



2026:DHC:3353-DB



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

+ **W.P.(C) 13366/2018**

DR. S. ANIL KUMAR

.....Petitioner

Through: Mr. T.V. George, Adv.

versus

UNION OF INDIA & ANR

.....Respondents

Through: Mr. Vikram Jetly, CGSC with
Ms. Shreya Jetly, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

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21.04.2026

C. HARI SHANKAR, J.

1. The petitioner is a 2010 batch officer of the Indian Revenue Service. He was posted as Assistant Commissioner of Customs and Central Excise¹ in Cochin, and was stationed at the Cochin Airport. He was arrested on 17 October 2013 on the basis of an information gathered by one Mr. T.K. Faiz, pertaining to alleged smuggling of 3.6 kg of gold and other material during the period when the petitioner served as AC.

2. The petitioner was placed under suspension on 28 October 2013 with effect from 17 October 2013. The order of suspension was revoked on 3 July 2015 and the petitioner was transferred to Patna.

¹ "AC" hereinafter



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3. On 30 January 2015, a Departmental Promotion Committee² convened to consider the case of the petitioner for promotion as Deputy Commissioner of Customs. The recommendations of the DPC were placed in a sealed cover. The petitioner approached the Central Administrative Tribunal³, aggrieved thereby. The Tribunal disposed of the OA with liberty to the petitioner to address a representation to the respondent. He did so. The respondent, *vide* order dated 4 October 2016 informed the petitioner that sealed cover could not be opened till the criminal case against him was decided.

4. Aggrieved thereby, the petitioner re-approached the Tribunal by way of OA 1044/2017, in which the presently impugned judgment has been rendered. Before the Tribunal, the petitioner contended that, as no charge-sheet had been filed against him in the criminal proceedings or departmentally, and he was not under suspension, the adoption of the sealed cover procedure in his case was contrary to the law laid down by the Supreme Court in ***Union of India v. Anil Kumar Sarkar***⁴.

5. The respondent, in response, placed reliance before the Tribunal on the judgment of the Supreme Court in ***Union of India v. K.V. Jankiraman***⁵, and Office Memorandum dated 14 September 1992 issued by the Department of Personnel and Training⁶ to contend that the sealed cover in which the recommendations of the DPC which met on 30 January 2015 had been placed could be opened only on

² “DPC” hereinafter

³ “the Tribunal”, hereinafter

⁴ (2013) 4 SCC 161

⁵ (1991) 4 SCC 109

⁶ “DOPT”, hereinafter



completion of the criminal case against the petitioner.

6. The Tribunal dismissed the OA filed by the petitioner, reasoning thus :

“9. It is not in dispute that a criminal case was pending against the applicant by the time the DPC met. In addition to that, he remained under suspension for a considerable time before the DPC met. Under these circumstances, the occasion to open the sealed cover would arise only when the criminal case is terminated in his favour.

10. Reliance is placed upon the judgment of the Supreme Court in **Anil Kumar Sarkar's case (supra)**. Their Lordships referred to the judgment in **K.V. Jankiraman's case** and the DoP&T OM dated 14.09.1992. In that case, the employee in respect of whom sealed cover procedure was adopted, was neither placed under suspension nor any charge-sheet was issued in the departmental proceedings. Though a criminal case was registered, charge-sheet was not filed, by the time the DPC met. Therefore, the Hon'ble Supreme Court took the view that the relief granted to the employee by the High Court does not warrant interference. Para 14 of the judgment reads as under:

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



Specific reference was made to the judgment in **K.V. Jankiraman's case** on the point, as to when the disciplinary/criminal proceedings can be said to have commenced. It was observed that it is only when a charge-sheet in the disciplinary proceedings or a criminal case is filed, that it can be said that departmental proceedings / criminal prosecution are initiated. In the instant case, it is no doubt true that the charge-sheet in the criminal case was not filed by the time the DPC met. However, it is not in dispute that the applicant was placed under suspension in respect of those very proceedings.

11. The plea of the applicant that though he was placed under suspension earlier, he stood reinstated by the time the DPC met, and in that view of the matter, sealed cover procedure should not have been adopted, cannot be accepted. In the judgment in **K. V. Jankiraman's case** as well as in the DoP&T OM dated 14.09.1992, suspension of an employee is treated as a basis to adopt the sealed cover procedure. The same was reiterated in Anil Kumar Sarkai's case also. In none of them, it is mentioned that the suspension must be in force as on the date of the meeting of the DPC. The following observations contained in para 16 in **K. V. Jankiraman's case**, referred to by the Hon'ble Supreme Court in **Anil Kumar Sarkar's case**, assumes significance in this regard:

“...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.... (emphasis supplied)”

From this, it becomes clear that the factum of an employee having been placed under suspension provides adequate ground to adopt the sealed cover procedure, as long as the proceedings/allegations in relation to which, the employee was placed under suspension, have not assumed finality. The fact that he was reinstated after some time does not make much difference.”

7. Aggrieved by the aforesaid decision, the petitioner has approached this Court by means of the present writ petition.

8. We have heard Mr. T.V. George, learned counsel for the



petitioner and Mr. Jetly, learned counsel for the respondents, at length.

9. The law relating to the circumstances in which the recommendations of the DPC which considered a public servant for promotion can be placed in a sealed cover is no longer *res integra*. The field is covered by the judgments of the Supreme Court as well as the OM issued by the DOPT.

10. In ***K.V. Jankiraman***, the 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.”

11. Following the judgment in ***K.V. Jankiraman***, the DOPT issued O.M. dated 14 September 1992, on which the respondent had placed reliance before the Tribunal as well as before us. Mr. Jetly, learned counsel for the respondent has drawn our attention to paras 1 and 2 of the aforesaid OM:

“1. 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 judgement dated 27.08.1991 of the Supreme Court in ***Union of India etc. v. K.V. Jankiraman*** etc. As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

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

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

2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case criminal prosecution pending. The assessment of the DPC, including "Unlit for Promotion", and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed Findings regarding suitability for promotion to the grade/post of in respect of Shri termination of (name of the Government servant), Not to be opened till the disciplinary case/criminal prosecution against Shri The proceedings of the DPC need only contain the note "The findings are contained in the attached sealed cover. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded."



12. The aforesaid OM dated 14 September 1992 required some further elucidation, which prompted the DOPT to issue a subsequent OM on 2 November 2012 of which we deem it appropriate to reproduce paras 1 to 8 :

“Instructions issued vide O.M. No. 22012/1/99-Estt. (D) dated 25.10.2004 based on the O.M. No. 22011/4/1991-Estt. (A) dated 14.09.1992 (issued on the basis of procedure laid down by Supreme Court in **K.V. Jankiraman** case) makes it clear that vigilance clearance for promotion may be denied only in the following three circumstances: -

- (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.

Withholding of vigilance clearance to a Government servant who is not under suspension or who has not been issued a charge sheet and the disciplinary proceedings are pending or against whom prosecution for criminal charge is not pending may not be legally tenable in view of the procedure laid down in the aforesaid O.Ms.

2. Existing instructions provide for processing the cases of disciplinary proceedings in a time bound manner. A number of cases have however, come to notice where initiation of disciplinary proceedings/issue of chargesheet/processing of the case is considerably delayed by the administrative Ministries/Departments. Such delays allow an officer whose conduct is under cloud, to be considered for promotion. It becomes essential in respect of officer(s) in whose case disciplinary proceedings are contemplated or pending and are included in consideration zone for promotion, necessary action be taken for placing the proposal before the DPC so that vigilance clearance is not allowed as per conditions mentioned in para 1 above.

3. The Hon'ble Supreme Court in its judgment dated 27.08.1991 in **Union of India v. K.V. Jankiraman** etc has held:

“5. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a



post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is therefore, no discrimination when in the matter of promotion, he is treated differently".

4. The issue of promotion of an officer who may be technically cleared from vigilance angle but in whose case it may not be appropriate to promote him/her in view of doubtful integrity or where a charge-sheet is under consideration etc has been under examination in this Department.

5. The O.M No. 22012/1/99-Estt. (D) dated 25th October, 2004 further provides that a DPC shall assess the suitability of the Government servant coming within the purview of the circumstances mentioned in para 2 of the Office Memorandum No. 22011/4/91-Estt. (A) dated 14.09.1992, alongwith other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution pending. No promotion can be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issue of charge sheet etc. If in the matter of corruption/derelection of duty etc., there is a serious complaint and the matter is still under investigation, the Government is within its right to suspend the official. In that case, the officer's case for promotion would automatically be required to be placed in the sealed cover.

6. When a Government servant comes under a cloud, he may pass through three stages, namely, investigation, issue of charge by either sheet in Departmental Proceedings and/or prosecution for a criminal charge followed penalty/conviction exoneration/acquittal. During the stage of investigation prior to issue of charge sheet in disciplinary proceedings or prosecution, if the Government is of the view that the charges are serious and the officer should not be promoted, it is open to the Government to suspend the officer which will lead to the DPC recommendation to be kept in sealed cover. The sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued or the officer is placed under suspension. The pendency of preliminary investigations prior to that stage is not sufficient to adopt the sealed cover procedure.

7. The law on sealed cover based on the judgment of the Apex Court in **Union of India v. K.V. Janakiraman** etc., is by now well settled. The O.M. dated 14.9.92 confined the circumstances for



adopting sealed cover to the three situations mentioned in para 2 of the said O.M. Even after recommendation of the DPC, but before appointment of the officer if any of the three situations arise, the case is deemed to have been kept in sealed cover by virtue of para 7 of the O.M. dated 14.9.92.

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

"(b) judicial proceedings shall be deemed to be instituted

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

13. Subsequently, in **Anil Kumar Sarkar, K.V. Jankiraman**, was revisited. The Supreme court held in the said case that where no criminal case was registered, charge-sheet filed and where the officer was not under suspension on the date when the DPC met, the case could not be placed in a sealed cover.

14. The position as it emerges from the decisions in **K.V. Jankiraman**, and **Anil Kumar Sarkar**, as well as OMs dated 14 September 1992 and 2 November 2012 issued by the DOPT is clear and categorical. Vigilance clearance may be denied and the case of an officer for promotion may be placed in sealed cover only if (i) criminal proceedings are pending against the officer, or (ii) the officer is the recipient of a charge-sheet initiating disciplinary proceedings against him, or (iii) the officer is under suspension, on the date when the DPC meets.



15. The concept of pendency of criminal proceedings has further been clarified by the OM dated 2 November 2012 issued by the DOPT which, placing reliance on Rule 9(6)(b)(i) of the CCS (Pension) Rules 1972 deems criminal proceedings to be instituted on the date when the complaint or report of a police officer and Magistrate takes cognizance. However, this position stands clarified by the judgment of the Supreme Court in ***K.V. Jankiraman***, which has approved the view adopted by a Full Bench of the Tribunal to the extent 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.

16. In the present case on the date when the DPC met, there were no departmental charge-sheet had been issued to the petitioner, no charge-sheet had been filed against the petitioner before the Criminal Court as it came to be filed only later on 10 February 2016 and suspension order of the petitioner had already been revoked.

17. Mr. Jetly has placed reliance on some decisions which we deem it appropriate to deal with. Mr. Jetly first cites ***State of Madhya Pradesh v. Syed Naseem Zahir***⁷. This decision in fact supports the

⁷ (1992) Supp 1 SCR 962



petitioner. In that case, the Supreme Court has specifically held as under:

“The tribunal allowed the application of Syed on the short ground that the Departmental Promotion Committee which met on October 28, 1987 acted illegally in adopting the "sealed cover" procedure. Relying upon the judgment of this Court in ***Union of India v. K.V. Jankiraman and Others***, the tribunal came to the conclusion that "sealed cover" procedure could be adopted only after the date of issuance of charge-sheet, that being the date from which disciplinary proceedings could be taken to have been initiated. Since in this case, admittedly, on the date when the DPC met the charge sheet had not been served on Syed, resort could not be had to the "sealed cover" procedure. The reasoning and the conclusion of the tribunal are unexceptionable. The only question for our consideration is whether in the facts and circumstances of this case specially in view of the events subsequent to the meeting of the DPC, it would be in the interest of justice to promote respondent Syed to the post of Chief Engineer.”

18. The Supreme Court was in this case dealing not with criminal proceedings but with disciplinary proceedings. The Tribunal had held that as no charge-sheet had been served on the employee prior to the DPC, the DPC could not have adopted the sealed cover. The Supreme Court has clearly held that the reasoning and conclusion of the Tribunal were unexceptionable. The Supreme Court proceeded, however, to examine whether keeping in view the events which took place after the meeting of the DPC, it was in the interests of justice to promote the employee to the post of Chief Engineer.

19. We are not concerned with events which took place after the holding of the DPC. The *lis* before us is, whether the sealed cover should or should not have been opened. As such, this case does not operate against the view that we have adopted.



20. Mr. Jetly next cites *Union of India v. Kewal Kumar*⁸. This was a case in which, on the date of meeting of the DPC, a charge-sheet proposing initiation of disciplinary proceedings for major penalty had already stood issued to the employee concerned. This case is, therefore, clearly distinguishable from the case before us.

21. The Tribunal was, therefore, to our mind, in error in holding that the sealed cover procedure could have been adopted in the case of the petitioner.

22. Resultantly, the OA filed by the petitioner before the Tribunal would stand allowed. The impugned judgment of the Tribunal is quashed and set aside. The petitioner would be entitled to consequential relief as available in law.

23. In case after opening of the sealed cover, the petitioner is found fit for promotion, he shall be entitled to promotion from the date on which others who were considered for promotion to the post of Deputy Commissioner of Excise and Customs by the same DPC.

24. The writ petition is allowed in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

APRIL 21, 2026/yg

⁸ (1993) 3 SCR 45