal proceedings. Ld. Counsel also relies on the decisions of the Hon'ble Supreme Court in the cases of **Kewal Kumar and others** and **R.S.Sharma** (supra).

In my view the petitioners case is squarely covered by the decision of the Hon'ble Supreme Court in **K.V.Jankiraman's case** (supra). In that case, the Hon'ble Supreme Court considered in detail three questions that arise in relation to the 'sealed covered procedure' ; namely;

1. What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee?
2. What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal?
3. To what benefits an employee who is completely or

partially exonerated is entitled to and from which date?

Answering the first question, it was observed:

“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;”

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.”

It approved the decision of the Ld. Administrative Tribunal directing that the sealed cover be opened and if the

respondent was found fit for promotion by the DPC to give him promotion from the date his immediate junior was promoted. The further direction of the Ld. Tribunal to grant all consequential benefits to him was also upheld. This decision has since been followed by the Hon'ble Supreme Court in various cases.

In **Union of India v. Sudha Salhan (Dr)**, (1998) 3 SCC 394, at page 396 :

“6. The question, however, stands concluded by a three-Judge decision of this Court in Union of India v. K.V. Jankiraman in which the same view has been taken. We are in respectful agreement with the above decision. We are also of the opinion that if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to a higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the “sealed cover” procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a “sealed cover” only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to.”

In **Bank of India v. Degala Suryanarayana**, (1999) 5 SCC 762, at

page 769 :

“However, the matter as to promotion stands on a different footing and the judgments of the High Court have to be sustained. The sealed cover procedure is now a well-established concept in service jurisprudence. The procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion, increment etc. are kept in a sealed cover to be opened after the proceedings in question are over (see Union of India v. K.V. Jankiraman SCC at pp. 114-115 : AIR at p. 2013). As on 1-1-1986 the only proceedings pending against the respondent were the criminal proceedings which ended in acquittal of the respondent wiping out with retrospective effect the adverse consequences, if any, flowing from the pendency thereof. The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3-12-1991. In the year 1986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to to which the respondent was found entitled as on 1-1-1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1-1-1986.”

The two cases relied upon by the Ld. Counsel for the

respondent do not detract from the aforesaid position. The facts in those cases were different and they were decided in the light of the earlier O.M. dated January 12, 1988 the provisions whereof were materially different from that in O.M. 14.9.1992 which is applicable in the present case and which has been issued after the decision in Janakiraman case.

As per clause (ii) of paragraph 2 of O.M. dated 12.1.1988, sealed cover procedure was applicable even in a case where decision had been taken to initiate disciplinary proceedings and as per Clause (iv) of paragraph 2, such procedure was applicable in cases where an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by CBI or any agency, departmental or otherwise. The relevant para 2 of this O.M. dated 12.1.1988 is reproduced below:

*“Cases where ‘Sealed Cover Procedure’ applicable.—
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 disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;*
- (iii) government servants in respect of whom prosecution for a criminal charge is pending or a sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution;*
- (iv) government servants against whom an investigation*

on serious allegations of corruption, bribery or similar grave misconduct is in progress either by CBI or any agency, departmental or otherwise.”

The facts in **Kewal Kumar's case** (*supra*) were that the DPC met on November 23, 1989 for considering the respondent and some others for promotion to the Senior Administrative Grade. Before that on November 20, 1989 the decision to initiate disciplinary proceedings against him for imposition of major penalty had been taken by the competent authority. This decision to initiate disciplinary proceedings was taken on the basis of a First Information Report (FIR) registered on September 30, 1988 by the Central Bureau of Investigation (CBI) which was received by the departmental authorities concerned on May 31, 1989. Even though the decision was so taken on November 20, 1989 on the basis of the FIR made much earlier, the charge-sheet was actually issued to the respondent on August 1, 1990.

It was in the aforesaid context that the Hon'ble Supreme Court observed:

3. xxxxxxxx. *In a case like the present, where the First Information Report was registered by the Central Bureau of Investigation, and on that basis the decision had been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the respondent prior to the meeting of the DPC, the applicability of the sealed cover procedure cannot be doubted. The formulation of the charges required for implementing the decision of the competent authority to initiate the disciplinary proceedings, is satisfied in such a*

case by the recording of the First Information Report by the Central Bureau of Investigation which records the allegations against the respondent, and provides the basis for disciplinary proceedings. The requisite formulation of the charges, in such a case, is no longer nebulous, being crystallised in the FIR itself and, therefore, even if the charge-sheet was issued by its despatch to the respondent subsequent to the meeting of the DPC, this fact alone cannot benefit the respondent.

4. The question to examine in each case, is : Whether, the decision to initiate the disciplinary proceedings had been taken or steps for criminal prosecution initiated before the date on which the DPC made the selection? The decision would depend on the facts of the case, keeping in view the object sought to be achieved by adopting the sealed cover procedure. It would be incongruous to hold that, in a case like the present, where the CBI had recorded the FIR; sent the same to the superior authorities of the respondent for taking necessary action; and the competent authority had taken the decision, on the basis of the FIR, to initiate disciplinary proceedings against the respondent for imposition of major penalty, there can be any doubt that the sealed cover procedure is attracted to avoid promoting the respondent, unless exonerated of those charges. These facts, which led to the adoption of the sealed cover procedure, are undoubtedly very material to adjudge the suitability of a person for promotion to a higher post. A decision to follow the sealed cover procedure in these circumstances cannot, therefore, be faulted.”

Clearly indicating that the decision was rendered in the light of the

OM dated 12.1.1988 it was observed: **at page 207 :**

“6. We may also advert to another aspect of this case. In para 2 of the office memorandum No. 22011/2/86-Estt. (A), dated January 12, 1988 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, on the subject of procedure and guidelines to be followed in such cases, indicating the situations in which the sealed cover procedure is to be followed, clause (iv) specifies another category. Clause (iv) relates to ‘Government servants 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’. The fact that the FIR was registered by the CBI, and on communication of the same to the departmental superiors a decision had been taken to initiate disciplinary proceedings for imposition of a major penalty, against the respondent in the present case, brings this case squarely within the ambit of clause (iv) of the guidelines, in addition to clause (ii), thereof.”

In **R.S. Sharma's case** (*supra*), the facts were that when the DPC was held on 3.4.1991 and it decided to put the recommendations concerning the respondent in the sealed cover, investigation into FIR registered against him by the CBI in relation to allegations of serious financial irregularities was pending. Hence, the Sealed Cover Procedure was adopted as his case fell within the purview of clause (iv) of the second para of O.M. dated 12.1.1988. But on 31-7-1991 as per Office Memo No. 22011/1/91-Estt.(A) the restriction imposed as per clause (iv) was deleted from the second para of the “Sealed Cover Procedure”. However, three counts of clarifications were made by the Government of India through the

same OM:-

“It is further clarified that—

(i) All cases kept in sealed cover on the date of this OM on account of conditions obtainable in para 2(iv) of the OM dated 12-1-1988 will be opened. If the official had been found fit and recommended by DPC, he will be notionally promoted, from the date his immediate junior had been promoted. The pay of the higher post would, of course, be admissible only on assumption of actual charge in view of the provisions of Fundamental Rule 17(1). (Since only officiating arrangements could be made against the vacancies available because of cases of senior officials being in sealed cover, there may not be any difficulty in terminating some officiating arrangements if necessary and giving promotion in such cases.)

(ii) If any case is in a sealed cover on account of any of the other conditions mentioned in paras 2(i) to 2(iii) of the OM dated 12-1-1988, the case will continue to be in the sealed cover.

(iii) On opening of the sealed cover because of deletion of para 2(iv) if an officer is found to have been recommended as ‘unfit’ by DPC no further action would be necessary.”

As per the facts of this case on completion of investigation by the CBI, the Minister of State concerned gave his approval to prosecute the respondent on 9-7-1991. The matter was referred for the advice of the Central Vigilance Commission (CVC) and on receipt of its advice and completion of other formalities, the President granted approval for sanction for prosecution on 30-9-1991. The Hon'ble Court accepted the contention of learned Additional Solicitor General that as the Minister concerned accorded approval for granting

sanction to prosecute the respondent as early as 9-7-1991, the recommendations of DPC must remain under sealed cover by virtue of the conditions specified in clause (iii) of the second para of the Sealed Cover Procedure, because in such an event deletion of clause (iv) on 31-7-1991 by itself had no consequence.

The Hon'ble Supreme Court in this case has clearly stated that the clauses of the second para considered in Jankiraman case were different from those involved in this case. The relevant observations in this regard are, **at page 398** :

“16. Learned counsel for the respondent made an endeavour to contend that in the light of the decision of this Court in Union of India v. K.V. Jankiraman the Sealed Cover Procedure can be resorted to only after charge-memo is received or a charge-sheet is filed and that unless such an event had happened at the relevant time the government employee cannot be denied of his promotion, if he is otherwise entitled to it. Learned counsel also submitted that Jankiraman was since followed in Union of India v. Dr Sudha Salhan and Bank of India v. Degala Suryanarayana. The clauses of the second para of the Sealed Cover Procedure considered in Jankiraman were not those involved in the present case and hence that decision is of no avail to the respondent. In the other two decisions the facts warranted application of the ratio contained in Jankiraman. The added factor in these two cases was that the public servant concerned had been exonerated of the charges framed by the criminal courts. In the present case the respondent is still facing trial for serious offences, and hence the situation is different.”

The above cases were noticed by the Hon'ble Supreme Court in a later decision in **Union of India v. Anil Kumar Sarkar, (2013) 4 SCC 161** and reiterating the observations of Jankiraman case it was observed:

14. As per Para 2 of the said memorandum, at the time of consideration of the government servants for promotion, the following details of government servants in the consideration zone for promotion falling in the categories mentioned should be specifically brought to the notice of the DPC viz. (i) Government servant is under suspension; (ii) Government servant has been served with a charge-sheet and the disciplinary proceedings are pending; and (iii) Government servant is facing prosecution for a criminal charge and the said proceedings are pending. As rightly observed by the High Court, if the above conditions are available, even one of them, then the DPC has to apply the “sealed cover process”. In the case on hand, it is not in dispute that the relevant date is 21-4-2003, when the respondent's batchmates were promoted, admittedly on that date the respondent was not under suspension, no charge-sheet was served upon him nor was he facing any criminal prosecution. In such circumstances, in terms of Para 2 referred to above, the recommendation of the DPC has to be honoured and there is no question of applying “sealed cover process”.

15. Mr Mohan Jain, learned ASG submitted that Para 2 has to be read along with Para 7 of the Office Memorandum dated 14-9-1992. We have already extracted Para 7 of the memorandum which makes it clear that a government servant, who is recommended for promotion by the DPC if any of the circumstances

mentioned in Para 2 of the said memorandum arises after the recommendations of the DPC are received, but before he is actually promoted, will be considered as if his case has been placed in a sealed cover by the DPC. After extracting Para 2, we also highlighted the three conditions prescribed therein. Though, the learned ASG has mentioned that four charge-sheets were issued to the respondent, enquires were completed and show-cause notices had already been served on the respondent, on the relevant date, namely, 21-4-2003, when his batchmates were promoted, none of the conditions was in existence in the case of the respondent. Admittedly, the respondent was not placed under suspension, charge-sheet had been issued only on 13-8-2003 i.e. nearly after 4 months, no disciplinary proceedings were initiated or were pending as on 21-4-2003. In such circumstances, we are of the view that the High Court is fully justified in issuing the direction based on Para 2 of the memorandum. No doubt, the learned ASG heavily relied on the later part of Para 7 of the memorandum which reads as under:

“He shall not be promoted until the conclusion of disciplinary case/criminal proceedings and the provisions contained in this letter will be applicable in his case also.” Inasmuch as none of the circumstances was in existence as on 21-4-2003, reliance placed on the later part of Para 7 cannot be accepted or even not be applicable.

23. *In the light of the above discussion and in view of the factual position as highlighted in the earlier paras, we hold that the ratio laid down in Jankiraman case is fully applicable to the case on hand, hence we are in agreement with the ultimate decision of the High Court. Consequently, the appeal filed by the Union of India fails and the same is dismissed. However, there will be no*

order as to costs.

Specifically referring to the case of **R.S. Sharma** (supra) it was observed:

“22. The learned ASG, by drawing our attention to the decision of this Court in Union of India v. R.S. Sharma submitted that in spite of the decision of this Court in Jankiraman case in view of Para 7 of the Office Memorandum and in the light of the fact that proceedings were initiated both criminal and departmental, the High Court committed an error by overlooking Para 7 of the sealed cover process and contended that the direction issued by it cannot be sustained. We have carefully gone through the factual position and the ultimate ratio laid down by this Court in R.S. Sharma case. Even though in the said decision, this Court has distinguished the decision in Jankiraman case and held that the same is not applicable to its case, in the light of the conditions mentioned in Para 2 as well as Para 7 of the Office Memorandum dated 14-9-1992 and of the categorical finding that none of the conditions mentioned therein has been fulfilled, we are of the view that the decision in R.S. Sharma case is not helpful to the case of the appellant.”

In view of the above settled legal position, I am of the view that the decision of the DPC to keep the case of the petitioner in the sealed cover cannot be sustained. At the relevant time when the DPC was held on 14.10.2012, none of the three circumstances mentioned in paragraph 2 of the O.M. 14.9.1992 was present to justify resort to the sealed cover procedure. The mere fact that a decision had been taken to initiate disciplinary proceedings and issue

a charge-sheet before that date on 28.12.2011, would be of no consequence, in view of the specific requirement in the second paragraph of the O.M. that for resort to sealed cover procedure charge-sheet must have been issued and disciplinary proceedings must be pending. Paragraph 7 also does not help the respondents because it cannot be intended to cover cases where promotion was withheld in the first instance by wrong resort to sealed cover procedure. In the present case the charge-sheet was eventually issued only on 21.6.2013, about six months after the holding of the DPC on 14.10.2012 when the petitioner's case had been wrongly placed in sealed cover. Hence, in my view paragraph 7 would not be attracted.

Accordingly, this writ petition is allowed. It is directed that the sealed cover be opened and if the petitioner was found fit for promotion by the DPC held on 14.10.2012, he be given promotion from the date his immediate junior was promoted. The petitioner would also be entitled to all consequential benefits.

June , 2015

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(HARINDER SINGH SIDHU)
JUDGE