

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**WRIT PETITION NOs.43182 OF 2016; 1045, 2449, 2451, 2688,
3188, 3576 AND 5988 OF 2017**

WP No.43182 of 2016:

Between:

A.Jalender Reddy, S/o Sathi Reddy, Aged about 54 years,
Occu: District Town & Country Planning Officer,
O/o DTCPO, R.R.District, 640-AC Guards, Hyderabad,
r/o.H.No.12-13-528 & 529, F/201, Street No.14,
Tarnaka, Secunderabad.

.....Petitioner

and

The State of Telangana, rep.by its Principal Secretary,
Municipal Administration & Urban Development (Vig-III)
Department, Secretariat, Hyderabad and another.

.....Respondents

JUDGMENT PRONOUNCED ON : 17.04.2017

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : No
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : **Yes**
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : No
See fair Copy of the Judgment ? :

***HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION NOS.43182 OF 2016; 1045, 2449, 2451, 2688, 3188, 3576 AND 5988 OF 2017

% 17.04.2017

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.... Respondents

!Counsel for the petitioners :

Sri N.Ramesh, counsel for petitioner in WP No.43182 of 2016;
Sri Pillix Law Firm for petitioner in WP No.1045 of 2017;
Sri S.Gopal Rao, counsel for petitioner in WP No.2449 of 2017;
Sri MVS Sai Kumar, counsel for petitioner in WP No.2451 of 2017;
Sri KV Rajendra Prasad, counsel for petitioner in WP 2688 of 2017;
Sri Ch.Jagannatha Rao, counsel for petitioner in WP 3188 of 2017;
Sri M.Ratna Reddy, counsel for petitioner in WP 3576 of 2017;
Sri K.R.Srinivas, counsel for petitioner in WP 5988 of 2017.

Counsel for the Respondents:

Govt. Pleader for Municipal Admn.(TG) for respondents 1 & 2 in WP NO.43182 of 2016;
Govt.Pleader for Revenue (TG) for respondent No.1, Govt.Pleader for Land Admn.(TG) for respondent No.2 and Sri V.Ravi Kiran Rao, Spl.PP, for ACB Cases (TG) for respondent No.3 in WP No.1045 of 2017;
Govt.Pleader for Services-I (TG) for GP for Revenue in WP 2449 of 2017;
Govt.Pleader for Municipal Admn. (TG) for respondents 1 & 2 in WP 2451 of 2017;
Govt.Pleader for Services-I (TG) for G.P. for Home for R1 to R3 in WP No.2688 of 2017;
Govt.Pleader for Services-I (TG) for G.P. for Revenue (TG) for Respondents 1 to 4 in 3188 of 2017;
Govt.Pleader for Services-I (TG) for G.P. for Revenue (TG) for respondents in WP NO.3576 of 2017;
Govt.Pleader for Services-I (TG) for G.P. for Revenue (TG) for respondents in WP No.5988 of 2017

<Gist :

>Head Note:

? Cases referred:

1990 (Supp) SCC 738; 1991 Supp (2) SCC 199; (1991) 2 SCC 220;
(1991) 4 SCC 109; (1993) 3 SCC 196; (1993) 3 SCC 204 ; (1998) 3 SCC 394;
(1999) 5 SCC 762; (2000) 4 SCC 394; (2007) 9 SCC 625; (2007) 6 SCC 704;
(1995) 2 SCC 570; (2005) 6 SCC 636; (2007) 14 SCC 49; (2009) 7 SCC 305;
(2013) 6 SCC 530; 2010 (4) ALT 374 (DB); 2010 (1) ALD 144; (1991) 4 SCC 129

HONOURABLE SRI JUSTICE P.NAVEEN RAO

**WRIT PETITION NOS.43182 OF 2016; 1045, 2449, 2451,
2688, 3188, 3576 AND 5988 OF 2017**

COMMON ORDER:

In these writ petitions, the vexed question, whether petitioners are entitled to be considered for promotion pending disciplinary/criminal proceedings against them, that visits this court more often than any other issue, falls for consideration. As the core issue is common in all these writ petitions they are disposed of by this common order.

2. Ordinarily, an employee is entitled to be considered for promotion as per his seniority. If promotion is based on seniority, as a matter of course, senior should be granted promotion unless he is otherwise declared as unfit to be promoted. If promotion to the next cadre is based on selection, employee is entitled to be considered as per seniority along with all other eligible candidates by Departmental Promotion Committee and if Promotion Committee recommends, he is entitled to be promoted.

3. In service matters, one of the biggest contributors to litigation and occupying huge legal space is disputes relating to claim for promotion by employee as against employer's desire to defer promotion on the ground of pendency of disciplinary action/criminal action.

4. The substratum of litigation is competing claims of employee and employer. Employee wants promotion when due notwithstanding alleged misconduct, criminal or departmental and employer's desire to at least deny elevation in status to employee

when he is facing disciplinary action/criminal action, more particularly on grave allegations. Broadly, there are four categories of cases, (i) contemplated disciplinary proceedings; (ii) no formal charge sheet is drawn/drawn but not served in disciplinary proceedings/no charge sheet is filed in criminal proceedings; (iii) not concluding the pending disciplinary proceedings/criminal proceedings for a long time and denying promotion; and (iv) dropping of disciplinary action/clearing of disciplinary proceedings/acquittal in criminal proceedings which was the basis for earlier deferment.

5. There is plethora of precedents on the substratum of the litigation. It is expedient to discuss some of the leading decisions on the subject in seriatim of the decisions.

6.1. **State of Madhya Pradesh v. Bani Singh and another**¹ was an appeal against decision of the Central Administrative Tribunal in two OAs filed by Bani Singh. In one OA, he challenged adverse entries in service record and sought retrospective promotion and in another OA, he challenged initiation of disciplinary proceedings on the ground of inordinate delay. Both OAs were allowed. The Supreme Court upheld the decision of Tribunal. Supreme Court observed as under:

“4. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.

6. ***Normally, pendency or contemplated initiation of disciplinary proceedings against a candidate***

¹ 1990 (Supp) Supreme Court Cases 738

must be considered to have absolutely no impact upon his right to be considered. If the departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure followed as mentioned by the Tribunal was 'sealed cover' procedure but if the disciplinary proceedings had not reached that stage of framing of the charge after prima facie case is established the consideration for the promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of such disciplinary proceedings. Deferring the consideration in the Screening Committee meeting held on November 26, 1980 on this ground was therefore insupportable. In fact, even in respect of the adverse remarks which has been now quashed the respondent officer had made his own representation and the representation also was pending consideration at that time and it was disposed of only in December 1986. The remark, therefore, should not be taken to have become final so as to enable the Committee to take that remark into consideration. The deferring of the consideration in the meeting held on November 26, 1980, therefore, could not be considered as valid.”
(emphasis supplied)

6.1.1. In **C.O.Arumugam and others v. State of Tamil Nadu and others**², Supreme Court held,

“5. As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. *The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded.* They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.”
(emphasis supplied)

6.1.2. In **New Bank of India v. N.P.Sehgal and another**³, the main contention urged by the respondent was, as a consequence to grant of promotion, all the earlier alleged misconducts gets wiped out and it is not permissible to conduct disciplinary proceedings. Supreme Court held as under:

“7. On a plain reading of this clause it is clear that even if disciplinary action is in process against an officer of the

² 1991 Supp (2) SCC 199

³ (1991) 2 SCC 220

appellant Bank, that would not entitle the appellant Bank to exclude from consideration for promotion the officer concerned if he is otherwise entitled to be so considered. The only right given to the appellant in such cases is that, in case such an officer is otherwise found fit for promotion and selected for promotion, that promotion can be withheld until the officer is exonerated from the charges. It is significant that the said clause goes to state that in case such an officer is exonerated from the charges, promotion will have to be given effect to from the date on which it would have been otherwise effective but for the disciplinary action. ***This rule gives rise to the implication that till disciplinary action is in process or initiated, the officer concerned, against whom allegations of misconduct might be made, can neither be excluded from consideration for promotion if he is entitled to be considered otherwise nor can the promotion be denied to him.*** In these circumstances, when the promotion from Scale II to Scale III was granted to respondent 1 on July 17, 1984, ***there could be no question of condonation of the earlier acts of misconduct by reason of this promotion*** because in law and in view of the said clause (9) the appellant had no option but to consider respondent 1 for promotion and if he was otherwise found fit for promotion to promote him. In view of this conclusion, it must follow that the charge sheet submitted against respondent 1 and the disciplinary proceedings pursuant to the said charge sheet cannot be said to be bad in law and cannot be interfered with on the ground of condonation. In our view, the courts below were in error in holding that the earlier alleged acts of misconduct of respondent 1 had been condoned by the appellant and basing their conclusions thereon.” (emphasis supplied)

6.2.1. Government of India notified office memorandum on 30.01.1982 laying guidelines for adopting sealed cover procedure. This memorandum was subject matter of challenge before the Central Administrative Tribunal. The decision rendered by the Full Bench of Central Administrative Tribunal and the benches of the Central Administrative Tribunal were assailed before the Supreme Court by the Union of India in batch of appeals in the case reported as **Union of India and others v. K.V.Jankiraman and others**⁴. The common questions involved in all the matters relate to sealed cover procedure. Three questions were considered by the Supreme Court: (1) What is the date from which it can be said that

⁴ (1991) 4 SCC 109

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.

6.2.2. Insofar as the present issue is concerned, the first question considered by the Supreme Court is relevant. On this issue, Supreme Court upheld the decision of the Full Bench of the Tribunal. Full Bench of the Tribunal held that only if a charge memo in disciplinary proceedings or a charge sheet in criminal prosecution is issued to the employee that it can be said that departmental proceedings/criminal prosecution is initiated against an employee.

6.2.3. Supreme Court held that the sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued. It is held:

“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.” (emphasis supplied)

6.3. In **Delhi Development Authority v. H.C.Khurana**⁵ and **Union of India v. Kewal Kumar**⁶ Supreme Court has taken a different view.

6.3.1. In **H.C.Khurana**(supra) charges were framed against the employee on 11.07.1990;DPC met on 28.11.1990; recommendation of the DPC was kept in a sealed cover. Delhi High Court held that since charge sheet was not served before the DPC meeting was held, the sealed cover procedure is not attracted. The said decision of the Delhi High Court was challenged before the Supreme Court. The contention urged by the Delhi Development Authority was decision to frame charges was taken much earlier to the meeting of the DPC, charges were framed, but could not be served before the DPC meeting was held and to adopt the sealed cover procedure, it is sufficient if decision to take disciplinary action was made prior to holding of DPC.

6.3.2. The question that fell for consideration before the Supreme Court was, “What is the stage, when it can be said, that a decision has been taken to initiate disciplinary proceedings” ? On

⁵ (1993) 3 SCC 196

⁶ (1993) 3 SCC 204

behalf of employee, heavy reliance was placed on the decision of Supreme Court in **K.V.Jankiraman**.

6.3.3. On construction of OM dated 12.1.1988 and the decision in **Jankiraman**, Supreme Court observed as under:

“13. It will be seen that in *Jankiraman* [(1991) 4 SCC 109 : (1993) 23 ATC 322 : 1993 SCC (L&S) 387] also, emphasis is on the stage when ‘a decision has been taken to initiate the disciplinary proceedings’ and it was further said that ‘to deny the said benefit (of promotion), they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee’. The word ‘issued’ used in this context in *Jankiraman* [(1991) 4 SCC 109 : (1993) 23 ATC 322 : 1993 SCC (L&S) 387] it is urged by learned counsel for the respondent, means service on the employee. ***We are unable to read Jankiraman [(1991) 4 SCC 109 : (1993) 23 ATC 322 : 1993 SCC (L&S) 387] in this manner. The context in which the word ‘issued’ has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the charge-sheet leaving no doubt that the decision had been taken.*** The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision. Obviously, the contrary view cannot be taken. (emphasis supplied)

6.3.4. In **Kewal Kumar** similar issue came up for consideration. DPC meeting was held on 23.11.1989 and DPC followed the sealed cover procedure on the ground that decision to initiate disciplinary proceedings was taken on 20.11.1989 on the basis of the FIR registered by the CBI on 30.09.1988. However, charge sheet was actually issued on 01.08.1990. The Central Administrative Tribunal granted relief to the employee based on the earlier decision of the Supreme Court in **Jankiraman**.

6.3.5. Supreme Court held, ***“thus, the sealed cover procedure is attracted even when a decision has been taken to initiate disciplinary proceedings, ‘or decision to accord sanction for***

prosecution is taken’ or ‘criminal prosecution is launched’
(paragraph 2). It is further observed that, ***“It is obvious that when the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC”*** (paragraph 3).

6.3.6. Supreme Court held as under:

“3. It is obvious that when the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given the promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC, being found suitable otherwise. ***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."

(emphasis supplied)

6.3.7. In both the decisions, Supreme Court was considering the scope of the clause (iv) of OM, dated 12.1.1988, which is similar to clause (iii) of G.O.Ms.No.424 and G.O.Ms.No.257.

6.4.1. In **Union of India and others v. Dr Sudha Salhan (Smt)**⁷, respondent was considered by the Departmental Promotion Committee for promotion on 08.03.1989, but the proceedings of the Selection Committee were placed in a sealed cover. On 16.04.1991, she was placed under suspension. On 08.05.1991 charge sheet was issued. On 18.04.1991, respondent filed O.A. before the Central Administrative Tribunal praying to open the sealed cover to grant promotion retrospectively from the date her immediate juniors were promoted and to arrears of salary and allowances and also consequential benefits. O.A. was allowed by the Tribunal. The said decision was challenged before the Supreme Court.

6.4.2. Supreme Court observed as under:

"6. The question, however, stands concluded by a three-Judge decision of this Court in Union of India v. K.V. Jankiraman [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] 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

⁷ (1998) 3 SCC 394

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.” (emphasis supplied)

6.5.1. In **Bank of India and another v. Degala Suryanarayana**⁸, on 16.04.1981, complaint was filed against the employee with the CBI alleging misappropriation. While complaint was under investigation, employee was interviewed for promotion in the year 1981-82. Result of the interview was withheld on the ground of pendency of the criminal proceedings. In 1983, two criminal cases were filed by the CBI implicating the employee. In 1987, though he was found fit for promotion w.e.f. 1.1.1986, but was not given effect to on account of pendency of the criminal cases. The criminal cases ended in acquittal on 17.08.1988. On 03.04.1991, charge sheet was given alleging commission of misconduct. Contending that allegations made in the charge sheet are on stale matters, employee filed writ petition in the year 1992. During the pendency of the writ petition, employee was visited with the punishment of reduction of pay by one stage. The same was also assailed before the High Court. High Court interfered with the punishment and directed regularization from the date of *ad hoc* promotion i.e., 1.1.1986.

⁸ (1999) 5 SCC 762

6.5.2. On the issue of entitlement for promotion, Supreme Court observed as under:

“14. 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 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.”

6.6.1. In **Union of India and another v. R.S.Sharma**⁹, Supreme Court considered the decisions rendered in **K.V.Jankiraman**, **H.C.Khurana** and **Kewal Kumar**. On the allegations of financial misdemeanour, FIR was registered by the CBI and CBI took up investigation. On completion of investigation, CBI applied to Government of India for according sanction to prosecute the employee. President granted sanction for prosecution on 30.09.1999. Meanwhile, DPC deferred the case of the employee on the ground that investigation is pending. This decision to defer was challenged before the Tribunal. Pursuant to the interim order of the Tribunal, DPC in its meeting held on 03.04.1991 considered the entitlement of the employee for promotion and kept the recommendation in a sealed cover. By then, the clause (iv) of OM dated 12.1.1988 as considered by the Supreme Court in **H.C.Khurana** and **Kewal Kumar** was in force. But before the

⁹ (2000) 4 SCC 394

sanction for prosecution was granted by the President, this clause was deleted on 31.07.1991. On account of deletion of the clause, there was no impediment to grant promotion merely on the ground of pendency of investigation.

6.6.2. Supreme Court noticed that though the deletion of clause (iv) on 31.07.1991 would enable consideration for promotion, but having regard to the fact that he was not promoted before sanction for prosecution was granted, held that adoption of sealed cover procedure could not be faulted, by referring to paragraph 7 of the OM dated 12.01.1988 and employee was not entitled for promotion.

6.6.3. Supreme Court held as under:

“13. Two factual aspects are admitted. One is that the respondent was not actually promoted even now. The other is that formal sanction has been accorded to prosecute him in the meanwhile. If that be so, para 7 of the Sealed Cover Procedure would entirely apply and the recommendations made by DPC in respect of the respondent have to remain in the sealed cover “until he is completely exonerated of the charges against him”.

xxxx

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* [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] 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* [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] was since followed in *Union of India v. Dr Sudha Salhan* [(1998) 3 SCC 394 : 1998 SCC (L&S) 884] and *Bank of India v. Degala Suryanarayana* [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036]. **The clauses of the second para of the Sealed Cover Procedure considered in Jankiraman [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] 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* [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] . 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.

17. We may also point out, in this context, that in *Delhi Development Authority v. H.C. Khurana* [(1993) 3 SCC 196 : 1993 SCC (L&S) 736 : (1993) 24 ATC 763 : *JT* (1993) 2 SC 695] and *Union of India v. Kewal Kumar* [(1993) 3 SCC 204 : 1993 SCC (L&S) 744 : (1993) 24 ATC 770 : *JT* (1993) 2 SC 705] this Court found that the ratio in *Jankiraman* [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] is applicable only to the situations similar to the cases discussed therein, and hence the Sealed Cover Procedure resorted to by DPC in those two cases was upheld by this Court.” (emphasis supplied)

6.7.1. In **Coal India Limited and others v. Saroj Kumar Mishra**¹⁰, to consider the cases for promotion of eligible officers from Grade E-3 to Grade E-4, DPC was held in April-May, 1999. Respondents in the above case were not promoted on the ground that General Manager (Vigilance) intimated to the authority concerned that the Vigilance cases were pending against them. Juniors were promoted on 31.08.1999. Writ petitions were filed against denial of promotions. During the pendency of the writ petitions, in June, 2002, charge sheets were issued, which ultimately resulted in imposing punishment in July, 2003. By construing concerned office memorandums and the decisions of the Supreme Court, the High Court allowed the writ petitions.

6.7.2. Before the Supreme Court also, heavy reliance was placed on office memorandums concerning the issue. Supreme Court observed that as valuable right of employee is effected,

¹⁰ (2007) 9 SCC 625

memorandums should be construed strictly and on so construed, ***“there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard”*** (paragraph 13).

6.7.3. Supreme Court observed that ***“a departmental proceedings is ordinarily said to be initiated only when a charge sheet is issued”*** (paragraph 18). *(Emphasis supplied)*

6.7.4. In **Union of India and others v. Sangram Keshari Nayak¹¹**, respondent was eligible for promotion to the post of Senior Administrative Grade in Indian Railway Traffic Services. His name was also placed before the DPC for preparation of panel for promotion to the said post. However, on the ground that vigilance case was pending, sealed cover procedure was adopted. On 27.08.1999 junior to the petitioner was promoted and on 24.09.1999, disciplinary action was initiated by issuing charge sheet. By interpreting the relevant provisions of the Administrative Instructions/orders, the Tribunal as well as High Court held that Government servant can be said to be under cloud only if the charge sheet is issued.

6.7.5. By interpreting the relevant provision of the concerned administrative instructions, Supreme Court observed that, ***“the recommendations of the DPC, therefore, can be refused to be given effect to only inter alia when one or the other conditions mentioned in Para 2 of the said circular stand satisfied which in the instant case would mean that as against the respondent a charge sheet had been issued or, in***

¹¹ (2007) 6 SCC 704

other words, a disciplinary proceeding was pending. It was held that there was no bar in promoting the respondent during the period 14.01.1999 to 27.08.1999. (emphasis supplied)

6.7.6. Having regard to the facts of the said case, Supreme Court held that earlier decision of the Supreme Court in **R.S.Sharma, H.C.Khurana** and **Kewal Kumar** are not attracted.

6.7.7. At this stage, it is appropriate to notice observations of the Supreme Court,

“ Interpretation of a purported circular letter dated 21.1.1993 falls for our consideration in this appeal which arises out of a judgment and order dated 31.1.2005 passed by the High Court of Orissa in Writ Petition No.50 of 2004.

“18. **As the circular contained a provision of that nature which is absent in the present case, the said decision, in our opinion, also has no application in the instant case.**” (emphasis supplied)

6.8.1. In **Union of India and others v. Anil Kumar Sarkar**, DPC was held on 26.02.2002 and 27.02.2002 to consider the eligible Grade B officers of the Indian Railways Accounts Service for substantive promotion to Group-A (Junior Scale). Respondent was also considered for the year 2001-02. Alleging committing grave misconduct during the year 1994-95, four memorandums of charges were issued in the year 2003 and in the year 2004. CBI lodged seven FIRs, which ultimately resulted in registering of three criminal cases. By proceedings dated 21.04.2003, batch mates of the respondent were promoted.

6.8.2. By interpreting the office memorandum dated 14.09.1992, Supreme Court observed that, on the date of promotion of the batch mates, neither ‘*criminal proceedings were initiated*’ nor

“department enquiry was initiated’, nor ‘any charge sheet was served’, nor ‘he was placed under suspension’, which were parameters prescribed in the office memorandum dated 14.09.1992 for deferring the promotion. Supreme Court, therefore, observed that applying sealed cover procedure was not warranted.

6.8.3. By relying on observations in **K.V.Janakiraman**, Supreme Court held:

“18. The principles laid down with reference to similar office memorandum are applicable to the case on hand and the contrary argument raised by the appellant Union of India is liable to be rejected.

21. We also reiterate that the disciplinary proceedings commence only when a charge-sheet is issued. Departmental proceeding is normally said to be initiated only when a charge-sheet is issued.

22. The learned ASG, by drawing our attention to the decision of this Court in *Union of India v. R.S. Sharma* [(2000) 4 SCC 394 : 2000 SCC (L&S) 653] submitted that in spite of the decision of this Court in *Jankiraman case* [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] 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* [(2000) 4 SCC 394 : 2000 SCC (L&S) 653] . Even though in the said decision, this Court has distinguished the decision in *Jankiraman case* [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] 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* [(2000) 4 SCC 394 : 2000 SCC (L&S) 653] is not helpful to the case of the appellant.”

7.1. One other major area of grievance in denying promotion pending disciplinary action where litigation springs up is inordinate delay in initiation/conclusion of disciplinary proceedings and on the ground of inordinate delay in initiation and

conclusion of the disciplinary proceedings, not attributable to the employees, their entitlement for promotion is denied. Employees place reliance on the Government policy decision to conclude the departmental proceedings, in case of minor misconduct within three months and in case of major misconduct within six months. The said policy is notified in G.O.Ms.No.679, General Administration (Service-C) Department, dated 01.11.2008. The employees contend that when time limit is prescribed for completing the disciplinary proceedings and when employee is no way responsible for the delay in completion, at least their entitlement for promotion cannot be ignored. They also contend that G.O.Ms.No.257 enables consideration for promotion, if there is delay in disposal of domestic enquiry.

7.2. In the following decisions, the Supreme Court considered this issue.

7.3.1. **State of Punjab and others v. Chaman Lal Goyal**¹² was a case of inordinate delay in initiation and conclusion of disciplinary proceedings and denial of promotion on the ground that disciplinary proceedings are pending. The High Court quashed the memo of charges. This issue was considered in detail. Supreme Court placed reliance on the judgment of Constitution Bench in **A.R.Antulay** to hold that right of speedy trial is fundamental right and the same principle would apply to the domestic enquiries also. Supreme Court held that whenever there is delay in conclusion of the disciplinary proceedings, the Court has to resort to 'balancing

¹² (1995) 2 SCC 570

test or balancing process' and determine in each case whether the right of speedy trial is denied and to pass appropriate orders.

7.3.2. Having regard to the delay in conclusion, though the Court declined to set aside the disciplinary proceedings, at the same time, directed consideration for promotion without reference to pending disciplinary proceedings. In the said case, there was delay of more than five years in initiation of the disciplinary proceedings.

7.3.3. Dealing with delay in initiation and conclusion of disciplinary proceedings and promotion, Supreme Court held as under:

“12. Applying the **balancing process**, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. **At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different.** The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped.” *(emphasis supplied)*

7.4.1. In **State of A.P. v. N.Radhakishan** (supra), Charge memo was issued to the employee on 31.07.1995 on incidents relating to years 1978, 1979 and 1984. The Tribunal quashed the disciplinary proceedings on the ground of delay. It appears three different

memos were issued, but only memo dated 31.07.1995 was quashed on the ground of delay and memos dated 27.10.1995 and 01.06.1996 were not disturbed but Tribunal directed consideration for promotion without reference to the said memos. Supreme Court upheld quashing of memo dated 31.07.1995 and directed the State to consider the claim of the employee for promotion ignoring the memo dated 27.10.1995 and 01.06.1996.

7.4.2. It is appropriate to extract following paragraphs of the decision.

“2. The Tribunal was concerned with the question if promotion of the respondent could be denied to him after his name had been included in the panel prepared by the DPC on the ground that the disciplinary enquiry initiated against him had not yet been terminated. The respondent had submitted before the Tribunal that the charge memo dated 31-7-1995 was served upon him just before the meeting of the DPC only to deprive him of his claim of promotion and further that the charge memos dated 27-10-1995 and 1-6-1996 being subsequent to the date of meeting of the DPC could not be taken into consideration for promoting him to the post of Director, Town and Country Planning. The Tribunal noticed that the memo dated 31-7-1995 related to the incidents that happened in the years 1978, 1979 and 1984, which were also the subject-matter of Memo No. 1412 dated 22-12-1987. While Memo No. 1412 had been issued under Rule 19 of the Andhra Pradesh Civil Services (CCA) Rules, 1963 (for short “1963 Rules”) that dated 31-7-1995 was issued under Rule 20 of the Andhra Pradesh Civil Services (CCA) Rules, 1991 (for short “1991 Rules”). Earlier Memo No. 1412 was neither cancelled nor annulled before issuance of memo dated 31-7-1995 and the Tribunal was of the view that because of this circumstance memo dated 31-7-1995 could not have been issued and enquiry should have proceeded under the old Rules after the Enquiry Officer had been appointed.

4. Whether the delay did vitiate the disciplinary proceedings and if the Tribunal was justified in giving the directions aforesaid we may refer to the sequence of events.

19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that

case. **The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them** to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. **In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred.** If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. **Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings.** Ultimately, the court is to balance these two diverse considerations.”

20. In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularising the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any enquiry officer even assuming that action was validly being initiated under the 1991 Rules. There is no explanation whatsoever for delay in concluding the enquiry proceedings all these years. The case depended on records of the Department only and the Director General, Anti-Corruption Bureau had pointed out that no witnesses had been examined before he gave his report. The Enquiry Officers who had been appointed one after the other had just to examine the records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that the respondent at any stage tried to obstruct or delay the enquiry proceedings. **The Tribunal rightly did not accept the explanations of the State as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated 31-7-1995 and directing the State to promote the respondent as per**

recommendation of the DPC ignoring memos dated 27-10-1995 and 1-6-1996. The Tribunal rightly did not quash these two latter memos.”

(emphasis supplied)

7.5.1. In **P.V.Mahadevan v M.D., T.N.Housing Board**¹³, again the very issue of delay in initiation/conclusion of disciplinary proceedings has come up for consideration. Charge memo was issued in the year 2000 alleging irregularities in issuing the sale deed in the year 1990 i.e., delay of ten years. Supreme Court noticed that there was no acceptable explanation for the inordinate delay in initiating disciplinary proceedings by relying on the decision of Supreme Court in **State of M.P. v Bani Singh** (supra) and **State of A.P. v. N.Radhakishan** (supra). Supreme Court quashed the charge memo.

7.5.2. Supreme Court held, “the protracted disciplinary enquiry against a Government employee issued, therefore, be avoided not only in the interests of Government employee, but in the public interest and also in the interest of inspiring confidence in the minds of the Government employees (paragraph 11).

7.6.1. In **Government of Andhra Pradesh and others v. V.Appala Swamy**¹⁴, the High Court quashed the charge memo on the ground of delay in initiation and conclusion. Supreme Court observed that, merely on the ground of delay in concluding the proceedings, the disciplinary proceedings should not be quashed and set aside the decision of the High Court.

¹³ (2005) 6 SCC 636

¹⁴ (2007) 14 SCC 49

7.6.2. Supreme Court held as under:

“12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard-and-fast rule can be laid down there for. Each case must be determined on its own facts. ***The principles upon which a proceeding can be directed to be quashed on the ground of delay are:***

(1) where by reason of the delay, the employer condoned the lapses on the part of the employee;

(2) where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the inquiry officer.”

7.7. **Prem Nath Bali** (supra), **Secretary, Forest Department and others v. Abdur Rasul Chowdhury**¹⁵, **Chairman, Life Insurance Corporation of India and others v. M.Masilamani**¹⁶, Supreme Court was dealing with delay in initiation and / or conclusion of disciplinary proceedings and held that delay should not be caused and such delay is not in public interest.

8.1. Next, learned counsel appearing for petitioners also placed reliance on decisions of the Division Bench of this Court in **Government of A.P., represented by its Principal Secretary, Revenue Department and another v. A.Rajeswara Reddy, Deputy Collector, presently on deputation as Deputy Administrator at Govt.Pleaders Office, High Court of A.P., Hyderabad**¹⁷, State of A.P., rep.by its Principal Secretary to

¹⁵ (2009) 7 SCC 305

¹⁶ (2013) 6 SCC 530

¹⁷ 2010 (4) ALT 374 (D.B.)

Government, Revenue Department and another v A.Ramulu and another¹⁸ and W.P.No.8690 of 2016.

8.2. In **A.Rajeswara Reddy**, The facts that can be culled out in the reported decision are: on 23.04.2008, departmental proceedings were initiated. On the ground that disciplinary proceedings were pending, promotion of the employee to the post of Special Grade Deputy Collector for the panel year 2008-09 was deferred by the Government Order dated 01.11.2008. Employee filed O.A.No. 6083 of 2009 in APAT to consider his case for promotion without reference to pending disciplinary proceedings. Tribunal by order dated 19.10.2009 allowed the O.A. On behalf of the State, reliance was placed on the decision of this Court in **A.Ramulu**. However, Division Bench observed that since G.O.Ms.No.679 dated 1.11.2008 prescribes time limit for completing the disciplinary proceedings and as disciplinary proceedings were not concluded within the time fixed therein, upheld the decision of the Tribunal. The Division Bench also noticed that order based on which disciplinary proceedings were initiated were passed by the employer acting as quasi judicial authority and Tribunal's finding that decision in quasi judicial capacity was not amenable to disciplinary action was upheld. The Court also observed that in the earlier decision in **A.Ramulu**, G.O.Ms.No.679 was not considered. It is also relevant to note that, in this case G.O.Ms.No.257 was not considered.

8.3. In **A.Ramulu**, employee, filed O.A.No.7307 of 2009 in Andhra Pradesh Administrative Tribunal (APAT) seeking to

¹⁸ 2010 (1) ALD 144

consider his case for promotion to the post of Assistant Commissioner of Prohibition and Excise without reference to disciplinary proceedings initiated on 11.02.2008. Employee also filed O.A.No.6719 of 2009 contending that not disposing of the disciplinary proceedings within the stipulated time as illegal and sought for consequential direction. In O.A.No.7307 of 2009, Tribunal directed consideration of employee for promotion without reference to pending disciplinary proceedings. In O.A.No.6719 of 2009 initially Tribunal directed not to affect any promotion, but later it was vacated. The State as well as A.Ramulu filed two writ petitions questioning the respective orders of the Tribunal. On considering the provisions in Rules 5 and 6 of Andhra Pradesh State and Subordinate Service Rules, 1996 and G.O.Ms.No.257 dated 10.06.1999, this Court held as under:

“21. In view of the orders of the Government in G.O.Ms. No. 257, dated 10.6.1999, and the judgment of the Apex Court referred to above, we are of the opinion that the applicant is not entitled to any relief in the said O.As and both the O.As are misconceived. Admittedly, pursuant to the orders of the Government in G.O.Rt. No. 444, dated 11.2.2008, an enquiry officer was appointed and the enquiry officer submitted his report on 2.7.2009 holding that charge No. 2 is proved and the other charges are not proved. The Government while disagreeing with the findings of the enquiry officer on charge No. 3, a show cause notice was issued vide memo No. 62574/Vig.V(2)/2007-1 1, dated 14.7.2009, calling upon the applicant to submit his representation on the findings of the enquiry officer in respect of charge No. 2 and also on the disagreement factors in respect of charge No. 3 to the Government by 31.7.2009. It is stated that in pursuance of the said memo, the applicant submitted his explanation on 26.8.2009. It is stated that the matter is under consideration for consultation of the Vigilance Commissioner as well as Public Service Commissioner, if necessary.

22. Therefore, we are not inclined to express any opinion on the merits of the case so far as the disciplinary proceedings are concerned. However, in view of the pendency of the aforesaid disciplinary proceedings and the enquiry was already completed and show cause notice was also issued and final orders are yet to be passed, the

applicant is not entitled to be considered for promotion to the post of Assistant Commissioner of Prohibition and Excise.

8.4. In **W.P.No.8690 of 2016**, the employee claimed promotion as Assistant City Planner/ Assistant Director, Town and Country Planning without reference to pending disciplinary proceedings. As seen from the order of the Division Bench, it appears that there was no progress in the domestic enquiry even after long time of initiation and another employee involved in the same disciplinary action was promoted. The learned Government Pleader, on instructions, reported to the Court that Enquiry Officer was not appointed. Having regard to these facts, the Division Bench issued directions to grant promotion to the employee without reference to the pending disciplinary proceedings. Division Bench has not considered the scope of the Government policy as reflected in G.O.Ms.Nos.424 and 257 and the decisions of the Supreme Court referred to above.

9. The precedent decisions by the Hon'ble Supreme Court broadly deal with three different contingencies and for convenience they can be put into three categories. In the first category of cases, Supreme Court considered the issue when entitlement of an employee for promotion can be deferred. In the second category of cases, Supreme Court was considering the situation when entitlement of an employee for promotion can be deferred even though a formal charge sheet was not issued. In the third category of cases, Supreme Court dealt with situations where though charge sheet was issued there was inordinate delay in initiation/ conclusion of disciplinary proceeding and the course that should

be adopted by the courts whenever such issue arises for consideration.

10. CATEGORY I:

10.1.1. In the decisions of Supreme Court in **C.O. Arumugum, N.P.Sehgar**, in the main judgment in **Janakiraman, Dr.Sudha Salhan, Coal India, Sangram Keshari and Anil Kumar Sarkar**, Supreme Court held that disciplinary proceedings are stated to be pending only when charge memo/ charge sheet is drawn / issued and only then, ordinarily, an employee can be ignored for promotion/ employer can adopt sealed cover procedure.

10.2. CATEGORY II:

10.2.1. Decisions in **Civil Appeal Nos.51-55 of 1990 (as part of K.V.Janakiraman), H.C.Khurana, Kewal Kumar, R.S.Sharma and Tejinder Singh** fall into this category. In these decisions, a departure is made from the above broad principle. It is necessary and expedient to consider these decisions in little more detail, at the cost of repetition.

10.2.2. In **K.V.Janakiraman**, appeals were preferred against the decision of Full Bench of Central Administrative Tribunal and the decision of Central Administrative Tribunal Benches. All appeals were clubbed and considered. There were three common questions involved in the batch of cases before the Supreme Court. One of the questions considered was, ***“What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee”.***

10.2.3. In **K.V.Janakiraman**, after considering the decision of Full Bench of Central Administrative Tribunal on various clauses of O.M. on sealed cover procedure, Supreme Court considered orders passed by Benches of Central Administrative Tribunal in individual cases. It is appropriate to note the observations made by the Supreme Court in **Civil Appeal Nos.51-55 of 1990**.

10.2.4. The facts of these appeals noted as in paragraphs 36 and 37 of the judgment would reveal that disciplinary proceedings as well as criminal prosecutions were launched against each of the employees for lodging false Leave Travel Concession claims and for using forged documents to support them. The employees were placed under suspension on 15.07.1983. They admitted guilt and pleaded revocation of their suspension. The amount of Rs 1600/- was deposited in October, 1983. On depositing the amount, suspension was revoked in November, 1983. A lenient view was taken and criminal prosecutions were dropped on 14.01.1985, but without prejudice to the departmental proceedings. Formal charge sheet was issued on 24.12.1987. While so, the Departmental Promotion Committee met in July, 1986. The DPC resorted to sealed cover procedure against these employees.

10.2.5. On challenge, Tribunal directed promotions to be given to the employees on the basis of the recommendations of the DPC in July, 1986. Supreme Court found fault with the said direction. Supreme Court held that such mechanical view of the earlier decision of the Full Bench was erroneous.

10.2.6. Supreme Court observed as under:

“39. In view of the aforesaid peculiar facts of the present case, the DPC which met in July 1986 was justified in resorting to the sealed cover procedure, notwithstanding the fact that the charge-sheet in the departmental proceedings was issued in August/December, 1987. The Tribunal was, therefore, not justified in mechanically applying the decision of the Full Bench to the facts of the present case and also in directing all benefits to be given to the employees including payment of arrears of salary. We are of the view that even if the results in the sealed cover entitle the employees to promotion from the date their immediate juniors were promoted and they are, therefore, so promoted and given notional benefits of seniority etc., the employees in no case should be given any arrears of salary. The denial of the benefit of salary will, of course, be in addition to the penalty, if any, imposed on the employees at the end of the disciplinary proceedings. We, therefore, allow these appeals as above with no order as to costs.”

(emphasis supplied)

10.2.7. At this stage, it is also appropriate to note the observations of the Supreme Court in **Union of India v. Tejinder Singh**¹⁹. This appeal was preferred against the interim directions issued by the Central Administrative Tribunal. The Tribunal directed the Union of India to consider and promote the respondent irrespective of whether departmental enquiry was contemplated or pending. Supreme Court observed that this direction virtually amounted to pre-judging the whole issue before the Tribunal.

10.2.8. Supreme Court observed as under:

“4. we would like to record that the Tribunal had no jurisdiction whatever while dealing with a petition to quash the contemplated departmental enquiry against the respondent, to make an interim order of this nature. We are also not satisfied as to the correctness of the view expressed by the Tribunal that a contemplated departmental inquiry or pendency of a departmental proceeding cannot be a ground for withholding consideration for promotion or the promotion itself. We are not aware of any rule or principle to warrant such a view. As at present advised, we do not subscribe to the view expressed by the Tribunal.”

(emphasis supplied)

¹⁹ (1991) 4 SCC 129

10.2.9. In **H.C.Khurana**, Supreme Court held that adopting sealed cover procedure is valid if decision to frame charges was taken and charges were framed earlier to meeting of DPC and it is not necessary that the charge sheet should be actually served. In **Kewal Kumar**, Supreme Court held that on recording of the FIR by the CBI, if a decision is taken by disciplinary authority to initiate disciplinary action is sufficient and no formal charge sheet is required to keep the result of employee claim for promotion in a sealed cover. In **R.S.Sharma**, Supreme Court observed that before employee could be actually promoted sanction for prosecution was granted and thus though sealed cover procedure was not attracted when it was observed but no promotion can be granted on account of subsequent development. The view of the Supreme Court in **K.V.Janakiraman**, echoed in **H.C.Khurana**, **Kewal Kumar**, **R.S.Sharma** and **Tejinder Singh**, would show that in the facts of a given case it is permissible to differ promotion even when no formal charge sheet is drawn / served in departmental proceedings or charge sheet is filed in a criminal case. It is also relevant to note that the decisions in **K.V.Janakiraman** and **R.S.Sharma** were by benches composing of three learned judges.

10.3. CATEGORY - III:

10.3.1. **Chaman Lal Goyal, P.V.Mahadevan, N.Radhakishan and V.Appala Swamy** (supra) fall into this category. Other cases discussed above deal with delay in initiating and concluding the disciplinary proceeding only and do not deal with entitlement for promotion. In this category, principle deducible from the above precedent decisions is that in case of abnormal delay in

initiation/conclusion of disciplinary proceedings and the delay is not satisfactorily explained by the employer, court is required to consider several relevant factors, apply 'balancing test or balancing process' and pass such appropriate order as court finds just and equitable in the circumstances of a case (**Chaman Lal Goyal**). In this category of cases wherever it was found that the delay in initiation / conclusion of disciplinary proceedings is unreasonably long, direction was issued to consider the employee for promotion without reference to and without taking into consideration the charges or the pendency of the enquiry.

10.3.2. As can be seen from the precedent decisions referred to above, it is desirable for the disciplinary authority to conclude the disciplinary proceedings within the fixed time frame. The orders of the Government in G.O.Ms.No.679 give guidance to the disciplinary authority to conclude the disciplinary proceedings within reasonable time. However, merely because disciplinary proceedings are not concluded within the time fixed, it does not automatically invalidate the disciplinary action and each case has to be seen in accordance with the parameters laid down by the Supreme Court in **V.Appala Swamy** (supra). However, even while upholding the disciplinary action, court may consider issuing direction to consider for promotion, depending on the facts of the case, nature of allegations leveled, reason for delay and the policy of the employer.

10.3.3. At this stage it is appropriate to note the observations of the Supreme Court in **Chaman Lal Goyal**. Supreme Court observed, "At the same time, it is directed that the respondent

*should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. **This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different.***”

RULES AND POLICY OF THE GOVERNMENTS IN BOTH STATES:

11.1. Andhra Pradesh State and Subordinate Service Rules 1996 (for convenience referred to as ‘General Rules’) deal with general conditions of service of all Government employees. Rule 5 deals with procedure for promotion to selection posts and non-selection posts. According to this Rule, non-gazetted posts are not treated as selection posts. According to sub-rule (a) of Rule 5, all first appointments to a State service and all promotions/appointments by transfer in that service should be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal from the panel of candidates provided. In case of non-section post, sub-rule (b) contemplates that it should be made in accordance with the seniority cum fitness.

11.2. Rule 6 deals with method of preparation of panels. The salient features of this provision are, panel of approved candidates as envisaged in Rule 5 (a) should be prepared by appointing authority/authority empowered, in consultation with, the Departmental Promotion Committee if such posts are outside the purview of the Andhra Pradesh Public Service Commission (now

Telangana State Public Service Commission), and the Screening Committee, in respect of the posts within the purview of Telangana State Public Service Commission. The appointment should be made from the panels so drawn. Where no consultation is required from the Public Service Commission, panel should be prepared ordinarily during the month of September every year on the basis of estimate of vacancies. The 1st September of the year shall be reckoned as qualifying date to determine the eligibility and such panel would lapse on 31st December of the succeeding year or when the next panel is prepared, whichever is earlier. The zone of consideration is confined to 1:3. For computation of vacancies, 1st September of the year to the 31st August of the succeeding year should be reckoned as the period.

11.3. According to Rule 6(i) for non selection posts, competent authority should prepare list of eligible employees every year i.e., from 1st September of the year to the 31st August of the succeeding year, after considering the record sheet and qualifications prescribed.

11.4. It is appropriate to notice that Rules 5 and 6 of the A.P.State and Subordinate Service Rules, 1996 do not deal with the issue of consideration for promotion when disciplinary proceedings or criminal proceedings are pending. The administrative instructions /orders notified vide G.O.Ms.Nos.424 General Administration (Services.C) Department, dated 25.05.1976 and G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.06.1999 reflect the policy of the

Government on consideration for promotion when disciplinary proceedings / criminal proceedings are pending.

12.1. At this stage it is expedient to consider the policy of the State Government. In the combined State, prior to bifurcation, the Government formulated promotion policy on consideration of employees/officers facing the disciplinary proceedings and the same is in force in both States. The two states are not adopting sealed cover procedure. After consideration of the case by the DPC or by the appointing authority, if the employee is found suitable / fit for promotion, the result of consideration is declared but his actual promotion is deferred till the proceedings pending against him are concluded. Government notified its policy vide G.O.Ms.No. 424, dated 25.05.1976.

12.2. For the purpose of such consideration, Government classified the Officers, who are facing enquiry, trial or investigation, into three categories. The three categories are as under:

i) an officer with a clean record, the nature of charges/ allegations against whom relate to minor lapses having no bearing on his integrity or efficiency, which, even if held proved, would not stand in the way of his being promoted;

ii) an officer whose record is such that he would not be promoted, irrespective of the allegations/charges under enquiry, trial or investigation; and

iii) an officer whose record is such that he would have been promoted had he not been facing enquiry, trial or investigation, in respect of charges

which, if held proved, would be sufficient to supersede him.

12.3. According to G.O.Ms.No.424, dated 25.5.1976, Officers falling into third category should be deferred for promotion pending departmental enquiry/trial/investigation. Most of the litigation is generated in cases falling into third category.

12.4. On further review of this policy and subsequent orders of the Government, Government notified its fresh policy vide G.O.Ms.No.257 dated 10.06.1999.

12.5. The relevant portions of G.O.Ms.No.257 read as under:

“(5) Government also order that with immediate effect the following procedure and guidelines, be followed to consider the employees against whom disciplinary cases or criminal prosecution are pending or whose conduct is under investigation, for appointment by promotion or transfer, to next higher categories.

(A) The details of employees in the zone of consideration for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committees or Screening Committees:-

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

(B) Officers who are facing enquiry, trial or investigation; can be categorized into the following groups based on the nature of the allegations or charges pending against them or about to be instituted namely:-

- (i) an officer with a clean record, the nature of charges or allegations against whom related to minor lapses having no bearing on his integrity or efficiency, which even if held proved, would not stand in the way of his being promoted.
- (ii) an officer whose record is such that he would not be promoted, irrespective of the allegations or charges under enquiry, trial or investigation; and
- (iii) an Officer whose record is such that he would have been promoted had he not been facing enquiry, trial or investigation, in-respect of charges which, if held proved, would be sufficient to supersede him.

(C) The suitability of the Officers for inclusion in the panel should be considered on an overall assessment based on the record which should include namely:-

(i) Adverse remarks recorded in the Annual Confidential Reports, the penalties awarded and the bad reputation of the Officer as vouchsafed by the Head of the Department and the Secretary to Government of the Department concerned;

The above cases should be considered as falling under category (ii) of item (B) above.

(ii) The Officers who do not have any adverse entry in the Annual Confidential Report, and who have no penalties awarded against them in the entire duration of the post and not merely in the past five years and whose reputation is vouchsafed by the Head of the Department and the Secretary to Government of the Department concerned should be considered as falling under category (iii) of item (B) above.

The Officers categorized as under item (iii) of G.O.Ms.No.424, G.A.(Ser.C) Dept, dt: 25-5-1976 as mentioned above only should be considered for adhoc promotion after completion of two years from the date of the Departmental Promotion Committee or Screening Committee Meeting in which their cases were considered for the first time.

(6) The Appointment Authority should consider and decide that it would not be against public interest to allow adhoc promotion to the Officer concerned and this shall be decided with reference to the charge under enquiry. If the charge is one of moral turpitude, misappropriation, embezzlement and grave dereliction of duty then the Appointing Authority should consider as not in the public interest to consider adhoc promotion to such charged Officer. But, however, if the charge is not a grave one but is a minor one, not involving moral turpitude, embezzlement and grave dereliction of duty then only in such cases the Appointing Authority should consider that it would not be against public interest to allow adhoc promotion because till then his record is clean with reference to ACRs, past punishment and reputation in the Department as vouchsafed by the Head of the Department and Secretary to Government. The Appointing Authorities should strive to finalise the disciplinary cases pursuing them vigorously so that within two years the proceedings are concluded and final orders issued."

12.6. This G.O. mandates that the concerned authority should bring to the notice of the Departmental Promotion Committee, the details of the employees in the zone of consideration for promotion falling under the three categories mentioned there under i.e., i) officers under suspension; ii) officers in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and iii) officers in respect of whom prosecution on criminal charges are pending. Similar categorization of officers as was notified in G.O.Ms.No.424 is also incorporated in paragraph-

5(B) of this G.O. The G.O. enables consideration of claims of officers also falling under the third category, if, even after completion of two years from the date of the Departmental Promotion Committee or Screening Committee meeting, there was no progress in the enquiry/trial/investigation. However, even this consideration is confined to officers against whom charge leveled is not grave, but is a minor one, not involving moral turpitude, embezzlement and grave dereliction of duty.

12.7. In other words, even if two years time has elapsed after the earlier Departmental Promotion Committee meeting and there is no progress in the case, the officer cannot be considered for granting *ad hoc* promotion also if charge leveled is either one of moral turpitude, misappropriation, embezzlement and grave dereliction of duty or all of them.

12.8. Thus, to claim *ad hoc* promotion, Officer is required to fulfill two conditions, i) that even after two years from the date of earlier Departmental Promotion Committee meeting, there is no progress in the departmental enquiry/trial/investigation; and ii) that the allegations leveled do not deal with moral turpitude, misappropriation, embezzlement and grave dereliction of duties.

12.9. As seen from the two Government orders, policy of the Government is clear and unambiguous; that the Government does not intend to grant promotion even on *ad hoc* basis if the allegations leveled against the employee/officer are grave and that such officer/employee is facing enquiry/trial/investigation.

13. In the several decisions referred to above, Supreme Court was interpreting the policy document of the employers on the scope of consideration for promotion when disciplinary/criminal proceedings are pending (ordinarily employers adopt the 'sealed cover procedure'; in States of Andhra Pradesh and Telengana- result of the DPC recommendation is announced but adopt policy of deferment). The precedent decisions unequivocally hold that disciplinary proceedings or criminal proceedings are stated to be pending only when charge sheet is issued / filed and then only promotion can be differed and pending investigation is not a ground to deny promotion when due.

14. It is settled principle of law that an employee has right for consideration for promotion, but has no right to ask promotion as a matter of course [***K Samantaray Vs National Insurance Company Limited - (2004) 9 SCC 286***]. One of the important parameters of public service is if an employee is facing disciplinary action/trial on his/her misdemeanor or misconduct- criminal/civil, he/she should not be granted promotion. It is not in public interest to grant promotion to an employee when on serious allegation enquiry / trial is pending against him. Thus, employee is entitled to be considered for promotion and in such consideration even if he is found fit, his promotion can be differed on the ground that disciplinary proceedings/criminal proceedings are pending.

15. The long line of precedent decisions, illuminate the path on consideration of claims for promotion by employees facing disciplinary/criminal proceedings. Guided by the precedent

decisions, each case requires consideration in the given facts of the case duly taking note of Government policy notified vide G.O.Ms.No.257.

16. Briefly, the relevant facts, contentions and issue in each of the cases are discussed hereunder.

17. The cases on hand can be broadly classified into three categories as under:

(I) Crime registered / prosecution launched under the Prevention of Corruption Act on the allegation of demand and acceptance of bribe:

18. **W.P.No.2688 of 2017:**

19.1. Facts as averred in the affidavit filed in support of writ petition would disclose that petitioner is presently working as Inspector of Police in Special Branch (Civil), Hyderabad. The next promotion is to the category of the Deputy Superintendent of Police (Civil). By proceedings dated 17.07.2014, fifty one Inspectors of Police were promoted as Deputy Superintendent of Police. According to the petitioner, several persons promoted on 17.07.2014 are juniors to him. Petitioner was ignored for promotion on the ground that a case in Crime No.5/ACB-CR-1/2010 is registered by ACB. Petitioner earlier filed O.A.No.4691 of 2014 before the Andhra Pradesh Administrative Tribunal. By interim order dated 12.08.2014, Tribunal directed consideration of the case of the petitioner for promotion to the post of Deputy Superintendent of Police during the year 2012-13 without reference to the pending criminal case. By proceedings dated

17.12.2015, his claim was rejected. Petitioner earlier filed W.P.No.44740 of 2016 questioning the proceedings dated 17.12.2015. While so, petitioner claimed to have made a representation on 14.10.2016 requesting to grant promotion in accordance with the orders in G.O.Ms.No.424 General Administration (Services.C) Department, dated 25.05.1976 and G.O.Ms.No.257 General Administration (Ser.C) Department, dated 10.06.1999, and also referring to grant of promotion to one Mr. P. Ashok though ACB case was also pending against him. The claim of the petitioner was rejected by the Memo dated 09.01.2017 impugned in this writ petition.

19.2. Learned counsel for petitioner contended that in view of the policy of the Government, as reflected in Government Orders in G.O.Ms.Nos.424 and 257, petitioner is entitled to be considered for promotion as per his seniority since there is no progress in the criminal case even after more than three years and petitioner is no way responsible for the delay in completion of the investigation/trial. He further submitted that when similarly situated person was considered for promotion, not extending the same benefit to the petitioner amounts arbitrary exercise of power and also discriminatory. He further submitted that false case is foisted on him and further injustice cannot be caused on him.

19.3. In the order impugned, petitioner was informed that he cannot compare with P. Ashok as no charges were framed against him when he was considered for promotion and the case was pending before Tribunal for disciplinary proceedings, whereas in the case of the petitioner, charge sheet was already filed in

criminal case. When specifically asked, learned counsel for petitioner fairly submitted that charge sheet is already filed in the criminal case. However, he would submit that before charge sheet was filed he was eligible for promotion.

20. WP No. 3188 of 2017:

20.1. Petitioner is presently working as Senior Assistant. Petitioner claims to have passed Criminal Judicial test papers 1 to 4, Indian Evidence Act Test, Civil Judicial Test papers 1 & 2 and Maintenance test for Revenue Subordinates and has also worked as Mandal Revenue Inspector. He claims that he is now eligible to be promoted as Naib Tahsildar. Even though he is one of the senior most Senior Assistants and fully qualified, he is ignored and fifty juniors to him are now proposed for promotion as Naib Tahsildars. Petitioner contends that such action of the respondents is illegal, amounts to arbitrary exercise of power and authority.

20.2. According to the petitioner, when he was working as Mandal Revenue Inspector-II and Incharge VRO of Malakpet Village, on false allegation of demanding and acceptance of illegal gratification, Crime was registered by the ACB on 11.01.2013. As a consequence to the registration of the crime, by order dated 30.01.2013, he was placed under suspension. The orders of suspension was revoked by proceedings dated 24.11.2014 and he was given posting orders by proceedings dated 10.02.2015. According to petitioner, post of Deputy Tahsildar/Naib Tahsildar is governed by A.P. Revenue Subordinate Service Rules. According to note-3 appended to Rule 3 of the said Rules, list of approved

candidates for appointment should be drawn up in the month of September every year and as per Rule 5(c) of the Rules, Senior Assistants, who passed all the departmental tests and examinations prescribed, are eligible for consideration for inclusion in the approved list. Though petitioner is otherwise eligible and qualified, while considering his far juniors, he is being ignored merely on the ground that crime is registered against him. It is further averred that vide notice dated 16.1.2017 names of 50 Senior Assistants/MRI to be promoted as Naib Tahsildars is circulated, who are all junior to petitioner. If they are promoted, ignoring petitioner, grave prejudice would be caused.

20.3. Learned counsel for petitioner submitted that mere registration of the crime is not a bar for consideration for promotion. He would further submit that there is no progress in the investigation even after four years for no fault of the petitioner and, therefore, petitioner cannot be subjected to further harassment and suffering by denying his promotion. He placed reliance on the G.O.Ms.No.66, General Administration (Services.C) Department, dated 30.01.1991, to contend that mere pendency of the investigation is not a ground and promotion can be denied only if a charge sheet is filed in criminal case.

21. WP No.3576 of 2017:

21.1. Petitioner is presently working as Deputy Tahsildar. The next avenue of advancement in service is to the post of Tahsildar. According to the petitioner in the integrated seniority list of the Deputy Tahsildars in Zone-V promoted during the panel years 2012-13 to 2014-15, his name stands at Sl.No.59. The

Government is in the process of taking up promotions and being senior most, he is eligible for promotion. Juniors to the petitioner, whose names are included in the panel year 2013-14 are being granted *ad hoc* promotions ignoring the petitioner. Petitioner apprehends that in the impending promotions, petitioner is likely to be over looked on the ground that criminal case is pending against him.

21.2. According to the averments in the affidavit filed in support of the writ petition, trap was laid by the ACB on 27.11.2012 on the allegation that petitioner demanded and accepted bribe of Rs.8,000/-. After completion of investigation, ACB filed charge sheet. Case was initially registered as CC No.9 of 2014, later renumbered as C.C.No.54 of 2015 and criminal case is pending trial in the Court of II Additional Special Judge for SPE and ACB Cases at Hyderabad. On the allegation of involvement in demand and acceptance of bribe, petitioner was placed under suspension on 27.11.2012, but the suspension was revoked by order dated 04.04.20014.

21.3. Learned counsel for petitioner contended that petitioner was falsely implicated in a criminal case and on the ground of pending criminal case he is not likely to be promoted. He further submitted that for no fault of petitioner, for more than four years, the criminal proceedings are not concluded. Though he has meritorious record of service, on account of this false implication at the fag end of his service, he is likely to be ignored for promotion, causing severe hardship and suffering. By placing reliance on G.O.Ms.No. 257 General Administration (Ser-C) Department, dated

10.06.1999, he contended that even if criminal case is pending, he is entitled to be considered for promotion.

22. W.P.NO.2449 OF 2017

22.1. Petitioner is presently working as Village Revenue Officer. Petitioner claims promotion to the post of Senior Assistant. According to the petitioner, he is at sl.no.23 in the eligibility list of Village Revenue Officers for promotion to the cadre of Senior Assistants as per the proceedings, dated 19.08.2015. However, against his name, an endorsement is made that ACB case is pending and on that ground, he is not being promoted. According to the petitioner, four persons junior to him shown below in the eligibility list dated 19.08.2015 and shown against Sl.Nos.24, 25, 26 and 29, were promoted by proceedings dated 01.08.2016, ignoring the petitioner.

22.2. According to the petitioner, on the allegation of demand and acceptance of bribe, Crime No.33/RCT-HR/2013 is registered against him. He was placed under suspension by order dated 11.09.2013. On review of suspension, he was reinstated by order dated 21.11.2014. According to the petitioner, there is no further progress in the investigation by the ACB and so far charge sheet is not filed.

22.3. Learned counsel for petitioner submitted that petitioner is seeking promotion to the post of Senior Assistant. The said post is not a selection post and promotion is based on seniority. Therefore, merely because crime is registered cannot be a ground to ignore him for promotion and promote his juniors. By placing reliance on the orders of the Government in G.O.Ms.No.66, General

Administration (Services.C) Department, dated 30.01.1991, he contended that only when a charge sheet is filed in criminal case, an employee can be ignored for promotion, but in the instant case no charge sheet is filed.

22.4. Learned counsel further contended that petitioner earlier filed W.P.No.32787 of 2016 alleging inaction of respondents in considering the case of the petitioner for promotion. This Court, by way of interim order, dated 27.09.2016, directed the first respondent to consider the representation dated 06.06.2016 and pass appropriate orders. By the order impugned, the representation of the petitioner was rejected. He submitted that the reasons assigned are contrary to the Government policy on granting promotions pending disciplinary proceedings. The reply given to the petitioner is vague. Since no charge sheet is filed and as incident relates to the year 2011, there is no justification to deny his promotion.

23.1. In all the above cases, the allegation leveled against the petitioners is they indulged in illegal gratification and they are shown as accused in pending criminal cases/ investigation is in progress on the crime registered against them. Crimes were registered against them under the Prevention of Corruption Act.

23.2. The issue for consideration in these writ petitions is whether the pending investigation by the ACB / Criminal Case on the allegation of demand and acceptance of illegal gratification is a ground to deny the promotion?

23.3. In WP NOs 3188 of 2017 & 2449 of 2017 since only crime is registered on the allegation of demand and acceptance of bribe and no charge sheet is filed nor permission for prosecution is sought their claim for promotion cannot be deferred. Thus, petitioners are entitled to be considered for promotion without reference to the pending crimes against them and if they are otherwise eligible and suitable. Writ Petitions are accordingly disposed.

23.4. In WP Nos.2688 Of 2017 & 3576 Of 2017 admittedly charge sheets are filed and trial has to be conducted. Though petitioners contend that they are not responsible for the delay in completion of trial, it is to be noted that registration of crime and continuation of criminal proceedings is not the subject matter in these writ petitions. To maintain sanctity in public service, no person who is facing such serious allegations can be rewarded with promotion. It is not in public interest. The policy of the Government is clear and unambiguous and in terms thereof petitioners are not entitled for promotion even on *ad hoc* basis when criminal cases are pending. It cannot be said that such employee is remediless. If he comes clean on the charge of illegal gratification, he can claim all benefits from retrospective date. Thus, these writ petitions deserve to be dismissed. They are accordingly, dismissed.

(II) Delay in initiation/Delay in conclusion of disciplinary proceedings:

24. WP No.43182 of 2016:

24.1. Petitioner is presently working as Assistant Director of Town and Country Planning. Petitioner claims that he is fully qualified

and eligible for promotion to the post of Deputy Director of Town and Country Planning. According to the petitioner, in the over all seniority list, his name stands at Sl.No.41 and if the seniority of persons possessing Post Graduate qualification is taken, his name stands at Sl.No.25. There are number of vacancies and either way petitioner is within the zone of consideration for promotion.

24.2. By Order in G.O.Rt.No.314, Municipal Administration and Urban Development (Vig.II(2)) Department, dated 03.05.2016, petitioner was served with charge memo containing five charges. Petitioner sought permission to peruse the records relating to the allegations levelled in the charge memo, but so far records are not furnished. Though petitioner is eligible and qualified, he is not considered for promotion on the ground that disciplinary proceedings are pending.

24.3. According to the learned counsel for petitioner, petitioner worked in the then Nizamabad Municipality (now Municipal Corporation) between 18.06.2007 and 10.04.2008. The charges levelled now relate to this period. Furthermore, disciplinary action is initiated against 16 Officers, who have worked in the then Nizamabad Municipality, presently Municipal Corporation, between 2005 and 2008. He would contend that there is inordinate delay in initiating the disciplinary proceedings. There is no satisfactory explanation as to why there is such inordinate delay in initiating. The disciplinary action is liable to be set aside on the sole ground of such inordinate delay. He would further submit that charges are vague; that the permission to the buildings on which unauthorized/illegal constructions are alleged to have been made

were granted in the year 2005, that is much before the petitioner joined in Nizamabad Municipality and by the time, he joined, the constructions were also completed.

24.4. He would further submit that his tenure was very short i.e., 7 months and even in the seven months, he was deputed for training on three occasions for a total period of more than 30 days and he had hardly worked in the Municipality. He further submitted that the incidents, on which charge memo is issued, pertain to the period when he was working as Town Planning Officer. In the year 2013, he was promoted as Assistant Director. He therefore submitted that by referring to the two allegations relating to the period when petitioner worked as Town Planning Officer, he cannot be ignored for promotion. There are no allegations against him in the present position occupied by him and he has clean record of service.

24.5. Learned counsel contended that inordinate delay in finalizing the departmental proceedings defeats justice and equality clause under Article 14 of the Constitution of India and at any rate since departmental proceedings are initiated belatedly, employee is entitled to be considered for promotion notwithstanding pending disciplinary proceedings. Even according to Government orders, for simple cases, enquiry should be completed in three months and on serious allegations enquiry should be completed within six months. In the instant case, there is no progress in the enquiry after the charge memo was issued on 3.5.2016 and, therefore, the charge memo is liable to be set aside on the said ground.

24.6. The facts relevant to note the assessment of claim of petitioner are, charge memo is dated 03.05.2016; that charges relate to the period between 2007 and 2008 when he was working in the Post of Town Planning Officer; that no junior to him is promoted so far.

24.7. Whether the disciplinary proceedings are liable to be set aside on the ground of inordinate delay in initiating and concluding the disciplinary proceedings? or whether petitioner can be directed to be considered for promotion without reference to the pending disciplinary proceedings on the ground that there is delay in initiating the disciplinary proceedings?

24.8. The facts as noted above would show that the incident related to the period between 2007 and 2008 when petitioner was working as Town Planning Officer and after drawing up charges, it appears, there is no further progress in the enquiry. From the facts noted above there is no justification in not concluding the disciplinary proceedings even after it was initiated, more so when the initiation itself is after eight years from the date of alleged incident. However, following the principle laid down in **Chaman Lal Goyal and V. Appala Swamy** this court is not inclined to quash the disciplinary proceedings on the ground of delay. The petitioner can raise the plea and take all defences as available in law before the enquiry authority and the disciplinary authority. On the issue of entitlement for promotion, it is seen that for the first time, petitioner is in the reckoning for promotion. Having regard to these facts, by applying the balancing process, the respondents are directed to conclude the disciplinary proceedings as expeditiously

as possible, preferably within a period of four months from the date of receipt of copy of the order. For any reason, disciplinary proceedings are not concluded and delay in concluding the disciplinary proceedings is not attributable to the petitioner, he shall be considered for promotion without reference to pending disciplinary proceedings after four months of time granted by this Court. Such promotion shall be *ad hoc*.

25. **W.P.No.5988 of 2017**

25.1. In this writ petition, petitioner is aggrieved by delay in conclusion of disciplinary proceedings and denying him promotion.

25.2. Petitioner is presently working as Deputy Tahsildar and the next avenue of advancement in service is to the post of Tahsildar. Petitioner was served with charge memo dated 20.05.2015, which contained two charges. Sum and substance of the allegations in the two charges are, petitioner failed to protect the Government land as he has issued patta in Government land and he failed to attend his legitimate duties and violated Rule 3 of Andhra Pradesh Civil Service (Conduct) Rules, 1964. Denying the charges, petitioner filed his explanation on 12.06.2015. Not convinced with the explanation filed, enquiry was ordered, appointing Additional Joint Collector, Nizamabad as Enquiry Officer. Petitioner claims that on 02.09.2015, he appeared before the Enquiry Officer and submitted his written statement. There is no further progress.

25.3. In the integrated seniority list of Deputy Tahsildar, dated 04.02.2017, name of the petitioner was shown at Sl.No.51. This list was prepared to effect promotions to the post of Tahsildar from the Naib-Tahsildars of the panel year 2012-13. The Departmental

Promotion Committee (DPC) is constituted to effect promotions on *ad hoc* basis and in the DPC proceedings name of the petitioner was shown at Sl.No.80. However, against his name, in remarks column, it was shown that petitioner name is deferred for promotion.

25.4. Learned counsel for petitioner contended that deferring him for promotion is referable to the disciplinary action initiated on 20.05.2015. There is no further progress in the disciplinary proceedings after 02.09.2015 and petitioner is no way responsible for the delay in conclusion of the disciplinary proceedings. He would further submit that Government notified its policy vide G.O.Ms.No.679, General Administration (Services-C) Department, dated 01.11.2008, which envisage that in simple cases of disciplinary action, enquiry should be completed in three months and in serious cases, enquiry should be completed in six months, whereas in the instant case, even after 1½ years, there is no progress in the disciplinary action.

25.5. Learned counsel would further submit that petitioner is due for retirement on attaining the age of superannuation w.e.f. 31.05.2017 and unless he is granted promotion before his retirement, he would have to suffer humiliation of retiring in the present post and such humiliation is for life time.

25.6. Learned Government Pleader, on instructions, submitted that on account of subsequent bifurcation of districts and creation of additional districts, there is some disturbance in day to day working and movement of files, that is causing delay and if

reasonable time is granted, disciplinary proceedings would be concluded.

25.7. Two factors relevant to notice in this case are, (1) promotions now contemplated are on *ad hoc* basis, but not regular and for the panel year 2016-17; and (2) the disciplinary proceedings commenced on 20.05.2015 and after the initiation of disciplinary proceedings, DPC was held for the first time, where name of the petitioner was considered and recommended to defer him for promotion.

25.8. Taking note of the submissions of the learned Government Pleader, it can not be said that there is inordinate delay in initiation and conclusion of disciplinary proceedings. On account of bifurcation of existing districts and formation of new districts in October, 2016, the dislocation of work of the administration is possible and may be a cause for the delay in conducting of disciplinary proceedings, inasmuch as there is change of jurisdiction and assignment of duties and responsibilities in different districts. Petitioner has come up for consideration for promotion for the first time when DPC was held in February, 2017. By then disciplinary proceedings are pending against him. Even according to G.O.Ms.No.257, the claim of the petitioner for promotion is not valid. Thus, petitioner is not entitled to claim promotion at this stage.

25.9. However, it is needless to observe that since charge memo is dated 20.05.2015, which is almost two years by now and petitioner is due for retirement shortly, respondents shall fix time frame to complete disciplinary proceedings as expeditiously as

possible, preferably within a period of four months from the date of receipt of copy of the order. In the event of exoneration of petitioner, he shall be granted all benefits from the date of promotion granted to his immediate junior. Writ Petition No.5988 of 2017 is disposed of.

(III) Whether employee can claim promotion on the ground that no charge sheet is drawn/ served though decision was taken to initiate disciplinary action?

26. W.P.No.1045 of 2017:

26.1. Petitioner is presently working in the cadre of Deputy Collector and claiming promotion as Special Grade Deputy Collector. Petitioner worked as Tahsildar, Shahbad Mandal, Ranga Reddy District from 22.03.2010 to 19.05.2011. Relating to the period issue when he was working as Tahsildar, on 10.06.2011, Crime No.13/ACB-CR-1/2011 was registered against him under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988. This Crime was registered based on the complaint alleging that petitioner demanded bribe for doing official favour. Petitioner was arrested on 12.06.2011 and was remanded to judicial custody for 14 days. Since petitioner was in custody for more than 48 hours, he was placed under suspension vide order in G.O.Rt.No.827, Revenue (Vig.III) Department, dated 11.07.2011. The said suspension was revoked by order in G.O.Rt.No.1171, Revenue (Services-I) Department, dated 04.08.2012. On conducting enquiry, ACB filed its final report. On consideration of the final report and the representation of the petitioner, Government by order dated 29.09.2014 declined to accord sanction to prosecute the petitioner

and instead decided to entrust the case to the Commissioner of Enquiries. It is further requested the Director General of ACB to furnish draft articles of charge. According to the petitioner, so far articles of charges are not furnished by the ACB. Till date, no charge memo is issued and, therefore, no disciplinary proceeding is pending against him. While so, on 14.11.2016, several juniors to the petitioner were promoted as Special Grade Deputy Collectors on *ad hoc* basis. On enquiries, petitioner was informed that he was ignored on the ground that Government decided to hold departmental proceedings. Aggrieved thereby, this writ petition is filed.

26.2. Learned counsel for petitioner submitted that since charges are not framed, there is no impediment in considering him for promotion and an employee can be ignored only when charges are drawn. Further contention of the learned counsel for petitioner is, as per the policy of the Government as notified in G.O.Ms.No.529, dated 19.08.2008, disciplinary proceedings have to be concluded within the maximum period of six months, whereas in the instant case, for more than two years, even charges are not drawn. Learned counsel, therefore, submitted that petitioner is entitled to be considered for promotion as Special Grade Deputy Collector at least on *ad hoc* basis without regard to intention of the Government to initiate disciplinary proceedings.

27. **WP NO. 2451 of 2017:**

27.1. Petitioner is working as Town Planning Officer. The next avenue of advancement in service is to the post of Assistant Director, Town and Country Planning. According to the petitioner,

though he is senior and eligible, he was ignored and fourteen juniors to him were promoted on 23.04.2016. His representation dated 27.04.2016 to consider him for promotion was ignored while promoting his juniors.

27.2. It appears, on the allegation of demanding and acceptance of illegal gratification, crime was registered against the petitioner by the Anti Corruption Bureau (ACB). On investigation, ACB filed its final report and suggested to the Government that petitioner be proceeded departmentally in stead of prosecuting him in criminal Court. Based on the said recommendation of the ACB, Government in Memo No.272/ Vig.I(1)2014, dated 23.04.2016 decided to initiate departmental action. According to the petitioner, though decision to initiate departmental action was taken on 23.04.2016, so far no action was initiated.

27.3. To complete the narration, after registration of crime on 12.06.2014, petitioner was placed under suspension by Order, dated 18-06-2014, w.e.f., 12.06.2014, but later revoked and is presently working as Town Planning Officer.

27.4. In this writ petition, petitioner contends that as no charge memo was issued to him and no criminal proceedings are pending against him, the action of the respondents in ignoring him for promotion while promoting his juniors is illegal, amounts to arbitrary exercise of power.

28. In the analysis of above facts, in these two writ petitions, it is to be seen that based on the decision taken by the Government in Memo dated 29.9.2014 and 23.4.2016, not to prosecute in

criminal Court and to initiate departmental action, whether petitioners can be ignored for promotion on that ground?.

29.1. Decisions rendered by the Supreme Court in Civil Appeal Nos.51-55 of 1990 (part of **Janakiraman**), **Tejinder Singh**, **H.C.Khurana**, **Kewal Kumar** and **R.S.Sharma** are close to the issue involved in these writ petitions. In W.P.No.1045 of 2017 ignoring the advice of ACB, though sanction to prosecute was not granted but decision was taken to take disciplinary action; and in W.P.No.2451 of 2017, based on the advice of ACB a decision to initiate disciplinary proceedings was already taken. Thus, *'The requisite formulation of the charges, in such a case, is no longer nebulous, being crystallised in the FIR itself..'* (**KEWAL KUMAR**) and, therefore, in these two cases, it is deemed that disciplinary proceedings are set in motion and pending. Thus, petitioners are not entitled to claim promotion.

29.2. As seen from the facts in W.P.No.1045 of 2017, the incident relates to the year 2011 and on 29.09.2014, Government declined the request of ACB to sanction to prosecute the petitioner and instead, decided to entrust the case to the Commissioner of Inquiries. For more than two years, there is no progress in formulating the charges and the disciplinary proceedings are lingering at that stage. On the ground that disciplinary proceedings are pending, his juniors were promoted in November, 2016. Similarly in W.P.No.2451 of 2017, the incident relates to the year 2014 and the crime was registered on 12.06.2014. On 23.04.2016, Government decided to initiate disciplinary action. Thereafter, there is no further progress. Having decided to initiate

disciplinary action, there is no justification for the Government to keep silent, not frame the charges and conduct enquiry. Thus, in the facts of these two cases and by applying the balancing process, I deem it proper to direct the respondents to conclude the disciplinary action as expeditiously as possible, preferably within a period of six months from the date of receipt of copy of this order. A time schedule to be drawn commensurate with the procedure incorporated in APCS (CCA) Rules, 1991. Petitioners shall cooperate for early conclusion of the enquiry. If the petitioners do not cooperate, it is open to the disciplinary authorities to conduct *ex parte* enquiry and conclude the proceedings. Their entitlement for promotion shall be reviewed on conclusion of disciplinary proceedings. For any reason, disciplinary proceedings are not concluded, delay not attributable to petitioners, their entitlement for promotion may be considered in accordance with G.O.Ms.No. 257 dated 10.06.1999. Subject to above directions W.P.Nos.1045 and 2451 of 2017 are dismissed.

30. Writ Petition Nos.1045, 2451, 2688 and 3576 of 2017 are dismissed and Writ Petition Nos.43182 of 2016, 2449, 3188 and 5988 of 2017 are disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 17.04.2017
Kkm/tvk

HONOURABLE SRI JUSTICE P.NAVEEN RAO



**WRIT PETITION NOs.43182 OF 2016; 1045, 2449, 2451,
2688, 3188, 3576 AND 5988 OF 2017**

Date: 17.04.2017

kkm