

**HIGH COURT OF MADHYA PRADESH****BENCH AT GWALIOR****(DB : Sheel Nagu & Rajeev Kumar Shrivastava, JJ.)****WA.190.2020*****Omprakash Singh Narwariya*****Vs.****State of M.P. and Anr.**

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**For appellant:**

Shri S.K. Sharma, learned counsel for the appellant.

**For Respondents:**

Shri Pratip Visoriya, learned Government Advocate, for respondents/State.

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**WHETHER REPORTABLE :**  Yes  No

**Law Laid Down:**

It is the date of holding of DPC when consideration is made for promotion and not the eligibility date which may be a prior date than the date of holding of DPC, which decides the question as to whether sealed cover procedure is to be adopted or not.

**Significant Paragraph Numbers:** 8 to 12

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**ORDER****(04/03/2020)****Per: Sheel Nagu, J.**

(1) The instant intra-court appeal filed u/S 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, assails the final order passed on 10.12.2019 in

WP.7320/2016 by the learned Single Judge while exercising writ jurisdiction u/Art.226 of the Constitution dismissing the petition in question by which challenge was made to Annexure P-1, an order rejecting representation of petitioner preferred against the decision to adopt sealed cover procedure by DPC dated 27.02.2016 on account of petitioner having been issued charge-sheet on 08.02.2016 i.e. prior to holding of the said DPC but subsequent to 01.01.2015 which was the eligibility date for consideration by the said DPC.

(2) Learned counsel for the rival parties are heard on the question of admission.

(3) Learned Single Judge by relying upon the decisions of Apex Court in the case of **“Union of India and others Vs. K.V. Jankiraman and others [(1991) 4 SCC 109] and Union of India and others Vs. Dr. Sudha Salhan (Smt) [(1998) 3 SCC 394]”** dismissed the petition in question by holding that for the purpose of adoption of sealed cover the crucial date is the date when consideration for promotion takes place and not any other prior date.

(4) The seminal question which begs for an answer in the instant case is as to whether it is the date of eligibility fixed by DPC for consideration or the date of holding DPC, which will form the crucial date for deciding as to whether sealed cover procedure is to be adopted?

(5) The undisputed facts of the case relevant for deciding the said question are that DPC in question met on 27.02.2016 which considered the eligible persons including the petitioner for promotion to the post of Joint Director, Kisan Kalyan Tatha Krishi Vikas. Pertinently, the said DPC prescribed 01.01.2015 as the eligibility date for consideration of candidates in the zone of consideration. Clause 8 of the minutes of DPC filed by the petitioner vide document 2032/2020 on 14.02.2020 is to the following extent:

“8— पदोन्नति की पात्रता अर्जित करने का दिनांक अर्थात् वर्ष की 1 जनवरी, का जिन अधिकारियों के विरुद्ध अनुशासनात्मक कार्यवाही प्रगति पर थी या आपराधिक प्रकरण पंजीबद्ध कर चालान प्रस्तुत कर दिया गया था, उन अधिकारियों के संबंध में, ऐसी कथित विभागीय जांच/आपराधिक प्रकरण से अप्रभावित रहते हुए पदोन्नति की उपयुक्तता जांची गई किन्तु अपनी सिफारिशों को प्रश्नास्पद कार्यवाहियों के परिणामों के अध्यधीन मानते हुए सील बंद लिफाफे में रखा गया।”

(6) The petitioner was considered for promotion but the recommendations were put in sealed cover despite charge-sheet having been issued on 08.02.2016 (after the eligibility date of 01.01.2015).

(7) Learned counsel for the petitioner primarily submits that since the crucial date for eligibility to be considered for promotion by the DPC was fixed as 01.01.2015, the decision to adopt sealed cover or not should also be taken in view of the situation prevailing on 01.01.2015, without being affected by any subsequent development, meaning thereby as urged that since the petitioner on 01.01.2015 was not under any cloud of disciplinary proceedings

[charge-sheet having been issued subsequently on 08.02.2016] the DPC held on 27.02.2016 could not have taken into account the subsequent event of issuance of charge-sheet on 08.02.2016 while considering petitioner for promotion in DPC dated 27.02.2016. It is, thus, submitted that the adoption of sealed cover by the said DPC was by taking into account extraneous consideration which ought to have been ignored. On this premise, learned counsel for the petitioner prayed for quashing of the impugned order before the writ court and as well as this court.

(8) The concept of adoption of sealed cover is not statutorily provided. The said concept is governed by executive instructions and judicial pronouncements. The Apex Court in the case of **K.V. Jankiraman (supra)** has explained the concept of sealed cover, its sweep and limitation in detail. Relevant extract of the said judgment is reproduced below for ready reference and convenience:

*“8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are:--(1) what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but*

*disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hence, the relevance and importance of the questions.*

*16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a 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. 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. If the allegations are*

*serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p.196, para 39)*

*"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;*

*(2) \* \* \**

*(3) \* \* \**

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

*17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the*

*employee. Thus read, there is no inconsistency in the two conclusions.”*

(9) It is undisputed at the bar by learned counsel for the rival parties that the law laid down by the Apex Court in **K.V. Jankiraman (supra)** has been followed till date which is evident by subsequent decisions of the Apex Court i.e. “**Delhi Development Authority Vs. H.C. Khurana [AIR 1993 SC 1488], Union of India and others Vs. Dr. Sudha Salhan (Smt) [(1998) 3 SCC 394], Bank of India and Another. Vs. Degala Suryanarayana [(1999) 5 SCC 762], Union of India and others Vs. Sangram Keshari Nayak [(2007) 6 SCC 704]**.”

(10) The underlying principle behind the concept of sealed cover is that no employee/officer against whom disciplinary proceedings or criminal prosecution has commenced should be promoted. This reasoning is in turn founded on fair play and good conscience and that such an employee/officer who comes under cloud by disciplinary proceedings cannot be treated at par with a contemporary employee/officer who has unblemished career. Unequals cannot be treated equals. Therefore, to prevent employees/officers under cloud by disciplinary proceedings, the concept of sealed cover procedure was invented. This procedure not only takes care of the problem which may arise by treating an officer with blemish and an officer without blemish equally during course of consideration for promotion but also takes care of the apprehended breach of fundamental right of a civil post holder

being considered for promotion enshrined u/Art.16 of the Constitution of India. The government has taken care while invoking unique concept of adoption of sealed cover by laying down that while considering an employee/officer who is under cloud of disciplinary proceedings, the consideration of such officer would take place including pending disciplinary proceedings and the recommendations so arrived at of fit/unfit as the case may be would be put in a sealed cover, meaning thereby that recommendations would not be disclosed. The sealed cover would be opened after the recommendations kept therein would be given effect to if the disciplinary proceedings culminate in exoneration. If on the other hand proceedings culminate even in minor imposition of penalty of censure then the sealed cover would never be opened and the case for promotion of such officer under cloud of the disciplinary proceedings would be considered in the next DPC as and when held on regular basis.

**(11)** Thus, a very reasonable and rational approach is adopted by the executive instructions of the State which shall take care of both the aspects i.e. avoiding treating of unequals as equals and of preventing breach of fundamental right of consideration for promotion u/Art.16.

**(12)** From the verdict of the Apex Court, as extracted above, it is obvious that the crucial stage of invoking the concept of sealed cover is the stage of consideration. If this crucial stage is preponed



to any previous date fixed by the DPC for eligibility of consideration for promotion then an incongruous situation may arise in cases of the nature in hand where an employee/officer will have to be considered and if found fit to be promoted despite the said employee/officer being under cloud of disciplinary proceeding which were though commenced prior to the holding of DPC but subsequent to the eligibility date. This would amount to award of premium to default by promoting an officer who is facing disciplinary proceedings arising out of a major misconduct committed during period prior to the eligibility date i.e. 01.01.2015. Our view finds support by the decision of Apex Court in **K.V. Jankiraman and others (supra)**, relevant extract of which is reproduced below for ready reference and convenience:

*“46. The peculiar facts in this case are that at the relevant time the respondent-employee was working as Superintending Engineer since July 1986. When earlier he was working as Garrison Engineer in Bikaner Division, there was a fire in the Stores in April 1984 and there were also deficiencies in the Stores held by: the Store-keeper during the period between 1982 and 1985. Hence, disciplinary proceedings were commenced in February 1988 and the respondent was served with a charge-sheet on February 22, 1988. By an order of August 19, 1988 a penalty of withholding of increment for one year was imposed on the respondent as a result of the said disciplinary proceedings.*

*47. On June 3, 1988, the DPC met for considering the promotion to the Selection Grade. Pursuant to this*

*meeting, by an order of July 28, 1988 some juniors were given the Selection Grade with retrospective effect from July 30, 1986. The respondent-employee's name was kept in a sealed cover and was, therefore, not included in the list of the promotee officers.*

*48. The Tribunal has found fault with the authorities on two grounds. The Tribunal has observed that although when the DPC met in June 1988, the employee was already served with a charge-sheet on February 22, 1988 and, therefore, the sealed cover procedure could not be faulted, since admittedly his juniors were given promotion with retrospective effect from July 30, 1986, the DPC should not have excluded the respondent's name from consideration when it met on June 3, 1988. The second fault which the Tribunal has found is that since the penalty of stoppage of increment was imposed at the end of the disciplinary proceedings, it was not open for the authorities to deny the respondent his promotion to the Selection Grade as that amounted to double penalty. Having taken this view, the Tribunal has directed that a Review DPC should consider the respondent's case for promotion w.e.f. July 1986 when his juniors were given promotion taking into account his performance and confidential records up to 1986. We are afraid the Tribunal has taken an erroneous view of the matter. Admittedly, the DPC met in June 1988 when the employee was already served with the charge-sheet on February 22, 1988. The charge-sheet was for misconduct for the period between 1982 and 1985. Admittedly further, the employee was punished by an order of August 19, 1988 and his one increment was withheld. Although, therefore, the promotions to his juniors were given with retrospective*

*effect from July 30, 1986, the denial of promotion to the employee was not unjustified. The DPC had for the first time met on June 3, 1988 for considering promotion to the Selection Grade. It is in this meeting that his juniors were given Selection Grade with retrospective effect from July 30, 1986, and the sealed cover procedure was adopted in his case. If no disciplinary proceedings were pending against him and if he was otherwise selected by the DPC he would have got the Selection Grade w.e.f. July 30, 1986, but in that case the disciplinary proceedings against him for his misconduct for the earlier period, viz., between 1982 and 1985 would have been meaningless. If the Tribunal's finding is accepted it would mean that by giving him the Selection Grade w.e.f. July 30, 1986 he would stand rewarded notwithstanding his misconduct for the earlier period for which disciplinary proceedings were pending at the time of the meeting of the DPC and for which again he was visited with a penalty. We, therefore, allow the appeal and set aside the finding of the Tribunal. There will, however, be no order as to costs.”*

**(13)** The petitioner in his petition did not assail the executive instructions governing the field of adoption of sealed cover by a DPC and therefore there is no need to go any further into that aspect. Dismissal of the petition by learned Single Judge cannot, thus, be found fault with.

**(14)** Consequently, writ appeal stands dismissed, *sans* cost.

**(Sheel Nagu)**  
**Judge**  
**04/03/2020**

**(Rajeev Kumar Shrivastava)**  
**Judge**  
**04/03/2020**