

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

PRE-DELIVERY JUDGMENT IN O.A. NOS.937/98 and 909/99.

Hon'ble Member (A) may kindly see
the above judgment for approval/signature.



VICE-CHAIRMAN

I agree
A. Saladue

Hon'ble Member (A) (BNB)

23/12/99

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO.937/98.
2. ORIGINAL APPLICATION NO.909/99.

Dated: 24-12-1999

Madhukar Krishnaji Bam and Anr. Applicants.

Mr.D.V.Gangal and Mr.G.S.Walia Advocate
-----Applicants.

Versus

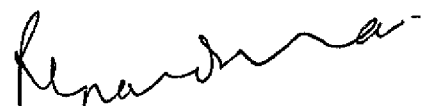
Union of India & Ors. Respondent(s)

Mr.V.S.Masurkar and Mr.Suresh Kumar. Advocate for
-----Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

- (1) To be referred to the Reporter or not? *yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *NO*
- (3) Library? *yes*


(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO.937/98.
2. ORIGINAL APPLICATION NO.909/99.

this the 24th day of Dec 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

1. ORIGINAL APPLICATION NO.937/98.

Madhukar Krishnaji Bam,
151/2, NAD (K) Colony,
PO : NAD Karanja,
Uran,
Dist. Raigad.
(By Advocate Mr.D.V.Gangal)

...Applicant.

Vs.

1. Union of India, through
Secretary
Ministry of Defence,
South Block,
New Delhi.
2. The Chief of Naval Staff,
Naval Head Quarters,
New Delhi.
3. Flag Officer Commanding-in-Chief,
Western Naval Command,
Shahid Bhagat Singh Road,
Fort,
Mumbai - 400 001.
4. The General Manager,
Naval Armament Depot,
Karanja,
Dist. Raigad.
5. Shri V.S.Sapkal,
Working as Foreman,
Ammunition Workshop,
Naval Armament Depot,
Karanja,
Dist. Raigad.
(By Advocate Mr.V.S.Masurkar)

...Respondents.

...2.



2. ORIGINAL APPLICATION NO.909/99.

R.P.Mittal,
C/o. G.S.Walia,
Advocate High Court,
16, Maharashtra Bhavan,
Bora Masjid Street,
Behind Handloom House, Fort,
Mumbai - 400 001.
(By Advocate Mr.G.S.Walia)

...Applicant.

Vs.

1. Union of India, through
Secretary,
Railway Board,
Rail Bhawan,
New Delhi.

2. The General Manager,
Central Railway,
Head Quarters Office,
Mumbai CST,
Mumbai - 400 001.
(By Advocate Mr.Suresh Kumar)

...Respondents.

: ORDER :

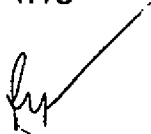
(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two applications filed by the respective applicants seeking a direction to Respondents to ^{Promote} permit them, and for consequential reliefs. Respondents have filed reply opposing both the applications. Since the point involved is a short point, we are disposing of both the applications by this common order after hearing the learned counsels appearing on both sides.

2. The facts are not in dispute in both the cases.

In OA 937/98, the admitted facts are that applicant is working as a Foreman (Ammunition Workshop), Karanja and due for promotion as Senior Foreman. A DPC was held on 4.9.1998. Applicant and others were considered for promotion. Applicant was found fit for promotion by the DPC, but in the order of promotion issued, applicant's name did not find place, but his

...3.



juniors have been promoted. A departmental charge sheet was issued against the applicant which is dt. 3.11.1998. The applicant's grievance is that when on the date of DPC no disciplinary case was pending and no charge sheet had been issued and when juniors were promoted there were no departmental enquiry pending against the applicant and no charge sheet had been issued and therefore withholding order of promotion of the applicant, by adopting the deemed "sealed cover procedure" the respondents have contravened the 1992 Circular and hence the respondents may be directed to promote the applicant with consequential reliefs.

The stand of the respondents is that though charge sheet was issued on 3.11.1998, ^{conscious} ~~conscience~~ decision has been taken by the administration to issue charge sheet against the applicant prior to the date of DPC and that is why the DPC had adopted "sealed cover procedure" so far as the applicant's promotion is concerned. Since the disciplinary enquiry ^{has} subsequently ended by awarding penalty of censure by order dt. 22.2.1999, the sealed cover cannot be opened and hence, question of promotion of the applicant does not arise.

At this stage, we may note that applicant has been considered by a subsequent DPC and he has since been promoted as a Senior Foreman, but the applicant wants retrospective promotion from the date the junior was promoted in October, 1998.

3. In OA 909/99, the applicant Mr.R.P.Mittal is working as Chief Electrical Service Engineer who is due for promotion to the higher administrative grade. The DPC found that applicant was fit for promotion. A panel of two officers due for promotion was prepared by the DPC which included the name of the applicant. The panel was approved by the government. On 26.10.1999 one



person in the panel Mr.Kalra, senior to the applicant, was promoted. Applicant's promotion has been withheld. Applicant has received a charge sheet dt. 22.11.1999.

Applicant's contention is that since on the date of DPC and on the date promotion order was issued to Mr.Kalra, no charge sheet had been issued against the applicant and no departmental enquiry was pending, the Administration had no right to withhold the promotion of the applicant. That, on the basis of contemplated departmental enquiry or on the basis of a charge sheet issued on 22.11.1999, four months after the DPC, the respondents cannot withhold the order of promotion of applicant.

The respondents' defence is that though the charge sheet was issued on 22.11.1999, a ^{conscious} ~~conscience~~ decision had been taken by the Disciplinary Authority for initiating disciplinary action and to issue the charge sheet, even before the date of DPC. Even otherwise, the respondents contention is that since the order of promotion to the applicant is not yet issued and is not yet promoted and in the meanwhile charge sheet is issued, applicant's case for promotion has to be kept in deemed sealed cover as per the 1992 Circular.

4. Mr.D.V.Gangal and Mr.G.S.Walia, the learned counsels appearing for the two applicants in the two cases have questioned the correctness and legality of the procedure adopted by the respondents. They contended that when there are no charge sheets and no departmental enquiry pending against the applicants as on the date of of DPC, the respondents have no right to adopt either sealed cover procedure or deemed sealed cover procedure and hence they have no right to withhold the promotion of the applicants. The learned counsels for the respondents contended

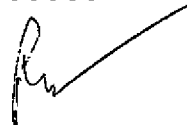
that though the charge sheet might have been issued after the date of the DPC a ^{conscious} ~~conscience~~ decision had been taken by the Disciplinary Authority prior to the date of DPC and therefore adopted sealed cover procedure ^{which} is perfectly valid. Further submission in R.P.Mittal's case is that deemed sealed cover procedure can be adopted ^{it} after the date of DPC and before the actual promotion a charge sheet ~~has~~ been issued as provided under the 1992 Rules.

5. In the light of the arguments addressed at the bar and the available pleadings, the short point for consideration in these two cases is whether the adoption of sealed cover procedure or deemed sealed cover procedure in these two cases is sustainable or not.

6. Though the point involved is a short point and lies in a narrow compass, lengthy arguments were addressed at the bar on both sides and references were made to number of authorities.

At one time, there were conflicting views as to when sealed cover procedure should be adopted. One view was that such procedure can be adopted if some investigation or preliminary enquiry is going on against an officer. Then, the conflicting views came to a rest when the Supreme Court pronounced judgment in K.V.Jankiraman's case (AIR 1991 SC 2010). Now, the Supreme Court has held in that case that sealed cover procedure can be adopted only if on the date of DPC a charge sheet had been issued or departmental enquiry was pending against the officer. If we go literally by the rule laid down in Jankiraman's case, then there is no doubt that in these two cases adoption of sealed cover procedure or deemed sealed procedure is not warranted, since

...6.



admittedly the charge sheets have been issued subsequently to the date of DPC. That is why, the learned counsels for the applicants were vehement in their argument that since admittedly charge sheets had been issued subsequent to the date of DPC in both the cases, the promotion of applicants cannot be withheld and sealed cover procedure cannot be adopted.

We must understand the purpose and object of the sealed cover procedure. In service jurisprudence, it is a well known principle that if an officer is due for promotion and in case he is facing departmental enquiry he should be considered for promotion, but he cannot immediately be promoted in view of the departmental enquiry. Therefore, the finding of the DPC will be kept in a sealed cover. In case, the departmental enquiry ends in exoneration, then sealed cover procedure will be opened and depending upon the recommendation of the DPC, the officer will be promoted or if he is found unfit for promotion then he will not get promotion. But, if the departmental enquiry ends in awarding a penalty to the Officer then sealed cover will not be opened at all. The main purpose and object of this rule is that a person under cloud cannot be ^{rewarded} ~~awarded~~ with promotion.

As already stated, if the rule laid down in Jankiraman's case is followed literally or mechanically, then the applicants must succeed and we must give a direction to respondents to issue orders of promotion to the applicants. In our view, we should not apply the rule mechanically de hors the facts of the case. We have to see the spirit of the rule and not the letter of the rule. We must go by the object and purpose of the rule and not implement the rule mechanically or literally. We hasten to add that this is not our personal view, but we are expressing this view on the basis of observations made by the Supreme Court in many cases including Jankiraman's case.

7. In Jankiraman's case, after explaining the proposition of

law it is stated that the sealed cover procedure cannot be adopted unless a charge sheet has been issued and departmental enquiry is pending, the Supreme Court considered several appeals one by one. For our present purpose, we will refer to paras 14 to 17 in Jankiraman's case (AIR 1991 SC 2010) which pertains to Civil Appeal Nos. 51 to 55 of 1990. In those cases, it was found as a fact, the DPC met in July, 1986, charge sheets were issued in December, 1987, but still sealed cover procedure was adopted. If we go by the strict rule of the law laid down in Jankiraman's case itself, the charge sheets were issued more than one and half years from the date of DPC, adoption of sealed cover procedure must be held to be illegal. In that case, the Tribunal had given a direction to open the sealed cover and give promotion. The Supreme Court did not approve the action of the Tribunal. The Supreme Court took into consideration that though the charge sheets were issued long after the date of DPC, there were some material to show that the officials concerned had admitted their guilt earlier and had been kept under suspension some time and criminal prosecution had been dropped etc. Then, the Supreme Court observed in para 16 as follows :

"However, we find that the Tribunal has taken a mechanical view and applied the decision of the Full Bench and directed the promotions to be given to the employees on the basis of the recommendations, if any, of the DPC of July, 1986. We are of the view that in the present case when the DPC met in July 1986, the Committee had before it the record of the refund of the amount by the respondent-employees and the consequent withdrawal of the prosecutions without prejudice to the authorities' right to institute departmental proceedings."

In para 17, the Supreme Court has observed as follows:

"In view of the aforesaid peculiar facts of the present case, the DPC which met in July, 1986 was justified in resorting to the sealed cover procedure, notwithstanding the fact that the charge-sheet in the departmental proceedings was issued in August/December, 1987. The

...8.



Tribunal was, therefore, not justified in mechanically applying the decision of the Full Bench to the facts of the present case and also in directing all benefits to be given to the employees including payment of arrears of salary."

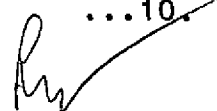
Therefore, the Supreme Court itself has cautioned that the rule should not be applied mechanically and the facts and circumstances must be taken into consideration.

Then, we may make useful reference to the case of State of Madhya Pradesh & Anr. Vs. Sayed Naseem Zahir & Ors. (1993 SCC (L&S) 429). That was a case where the DPC meeting was held on 28.10.1987. Since there was contemplation of departmental proceedings sealed cover procedure was adopted. But, charge sheet was issued six months later on 15.4.1988. The official filed a writ petition in the High Court which was later transferred to M.P. Administrative Tribunal. Following Jankiraman's case the Tribunal held that since on the date of DPC there ^{was} ~~were~~ no charge sheet pending and charge sheet had been issued six months later, it directed the administration to open the sealed cover and give effect to the recommendation of the DPC. The matter was taken to the Supreme Court by the State. In fact, the Supreme Court holds in para 5 that the order of the Tribunal is perfectly justified in view of the law laid down in Jankiraman's case. Having observed like that and after noticing the rule laid down in Jankiraman's case, in para 7, the Supreme Court observed "that it is difficult to ignore the glaring facts in a given case and act mechanically", then the Supreme Court referred to portion of Jankiraman's case pertaining to Civil Appeal Nos. 51 to 55 of 1990, which we have already referred to above and then held that in the peculiar facts of that case, it

is not a fit case to direct opening of sealed cover. The Supreme Court noticed that though the charge sheet was issued subsequent to the date of DPC, enquiry had proceeded and enquiry had been completed and therefore it is too late in the day now to give effect to the findings of the DPC kept in sealed cover. Then, the Supreme Court directed that the sealed cover shall not be opened till the final order is passed in the departmental enquiry and in case he is completely exonerated the sealed cover can be opened and the finding of the DPC can be given effect to.

It is therefore, seen that though it is a case of charge sheet being issued six months after the DPC and having regard to the facts and circumstances of the case, the Supreme Court directed that the sealed cover procedure should be continued. What we are stressing to point out is that we must ^{go by} use the object and purpose of the rule and we should not apply the rule mechanically ignoring the material facts.

8. In H.C.Khurana's case (1993 SCC (L&S) 736), the question was as to what is the meaning of the words "issue of charge sheet" mentioned in the Government Circular. In that case, though the charge sheet had been issued prior to the date of DPC, it was served on the officer long after the DPC. In view of this the High Court had quashed the adoption of sealed cover procedure. The Supreme Court reversed the order of the High Court. Therefore, on facts, the said decision may not apply to the facts of the present case, but we are only concerned with some of the observations made by the Supreme Court as to how the rules should be interpreted. The Supreme Court has taken into consideration the 1988 Circular and also the latest Circular of 1992 pertaining to sealed cover procedure. It is true that the



Supreme Court has referred to the words " a decision has been taken to initiate disciplinary proceedings" which are found in the 1988 circular and those words are not found in 1992 circular. The learned counsels appearing for the applicants in both the cases also impressed on us that in view of the difference in the words of 1988 circular and 1992 circular, the decisions pertaining to 1988 circular cannot be applied to cases which come under the 1992 circular. Though there cannot be any dispute on this point, we have to interpret the circulars with the object and spirit of the circular in mind and certainly not by applying the rule mechanically. The Supreme Court has observed that since decision had already been taken to initiate disciplinary action, the delay in serving the charge sheet on the officer will not come in the way of adopting sealed cover procedure. What is meant by the words issuing charge sheet has been explained in para 13 to mean 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. Therefore, the Supreme Court was emphasising that the decision must have been taken and charge sheet must have been framed and despatched.

Similarly, in Keval Kumar's case (JT 1993 (2) S.C. 705), similar question again arose for consideration. In this case, the DPC met on 23.11.1989, decision to initiate disciplinary action had been taken by the Competent Authority on 20.11.1989, charge sheet was issued only about 10 months later on 1.8.1990. The DPC followed the sealed cover procedure. The Officer filed an application before the Principal Bench of the Tribunal at New Delhi. Following Jankiraman's case, the Principal Bench held

that since charge sheet had been issued long after the DPC, adoption of sealed cover was bad and accordingly directed the administration to open the sealed cover and give effect to the recommendation of DPC. The government carried the matter in appeal before the Supreme Court, the Supreme Court observed that when a decision had been taken to initiate disciplinary action sealed cover procedure can be adopted, though charge sheet had not yet been issued. The Supreme Court was also concerned about interpreting the words "issue of charge sheet". In para 3 of the reported Judgment, it is observed that formulation of charges required for implementing the decision of the competent authority to initiate disciplinary enquiry is satisfied in such a case where appropriate order is passed by the Disciplinary Authority. The following words are very relevant "the requisite formulation of the charges, in such a case, is no longer nebulous, being crystallised....., even if the chargesheet ~~is~~ was issued by its despatch to the respondent subsequent to the meeting of the DPC.,.....". In para 4 the Supreme Court has observed that each case must be examined on its facts "keeping in view the object sought to be achieved by adopting the sealed cover procedure."

Therefore, the test to be applied is whether a ^{conscious} ~~conscience~~ decision had been taken by the Competent Authority for issuing charge sheet. It should not be a case of allegation or mere receiving complaints or some investigation is going on or some preliminary enquiry is pending. The matter should have reached a final stage, when a charge sheet can be issued. The words "issuance of charge sheet" means that a stage had reached ^{the stage to} ~~to~~

...12.



issue a chargesheet. In other words, if the competent authority has passed an order to issue charge sheet, then the mere fact that there was some delay in preparing a formal chargesheet in the proforma would not make any difference, having regard to the object of the rule that an officer under cloud cannot be rewarded with promotion. It is true, if we go literally by the 1992 circular sealed cover procedure cannot be adopted unless charge sheet had been issued prior to the date of the DPC or on the date of DPC, but having regard to the object and ^{spirit} performance of the rules and in view of the observations of the Supreme Court in many cases that rule should not be applied mechanically, we are interpreting the words "charge sheet had been issued and the disciplinary proceedings are pending" in the Office Memorandum dt. 14th September, 1992 means that a final stage had reached and the Competent Authority has passed an order for issuing chargesheet. We must also bear in mind that after the Competent Authority passes an order for issuance of charge sheet, there may be delay in the preparation of chargesheet in a proforma and annexing annexures like statement of imputations, list of documents, names of witnesses etc. Suppose, the Competent Authority passes the order and the concerned case ^{notably} delays for preparation of formal charge sheet and taking signature of Disciplinary Authority for few days or two to three weeks it does not mean that we should interpret the rule mechanically and hold that since charge sheet is not issued prior to the date of DPC, sealed cover procedure cannot be adopted. If we understand the purpose and object of the rule, and if the matter has reached a final stage of an order being passed by the competent authority consciously ^{for} of issuing charge sheet, then mere delay in the

...13.



issuance of chargesheet for few days or for two or three weeks should not come in the way of adopting sealed cover procedure having regard to the object to be achieved viz. an officer under cloud cannot be rewarded ^{with} promotion. We cannot interpret the rule mechanically or literally, but we must interpret the rule in such a way to achieve desired object of the rule. We have already pointed out some of the observations of the Supreme Court where there is a clear caution to Courts and Tribunals not to read or interpret rules mechanically de hors the object of the rule.

9. The learned counsel for the applicants have relied on two cases of Bank Officials which may not be strictly relevant for our present purpose since the Bank Rules are different from the Government Orders.

For instance, in New Bank of India's case (1991 SCC (L&S) 525), the Supreme Court has interpreted the Rule 9 of the Bank Rules and in fact has observed in para 7 that the officer cannot be promoted till the disciplinary action is in process or initiated promotion cannot be withheld. For one thing, the Supreme Court was interpreting Rule 9 of the Bank Rules even otherwise the Supreme Court has used the words "disciplinary action is in process or initiated". In our view, "initiated" means ^{conscious} ~~conscience~~ decision has been taken by the Competent Authority to issue charge sheet.

Then, reliance was placed on M.R.Bhagat's case (1993 (4) SLR 43), where the Chandigarh Bench of the Tribunal has taken the view that sealed cover procedure cannot be adopted if no charge sheet was pending on the date of DPC. Following Jankiraman's case, the Chandigarh Bench found that DPC met in August, 1992,

but the charge sheet was issued in December, 1992 and therefore, adoption of sealed cover procedure was wrong. The question about ^{conscience} ~~conscience~~ decision of the disciplinary authority to issue charge sheet was neither raised nor decided and the facts also do not indicate that any such argument was addressed before the Tribunal. The concerned file was not shown to the Tribunal to show as to when the disciplinary authority had taken the ^{conscience} ~~conscience~~ decision for ordering issuance of chargesheet. The whole case proceeded on the basis of two dates viz. the date of DPC and the date of charge sheet.

In another bank case viz. Bank of India and Anr. Vs. Degala Suryanarayana (1999 SCC (L&S) 1036), it was found that DPC was held on 1.1.1986 when criminal case was pending against the Bank Officer and therefore, the promotion was withheld. But, the criminal case ended in an acquittal. Then, subsequently fresh departmental chargesheet was issued on 3.12.1991, five years and eleven months after the date of DPC. That applicant had become due for promotion in 1986-87 and therefore, it was held that chargesheet issued in December, 1991 is no ground for withholding promotion and therefore sealed cover procedure cannot be adopted in 1990-91. In our view, on facts, the case is distinguishable and ^{it has} ~~there is~~ no bearing on the facts of the present case.

10. Reliance was placed by the applicants counsel on the order of a Division Bench of this Tribunal dt. 8.2.1999 in OA 841/98. In that case, the DPC was held in August, 1995, juniors came to be promoted in June, 1996, whereas the chargesheet against the applicant was issued in June, 1998. That means, there was a gap of nearly three years between the date of DPC and the date of charge sheet and a gap of two years between the date

of promotion of junior and the date of issuance of charge sheet. Hence, it is distinguishable on facts. The learned counsel for the respondents pointed out that against the order of the Tribunal a writ petition was filed in the High Court. In the High Court, by a speaking order, stayed the judgment of this Tribunal by referring subsequent events and the decision of Supreme Court in Kewal Kumar's case and H.C.Khurana's case.


Similarly, reliance was placed on N.K.Gupta's case (1992 (8) SLR 431) and Shivachandramoorthi's case (1992 (8) SLR 403), which are distinguishable on facts.

From the above discussion, we have reached the conclusion that the words "charge sheet" issued in the 1992 Office Memorandum and the 1993 Railway Board Circular would mean that final stage has reached, where the Competent Authority has passed an order for issuance of chargesheet. The mere delay in preparation of chargesheets in proforma and sending it to the delinquent official will not come in the way of DPC keeping its findings in sealed cover if the competent authority has passed an order for issuance of charge sheet prior to the date of DPC.

11. The next point for consideration is what should happen if on the date of DPC there was neither charge sheet nor an order passed by the Competent Authority for issuance of chargesheet and if such a chargesheet is issued order is passed after the date of DPC before actually promoting the officer, the rule itself provides for ^{this} its contingency.

In O.M. dt. 14.9.1992 para 7 reads as follows:

"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 OM will be applicable in his case also". (underlining is ours)



The same rule has been incorporated in the Railway Board Circular dt. 22.1.1993 ^{which applies} in one of the case before us pertaining to Railways and it ^{has} ~~is~~ adopted in O.M. 1992 verbatim. Here, para 6 of the Railway Board Circular is in pari materia with para 7 of the O.M. which we have extracted above.

12. In the light of the above discussion and para 7 of the O.M. or para 6 of the Railway Board Circular, we have to see in the facts of the present case whether the adoption of sealed cover procedure or deemed sealed cover procedure is valid or not.

13. In O.A. 937/98, the DPC was held on 4.9.1998.

The respondents counsel has produced the original file before us which shows that on 1.9.1998 an order is passed for issuing charge sheet against the applicant. If this date is taken as the final decision to issue chargesheet as per our interpretation of the 1992 O.M., then it shows that the decision to issue chargesheet has been taken prior to the date of DPC and therefore adopting sealed cover procedure is perfectly justified.

Even otherwise, we have one more date on the file i.e. 7.9.1998 where the General Manager has passed an order for taking necessary action as mentioned in para 4 which means, issuing charge sheet. Even if we take this as the date of the Competent Authority for issuing charge sheet, even then we find that the order of the competent authority for approving the panel prepared by the DPC was on 18.9.1998 and then the Dy. General Manager has issued the panel on 7.10.1998, which is at page 13 of the paper book, the orders of promotion of juniors is issued one or two days later. That means, before the panel for promotion was approved by the competent authority and before the order of promotion of junior was issued, ~~the~~ the decision had been taken at the

highest place for issuing chargesheet against the applicant and therefore, the case is squarely covered by para 7 of the O.M. which we have pointed out above. That means, even if there was no charge sheet on the date of DPC, but if the charge sheet is issued after the date of DPC and before the date of promotion, then sealed cover procedure can be adopted which we have pointed out above. Hence, in the circumstances we hold that the respondents were justified in adopting sealed cover procedure in the case of the applicant.

Since the applicant has suffered minor penalty in the disciplinary case, the question of opening the sealed cover does not arise at all.

We have already noted that the applicant has been considered by a subsequent DPC and he has already been promoted as Senior Foreman. Therefore, the applicant in this OA is not entitled to any relief.

14. In OA 909/98, the DPC was held on 29.7.1999. Charge Sheet was issued on 22.11.1999. Therefore, admittedly this is a case where there was no charge sheet on the date of DPC, but chargesheet ^{has} ~~have~~ been issued subsequent to the date of DPC. The learned counsel for the respondents has placed before us the original file of the department. A perusal of the same shows that the competent authority has passed an order on 27.8.1999 for issuing minor penalty chargesheet against the applicant. We can see from the file that a sort of preliminary enquiry was going on including questioning of the applicant, then a final stage reached when the competent authority has passed an order for issuing a charge sheet on 27.8.1999. It may be, subsequently the CVC suggested major penalty charge sheet and accordingly major

...18.



penalty chargesheet has been issued, but at any rate the matter had reached final stage when the competent authority has passed an order dt. 27.8.1999 for issuing charge sheet. The order of promotion is not issued to the applicant at all. The applicant's senior Mr. Kalra's name was included in the panel on 26.10.1999 and he has been granted promotion. No junior of the applicant has been promoted. In such a situation para 6 of the O.M. which is equivalent to para 7 of the Railway Board circular is attracted. That means after the recommendation of the DPC and before the officer is actually promoted, if any chargesheet is issued, then deemed sealed cover procedure must be adopted.

In the present case the appointment was approved by the Appointments Committee of the Cabinet on 5.10.1999 and Kalra's promotion order was issued on 26.10.1999, but before these two dates the competent authority has passed the order on 27.8.1999 for issuance of charge sheet. We have already held that the words "chargesheet issue" means that the matter has reached final stage when competent authority passes an order for issuing charge sheet. Such a situation has arisen here after the date of DPC and before the order of promotion is issued to the applicant. Hence, for the reasons mentioned already, deemed sealed cover procedure has to be adopted and therefore the respondents have rightly adopted the deemed sealed cover procedure. If the applicant is exonerated in the departmental enquiry, then sealed cover must be opened and applicant must be given promotion as per the recommendation of the DPC. If the applicant is found guilty

...19.



and suffers any penalty in the disciplinary case, then the DPC recommendation kept in the deemed sealed cover cannot be given effect to.

15. In the result, both the applications are rejected at the admission stage. The ex-parte ad-interim order dt. 25.10.1999 in OA 109/99 and extended from time to time is hereby vacated. There will be no order as to costs.

B. N. Bahadur
(B.N. BAHADUR)
MEMBER(A)

R. G. Vaidyanatha
26.12.99
(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.