

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 409 of 2005

Wednesday, this the 1st day of November, 2006.

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

Joseph George,
S/o. Shri George Joseph,
Assistant Finance & Accounts Officer,
Regional Centre of CMFRI, Mandapam,
Presently residing at Type III/4 quarters,
CMFRI Residential Complex, Kochi.

... Applicant.

(By Advocate Mr. T C Govindaswamy)

v e r s u s

1. Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi - 110 001.
2. Director,
Central Marine Fisheries Research Institute,
Post Box No. 1603, North Post office,
Ernakulam.

... Respondents.

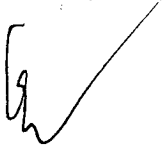
(By Advocate Mr. P. Santhosh Kumar)

This Original Application having been heard on 19.10.06, this Tribunal on 1.11.06 delivered the following :

ORDER

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant was kept under suspension vide order dated 10.03.2003
(Annexure A-1) on the ground that disciplinary a proceeding against the




applicant was pending. By an order dated 18-07-2003, during the currency of suspension, the HQ of the applicant was shifted and the applicant challenged the aforesaid orders through OA 783/2003 which was allowed vide Annexure A-2 order dated 04-11-2003 on the sole ground that though some criminal case was under investigation, on the date of suspension no disciplinary proceeding was pending as alleged in the order of suspension. Hence, the order of suspension as well as the subsequent order of shifting of the HQ was quashed and set aside. Full pay for the period of suspension, treatment of the period of suspension as of duty for all purposes have also been ordered by the Tribunal. By order dated 30-12-2003, the respondents had revoked the suspension.

2. Before the aforesaid order could be passed, the respondents have effected promotion of three officers, who were junior to the applicant, vide Annexure A-3 order dated 15-09-2003, to the post of Finance and Accounts Officer in the combined cadre of Finance and Accounts officers in the pay scale of Rs 8000 - 275 - 13500/- and presumably, the case of the applicant was kept in sealed cover due to his having been kept under suspension at the time of consideration for promotion. On receipt of the order of the Tribunal mentioned above, the applicant made the Annexure A-4 representation dated 24th Nov., 2003 inter alia submitting that he is, by virtue of the Tribunal's order entitled to be considered for promotion, as his juniors have already been promoted. This was followed by another representation dated



24.01.2004 (Annexure A-5). However, as there was no response, the applicant moved OA No. 116/2005 which was disposed of by the Tribunal vide Annexure A6 order dated 22-02-2005, directing the respondents to dispose of the representations dated 24-11-2003 and 24.01.2004 pending before them. While nothing came out in pursuance of the aforesaid order of the Tribunal, on 15th December, 2004, the applicant was issued with a minor penalty charge sheet (Annexure A-7 memo) with an allegation of his having scored in the peon book of his signature already appended by him in token of his having received the transfer order and also for his having shouted at a colleague officer in this regard on 11-12-2002. By Annexure A-8 letter dated 20-12-2004, the applicant refuted the charges as baseless. This charge sheet culminated in the issue of a penalty order of censure to the applicant, vide Annexure A-9 order dated 24-02-2005. The statutory remedy of appeal was availed of by the applicant vide appeal dated 05-04-2005 (Annexure A-10). It is only after the penalty order was passed and at a time when the appeal preferred by the applicant is still pending, that the respondents, by the impugned order dated 16th March, 2005 informed the applicant as under:-

*"Now, therefore, Shri Joseph George is informed that since a **'penalty of censure'** has been imposed on him, the sealed cover containing the proceedings of the DPC cannot be acted upon and whereas his request for the transfer to CMFRI, Cochin (Hqrs) or elsewhere is concerned, he may take up the matter with the Director, CMFRI, Cochin."*



3. It is the above order dated 16th March, 2005 that has been under challenge through this OA on the following grounds and seeking the relief(s) as reflected hereunder:-

(a) Grounds:

- (i) The impugned order is violative of Art. 14 and 16 of the Constitution.
- (ii) When promotion pertains to 2002-2003 and there was no pending proceedings, on the basis of a proceeding initiated in 2004, which resulted only in a penalty of censure, refusing to open the sealed cover and act on the basis of the recommendations contained therein is thoroughly arbitrary and illegal.
- (iii) The entire action smacks cover up action to justify the illegal action of suspension, with a view to denying the applicant of his legitimate promotion.
- (iv) Sealed cover procedure was not adopted on account of the pending criminal investigation. Even if it be so assumed, till May 2005 no final report was filed in the court by the Prosecution. Thus, from any angle, depriving the applicant of his entitlement to be considered for promotion by opening the sealed cover is thoroughly illegal.

(b) Relief(s):

- (i) Quashing of Annexure A-11 order dated 16th May, 2005.



(ii) Direction to the respondents to act upon the findings contained in the recommendations of the DPC and to grant the applicant the benefit of promotion, as Finance and Accounts Officer from the date his juniors were promoted in terms of order dated 15-09-2003.

(iii) Deterrent cost in favour of the applicant and against the respondents.

4. Respondents contest the OA. According to them, a criminal case has been pending before the Criminal Court and at the time when the case of the applicant was considered for promotion to the post of Finance and Accounts Officer, he was not cleared from Vigilance angle; that delay in initiation of disciplinary proceedings was due to the time taken in having clarification from Headquarters; and as regards rules relating to opening of sealed cover on conclusion of disciplinary proceedings, if any penalty is imposed on the Government servant or if he is found guilty of in the criminal prosecution against him, the findings of the sealed cover shall not be acted upon. In such cases, promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him. In the instant case, since a penalty of 'Censure' has been imposed on the applicant, the sealed cover containing the proceedings of the DPC could not be acted upon.

5. The applicant has filed his rejoinder rebutting various contentions of the respondents in their reply.



6. In the additional statement filed, the respondents have stated that FIR was filed before the Additional Chief Judicial Magistrate, Ernakulam on 20.12.2002; applicant was charge sheeted by the police on 10-02-2003; the applicant was placed under suspension on 10-03-2003; the Criminal Court took cognizance on 20-08-2003; DPC for the post of FAO was held on 8.9.2003; Charge sheet for misbehaviour was issued on 15-12-2004; Penalty of Censure in respect of the charge sheet issued was passed on 24-02-2005. The applicant, while furnishing his rejoinder to this statement of reply, specifically denied that the Criminal Court took cognizance of the offence on 20-08-2003. In their further reply, the respondents have annexed a copy of yet another charge sheet (this time under major penalty proceedings) dated 27-08-2005. The alleged incident leading to the issue of this charge sheet also relates to the period of February, 2002 and all the documents enlisted in the list of documents vide Annexure III to the charge sheet date back to the period from 12-12-2002 to 22-04-2003.

7. Counsel for the applicant submitted that the entire action of the respondents speaks of their whimsical action and establishes only arbitrariness. According to the counsel, the applicant was kept under suspension by order dated 10-03-2003, which had been rightly set aside by the Tribunal; the applicant was not proceeded against under either disciplinary proceedings or ~~under~~ criminal proceedings at the time when the DPC met, yet the respondents have resorted to adopting of the sealed cover



procedure. That procedure, which should not have been adopted at all under the facts and circumstances of the case, should have been reviewed after the penalty of censure is passed. In fact, the sealed cover procedure contemplates only action pending as on the date of DPC and not thereafter. Here, while no criminal proceedings were pending on the date of holding of DPC and when there was also, as per the findings of the Tribunal too, no disciplinary proceedings pending, the respondents were under a legal obligation to open the sealed cover and act accordingly. Thus, their action at all stages only manifests their arbitrariness and the latest issue of major penalty proceedings is a clear proof that the respondents are bent upon to deny the applicant his legitimate promotion to the post of Finance and Accounts Officer. The counsel also submitted that the recent issue of major penalty charge sheet cannot in any way support the case of the respondents as the charge sheet was not in existence at the time when the DPC met. In fact, according to the counsel, the issue of charge sheet at this juncture was not with any bonafide intention.

8. The counsel for the respondents on the other hand submitted that cognizance of criminal offence having taken place in August, 2003, the applicant was rightly denied his promotion. And, his case for promotion would be considered in the next DPC.

9. Arguments were heard and documents perused. The admitted facts



and dates are as under:-

(a) Applicant was under suspension on the ground of 'disciplinary proceedings being pending' vide order dated 10-03-2003.

(b) The DPC was held on 08-09-2003 and promotion orders issued on 15-09-2003 in which the name of the applicant was not found, while, all those who were promoted are all juniors to the applicant.

(c) Minor penalty proceedings were initiated in December, 2004 and the same resulted in a penalty of censure in February, 2005.

The dates of filing of the FIR, charge sheet, taking cognizance of offence by the Criminal Court have all not been admitted and each party has its own dates of events.

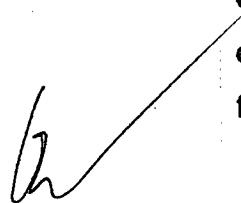
10. Be that as it may. What does the rule say? Opportunity is availed of here, to trace the entire background of the "sealed cover procedure".

11. Prior to issuance of OM No. 22011/1/79. Estt.(A) dated January 30, 1982 on the subject "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", 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 Departmental Promotion Committee (hereinafter referred to as 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. 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. 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.

12. On the issue of OM dated 30-01-1982, provisions for promotion for such employees whose case is pending were introduced and in nutshell, the same are as under:-

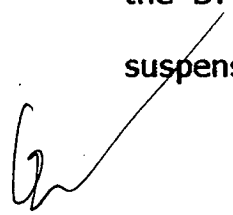
- (a) procedure was prescribed for ad hoc appointment of the concerned officer when the disciplinary/court proceedings are not concluded even after the expiry of two years from the date of the DPC which first considered him for promotion and whose findings are kept in
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the sealed cover, provided however that the officer is not under suspension. In making the ad hoc promotion in such cases, the case should be placed before the DPC which is held after the expiry of the said period of two years, and the ad hoc promotion has to be made on the basis of the totality of the record of service etc.

- (b) If the officer concerned is acquitted in the court proceedings on merits of the case or exonerated in departmental disciplinary proceedings, the ad hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad hoc promotion with all attendant benefits. In such cases, the sealed cover may be opened and the official may be assigned his place in the seniority list as he would have got in accordance with the recommendation of the DPC.
- (c) Further, where the acquittal in a court case is not on merits but purely on technical grounds, and the Government either proposes to take the matter to a higher court or to proceed against the officer departmentally, the appointing authority may review whether the ad hoc promotion should be continued. Where the acquittal by court is on technical grounds, if the Government does not propose to go in appeal to a higher court or to take further departmental action, action should be taken in the same manner as if the officer had been acquitted by the court on merits. If the officer concerned is not acquitted/exonerated in the court proceedings or the departmental proceedings, the ad hoc promotion already granted should be brought to an end by the issue of the 'further order' contemplated in the order of ad hoc promotion and the officer concerned reverted to the post from which he was promoted on ad hoc basis. After such reversion, the officer may be considered for
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future promotion in the usual course by the next D.P.C. (See ***Union of India v. K.V. Jankiraman, (1991) 4 SCC 109***)

13. The Apex Court in the case of ***Union of India v. Tejinder Singh*** had held that pending Departmental inquiry can be a ground for withholding consideration for promotion or promotion itself. In the wake of the same, 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 January 30, 1982 referred to above, was issued. 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 a 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.

14. Thus, the following provisions as contained in the said OM dated 12-01-1988 as amended by OM dated 31-07-1991 were in vogue prior to the judgment of the Apex Court in the case of *K.V. Jankiraman (supra)*.

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

- (i) government servants under suspension;
- (ii) government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;
- (iii) government servants in respect of whom prosecution for a criminal charge is pending or a sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution;
- (iv) government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by CBI or any agency, departmental or otherwise." *(This clause has been deleted by OM dated 31-07-1991)*

As per Office Memo No. 22011/1/91-Estt.(A) dated 31.7.1991 the restriction imposed as per clause (iv) was deleted from the second para of the "Sealed Cover Procedure". However, three counts of clarifications have been made by the Government of India through the same OM. They are extracted below:

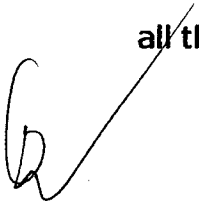
6 "It is further clarified that—

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

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


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

15. 'K.V. Jankiraman' (*Supra*) is a case where the Tribunal's Full Bench judgment in regard to application of sealed cover procedure was under challenge. The Full Bench of the Tribunal, while considering the earlier Memorandum dated January 30, 1982 has, among other things, held that the portion of paragraph 2 of the memorandum which says "but no arrears are allowed in respect of the period prior to the date of the actual promotion" is violative of Articles 14 and 16 of the Constitution and directed full pay and allowances. The Apex Court has, holding that the view of the Tribunal is not all that correct modified the above instructions as,



"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

16. The Tribunal has also struck down the the second sub-paragraph after clause (iii) of paragraph 3 *"the officer's case for promotion may be considered in the usual manner by the next DPC which meets in the normal course after the conclusion of the disciplinary/ court proceedings"* and directed that if the proceedings result in a penalty, the person concerned should be considered for promotion in a Review DPC as on the original date in the light of the results of the sealed cover as also the imposition of penalty, and his claim for promotion cannot be deferred for the subsequent DPCs as provided in the instructions and held that when an employee is visited with a penalty as a result of the disciplinary proceedings there should be a Review DPC as on the date when the sealed cover procedure was followed and the Review DPC should consider the findings in the sealed cover as also the penalty imposed. This finding of the Tribunal has been struck down by the Apex Court and to this extent (including the aforesaid modification), these were held to be applicable not only to the OM dated 30-01-1982 but also to the OM dated 12-01-1988.



17. Judgment in the case of K.V. Jankiraman was passed by the Apex Court on 27th August, 1991 and the Ministry of Personnel, on 14th September, 1992 issued another OM superseding all other earlier memoranda relating to adopting of sealed cover and the crux of the same is as under:-

"Procedure to be followed in respect of those under suspension / in respect of whom disciplinary/criminal case pending :

11.1 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 servant servants in respect of whom prosecution for a criminal charge is pending.

11.2. Sealed cover procedure.- The Departmental Promotion Committee shall assess the suitability of the Government servants coming with the purview of the circumstances mentioned above along with 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. The cover will be superscribed "Findings regarding suitability for promotion to the grade/post of in respect of Shri, (name of the Government servant). Not to be opened till the termination of 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

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kept in a sealed cover.

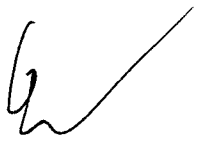
11.3. Procedure by subsequent DPCs.- The same procedure outlined in Para 11.2 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded."

18. In addition, the said OM dated 14-09-1992, vide para 7 thereof, also provides, *"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 DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also"*.

19. Thus, in so far as adopting sealed cover procedure at the time of DPC is concerned, the rule is that the same shall be adopted in the cases of (a) government servants under suspension; (b) government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings; and (c) 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; and in addition, in case, after the panel has been published, if any of the aforesaid three contingencies arises before actually

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effecting promotion, notwithstanding the publication of panel, deemed sealed cover procedure would be adopted and the case of the applicant for promotion shall be considered only after the completion of the disciplinary/criminal proceedings and promotion if so recommended by the DPC could be made only when there is a complete exoneration or acquittal of the government servant concerned. However, where there is neither of the above conditions as on the date of consideration by DPC of promotion, sealed cover cannot be invoked. The Apex Court in the case of ***Union of India v. Sudha Salhan (Dr)***, (1998) 3 SCC 394, held, "if on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to a higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a "sealed cover" only if on the date of consideration of the name for promotion, the departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority. It is obvious that if the officer, against whom the departmental proceedings were initiated, is ultimately exonerated, the sealed cover containing the recommendation of the Departmental Promotion Committee would be opened, and the recommendation would be given effect to."



20. In *K.V. Jankiraman(supra)* another aspect considered by the Apex Court was, " as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced". The Apex Court has held, *"the Full Bench of the Tribunal 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. ... As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy."*

21.

Ultimately, the Apex Court has held, *"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." (underline supplied)

22. The term "issued" used in the context in *Jankiraman* was considered by the Apex Court in the case of ***Delhi Development Authority v. H.C. Khurana, (1993) 3 SCC***, wherein, the Apex Court has held as under:-

The word 'issued' used in this context in Jankiraman it is urged by learned counsel for the respondent, means service on the employee. We are unable to read Jankiraman in this manner. The context in which the word 'issued' has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the charge-sheet leaving no doubt that the decision had been taken. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision. Obviously, the contrary view cannot be taken.

14. *'Issue' of the charge-sheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the charge-sheet and taking of the necessary action to despatch the charge-sheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the charge-sheet on the employee.....*

15..... *The issue of a charge-sheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the charge-sheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in*



which the word 'issue' was used in the expression 'charge-sheet has already been issued to the employee', in para 17 of the decision in Jankiraman

23. In so far as criminal proceedings are concerned, in order to find out as to at what stage, it could be stated that 'prosecution for a criminal charge is pending', reference to Cr.P.C. is also essential. For, an investigation concludes when charge sheet is filed in a Criminal Court or closure report is filed (subject, however, to provisions of Sec. 173(8) Cr. P.C.) Chapter XII of the Cr.P.C deals with Information to the Police and their powers to investigate. Sec. 157 of the Criminal Code provides for the procedure for investigation and Sec. 173 is report of police officer on completion of investigation (Sec 173(8) provides for further investigation if the Magistrate so desires). Sec 190 provides for cognizance of offence by Magistrates, inter alia upon a police report of such facts and Sec 211 deals with charge, which, under Sec. 211 (6) shall be in the language of the Court. Thus, issue of charge sheet means that the criminal trial commences, whereafter, it is that Court which could take any action, and the matter is beyond the jurisdiction of any other functionary. The Apex Court, while considering the stage upto which a case could be 'monitored' by it, has in the case of ***Rajiv Ranjan Singh 'Lalan' (VIII) v. Union of India, (2006) 6 SCC 613***, referred to the following portion of its judgement in the case of *Union of India v. Sushil Kumar Modi*:



"6. This position is so obvious that no discussion of the point is necessary. However, we may add that this position has never been doubted in similar cases dealt with by this Court. It was made clear by this Court in the very first case, namely, *Vineet Narain v. Union of India* that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive. It is, therefore, clear that the impugned order of the High Court dealing primarily with this aspect cannot be sustained. (emphasis supplied)

After referring to the above, the Apex Court has held,

It is thus clear from the above judgment that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end and thereafter, it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173(8).

38. We respectfully agree with the above view expressed by this Court. In our view, monitoring of the pending trial is subversion of criminal law as it stands to mean that the court behind the back of the accused is entering into a dialogue with the investigating agency. Therefore, there can be no monitoring after the charge-sheet is filed.

24. Thus, where criminal charges are involved, sealed cover procedure shall be invoked only after the completion of investigation by filing of charge sheet, as it is only at that stage when the charge sheet is said to be issued.



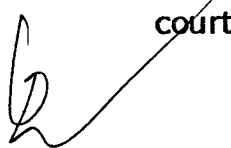
25. With the above rule position, the case of the applicant has to be analyzed whether at the time when the respondents adopted the sealed cover procedure, the stage of issue of charge memo/charge sheet had occasioned? Initially when the DPC was held, no doubt, the applicant was under suspension, but the very suspension having been declared by the Tribunal illegal, the effect of such suspension cannot percolate upon his case being considered without sealed cover procedure for promotion. What is, therefore, to be seen is whether there was the stage of charge sheet issued by the police before the Court. The Respondents, though in their additional reply stated that FIR was filed by the Police with the Court on 20-02-2003 (i.e. prior to holding of DPC), nowhere indicated that charge sheet was issued. Filing of FIR is one thing, issue of charge sheet is another. Issue of charge sheet is after investigation is complete. The applicant's counsel contended that he was not supplied with copy of charge sheet. Non supply of charge sheet or non intimation of charges by itself cannot mean that charge sheet has not been issued; for, as per the decision of the Apex Court in the case of **HC Khurana (supra)**, 'issue' is complete when decision to issue is taken and process of despatch commenced. Issue of charge sheet before the Court would suffice. But the respondents have not produced any evidence to show that either charge sheet is filed before the Court or such a decision to frame charges by the Court has been taken or charge sheet is filed before the Court.



26. The counsel for the respondents has argued that the applicant having been inflicted with a minor penalty of censure, as per the decision of the Apex Court and also as per the provisions of the Ministry of Personnel OM, the sealed cover cannot be opened and acted upon as there is no complete exoneration. This submission has to be rejected since the proceeding which has culminated into the penalty of censure is not one which was initiated at the time of DPC. The very charge memo in that case was in Dec 2004, i.e. posterior to the DPC. Similarly, it has been submitted that as recently as August, 2005, major penalty charge sheet has been issued, which relates to an alleged incident that took place in 2002, i.e. prior to holding of the DPC. This too is not to be taken notice of, for, what is to be seen is whether there is any charge sheet issued at the time when DPC took place. The timing of issue of the major penalty charge memo in late 2005 (wherein the documents relied upon relate only upto beginning of 2003) may have its own tale to tell!

27. Thus, adoption of sealed cover procedure in the instant case is without fulfillment of the conditions attached to it and hence, the applicant is entitled to the relief prayed for.

28. The Tribunal had directed the respondents to produce before the court the recommendations of the DPC kept in sealed cover, as, in the event



of the DPC not recommending the case of the applicant for promotion, it would be only an academic exercise. The respondents had produced the same and the exercise is not one of academic in nature but warranted under the facts and circumstances.

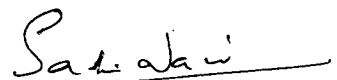
29. In view of the above, the OA succeeds. Annexure A-11 order dated 16th May, 2005 is hereby quashed and set aside. Respondents are directed to act upon the recommendations of the DPC for the year 2002-2003 kept in sealed cover and take further action in this regard, in accordance with rules. The applicant is entitled to all consequential benefits flowing therefrom. As regards arrears of pay and allowances, the same shall also be in accordance with the prescribed rules.

30. Under the above circumstances, there shall be no orders as to costs.

(Dated, 1st November, 2006)



K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

cvr.