

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 743/2017

Dated this Tuesday the 18th day of December, 2018.

CORAM: HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Abdur Rahman Aged 44 years,
presently working as
Deputy Inspector General of Police,
Wireless Maharashtra State,
Pune Chavan Nagar,
Pashan Road, Pune 411 008 . . . **Applicant**

(By Advocate Shri R.G. Walia)

VERSUS

1. Union of India
through the Secretary
Government of India,
Ministry of Home Affairs,
North Block, New Delhi 110 001.
2. The Chairman,
Union Public Service Commission,
Dholpur House, Shah Jahan Road,
New Delhi-110 001.
3. The Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.
4. The Addl. Chief Secretary (Home)
Government of Maharashtra,
Mantralaya, Mumbai - 400 032.
5. Dr. Suresh Mekhla,
IPS presently posted as
Special Inspector General of Police
State Reserve Police Force,
Pune Range, Ram Tekdi,
Hadapsar, Pune - 411 022....

*(By Advocate Shri V.B. Joshi for R1 & R2
Shri V.S. Masurkar for R3 & R4)*

O R D E R
Per: Ravinder Kaur, MEMBER (J)

This application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“(a) that this Hon'ble Tribunal be pleased to call for the records and proceedings relating to the DPC of 20th February, 2015, after perusing the same be pleased to quash and set aside the select list dated 05.05.2015 insofar as the exclusion of the Applicant therefrom for grant of promotion to him in the rank of SIG is concerned and further direct the Respondents to hold the review DPC and promote the Applicant in the rank of Special Inspector General of Police on account of none of the situations as envisaged in the DOPT OM of 14/9/1992 prevailing in April, 2015, direct the Respondents to grant promotion to the Applicant on par with his immediate junior Dr. Suresh Mekhla;

(b) all consequential benefits including back wages in terms of difference in salary payable in the rank of SIG to the Applicant be paid along with 18% interest thereon;

(c) costs of this application be provided for

(d) such other and further reliefs as this Hon'ble Tribunal may deem fit in the nature and circumstances of the case be granted”

2. The facts are that the applicant is a direct recruit IPS Officer of 1997 batch. He was promoted to the rank of Deputy Inspector General of Police w.e.f. 2011 along with his batchmates. He was initially posted as

Additional Commissioner of Police (Administration) at Pune City, DIG, Wireless, M.S., Pune, then DIG, EOW, CID(Crime), Pune and since June 2017, is posted as DIG Wireless, Pune. It is stated that he was awarded DG Medal for doing exemplary work in Naxal areas for more than two years while he was posted in Chandrapur and Yavatmal. He was also awarded Mahatma Gandhi Peace Award for communal harmony in the year 2008. That the applicant was entitled to be considered for promotion to the rank of Special Inspector General of Police in 2015 and Departmental Selection Committee (in short 'DPC') proceedings were held on 20.02.2015 for the same. However, the applicant was overlooked for promotion to the rank of SIG on the ground that a chargesheet had been issued to him and disciplinary proceedings were pending against him. This fact he came to know when he obtained the copy of the DPC proceedings dated 20.02.2015 (Annexure A-1) under RTI. It is stated that the applicant was never issued any chargesheet nor was there any disciplinary proceedings pending against him during the relevant period. He made representation on 15.04.2015 to the ACS(Home).

He also made representation to the Chief Secretary of the State on 25.04.2015 and 17.06.2015 respectively. Copies of these representations are annexed as Annexure A-2 colly. Vide these representations the applicant had brought to the notice of competent authorities that he could not have been overlooked for the promotion in the light of the fact that none of the situations as envisaged in Department of Personnel and Training OM dated 14.09.1992 (Annex. A-3) were existing on 20.02.2015 when the DPC had met or on 13.04.2015 when promotion order of his batchmate including his immediate junior in the rank of Special Inspector General of Police was actually issued. The applicant further made representation dated 15.04.2015 to the Chief Minister as well as the Chief Secretary and the ACS (Home) highlighting the fact that he had achieved the required benchmark in the ACRs for the relevant period from 2009-10 until 2013-14 which was the relevant period under consideration by the DPC. He requested the Chief Secretary as Head of DPC to hold a Review DPC to reconsider his case and grant him promotion. As a consequence, Review DPC was

held on 04.06.2015, the copy of which is annexed as A-4. On the same very day, the Anti Corruption Bureau sent a request to the Govt. seeking permission for conducting an enquiry against the applicant and this fact finds mention in the DPC proceedings (Annex. A-4).

3. The applicant has stated that the cases for promotion in the IPS are ordinarily considered under the provisions laid down by OM NO. 45020/11/97-IPS.II dated 15.01.1999 issued by Govt. of India, M/o Home Affairs (Annex. A-5). As per this OM, vigilance clearance can be refused only in cases where one of the three situations as envisaged in the DOPT OM dated 14.09.1992 are existing i.e.

(i) The officer being under suspension

(ii) The officer in respect of whom a chargesheet has been issued and DP are pending or

iii) an officer in respect of whom a criminal prosecution is pending.

4. Applicant has relied upon para 11 of General Principles regarding mode of selection etc. for promotions and functions of Screening Committee etc.

5. The applicant submits that as on 20.02.2015 or 13.04.2011 or on 04.06.2015, none

of the three conditions as envisaged in the DOPT OM dated 14.09.1992 were prevailing in respect of the applicant.

6. He has further relied upon the Govt. of India, M/o Personnel, Public Grievances and Pensions OM NO. 11012/11/2007-Estt(A) dated 14.12.2007 (*Annexure A-6*) which also finds mention that unless one of the three conditions as envisaged in OM dated 14.09.92 are prevailing, a promotion cannot be stopped or vigilance clearance cannot be withheld.

7. The applicant has also relied on another OM file No 22034/4/2012/Estt.(D) dated 02.11.2012 (*Annexure A-7*) issued by DOPT under the subject "Comprehensive Review of instructions pertaining to Vigilance Clearance of promotions" which is on the lines of OM dated 14.09.1992 (*Annexure A-3*) and OM dated 25.10.2004 (*Annexure A-8*).

8. The applicant has submitted that the open enquiry was conducted by the ACB and the same was closed in July/August 2016. Thus the respondents as of October, 2016 had no reason not to hold the review DPC and promote the applicant on par with his junior Dr. Suresh Mekhla w.e.f. April, 2015.

9. The applicant further alleged that on 04.11.2015, he was served with major penalty chargesheet (Annexure A-9) for quite unfathomable reasons, on a frivolous issue relating to non supply of information under RTI in the year 2007 which action does not even indicate any misconduct on the part of the applicant. This action of the respondents has been termed by the applicant as to somehow willy-nilly denial of promotion to the applicant. It is stated that during his tenure as Superintendent of Police at Yavatmal between 31.07.2006 and 16.06.2008, one C.R. No.35/2007 under Section 384, 504, 506 and 34 IPC was registered at Police Station Vadgaon Road on the complaint of one Dr. Jayant Deshmukh in respect of some incident between himself and his neighbour. Dr. Jayant Deshmukh had though been supplied a copy of FIR, moved an application under RTI and sought information from the APIO and SHO Vadgaon Road Police Station with regard to the action taken in respect of the aforesaid FIR. The required information was supplied within 5 days i.e. 16.04.2017 and was sent to Dr. Jayant Deshmukh by general post. Inspite of that Dr. Jayant

Deshmukh filed an appeal to the S.P. Yavatmal vide his letter dated 20.07.2007 which was submitted to the applicant in the last weeks of July, 2007. During the period starting from 1st August, 2007 till 20.09.2007, the applicant was busy with Police Recruitment. He enquired briefly about the previous application of Dr. Deshmukh and was told that the required information had already been sent to him through general post. Despite this, the information was again sent to Dr. Jayant Deshmukh by the Deputy Superintendent of Police (Home) and the Public Information office in the office of SP through General post dated 11.09.2007. So there was no question that Dr. Deshmukh had not received any information either from APIO or from the PIO in the office of SP. Consequently, the applicant had told the concerned clerk Mr. Kamal Kundalik Katkar to file the said appeal and to inform the RTI applicant Dr. Deshmukh. However, later on it revealed that the clerk had failed to intimate Dr. Deshmukh about the decision of SP on his application. It is claimed that there were no allegations of dereliction of duties against the applicant

and the major penalty chargesheet was manufactured only with a view to keep the applicant away from his promotion in the rank of SIG.

10. It is further claimed that when the first DPC was held on 20.02.2015 and when Review DPC held on 04.06.2015, there was nothing against the applicant which could have stopped his promotion. Similarly, when the applicant's immediate junior was promoted in April, 2015, there was absolutely no impediment for promoting the applicant to the post of SIG. The gradings of the applicant for the last relevant five years which were under consideration by DPC were upto the mark. Further that the case of the applicant was not put under sealed cover instead his case was never considered. The so-called open enquiry conducted by ACB against the applicant was closed in July/August, 2016 but despite that Review DPC was not conducted to grant promotion to the applicant. That the request for an open enquiry by ACB could not have stopped vigilance clearance for grant of promotion as envisaged by DoPT OM dated 14.09.1992.

11. The respondents have filed detailed affidavit in reply whereby in fact they admitted the entire case of the applicant.

12. We have heard Shri R.G. Walia, learned Advocate for the applicant and Shri V.S. Masurkar, learned counsel for the respondents and perused the material available on record.

13. Learned counsel for the applicant in the present case has relied upon the judgments of Hon'ble Apex Court in the case of **Union of India Vs. K.V. Jankiraman** reported in **AIR 1991 SC 2010** and **Union of India and Others Vs. Anil Kumar Sarkar** reported in **(2013) 4 SCC 161.**

14. He has further relied upon DoPT OM No.22011/4/91-Estt. (A) dated 14.09.1992 which lays down the procedure and guidelines to be followed in the case of promotion of a Government servant against whom disciplinary/court proceedings are pending or whose conduct is under investigation.

15. We have gone through DoPT Office Memorandum dated No.22011/4/91-Estt. (A) dated 14.09.1992 whereby the procedure and circumstances have been laid down in accordance with which the case of Government Servants can

be put under sealed cover. Relevant para 2 of this OM is reproduced as follows:-

“ No.22011/4/91-Estt.(A)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training

North Block, New Delhi – 110 001
Dated, the 14th Sept. 1992.

OFFICE MEMORANDUM

Subject: Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation – Procedure and guidelines to be followed.

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2. *At the time of consideration of the cases of Government servant for promotion details of Government servant in the consideration zone for promotion falling under the following category 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 criminal charge is pending.”

16. The applicant has also relied upon the Office Memorandum No.45020/11/97-IPS-II dated 15.01.1999 (Annexure A-5) issued by Joint Secretary (Police), Ministry of Home Affairs, Government of India, New Delhi. He has relied upon para 11 of the general principles regarding mode of selection etc. for promotion and functions of screening committees etc. which are part of this OM as Annexure. We have

perused para 11 which deals with the procedure to be followed in respect of officers under cloud. Para 11.1 and 11.2 are reproduced as follows:-

"No.45020/11/97-IPS-II
Ministry of Home Affairs/Grih Mantralaya
Government of India/Bharat Sarkar

New Delhi:dated 15th January, 1999

To,
The Chief Secretaries of all States

Subject: Indian Police Service-Promotion to Senior Scale, Junior Administrative Grade, Selection Grade, Super Time Scale and above Super Time Scales. Guidelines regarding.

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GENERAL PRINCIPLES REGARDING MODE OF SELECTION ETC. FOR PROMOTION AND FUNCTIONS OF SCREENING COMMITTEES ETC.

I to 10

11	<i>PROCEDURE TO BE FOLLOWED IN RESPECT OF OFFICES UNDER CLOUD</i>	<p>11.1 <i>At the time of consideration of the cases of officers for promotion of such officers in the zone of consideration falling under the following categories should be specifically brought to the notice of the concerned Screening Committees:-</i></p> <p class="list-item-l1">(a) <i>Officers under suspension;</i></p> <p class="list-item-l1">(b) <i>Officers in respect of whom a chargesheet has been issued and disciplinary proceedings are pending;</i></p> <p class="list-item-l1">(c) <i>Officers in respect of whom prosecution for criminal charge is pending.</i></p>
		<p>11.2 <i>The Screening Committee shall asses the suitability of the officers coming within the purview of the circumstances mentioned above, along with other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution which is pending. The assessment of the Committee including "unfit for Promotion" and the grading awarded by it will be kept in a sealed cover. The cover will be super scribed "FINDINGS REGARDING THE SUITABILITY FOR PROMOTION TO THE SCALE OFIN RESPECT OF SHRI.....NOT TO BE OPENED TILL THE TERMINATION OF THE DISCIPLINARY CASE/CRIMINAL PROSECUTION AGAINST SHRI....." The proceedings of the Committee need only contain the note "THE FINDINGS ARE CONTAINED IN THE ATTACHED SEALED COVER" The same procedure will be adopted by the subsequent Screening Committee till the disciplinary case/criminal prosecution against the officer concerned is concluded.</i></p>

17. The applicant has also relied upon the Office Memorandum No.22012/1/99-Estt(D) issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi dated 25.10.2004. The said OM is reproduced as under:-

“No.22012/1/99-Estt(D)
Government of India Ministry of Personnel, Public Grievances and Pensions. (Department of Personnel and Training)
New Delhi 110 001

Dated 25th October, 2004

OFFICE MEMORANDUM

Subject:- Cases of persons whose conduct is under investigation or against whom a charge sheet is pending – consideration for promotion – clarification regarding.

The undersigned is directed to refer to the Department of Personnel and Training Office Memorandum No.22011/4/91-Estt-A dated 14th September, 1992 (copy enclosed) which has been issued pursuant to the judgment of the Hon'ble Supreme Court in the case of Union of India vs. K.V. Janakiraman etc. (AIR 1991 SC 2010), and is in supersession of all previous instructions on the subject, and to say that para 2.1 of the said Office Memorandum provides that the DPC shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned in para 2 of the Office Memorandum, along with other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution pending. Therefore, it is made clear that only a bare statement that case of an employee in the zone of consideration/extended zone of consideration is covered by any of the three situations indicated in para-2 of the said Office Memorandum is to be furnished to the DPC to enable it to place its recommendations in the sealed cover. No other details about the pending inquiry or the nature of charges etc. are to be furnished to the DPC lest these details weigh with the DPC in making its recommendations, which are to be placed in the sealed cover.

2. Considerable doubts also persist about the furnishing of the vigilance clearance and integrity certificate to the DPC. It is clarified that the DPC is required to consider the cases of all persons who are otherwise eligible in terms of the Recruitment Rules as on the relevant crucial date and are in the zone of consideration. If, however, case of an employee in the zone of consideration is covered by any of the three situations, only this fact is to be furnished to the DPC so that the recommendations could be placed in sealed cover. Where none of the three situations has arisen, a simple vigilance clearance would need to be furnished. Vigilance clearance/status would have no other significance and would not be a factor in deciding the fitness of the officer for promotion on merit.

3. It is also clarified that there is no requirement of furnishing a separate integrity certificate to the DPC. In terms of the judgment of the Hon'ble Supreme Court in the case of Union of India vs. K.V. Janakiraman etc. (AIR 1991 SC 2010), 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/dereliction of duty etc., there is a serious complaint and the matter is still under investigation of CBI or otherwise, 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.

4. If the conditions indicated in para-2 of DoPT Office Memorandum dated 14th September, 1992, arise only after the DPC has made its recommendations and therefore, the recommendations could not be placed in the sealed cover, para-7 of the said Office Memorandum provides that the recommendations of the DPC shall be deemed to have been placed in the sealed cover and he shall not be promoted until he is exonerated of the charges. Therefore, after the recommendations of DPC have been approved by the competent authority, it is necessary to again seek the status position from the concerned vigilance division before issuing promotion order in respect of any officer included in the approved panel of names to ensure that there is no hindrance in issuing the promotion order in respect of the concerned officer.

5. Hindi version will follow.

sd/-
 (Alok Saxena)
 Director”

18. The applicant has further relied upon the Office Memorandum No.11012/11/2007-Estt. (A) dated 14.12.2007. The relevant portion of this Office Memorandum which is relevant for the disposal of present OA is reproduced as follows:-

“No.11012/11/2007-Estt.(A)
Government of India
Ministry of Personnel & Public Grievances & Pensions
(Department of Personnel & Training)

New Delhi
Dated the 14th December, 2007

OFFICE MEMORANDUM

Subject:- *Guidelines regarding grant of vigilance clearance to members of the Central Civil Services/Central Civil posts.*

The undersigned is directed to say that the matter regarding guidelines for giving vigilance clearance to members of the Central Civil Services/Central Civil posts has been reviewed by the Department of Personnel & Training and it has been decided that the following guidelines for the grant of vigilance clearance to the Government servants belonging to the Central Civil Services/Central Civil posts shall be applicable with immediate effect:

1. *These orders regarding accordance of vigilance clearance to members of the Central Civil Services/posts shall be applicable with respect to (a) empanelment (b) any deputation for which clearance is necessary, (c) appointments to sensitive posts and assignments to training programmes (except mandatory training). In all these cases, the vigilance status may be placed before and considered by the Competent Authority before a decision is taken.*

2. *The circumstances under which vigilance clearance shall not be withheld shall be as under:*

*(a) Vigilance clearance shall not be withheld due to the filing of a complaint, unless it is established on the basis of at least a preliminary inquiry or on the basis of any information that the concerned Department may already have in its possession, that there is, *prima facie*, substance*

to verifiable allegations regarding (i) corruption (ii) possession of assets disproportionate to known sources of income (iii) moral turpitude (iv) violation of the Central Civil Services (Conduct) Rules, 1964.

(b) Vigilance clearance shall not be withheld if a preliminary inquiry mentioned in 2(a) above takes more than three months to be completed.

(c) Vigilance clearance shall not be withheld unless (i) the officer is under suspension (ii) a chargesheet has been issued against the officer in a disciplinary proceedings and the proceeding is pending (iii) orders for instituting disciplinary proceeding against the officer have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of passing such order (iv) chargesheet has been filed in a Court by the Investigating Agency in a criminal case and the case is pending (v) orders for instituting a criminal case against the officer have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of initiating proceedings (vi) sanction for investigation or prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter (vii) an FIR has been filed or a case registered by the concerned Department against the officer provided that the charge sheet is served within three months from the date of filing/registering the FIR/case and (viii) The officer is involved in a trap/raid case on charges of corruption and investigation is pending.

(d) Vigilance clearance shall not be withheld due to an FIR filed on the basis of a private complaint unless a chargesheet has been filed by the investigating agency provided that there are non directions to the contrary by a competent court of law.

(e) Vigilance clearance shall not be withheld even after sanction for prosecution if the investigating agency has not been able to complete its investigations and file charges within a period of two years. However, such vigilance clearance will entitle the officer to be considered only to be appointed to non-sensitive posts and premature repatriation to the parent cadre in case he is on deputation and not for any other dispensation listed in para 1 of this O.M.

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sd/-
(P. Prabhakaran)
Deputy Secretary to the Government of India”

19. It is further observed that in view of the judgment of the Hon'ble Apex Court in the case of *K.V. Jankiraman (supra)*, the DoPT reviewed the instructions issued with regard to the promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation, vide DoPT OM F.No.22034/4/2012-Estt. (D) dated 02.11.2012 and the relevant portion of the same is extracted below:-

“F.No.22034/4/2012-Estt.(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)
North Block,
New Delhi
Dated the 2nd November, 2012

OFFICE MEMORANDUM

Subject: Comprehensive review of instructions pertaining to vigilance clearance for promotion - regarding.

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(i) *Government servants under suspension;*

(ii) Government servants in respect of when 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 OMs”

20. According to the OM dated 14.09.1992, the Government servants falling only in the following three categories can be denied promotion:-

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

Similarly, as per OM dated 15.01.1999 again unless three conditions referred above i.e. in the OM dated 14.09.1992 are satisfied, the vigilance clearance cannot be refused. OM dated 25.10.2004, OM dated 14.12.2007 and OM dated 02.11.2012 referred above are all on the lines of OM dated 14.09.1992. As admitted by the respondents in their reply, even as per OM dated 14.12.2007, the vigilance clearance cannot be withheld merely for the reason a complaint was filed against the Government servant, unless it is established on the basis of at least a preliminary enquiry or on the basis of any information that there is *prima*

facie substance to verifiable allegations against the applicant.

21. It is observed in the reply of respondents that they have admitted that applicant was eligible for promotion in the scale of Special Inspector General of Police and his proposal was examined by Screening Committee Meeting held on 20.02.2015. It is also admitted that as per ACB letter dated 16.02.2015 vigilance clearance was not granted since **a proposal for departmental enquiry** against the applicant was submitted to the Director General of Police vide letter dated 19.01.2015. So admittedly there was no chargesheet issued to applicant and no departmental proceedings were pending against him as on the date 16.02.2015 when the vigilance clearance was not granted for the DPC proceedings to be held on 20.02.2015 whereby the applicant was to be considered for promotion to the rank of SIG.

22. The respondents in para 7 of their reply have further admitted as per Government of India, Ministry of Home Affairs Memorandum dated 15.01.1999 the procedure for sealed cover could only be adopted for, (a) the

officer under suspension (b) officer in respect of whom a charge sheet has been issued and disciplinary proceedings is pending (c) Officer in respect of whom prosecution for criminal charge is pending. However, it is stated that as the ACB withheld the Vigilance Clearance of the applicant his name was not selected for promotion by Screening Committee in the meeting held on 20.02.2015.

23. It is further admitted by the respondents that applicant made a representation dated 15.04.2015 to reconsider his name for promotion and accordingly meeting of Review Screening Committee was reconvened on 06.04.2015 to reconsider his name for promotion to the post of SIG of Police. For the said meeting, the vigilance clearance report was sought from ACB and POL-2 section of the department dealing with departmental enquiries of Class-I and above Police Officers. The ACB conveyed that a proposal for departmental enquiry was submitted to the office of DGP, M.S., Mumbai vide letter dated 19.01.2015. Hence, vigilance clearance cannot be granted to the applicant and permission from the Government was sought by the ACB for

conducting open enquiry against the applicant to ascertain whether he possesses assets disproportionate to his known source of income. Again, it is observed that on the date of Review Screening Committee meeting dated 04.06.2015, as per the admission of the respondents there was only a proposal for departmental enquiry to be initiated against the applicant and permission was also being sought from the Government for conducting open enquiry against him. In these circumstances, the vigilance clearance qua the applicant could not be withheld. The respondents themselves in para 9 of their reply have admitted that as per Government of India DoPT OM dated 14.12.2007 Vigilance Clearance shall not be withheld due to filing of a complaint, unless it is established on the basis of at least a preliminary enquiry on the basis of any information that there is *prima facie* substance to verifiable allegations regarding possessing the disproportionate assets to his known source of income.

24. The relevant dates for consideration in the present case are 20.02.2015 when the DPC proceedings took place and the date 13.04.2015

when promotion of the batchmates of the applicant including his immediate junior in the rank of Special Inspection of General Police was issued. The 3rd relevant date is the date of Review DPC held on 04.06.2015. Admittedly, as on 20.02.2015, 13.04.2015 and 04.06.2015 respectively neither the applicant was under suspension nor any chargesheet had been issued against him nor he was facing departmental proceedings nor he was facing any prosecution for a criminal case. Therefore, the vigilance clearance could not have been withheld by the concerned department. At the most, if any of the three conditions referred above were existing on the date when the applicant was to be considered for promotion, the sealed cover procedure could be adopted by the concerned authority.

25. The Hon'ble Apex Court in the case of *K.V. Jankiraman (supra)* where an identical issue was considered, dealt with the question "*as to what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee*" It observed "*As per the Rules applicable, 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". The Hon'ble Supreme Court laid down the following dictum in the above referred judgment:-

"16. It is only when a charge memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceeding/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 the stage will not be sufficient to enable the authorities to adopt the sealed cover procedure..."

26. The Hon'ble Apex Court in the case of Union of India and Others Vs. Anil Kumar Sarkar reported in (2013) 4 SCC 161 relying upon its earlier judgment in the case of K.V. JankiRaman (*supra*) held that 'sealed cover procedure' as envisaged in para 7 of the Government of India, Office Memorandum No.22011/4/91-Estt. (A) dated 14.09.1992 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 findings of his entitlement to benefit of promotion are kept in sealed cover to be opened after proceedings in question are over. It is also held that

departmental proceedings commence only when charge sheet is issued to the delinquent employee.

27. In the present case, learned counsel for the respondents argued vehemently that since there were allegations against the applicant of possessing disproportionate assets which were of serious nature, it would not have been appropriate and in the interest of the Administration to grant him promotion. Similar contention was advanced before the Hon'ble Supreme Court in the above noted case and it was observed as follows:-

“....The contention advanced by the learned counsel for the appellant authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment, etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge memo/charge-sheet.”

28. In view of the observations made by the Hon'ble Apex Court referred above, the argument of the learned counsel for the respondents that it was not in the interest of the Administration to grant promotion to the applicant, is of no consequence. As on

20.02.2015, neither the applicant was under suspension nor he had been issued any chargesheet nor departmental proceedings were pending against him nor he was facing any criminal prosecution.

29. The perusal of the Screening Committee Meeting (Annexure A-1) held on 20.02.2015 for consideration of promotion of IPS officers in the grade of Special Inspector General of Police shows that in respect of the present applicant the information furnished to the Committee was that a chargesheet had been issued and disciplinary proceedings were pending against him and consequently his case for promotion was not considered by the Committee. However, the respondents have failed to produce any material on record that any chargesheet had been issued to the applicant or any disciplinary proceedings were pending against him as on 20.02.2015 and consequently this information furnished to the SCM is incorrect. Moreover, even if this information had been correct, in view of the judgment of the Hon'ble Apex Court in the case of *K.V. JankiRaman (supra)* and *Anil Kumar Sarkar (supra)*, the sealed cover procedure was required to be

adopted and the same cover could be opened as and when an employee is due for promotion, increment etc.,

30. It is further observed that even on the date 13.04.2015 when the promotion orders were issued in favour of the batchmates of the applicant including his immediate junior in the rank of Special Inspector General of Police, none of the three situations mentioned above were existing.

31. It is seen that on the request of the applicant Review DPC was held on 04.06.2015. The applicant obtained the copy of these proceedings under RTI Act and came to know that the Committee was of the view that though a proposal to initiate the departmental enquiry against the applicant had been approved, however till date there was no chargesheet issued against him and hence it was necessary to consider him for promotion in the grade of Special Inspector General of Police. Despite this observation, his case was not considered for promotion as the ACB did not give vigilance clearance and that permission had been sought from the Government by the ACB vide letter dated 04.06.2015 for conducting open enquiry

against the applicant for ascertaining whether he possessed assets disproportionate to his known sources of income. Consequently, the Committee was of the opinion that the applicant was unfit for promotion in the grade of Special Inspector General of Police at this stage and suggested to keep the matter of his promotion open subject to the outcome of the open enquiry. In the circumstances of the case, it is observed that neither on 20.02.2015 nor on 13.04.2015 nor on 04.06.2015 there was any chargesheet issued to the applicant nor there was any disciplinary proceedings pending against him. As per the minutes of Review Screening Committee Meeting dated 04.06.2015, there was only a proposal of ACB dated 04.06.2015 for conducting open enquiry against the applicant to ascertain as to whether he was possessing assets disproportionate to his known sources of income, which in no manner can be considered to be as one of the three conditions laid down by the OM dated 14.09.1992 and other OM's issued thereafter.

32. It is also observed that when the first meeting of Screening Committee took place on 20.02.2015 even at that time wrong information

was given to the Committee that the applicant was served with the chargesheet and was facing departmental proceedings and the vigilance clearance was withheld, whereas, no such proceedings were pending against the applicant.

Again on 04.06.2015 when the Review DPC meeting took place again ACB did not issue the vigilance clearance certificate and proposal was put up for conducting open enquiry against the applicant to ascertain as to whether he possesses assets disproportionate to his known sources of income. The Screening Committee in its meetings held on 20.02.2015 and 04.06.2015 respectively while considering the case of applicant for promotion were wrongly persuaded by the ACB not to consider his case and thus the Committee acted in violation of the OMs dated 14.09.1992, 25.10.2004 14.12.2007, 02.11.2012 as well as the principles to be followed in the case of promotion as laid down by the Hon'ble Apex Court in the case of *K.V. JankiRaman (supra)* and *Anil Kumar Sarkar (supra)*. The sealed cover procedure was also not adopted by the Screening Committee for the reasons best known to them and have thus violated the principles of natural justice. Admittedly, the

promotion is not a fundamental right though right to be considered for promotion is fundamental right. In view of the law laid down by the Hon'ble Supreme Court in the case of *K.V. JankiRaman (supra)*, the vigilance clearance could not have been withheld till the disciplinary proceedings were initiated against the applicant. The counsel for the applicant has informed the Tribunal that the open inquiry initiated against the applicant has been closed vide order dated 27.07.2016 which is confirmed by the counsel for the respondents. To this effect, he has produced the copy of relevant letter dated 02.08.2016. Similarly, it is also brought to our notice that in the departmental enquiry initiated against the applicant on 04.11.2015, the applicant has been exonerated. The copy of the order to this effect has been produced before us by the respondents in a sealed cover. No doubt at this juncture the applicant has been exonerated both in the open enquiry as well as the departmental enquiry. However, this fact cannot be ignored that both the open enquiry and departmental proceedings were initiated against the applicant much after the date of the relevant meetings of the

Screening Committee which took place on 20.02.2015 and 04.06.2015 respectively to consider the case of the applicant for promotion and at the relevant time when his case was being considered for promotion, the applicant was neither served with any chargesheet and facing departmental proceedings, he was also not under suspension nor he was facing any criminal prosecution. Thus the act of the respondents in not considering the case of the applicant for promotion during both the above referred meetings is against the principles of natural justice, the law laid down by the Hon'ble Supreme Court in the case of *K.V. Jankiraman* (supra) and the provisions of relevant OMs already discussed above.

33. In view of the above discussions, the Original Application is allowed. The select list dated 05.05.2015 is held to be illegal in respect of non-inclusion of the name of the applicant for promotion to the rank of SIG. Consequently, the respondents are directed to include the name of the applicant in the select list dated 05.05.2015 for grant of promotion to him in the rank of SIG. The respondents are

further directed to hold Review DPC and consider the applicant for promotion in the rank of Special Inspector General of Police with all consequential benefits as per relevant law and rules, with effect from the date his immediate junior Dr. Suresh Mekhla was promoted. The respondents are directed to complete this entire exercise within a period of eight weeks from the date of receipt of certified copy of this order. MA No.690/2017 also stands closed. No order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

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