

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1009 OF 2023

MR. SIDDHARTH PITABAS NAYAK

Aged about 38 yrs, Occupation :Service

Residing at C-402, Sealand Towers, Jesal

Park, Bhayander (East), Thane-401 105.

....Petitioner

: V E R S U S :

1. UNION OF INDIA

Through its Secretary, Department of

Financial Services, Ministry of Finance,

North Block, New Delhi.

2. THE UNITED INDIA INSURANCE

COMPANY LIMITED, A Government of

India Undertaking Corporate Cell, 77, Vulcan

Insurance Building, Veer Nariman Road,

Near Gaylord Hotel, Churchgate,

Mumbai-400 020 & Registered Office at 24,

Whites Road, Chennai-600 014. & Head Office at No.19,

4th Lane, Nungambakkam High Road,

Chennai-600034.

**3. THE GENERAL MANAGER, HRM
DEPARTMENT HO, THE UNITED
INDIA INSURANCE COMPANY LTD.**

Nalanda, 19, 4th Lane, Uthamar Gandhi
Salai, Chennai, Tamilnadu-600 034.

**4. THE DEPUTY GENERAL MANAGER,
HRM DEPARTMENT HO, THE UNITED
INDIA INSURANCE COMPANY LTD.**

Nalanda, 19, 4th Lane, Uthamar Gandhi Salai,
Chennai-Tamilnadu-600 034.

**5. CENTRAL VIGILANCE COMMISSION,
NEW DELHI, Through its Commissioner
A Block, GPO Complex, Satarkata Bhawan,
INA, New Delhi-110 023.**

**6. CENTRAL VIGILANCE OFFICER,
UNITED INDIA INSURANCE CO. LTD.**

Registered Office at 24, Whites Road,
Chennai-600 014. & Head Office at No.19,

7. VIGILANCE OFFICER NO.1

Stadium House, 5th floor, V.N. Road,

Churchgate, Mumbai-400 020.

.....Respondents

Appearances:

Mr. Prashant Pandey with Mr. Dinesh Jadhvani and Ms. Priyanka Pawar i/by. ABG Associates, Advocate for Petitioner.

Mr. V.Y. Sangaliker, Advocate for Respondents.

CORAM : DHIRAJ SINGH THAKUR, &

SANDEEP V. MARNE, JJ.

DATE : July 5, 2023.

Judgment (Per Sandeep V. Marne):

1. ***Rule.*** Rule made returnable forthwith. With the consent of the parties, petition is taken up for final hearing.

2. 'Sealed Cover Procedure' has by now become a familiar term in service jurisprudence. It essentially refers to deferring of action on recommendations of a Departmental Promotion Committee (DPC)

till the officer concerned is cleared in departmental/judicial proceedings. In the meantime, secrecy is to be maintained in respect of those recommendations by keeping them in a 'sealed envelope'. Only in the event of the officer being exonerated/acquitted in departmental/criminal proceedings, the sealed envelope is to be opened to find out whether the DPC had recommended his/her promotion. If recommended, he/she earns the promotion which was withheld during pendency of proceedings. This sealed cover procedure emanated out of instructions issued by the Government of India, to which, we have made a reference in our judgment. However, the exact eventualities in which as well as the correct time at which this 'sealed cover procedure' can be adopted has been a subject matter of debate in various decisions of the Apex Court. This is yet another case which raises this issue about the timing of adoption of sealed cover procedure. Whether it can be adopted only after actual initiation of disciplinary proceedings or mere proposal to initiate the same is sufficient to resort to the same, is the issue involved in the present petition.

3. The issue arises in the light of Petitioner's claim for promotion to the post of Deputy Manager (Scale-III) in The United India Insurance Company Ltd.

4. Before we proceed to refer to the various instructions issued by the Government of India on sealed cover procedure as well as the judgments on the issue, a brief factual narration as a prologue to

our judgment would be necessary. Petitioner was appointed in the Respondent-Insurance Company on the post of Administrative Officer (Scale-I) on August 8, 2011. He secured a fast track promotion to the post of Assistant Manager (Scale-II) in the year 2015 but could not join the promotional post offered to him at Ahmedabad and continued working on the lower post Administrative Officer (Scale-I) in corporate office at Mumbai. On account of his refusal to join the promotional post at Ahmedabad in the year 2015, he was denied opportunity to appear for promotional exam in the year 2016. He was later promoted to the post of Assistant Manager (Scale-II) in the year 2017.

5. On May 24, 2021, one Mr. Khushal Singh working on the post of Assistant Manager (Scale-II), Petitioner's senior in the same scale, was placed under suspension in connection with some suspicious transactions. An FIR was lodged on May 29, 2021 against unknown persons in which Mr. Khushal Singh and his wife came to be arrested. Petitioner was summoned for enquiry and his statement was recorded during investigations. However, Petitioner is not made an accused in that case.

6. A selection was convened for effecting promotions to the post of Deputy Manager (Scale-III) vide notice dated July 21, 2021. Petitioner was fulfilling the eligibility criteria for such promotion and applied in pursuance of the notice. He participated in

the selection process comprising of an online examination. He claims to have secured 3rd ranking in Mumbai and 47th rank all over India. However in the list of promoted officers published on September 30, 2021, Petitioner's name was missing. His juniors as well as officers securing lesser marks were however promoted. Petitioner has accordingly filed the present petition seeking promotion to the post of Deputy Manager (Scale-III).

7. During pendency of the present petition, Memorandum of Chargesheet dated April 19, 2023 is issued to Petitioner levelling charges relating to grant of approval to 173 transactions amounting to Rs.52.15 crores effected by Khushal Singh.

8. An Affidavit-in-reply has been filed on behalf of Respondent-Insurance Company, *inter-alia* pleading that Petitioner was involved in a serious case relating to grant of approval to some of the fraudulent transactions of Mr. Khushal Singh amounting to Rs.51.67 crores. That Petitioner was involved in vigilance enquiry at the time of effecting promotions, and when remarks were called from Vigilance Department, it did not give clearance for Petitioner's promotion. That since Petitioner's role is under cloud, DCP followed sealed cover procedure.

9. Appearing for Petitioner, Mr. Pandey the learned Counsel would submit that the Respondent-Insurance Company has

erroneously adopted sealed cover procedure when no disciplinary proceedings were initiated against him on the date of DCP meeting. That mere pendency of Vigilance enquiry cannot be a reason for adopting sealed cover procedure. He would submit that the vigilance enquiry culminated in issuance of chargesheet to Petitioner only on April 19, 2023 and that therefore there was no impediment in promoting the Petitioner on September 30, 2021. In support of his contentions, Mr. Pandey would place reliance on judgments of the Apex Court in **Union of India & Ors. Vs. K.V. Jankiraman and Ors**, AIR 1991 SC 2010 (ii) **Delhi Jal Board Vs. Mahinder Singh**, (2000) 7 SSC 210.

10. The petition is resisted by Mr. Sanglikar, the learned Counsel appearing for the Respondent-Insurance Company justifying adoption of sealed cover procedure in the present case. He would submit that sealed cover procedure can be adopted even on the ground of pendency of vigilance enquiry. That Petitioner was involved in grave accusations of large scale financial irregularities and the employer is entitled to call for vigilance clearance before effecting promotion. That Petitioner was always aware about pendency of vigilance enquiries as he was summoned by the Vigilance Department for such enquiries before issuance of promotion orders to other officers. He would submit that the Respondent-Insurance Company follows the Rules, Regulations and Instructions issued by the Government of India, Department of Personnel Training (**DoPT**). In

support of his contentions, Mr. Sanglikar has relied upon following judgments :

(i)Delhi Development Authority Vs. H.C. Khurana, (1993) 3 SCC 196.

(ii)Union of India Vs. Kewal Kumar, (1993) 3 SCC 204.

(iii)Manoj Kumar Singh Vs. Coal India Ltd. & Ors. (2006) 13 SCC 705.

(iv)Union of India & Anr. Vs. R.S. Sharma, AIR 2000 S.C. 2337.

(v)Union of India Vs. Naresh K. Gupta,....

11. Rival contentions of the parties now fall for our consideration.

12. The short issue that arises for our consideration is whether sealed cover procedure can be adopted merely on account of pendency of vigilance enquiry or whether the same can be adopted only after chargesheet is issued to the delinquent officer.

13. Since Mr. Sanglikar has submitted that the Respondent-Insurance Company, being a Public Sector Undertaking of the Central Government, follows Rules, Regulations and instructions issued by the DoPT, it would be therefore necessary to consider the relevant instructions issued by the DoPT on the issue of

adoption of sealed cover procedure in case of officers who come under cloud.

14. The Government of India, Department of Personnel & Training (**DoPT**) issued Office Memorandum dated January 30, 1982 on the subject of promotion of officers in whose cases the sealed cover procedure had been followed but against whom disciplinary/court proceedings were pending for a long time. The Memorandum stated that according to the existing instructions, cases of officers (a) who are under suspension or (b) against whom disciplinary proceedings are pending or a decision has been taken by the competent disciplinary authority to initiate disciplinary proceedings or, (c) against whom prosecution has been launched in a court of law or sanction for prosecution has been issued, are considered for promotion by the DPC at the appropriate time but the findings of the Committee are kept in a sealed cover to be opened after the conclusion of the disciplinary/court proceedings. While the findings are kept in the sealed cover, the vacancy which might have gone to the officer concerned is filled only on an officiating basis. If on the conclusion of the departmental/court proceedings, the officer concerned is completely exonerated, and where he is under suspension it is also held that the suspension was wholly unjustified, the sealed cover is opened and the recommendations of the DPC are acted upon. If the officer could have been promoted earlier, he is promoted to the post which is filled on an officiating basis, the officiating arrangement being terminated. On his promotion, the officer gets the benefit of seniority and fixation of pay

on a notional basis with reference to the date on which he would have been promoted in the normal course, but for the pending disciplinary/court proceedings. However, no arrears of salary are paid in respect of the period prior to the date of actual promotion. The Memorandum then dealt with eventuality of delay in pendency of proceedings.

15. In pursuance of Apex Court judgment in **Union of India Vs. Tajinder Singh**, (1991) 4 SCC 129, DoPT revised the OM dated January 30, 1982 and issued revised instructions by Office Memorandum dated January 12, 1988 governing the cases of Officers under cloud at the time of consideration of their cases for promotion. The relevant portion of DoPT OM dated January 12, 1988 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.
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution;
- (iv) Government servants against whom an investigation or serious allegations of corruption,

bribery or similar grave misconduct is in progress either by the CBI or any agency, departmental or otherwise.”

16. Thus under the 1988 OM issued by the DoPT, Sealed Cover Procedure can be adopted even in respect of Government Servants against whom an investigation of serious allegations of corruption, bribery or similar grave misconduct was in progress. Furthermore, it was permissible to adopt sealed cover procedure against Government Servants in respect of whom disciplinary proceedings were pending or a decision was taken to initiate disciplinary proceedings.

17. After issuance of the OM dated January 12, 1988, an Office Note was issued on July 31, 1991 deleting clause-(iv) from second para of the OM dated January 12, 1988. Thus, the eventuality of pendency of investigations on serious allegations was deleted for adoption of sealed cover procedure. By Office Note dated July 31, 1991, following clarifications were however issued :

“It is further clarified that:-

- (i) All cases kept in sealed cover on date of this O.M. on account of conditions obtainable in para 2(iv) of the O.M. dated 12.1.1988 will be opened. If the official had been found fit and recommended by DPC, he will be notionally promoted, from the date his immediate junior had been promoted. The pay of the higher post would of course, be admissible only on assumption of actual charge in view of provisions of FR 17(1). (Since only officiating

arrangements could be made against the vacancies available because of cases of senior officials being in sealed cover, there may not be any difficulty in terminating some officiating arrangements if necessary and giving promotion in such cases).

(ii) If any case is in a sealed cover on account of any of the other conditions mentioned in para 2(I) to 2(iii) of the O.M. dated 12.1.88, the case will continue to be in the sealed cover.

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

18. Thus after issuance of the Office Note dated July 31, 1991, only first three eventualities specified under Clauses (i), (ii) and (iii) of OM dated January 12, 1988 were recognised for adoption of sealed cover procedure.

19. The provisions of DoPT OM dated January 12, 1988 came up for interpretation before the Apex Court in celebrated judgment in ***K.V. Jankiraman*** (supra). The Apex Court held in paras-5 and 6 of the judgment as under :

5. To bring the record up-to-date, it may be pointed out that in view of the decision of this Court in [Union of India & Anr. v. Tajinder Singh](#), [1986] 2 Scale 860 decided on September 26, 1986, the Government of India in the Deptt. of Personnel & Training issued another' Office Memorandum No. 22011/2/86. Estt. (A) dated January 12, 1988, in supersession of all the earlier instructions on the subject including the Office Memorandum dated 30th

January, 1982 referred to above. There is no difference in the instructions contained in this and the earlier aforesaid Memorandum of January 30, 1982, except that this Memorandum provides in paragraph 4 for a six-monthly review of the pending proceedings against the Government servant where the proceedings are still at the stage of investigation and if as a result of the review, the appointing authority comes to the conclusion on the basis Of material and evidence collected in the investigation till that time, that there is no prima facie case in initiating disciplinary action or sanctioning prosecution, the sealed cover is directed to be opened and the employee is directed to be given his due promotion with reference to the position assigned to him by the DPC. A further guideline contained in this Memorandum is that the same sealed cover procedure is to be applied where a Government servant is recommended for promotion by the DPC, but before he is actually promoted, he is either placed under suspension or disciplinary proceedings are taken against him or decision has been taken to initiate the proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken.

These differences in the two Memoranda have no bearing on the questions to be answered.

6. 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 chargesheet 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/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(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;

(3) ...

(4)...

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

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.

We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal.”

(emphasis added)

20. Thus in ***K.V. Jankiraman***, the Apex Court held that sealed cover procedure can be adopted only in a case where charge memo/chargesheet has already been issued to the employee and that pendency of preliminary investigation is not a ground for adoption of sealed cover procedure.

21. To implement the judgment of the Apex Court in the case of ***K.V. Jankiraman***, the DoPT issued OM dated September 14, 2022 in supersession of earlier instructions (including OM dated January 12, 1988) and revised instructions were issued relating to cases of promotions of Government Servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation. The opening portion of the OM, which seeks to supersede all earlier instructions reads thus :

“The undersigned is directed to refer to Department of Personnel & Training OM No.22011/2/86/Estt. (A) dated 12th January, 1988 and subsequent instructions issued from time to time on the above

subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgment dated 27.08.1991 of the Supreme Court in Union of India etc. vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the view and in supersession of all the earlier instructions on the subject (referred to in the margin), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.”

22. After superseding the earlier instructions, the DoPT issued following instructions for adoption of sealed cover procedure:

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

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

2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking

into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit for Promotion', and the grading awarded by it will be kept in a sealed cover."

23. Thus under the OM dated September 14, 1992 issued in pursuance of the judgment of the Apex Court in *K.V. Jankiraman*, Sealed Cover Procedure can be adopted only in respect of the government servants who are under suspension, against whom a chargesheet has been issued for departmental proceedings or in respect of whom prosecution for criminal charge is pending. It would be pertinent to note the wordings of Clause-(ii) of para-2 of the OM which uses words 'in respect of whom chargesheet has been issued and the disciplinary proceedings are pending'. Thus a marked departure is taken by the DoPT in comparison to its earlier OM dated January 12, 1988 which permitted adoption of sealed cover procedure even when a decision is taken to initiate disciplinary proceedings. With the issuance of the OM dated September 14, 1992, it is now not permissible to adopt sealed cover procedure only on the ground of contemplation of disciplinary proceeding. The eventuality of pendency of investigations in respect of a serious charge was already deleted by the Office Note dated July 31, 1991. Thus to adopt sealed cover procedure, now it is mandatory that chargesheet is actually issued to the Government Servant in question.

24. There is no dispute to the position that the DoPT, OM dated September 14, 1992 issued in pursuance of the judgment of the

Apex Court in *K.V. Jankiraman* continues to hold the field even today. So far as three eventualities specified in para-2 of the OM dated September 14, 1992 are concerned, same have not undergone any change. Therefore, applying the provisions of OM dated September 14, 1992, adoption of sealed cover procedure on the basis of vigilance enquiries or proposal for initiation of disciplinary proceedings or investigation is now no longer permissible.

25. Mr. Sanglikar, has made strenuous efforts to impress upon us that the law declared by the Apex Court in *K.V. Janakiraman* has subsequently been diluted in various decisions, on which he places reliance. We therefore proceed to examine judgments cited by Mr. Sanglikar.

26. *H.C. Khurana* (supra) is relied upon to suggest that the principles laid down in *K.V. Janakiraman* have been diluted by the Apex Court. In that case, the Respondent-H.C. Khurana was employed as an Executive Engineer in Delhi Development Authority. A preliminary memo was issued to him on November 6 1985 alleging some irregularities in construction works. A chargesheet was framed on July 11, 1990. The chargesheet was despatched to the Respondent therein on 13 July 1990. The chargesheet could not be served as the Respondent therein proceeded on leave. In the meantime, the DPC was convened on November 28, 1990 and the chargesheet came to be personally served on the Respondent therein only on January 25, 1991. In the light of this factual position, the issue before the Apex

Court was whether sealed cover procedure could be adopted before the date of actual service of the chargesheet ? The Apex Court held in para-9 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 chargesheet, since issue of the chargesheet is a consequence of the decision to initiate disciplinary proceedings. Framing the chargesheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The chargesheet is framed on the basis of the allegations made against the government servant; the chargesheet 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 chargesheet 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 chargesheet 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 chargesheet, is not a part of the decision making process of the authorities for initiating the disciplinary proceedings.”

27. Thus, the issue before the Apex Court in *H.C. Khurana* was altogether different. In that case, the chargesheet was

despatched for service on 13 July 1990 but the same could be served only on July 25, 1991. Between the said two dates, the DPC had met on November 28, 1990. The Apex Court held that the delay in service of the chargesheet is immaterial and the date of despatch thereof is the relevant date to be treated as the date of initiation of disciplinary proceeding. We are therefore unable to agree with the submission of Mr. Sanglikar that the Apex Court has diluted the law expounded in *K.V. Janakiraman* in its judgment in *H.C. Khurana*.

28. *Kewal Kumar* (supra) is relied upon by Mr. Sanglikar to suggest that the law expounded in *K.V. Janakiraman* has undergone further change. To examine the correctness of Mr. Sanglikar's submissions, it would be necessary to consider the factual background, as well as, the exact issue involved in *Kewal Kumar*. In that case, the DPC met on November 23, 1989 for considering the case of the Respondent therein for promotion but adopted sealed cover procedure on the ground of earlier decision to initiate disciplinary proceedings taken on November 20, 1989. The chargesheet was actually served on the Respondent therein on August 1, 1990. Issuance of chargesheet was based on FIR registered on September 30, 1988 by the CBI. Thus, the case related to the period when the instructions issued vide OM dated January 12, 1988 were in vogue. Infact the Apex Court has noted the provisions of DoPT, OM dated 12 January 1988 in para-6 of the judgment for arriving at the conclusion that sealed cover procedure was properly adopted. Paras-6 and 7 in *Kewal Kumar* reads thus :

“6. We may also advert to another aspect of this case. In Para 2 of the office Memorandum No. 22011/2/86-Estt. (A) dated 12.1.1988 issued by the Department of Personnel & training, Ministry of Personnel, Public Grievances and Pensions, Government of India, on the subject of procedure and guidelines to be followed in such cases, indicating the situations in which the sealed cover procedure is to be followed, clause (iv) specifies another category. Clause (iv) relates to 'Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise. The fact that the F.I.R. was registered by the C.B.I., and on communication of the same to the departmental superiors a decision had been taken to initiate disciplinary proceedings for imposition of a major penalty, against the respondent in the present case, brings this case squarely within the ambit of clause (iv) of the guidelines, in addition to clause (ii), thereof.

7. Following of the sealed cover procedure in the present case was, therefore, fully justified and the Tribunal committed an error in interfering with that action of the Government.”

29. Thus, ***Kewal Kumar*** is decided by interpreting the provisions of DoPT OM dated January 12, 1988 which permitted both the eventualities of decision to initiate disciplinary proceedings as well as investigation of serious allegations as a ground for adoption of Sealed Cover Procedure. Furthermore, the FIR was lodged against the Respondent therein on September 30, 1988 i.e. before the DPC meeting dated November 23, 1989. Thus, the judgment in ***Kewal Kumar*** is clearly distinguishable.

30. ***Manoj Kumar Singh*** (supra) is relied upon by Mr. Sanglikar in support of his contention that pendency of vigilance proceedings is a valid ground for adoption of Sealed Cover Procedure. ***Manoj Kumar Singh*** involved interpretation instructions issued by the Coal India Limited which apparently had its own instructions to deal with cases of officers under cloud. Coal India Ltd. had issued Office Memoranda dated June 19, 1979 and June 27, 1979 which provided that an executive against whom departmental/vigilance proceedings are pending can be promoted only after completion of proceedings. After considering the said instructions, the Apex Court held in paras-5 and 6 as under :

“5. Being aggrieved, the appellant preferred this appeal by special leave. The relevant rule as has been quoted in the office memorandums dated 19-6-1979 and 27-6-1979 is:

“An executive, who has been placed under suspension pending inquiry and/or against whom departmental/vigilance proceedings are pending will be promoted, if selected and placed in the select list by a DPC, only after completion of the proceedings and his complete exoneration of the charges. Such an officer shall be promoted in the first vacancy that may be available immediately after his complete exoneration with prospective effect.”

The rule makes it clear that even if vigilance proceedings are pending, the selection can be made only after completion of the proceedings and the complete exoneration from the charges.

6. From the uncontroverted statement in the counter-affidavit, it is clear that the vigilance proceedings were

pending against the appellant much prior to the date on which DPC first promoted the appellant's juniors.”

31. As against specific instructions issued by Coal India Ltd., the Respondent-Insurance Company has not issued its own instructions governing the cases of promotion of officers coming under cloud. On the contrary, Mr. Sanglikar has specifically asserted that the Respondent-Insurance Company follows the Office Memoranda issued by the DoPT from time to time. Therefore, the present case would be governed by the DoPT O.M. dated September 14, 1992 which does not recognise pendency of vigilance enquiry as a ground for adoption of sealed cover procedure. Also of relevance is the fact that the concerned instructions by Coal India Ltd were issued during the year 1979 i.e. before pronouncement of the judgment by the Apex Court in *K. V. Jankiraman*. Therefore, the judgment in ***Manoj Kumar Singh*** is also distinguishable.

32. Strong reliance is placed by Mr. Sanglikar on the judgment of the Apex Court in ***R.S. Sharma*** (supra). According to Mr. Sanglikar, the judgment in ***R.S. Sharma*** delivered by three judges Bench of the Apex Court in the year 2000 is the final word on the subject which permits adoption of sealed cover procedure even in a case where disciplinary proceedings are contemplated or investigation into serious allegations are pending. We therefore consider the factual background as well as the exact issue involved before the Apex Court in ***R.S. Sharma***. In that case, FIR was registered on March 10, 1988.

The Respondent therein was placed under suspension. Though the suspension was revoked, the CBI continued with the investigations and applied for issuance of prosecution sanction. In the meantime, the DCP met and deferred his case on account of pendency of investigations. The Respondent approached the Central Administrative Tribunal which passed interim order for consideration of his case for promotion. The DPC accordingly met on April 3, 1991 but kept its recommendations in sealed cover in accordance with the provisions of the DoPT O.M. dated January 12, 1988. The Apex Court considered the provisions of the DoPT O.M. dated January 12, 1988 as well as Office Note dated July 31, 1991 dealing with eventualities of pendency of investigations in Clause (iv) and proceeded to examine if deletion of eventuality of Clause (iv) by Office Note dated July 31, 1991 could result in opening of sealed cover. However, at that stage it was brought to the notice of the Apex Court that approval was granted for prosecution sanction on July 9, 1991. It was therefore contended on behalf of the Government of India that though DPC might have recommended case of Respondent therein for promotion on April 3, 1991, he came under cloud before his actual promotion on account of issuance of prosecution sanction on July 9, 1999. The Apex Court therefore proceeded to consider instructions in cases where Government servant comes under cloud after recommendations of DPC but before the actual promotion. It accordingly held in paras-11, 12 and 13 as under :

“11. Without conceding to the above position, Shri Mukul Rohtagi, Additional Solicitor General, adopted an alternative contention based on Paragraph 7 of the Sealed Cover Procedure which reads thus:

Sealed cover applicable to officer coming under cloud before promotion:- A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in his case also.

12. The conditions necessary to invoke the said clause are:

- (1) Recommendations of the DPC should have been made for promoting the Government servant.
- (2) After such recommendations and before he is actually promoted any, one of the circumstances in clause (ii) of the second paragraph (supra) should have arisen.

13. Two factual aspects are admitted. One is that 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, paragraph 7 of the Sealed Cover Procedure would entirely apply and the recommendations made by the DPC in respect of the respondent have to remain in the sealed cover “until he is completely exonerated of the charges against him.”

33. Thus the issue involved before the Apex Court in ***R.S. Sharma*** was altogether different. In that case, the Apex Court has

considered and decided the issue whether an officer can be promoted in whose case, the eventuality occurs between the date of DPC recommendations and the date of his actual promotion. Therefore, the judgment in ***R.S. Sharma*** would have no application to the present case.

34. Mr. Sanglikar has also placed heavy reliance on the judgment of Coordinate Bench of this Court in ***Naresh K. Gupta*** (supra) contending that the fact situation in that case is almost identical to the present one. We therefore proceed to examine his contention. In that case, DPC met in October 2001 and recommended Respondent therein for promotion. However, before the Officer could actually be promoted, chargesheet was issued on December 3, 2002. The coordinate bench of this Court followed the decision in ***R.S. Sharma*** and held that since the officer came under cloud before he could be actually promoted, the sealed cover procedure was rightly followed. True it is that the junior officer of the Respondent therein was promoted on June 14, 2002 during the period from DPC meeting and date of issuance of chargesheet. However, this Court does not appear to have delved into the issue of change in instructions effected vide OM dated January 12, 1988, Office Note dated July 31, 1991 and OM dated September 14, 1992. Therefore, the judgment of this Court in ***Naresh K. Gupta*** cannot be cited in support of the proposition that sealed cover procedure can be adopted in every case of pendency of vigilance enquiry or contemplated disciplinary

proceedings. Therefore, the reliance of Mr. Sanglikar on the judgment in *Naresh K. Gupta* is of little assistance to this case.

35. After considering the sound exposition of law by the Apex Court in the judgments discussed above, the conclusions deducible therefrom are as under:

- (i) Sealed cover procedure can be adopted only when charge memo/chargesheet is actually issued by the Disciplinary Authority.
- (ii) Sealed cover procedure cannot be adopted on the ground of pendency of vigilance enquiry or proposed initiation of disciplinary proceedings.
- (iii) The date of actual service of chargesheet is irrelevant and the date on which the chargesheet is despatched for service is the relevant date for adoption of sealed cover procedure.
- (iv) Sealed covered procedure can also be adopted where officer is not under cloud on the date of meeting of the DPC but comes under cloud before he is actually promoted.

36. We are therefore unable to accept Mr. Sangalika's contention that the law on the subject of adoption of sealed cover procedure has undergone any change after the judgment of the Apex

Court in ***K. V. Jankiraman***. The eventualities specified in DoPT OM dated September 14, 1992 issued towards implementation of judgment in ***K. V. Jankiraman***, for adoption of sealed cover procedure continue to apply even today.

37. The present case is not covered by any of the eventualities specified on DoPT OM dated September 14, 1992. The exact date of DPC meeting is not disclosed by the Respondent-Insurance Company in its affidavit-in-reply. The promotion order is however issued on September 30, 2021 and it appears that the DPC met somewhere in the month of September 2021. Admittedly on the date of DPC meeting, or on the date of effecting promotions, Memorandum of chargesheet was not issued to Petitioner. He was neither suspended nor prosecution for a criminal case was started against him. Therefore he was not covered by any of the eventualities specified in para-2 of the OM dated September 14, 1992. In these circumstances, adoption of sealed cover procedure by the Respondent-Insurance Company in the present case was not warranted.

38. The Writ Petition accordingly succeeds. The Respondent-Insurance Company is directed to open the sealed cover and process the recommendations made by the DPC in respect of the promotion of Petitioner to the post of Deputy Manager (Scale-III). If the DPC has recommended his case for promotion, he be promoted to

the post of Deputy Manager (Scale-III) w.e.f. September 30, 2021 with all consequential benefits.

39. Writ Petition is allowed in the above terms. Rule is made absolute.

(SANDEEP V. MARNE, J.)

(DHIRAJ SINGH THAKUR, J.)