



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.10.2020

Delivered on : 04.12.2020

C O R A M

Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE

and

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

W.A. (MD)No.64 of 2019

and

C.M.P. (MD)No.365 of 2019

1.The Director General of Police,
Mylapore,
Chennai - 600 004.

2.The Deputy Inspector General of Police,
Madurai Range,
In charge of Ramanathapuram Range,
Ramanathapuram District.

3.The Commissioner of Police,
O/o.The Commissioner of Police,
Tirunelveli City,
Tirunelveli District.

... Appellants/Respondents

vs.

K.Pitchai
Deputy Superintendent of Police,
In Service Training Centre,
Ramanathapuram.

... Respondent/Petitioner

This Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order dated 05.09.2017 made in W.P.(MD) No.12803 of 2017 on the file of this Court.

Prayer in WP(MD). 12803/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to relieve the petitioner from the post of Deputy Superintendent of Police, In-service Training Centre, Ramanathapuram and consequentially allow the petitioner to join in the promoted post as Additional Deputy Commissioner of Police, prohibition Enforcement Wing, Thirunelveli City in the light of proceedings of the Additional Chief Secretary to Government in his proceedings in Police Note No.12 dated



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30.06.2017 within the period that may be stipulated by this Honble Court.

For Appellants : Mr.M.Muthugeethiyan, Spl.G.P.

For Respondent : Mr.C.Venkateshkumar
for M/s.Ajmal Associates

J U D G M E N T

SENTHILKUMAR RAMAMOORTHY J.,

This intra-court appeal is directed against the order dated 05.09.2017 in W.P.(MD).No.12803 of 2017. By the said order, the Appellants herein were directed to relieve the Respondent/Petitioner from the post of Deputy Superintendent of Police, In-Service Training Centre, Ramanathapuram (DSP Ramanathapuram) with a consequential direction to permit him to join in the promotional post of Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Tirunelveli.

2. The Respondent was directly recruited as a Sub-Inspector on 28.09.1987 and promoted as Inspector of Police on 30.07.1998. By G.O.(Ms).No.504, Home (Pol.2) Department, dated 29.06.2009, the Respondent/Petitioner's name was included in the panel of Inspectors of Police for the year 2009-2010 at Sl.No.61-A below the name of his immediate senior, Thiru.T.Karuppasamy (Sl.No.61), and above the name of his immediate junior, Thiru.K.Paranthaman (Sl.No.62). The next promotional avenue is the post of Deputy Superintendent of Police (DSP), and the Respondent was promoted as a DSP on 13.07.2010. Thereafter, the first Appellant herein published the approved temporary promotion and posting orders of DSPs, who were promoted as Additional Superintendents of Police for the year 2015 - 2016, but the Respondent/Petitioner's name was not included therein. However, his immediate junior, Thiru K.Paranthaman's name was included. Therefore, the Respondent/Petitioner submitted a representation on 02.02.2017 requesting that he be promoted as Additional Deputy Superintendent of Police on a par with his immediate junior with retrospective effect. Upon receipt of this representation, the first Appellant/first Respondent, by proceedings dated 12.06.2017, forwarded the proposal to the Additional Chief Secretary to Government and, on that basis, the Additional Chief Secretary to Government, by proceedings dated 30.06.2017, issued orders to temporarily promote the Respondent/Petitioner as an Additional Superintendent of Police(Category - 1) and posted him as the Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Tirunelveli (ADCP Tirunelveli).



3. Pursuant thereto, the Respondent/Petitioner was not relieved from the post of DSP Ramanathapuram. Therefore, he made a representation to the first Respondent on 05.07.2017. In spite of receipt of such representation, he was not relieved from the said post. Instead, he was issued a charge memo under Rule 17(b) of the Tamil Nadu Civil Services(Discipline and Appeal) Rules 1955 (the TNCS D&A Rules) in PR.No.33/2017 dated 22.06.2017, which was communicated by the second Appellant herein by proceeding dated 05.07.2017, which was served on the Respondent/Petitioner on 07.07.2017.

4. In view of the fact that the Appellants failed to relieve the Respondent/Petitioner from the post of DSP Ramanathapuram, the Respondent/Petitioner was unable to join in the promoted post of ADCP Tirunelveli. The writ petition was filed in the said facts and circumstances. By order dated 05.09.2017, the writ petition was allowed primarily on the ground that the charge memo dated 22.06.2017 was served on the Respondent/Petitioner only on 07.07.2017 whereas the crucial date for consideration for promotion was 01.04.2017. Therefore, the learned Single Judge directed the Appellants herein to relieve the Respondent/Petitioner from the post of DSP Ramanathapuram within two weeks from the date of receipt of a copy of the order and allowed the Respondent/Petitioner to join in the promoted post as ADCP Tirunelveli. The said order is impugned in this writ appeal.

5. We heard Mr.M.Muthu Geethiyan, the learned Special Government Pleader for the Appellants, and Mr.C.Venkateshkumar for M/s.Ajmal Associates for the Respondent.

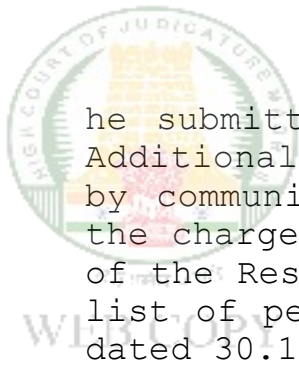
6. The learned Special Government Pleader submitted that the charges against the Respondent/Petitioner are serious. He pointed out that three charges were framed against the Respondent/Petitioner by charge memo in PR.No.33/2017, which was issued by the Superintendent of Police, Thanjavur District on 22.06.2017. The first charge was that while functioning as Deputy Superintendent of Police, Prohibition Enforcement Wing, Thanjavur District between 11.02.2015 and 01.03.2016, he had committed gross misconduct by staying with a person called Jothika of Salem area at the office-cum-residence at Pattukottai. The second charge was that he had given asylum to a person called Jesus and two other rowdies, who were involved in the murder of a person called Vijayakumar. The third charge was that he had utilized the services of a member of the Tamil Nadu Special Police Youth Brigade, namely, Arivalagan, as a driver of the department vehicle for private work. All three charges were held to be proved by the enquiry officer and the Disciplinary Authority, by order dated 29.09.2020, which was pronounced while the writ appeal was pending. ~~decided to impose the punishment of reduction in pay~~



to a lower stage by two stages for a period of six months without cumulative effect, with effect from 01.10.2020. The learned Special Government Pleader also submitted that the charge memo dated 22.06.2017 under Rule 17(b) of the TNCS D&A Rules was received in the office of the Deputy Inspector General of Police, Ramanathapuram Range, on 30.06.2017. The said charge memo should have been served on the same date but it was served on 07.07.2017. He further submitted that if charges under Rule 17(b) of the TNCS D&A Rules are pending, it constitutes a bar against the inclusion of the name of the charged person in the approved list as per paragraph II(8) of the Tamil Nadu Government Servants(Conditions of Service) Act 2016 (the Conditions of Service Act). In addition, he submitted that paragraph II(1) thereof provides that if specific charges have been framed against a member of the service, promotion of such member of service shall be deferred till such proceedings are concluded.

7. On account of the framing of charges on 22.06.2017, the learned Special Government Pleader submitted that the name of the Respondent/Petitioner was deleted from the panel of Deputy Superintendents of Police fit for promotion to the post of Additional Superintendent of Police for the year 2016 - 2017 by G.O.(Ms).No.798, Home(Pol.1A) Department, dated 30.10.2017. According to the learned Special Government Pleader, the learned single Judge failed to consider the import and implication of paragraph II(8) and paragraph II(1) of Schedule XI of the Conditions of Service Act. He further submitted that promotion cannot be claimed as a matter of right and that the right of the Respondent/Petitioner to be considered for promotion stood deferred on account of the pending charge memo at the relevant point of time. In other words, his contention is that the Respondent/Petitioner cannot be exempted from deferment of promotion merely because there was a delay in serving the charge memo dated 22.06.2017 on the Respondent/Petitioner.

8. On the contrary, Mr.V.Venkatesh Kumar submitted that the crucial date for promotion purposes was admittedly 01.04.2017. On the said date, the charge memo had not been prepared. The said charge memo was prepared on 22.06.2017 and received by the Respondent/Petitioner on 07.07.2017. In order to substantiate this contention, he referred to the communication dated 05.07.2017 from the Deputy Inspector General of Police, in charge, Ramanathapuram Range enclosing the approved charge memo. He also referred to the communication dated 30.06.2017 under Police Note No.12 stating that the following Deputy Superintendents of Police are temporarily promoted as Additional Superintendents of Police and posted as Additional Deputy Commissioner/ Additional Superintendent of Police (Category 1). The said list contained the name of the Respondent/Petitioner at Sl.No.1. On this basis,



he submitted that the Respondent/Petitioner was duly promoted as Additional Superintendent of Police and posted as ADCP Tirunelveli by communication dated 30.06.2017, which preceded the service of the charge memo on 07.07.2017. As such, he submitted that the name of the Respondent/Petitioner should not have been deleted from the list of persons who were promoted by the subsequent communication dated 30.10.2017.

9. In conclusion, the learned counsel for the Respondent/Petitioner referred to and relied upon several judgments of the Hon'ble Supreme Court as well as this Court. The said judgments are set out below along with context and principle:

(1) **Union of India and others v. K.V.Jankiraman and others (1991) 4 SCC 109 (Jankiraman)**, wherein, at paragraph 16 and 17, the Hon'ble Supreme Court held that disciplinary proceedings commence on the date when the charge memo/charge sheet is served on the delinquent employee. Therefore, the sealed cover procedure should be adopted only in respect of employees who have already been served with a charge memo/charge sheet.

(2) **Union of India and others v. Dr.Sudha Salhan (1998) 3 SCC 394 (Dr.Sudha Salhan)**, wherein, at paragraph 6, the principle laid down in **Jankiraman** was followed.

(3) **Bank of India and Another v. Degala Suriyanarayana (1999) 5 SCC 762**, wherein, at paragraph 14, it was held that the charge memo/charge sheet should be served on the delinquent employee and the departmental proceedings commence only upon such service.

(4) **Union of India and another v. R.S.Sharma (2000) 4 SCC 394 (R.S.Sharma)**, wherein, at paragraphs 11-16, the Hon'ble Supreme Court concluded that the sealed cover procedure may be resorted to in cases where a decision was taken to initiate departmental proceedings, and that this would precede the charge memo.

(5) **Coal India Limited v. Saroj Kumar Mishra (2007) 9 SCC 625 (Coal India Limited)**, wherein, at paragraph 18 to 20, the ratio in **Jankiraman** was followed.

(6) **The Principal Secretary to Government, Cooperation Food and Consumer Protection Department and others v. A.G.Chandrasekar 2020 (2) SCT 675 (Madras)**, wherein the ratio in **Jankiraman** was followed and the Division Bench of this Court directed the authorities to consider the case of the writ petitioner therein by following the sealed cover procedure.

(7) **The Principal Secretary, Department of Municipal Administration v. S.Parthasarathy, in W.A.(MD)No.591 of 2020, judgment dated 19.08.2020 (W.A.(MD) No.591 of 2020)**, wherein this Court considered the scope of paragraph II of Schedule XI of the Conditions of Service Act in light of the ratio in **Jankiraman** and concluded that a mere recommendation for initiation of



disciplinary action is insufficient and given that the charge memo was received by the party concerned only on 25.09.2019, the disciplinary proceedings cannot be said to have commenced or be pending until the date of receipt of the charge memo.

10. We considered the submissions of the learned counsel for the respective parties and examined the materials on record.

11. The principal question that arises for consideration is whether the Appellants were entitled to refuse to relieve the Respondent/Petitioner from the post of DSP Ramanathapuram and permit him to join in the promoted post of ADCP Tirunelveli. The main ground on which the Respondent/Petitioner was not relieved from the post was the issuance of the charge memo dated 22.06.2017. The factual position is largely undisputed. The crucial date was 01.04.2017 and the contesting parties agree that the charge memo dated 22.06.2017 was received in the office of the Deputy Inspector General of Police, Ramanathapuram Range, on 30.06.2017 but was served on the Respondent/Petitioner only on 07.07.2017. Therefore, the question arises as to whether the Respondent/Petitioner could be denied the promotion on account of the aforesaid charge memo. In order to answer this question, it is necessary to refer to the relevant provisions of the Conditions of Service Act. In particular, it is necessary to refer to paragraph - II, Sub-paragraph (1) & (8) of the said Act, which read as under:

"Consideration of members for Inclusion in the approved lists:

(1) In cases where enquiry (except Tribunal for Disciplinary Proceedings enquiry) including preliminary or detailed enquiry by the appropriate Investigating Authority is pending against a member of service and no specific charges have been framed, promotion or appointment of such member of service shall be considered on the basis of the merit (emphasis added) revealed through Annual Confidential Reports, Record Sheets and Punishments imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded. (emphasis added) On exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion.



(8) Pendency of charges framed under rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list."

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(emphasis added).

12. Upon perusal of the aforesaid, it is clear that a pending enquiry at a pre-charge memo/charge sheet stage is not a bar for the consideration of an employee for promotion. However, once charges are framed or a charge sheet is filed in a criminal case, the promotion of such persons is required to be deferred till such proceedings are concluded. Thus, the critical activity for triggering the disability to be considered for promotion is the framing of charges or filing of the charge sheet in a criminal case. Therefore, the next aspect to be considered is whether it is sufficient that charges are framed or is it necessary that the charge memo/ charge sheet should be served on the delinquent employee. Towards this end, the law on this issue should be examined.

13. In **Jankiraman**, the Hon'ble Supreme Court examined the Government of India, Department of Personnel and Training, Office Memorandum dated 30.01.1982, relating to promotion of employees against whom disciplinary proceedings are pending. In particular, the Court referred to the sealed cover procedure whereby the list pertaining to the promotion of the employee is put in a sealed cover until conclusion of proceedings against the employee. In that context, at paragraphs 8, 16 and 17, the Hon'ble Supreme Court held as under:

"8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are: (1) What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings



in question are over. Hence, the relevance and importance of the questions.

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.** (emphasis added). 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 added). What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p. 196, para 39)



"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2) ***

(3) ***

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

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions."

Thus, by applying the Memorandum of Procedure dated 30.01.1982, the Supreme Court concluded that the sealed cover procedure should be followed only if the charge memo was finalized and served on the employee, whereas if the employee had been considered for promotion prior to the service of the charge memo, the sealed cover procedure would not apply. The ratio of the judgment was followed in several judgments thereafter in cases such as **Dr.Sudha Salhan** and **Coal India Limited**. This Court has also followed the ratio in **Jankiraman** both in the Judgment in **W.A.(MD).No.591 of 2020** and in the judgment reported in **2020 (2) SCT 675(Madras)**.

14. By contrast, in **Union of India v. R.S.Sharma (2000) 4 SCC 394 (R.S.Sharma)**, the subsequent Government of India, Department of Personnel and Training, Memorandum of Procedure dated 31.07.1988 was applied. This Memorandum of Procedure provided for adoption of the sealed cover procedure once a decision is taken to initiate disciplinary proceedings. Not surprisingly, as will be evident from the following extracts, the Supreme Court arrived at the following conclusion and distinguished **Jankiraman**:

"5. At this stage, it is relevant to extract para 2 of the said office memorandum. It reads thus:



"Cases where 'Sealed Cover Procedure' applicable.—At the time of consideration of the cases of government servants for promotion, details of government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

(i) government servants under suspension;

(ii) government servants in respect of whom disciplinary proceedings are pending **or a decision has been taken to initiate disciplinary proceedings** (emphasis added);

(iii) government servants in respect of whom prosecution for a criminal charge is pending or a sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution;

(iv) government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by CBI or any agency, departmental or otherwise.

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 is that the public servant concerned had been



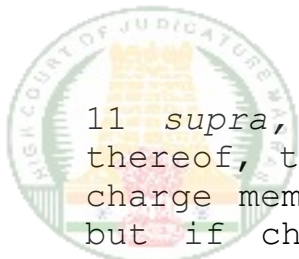
exonerated of the charges framed by the criminal courts. In the present case the respondent is still facing trial for serious offences, and hence the situation is different."

Likewise, in **Delhi Development Authority v. H.C. Khurana (1993) 3 SCC 196 (H.C.Khurana)**, clause (ii) of the Memorandum of Procedure, which applies once a decision is taken to initiate disciplinary proceedings, was interpreted as under:

"9.The question now, is : What is the stage, when it can be said, that 'a decision has been taken to initiate disciplinary proceedings'? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the charge-sheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of the allegations made against the government servant; the charge-sheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, an enquiry is held into the charges; if the charges are not proved, the proceedings are closed and the government servant exonerated; but if the charges are proved, the penalty follows. Thus, the service of the charge-sheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. **The delay, if any, in service of the charge-sheet to the government servant, after it has been framed and despatched, does not have the effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the government servant of the charges framed against him, by service of the charge-sheet, is not a part of the decision-making process of the authorities for initiating the disciplinary proceedings."**

(emphasis added).

15. The law laid down by the Hon'ble Supreme Court in the above cases should be applied to the case at hand. The applicable statute is the Conditions of Service Act and, in particular, the relevant paragraphs of Schedule XI thereto. As stated in paragraph



11 *supra*, as per sub-para (1) of paragraph II of Schedule XI thereof, the promotion of an employee against whom there is a pre-charge memo/pre-charge sheet enquiry would be considered on merit but if charges have been framed or a charge sheet filed, the promotion would be deferred. Indeed, it is expressly stipulated therein that "in cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded." From the above extract, it is evident that the critical event is the framing of charges or the filing of a charge sheet, as the case may be, and not the commencement of disciplinary proceedings.

16. In **Jankiraman**, as is evident from paragraph 16 thereof, the Supreme Court was unwilling to permit the sealed cover procedure in respect of an enquiry before the charge memo is issued because there is often inordinate delay in framing charges or charges are not framed at all and, in such event, the employee concerned would be put to prejudice. By contrast, in this case, the charges were framed on 22.06.2017, even before the temporary promotion order was issued, albeit there was a delay in communication thereof. Although it is true that the crucial date was 01.04.2017 and, as on that date, the charge memo had not been prepared, the charge memo was admittedly prepared before the temporary promotion order was issued. As stated earlier, once charges were framed by finalizing the charge memo, sub-para (1) of paragraph II of Schedule XI of the Conditions of Service Act gets activated. Therefore, in the present statutory context, the fact that the disciplinary proceeding against the Respondent commenced only upon service of the charge memo, as per the ratio in **Jankiraman**, does not lead to the inference that the Respondent is entitled to promotion notwithstanding the charge memo. To put it differently, the commencement of disciplinary proceedings is distinct from the deferment of promotion, which gets triggered once charges are framed.

17. Although the Supreme Court interpreted a Memorandum of Procedure wherein a decision to initiate disciplinary proceedings is sufficient to activate the sealed cover procedure in **R.S.Sharma** and **H.C. Khurana**, in our view, the ratio therein is more appropriate to this case than the ratio in **Jankiraman**. In **H.C. Khurana**, the Supreme Court emphasized that the decision to initiate disciplinary proceedings was the determinative event. Likewise, in light of sub-paragraph (1) of paragraph II of Schedule XI of the Conditions of Service Act, which does not impose the condition precedent that disciplinary proceedings should have commenced, and keeping in mind that there is no doubt that charges were framed on 22.06.2017, we hold that the framing of charges is the determinative event as regards deferment of



promotion. By way of a caveat, we add that in cases where the charge memo is served after a delay, there should be sufficient evidence before the Court that the charge memo was indeed finalised on the date stated so as to obviate the risk of ante-dating thereof. The judgment of the Division Bench of this Court in **W.A. (MD) No.591 of 2020** turned on the fact that the Court was not convinced that the charge memo dated 30.05.2019 was actually prepared on that date because it was not referred to in the subsequent communication dated 26.06.2019. By contrast, there is no dispute, in this case, that the charge memo was finalized on 22.06.2017 and served on the Respondent on 07.07.2017. Thus, the aforesaid judgment is distinguishable. As regards the judgment reported in **2020 (2) SCT 675 (Mad)**, in that case, criminal proceedings were pending and this Court directed that the sealed cover procedure should be followed.

18. Hence, we conclude that the impugned order of the learned single Judge warrants interference, and, for reasons aforesaid, we set aside the impugned order of the learned single Judge. As a corollary, the deferment of promotion by order dated 30.10.2017 is upheld. It was brought to our attention that the disciplinary proceedings were concluded while the writ appeal was pending, and that the Respondent was subjected to punishment. In light thereof, the Appellants would be entitled to apply the relevant provisions of the Conditions of Service Act as regards the Respondent's promotion. Nonetheless, we make it clear that we have not expressed an opinion on the merits of the disciplinary proceeding.

19. In the result, this writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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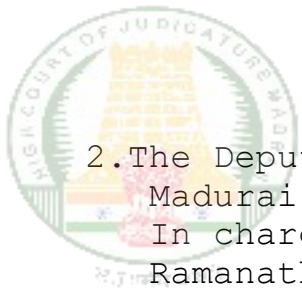
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Sub Assistant Registrar (CS)

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To

1.The Director General of Police,
Mylapore,
Chennai - 600 004.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Deputy Inspector General of Police,
Madurai Range,
In charge of Ramanathapuram Range,
Ramanathapuram District.

3.The Commissioner of Police,
O/o.The Commissioner of Police,
Tirunelveli City,
Tirunelveli District.

Judgment in
W.A. (MD) No. 64 of 2019
and
C.M.P. (MD) No. 365 of 2019
04.12.2020

KM (06.01.2021) 14P 4C