



GAHC010124462020



IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT PETITION (C) NO.3674 OF 2020

PETITIONERS:

1. **Sri Dhruba Bharali,**
Aged about 59 years, S/O Late Harmohan Bharali, Resident of Narikalbasti, 4th Bye-lane, Guwahati, P.O. Zoo Road, P.S.-Geetanagar, PIN-781024, Dist: Kamrup (M), Assam
2. **Sri Sanjib Das,**
Aged about 50 years, S/O-Late Satyen Kr. Das, Resident of Purbajyoti Path, Near Assam Forest School, P.O. Jalukbari, PIN: 781014, Dist: Kamrup (M), Assam

BY ADVOCATES:

Mr. Y.S. Mannan, Advocate.

RESPONDENTS:

1. **The State of Assam,** Represented by Commissioner & Secretary to Government of Assam, Panchayat and Rural Development Department, Dispur, Guwahati-6.
2. **The Under Secretary to the Govt. of Assam,** Political (Vigilance Cell) Deptt., Dispur, Guwahati-6.
3. **The Block Development Officer,** Tapatarry Development Block, Bongaigaon.
4. **The Block Development Officer,** Raha Development Block, Nagaon.

BY ADVOCATES:

Mr. K. Konwar, Addl. AG,

Mr. S. Dutta, SC, P&RD.

**BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

Date of hearing : 12-06-2023

Date of Judgment : 05.10.2023

J U D G M E N T A N D O R D E R

Heard Mr. Y. S. Mannan, learned counsel for the petitioners. Also heard Mr. K. Konwar, learned Additional Advocate General, Assam assisted by Mr. S. Dutta, learned Standing Counsel, P&RD for the respondents.

2. The petitioners, namely, Sri Dhruba Bharali and Sri Sanjib Das, have approached this Court by filing the instant writ petition seeking a direction to the respondent-authorities to promote them to the post of Assistant Engineers with effect from 26.12.2019, i.e., the date from which their immediate juniors were promoted. A further direction is also sought for release of all consequential service benefits.

3. The facts of the case, evident from a perusal of the pleadings, are that the petitioner No.1 was appointed as Junior Engineer under the Panchayat and Rural Development Department, Government of Assam (P&RD) in the year 1985. He joined the said post on

24.07.1985 and was posted at Chinthong Development Block, Hamren, Karbi Anglong. He was, thereafter, transferred and posted in other Development Blocks during the course of his service tenure. At the time of filing of the writ petition, the petitioner No.1 was posted at Tapattary Development Block, Abhayapuri under Bongaigaon district where he joined on 05.03.2014 and has been continuing to render his service without any blame or blemish.

4. The petitioner No.2 was also appointed as Junior Engineer under the P&RD Department on 07.12.1996. He joined the said post on 13.12.1996 and was initially posted at Dalgaon Sialmari Development Block, Darrang. The petitioner No.2 was also transferred and posted under different Development Blocks through his service tenure. At the time of filing the present writ petition, the petitioner No.2 was posted at Raha Development Block, Nagaon on 07.06.2014. It is also mentioned that the petitioner No.2 had successfully cleared the AMICE(I) Examination, 2013 under the Institution of Civil Engineers (India), which is equivalent to a degree in Civil Engineering.

5. While the petitioners were rendering services in their respective places of postings, an First Information Report dated 22.01.2013 was lodged by one Matiar Rahman against the said

Branch Post Master of Howrarpar Post Office Md. Samsul Haque alleging the Branch Post Master of Howrarpar Branch Post Office, one Md. Samsul Haque in connivance with the President and Secretary of Motichar Gaon Panchayat opened hundreds of fake saving accounts in Howrarpar Branch Post Office in the name of various persons without their knowledge with the intention to deposit and withdraw money sanctioned by the Government under the MGNREGA Scheme. It was alleged that the said Post Master of Howrarpar Branch had fraudulently deposited Government Scheme money in those fake accounts and subsequently withdrew the same from those accounts for their personal gain since the year 2010 onwards thereby causing loss of lakhs of rupees to the Government of India and depriving the job card holders. The said First Information Report was lodged before the CBI and the same was registered as CBI ACB Guwahati Branch Case No. RC 0172013A0001 dated 22.01.2013.

6. It is pleaded in the writ petition that the petitioners were unaware about the CBI enquiry initiated until they received copies of the prosecution sanction order dated 30.10.2015 vide Memo No.PDB.187/2015/59-A issued by the Secretary to the Government of Assam, Panchayat & Rural Development Department. In the said

sanction order, it was mentioned that the petitioners have forged the thumb impressions of the labourers without verifying the identity of each of the labourers, which, in turn, disclosed acts of omissions and commissions on their part under the provisions of 3(1)(i)(ii) & (iii), 3(2)(i) & (ii) of the *Assam Civil Service (Conduct) Rules, 1965* and, therefore, the Governor of Assam, after examining the materials placed before Him with regard to the allegations and circumstances of the case, considered prosecution of the petitioners and accorded prosecution sanction under Section 19 of the *Prevention of Corruption Act, 1988* with regard to the offences committed by them.

7. The CBI proceeded with the investigations. The CBI applied for prosecution sanction against the petitioners, which was issued by the Department. After completion of the investigations, charge-sheet was filed. The petitioners were not named as accuseds in the charge-sheet submitted by the CBI and they were shown only as witnesses. No proceedings were initiated by the CBI against the petitioners after issuance of sanction for prosecution. In response to the summons received from the Court of Special Judge, Chandmari, the petitioners appeared before the competent Court and deposed as witnesses.

8. Meanwhile, a provisional gradation list of Junior Engineers under P&RD Department was circulated under Memo No.PRD-12/92/2017-PRD(B)/180-A dated 29.11.2017 wherein the name of the petitioner No.1 was reflected at Serial No.3 and the name of the petitioner No.2 was reflected at Serial No.203.

9. After their depositions were recorded, no further communication was received from the department or from the CBI to the effect that the petitioners are subsequently put up as accused persons. The petitioners were only shown to be witnesses in the charge-sheet filed by the CBI. No further proceedings showing the petitioners as accused have been initiated against the petitioners.

10. In so far as the petitioner No.2 is concerned, a query was made by the Department in respect of the qualification obtained by the petitioner No.2 and the Institution of Civil Engineers, Ludhiana, Punjab responded to the query made by stating that the degree obtained by the petitioner No.2 in Civil Engineering may be recognized as an equivalent degree in civil engineering. It is pleaded that the persons named at Sl. No. 1, 2, 3 is the Provisional Gradation List had in the meantime superannuated and the petitioner's No. 1 name ought to have been reflected at Sl. No. 1 of the Final Gradation List.

11. The P&RD, thereafter, issued another notification dated 26.12.2019 whereby the final gradation list was published and the process for promotion of Junior Engineers in the said department to the post of Assistant Engineers was effected on the basis of the said final gradation list. The names of the petitioners, however, did not figure in the said final gradation list. Upon due enquiry, they were informed that because of the ongoing CBI matter, names of the petitioners were not included in the final gradation list, while names of persons junior to the petitioners were included in the said list.

12. It is the grievance of the petitioners that persons junior to the petitioners have been promoted to the post of Assistant Engineer, but their cases were not considered only for the reason that prosecution sanction has been granted against them, though there is no dispute that the petitioners are not named as accused persons in the charge-sheet and put up for trial. The petitioners were shown only as witnesses and, therefore, the department could not have deprived the petitioners from being considered for promotion to the next higher post of Assistant Engineer.

13. The petitioners represented before the competent authority ventilating their grievances and praying for consideration of their cases for promotion to the next higher cadre. However, the same

had remained pending. Subsequently, again by notification dated 05.06.2020, the department published the final gradation list determining the *inter se* seniority in respect of Junior Engineers serving under the department. In the said list, the name of the petitioner No.1 was reflected at Serial No.1 and the petitioner No.2 is shown at Serial No.12. The writ petitioners were apprehending that notwithstanding their positions in the final gradation list amongst the Junior Engineers, the department will continue to overlook their claims in respect of promotion to the next higher cadre only on the ground that prosecution sanction has been granted in respect of the petitioners although the department is fully aware that the petitioners are named as accused in the said CBI case or were they put up for trial till date. The petitioners were shown as witnesses and they had deposed before the competent Court upon being summoned by the Court. They have not been subsequently put up for trial by the CBI. Expressing such apprehensions, the present writ petition was filed seeking appropriate writ directions or order.

14. The department contested the claims of the petitioners by filing counter affidavit. It is contended by the department that a copy of the CBI report in CBI Case No. RC 0172013A0001 dated

22.01.2013 has been forwarded to the department wherein involvement of the petitioners are clearly shown. In response to the request for grant of sanction made by the investigating authority, the department upon examining the entire materials had granted prosecution sanction vide order dated 30.10.2015 against both the petitioners and at present, criminal trial is pending in Special Case No.07/2014 before the Court of Special Judge, CBI, Guwahati. The department denied the contention of the petitioners that their claim for promotion to the next higher post has been overlooked or not considered. It is averred that the findings of the Departmental Promotion Committee (DPC) in respect of both the petitioners have been kept in sealed cover and upon due conclusion of the criminal trial presently pending before the Court of Special Judge, CBI, Guwahati, necessary orders will be passed by the department.

15. It is contended that the petitioners' representations regarding grant of financial benefits under the ACPS and MACPS and promoting to the post of Assistant Engineer had been processed but the findings are kept in sealed cover in view of the pendency of the criminal trial before the Special Judge, CBI, Guwahati in which case sanction for prosecution against the petitioners have already been granted by the department.

16. The petitioners also filed reply affidavit disputing the contentions of the department and reiterating their claims made in the writ petition.

17. An additional affidavit has also been filed by the respondent No.1 stating that no departmental proceedings have been initiated against the petitioners although prosecution sanction has been granted against the petitioners on 30.10.2015. That apart, no information is available with the department in respect of the present status of the criminal trial pending before the Court of Special Judge, CBI, Guwahati.

It is also clear from the said affidavit that in respect of petitioner No.2, his ACR and APR were not submitted and, therefore, his name was not kept in sealed cover as per the decision of the Selection Board but no promotion was granted to him.

18. Mr. Mannan, learned counsel for the petitioners, strongly contends that the sealed cover procedure has been resorted by the department without any rhyme or reason and thereby overlooking the claim of both the petitioners for promotion to next higher post as well as for grant of ACP and MACP benefits.

Learned counsel for the petitioners submits that the sealed cover process is to be adopted only when there is a Departmental

Proceeding pending against the concerned officer(s) or when charge-sheet has been filed in a matter where the concerned officer is put up as an accused person. In the facts of the present case, neither of these two situations occurred. The prosecution sanction, which was granted by the department against the petitioners, was never acted upon by the prosecuting agency, namely, the CBI. The charge-sheet in the matter was filed as far back as on 18.12.2014. The charge-sheet reveals the names of the following officers as accused persons:-

1. Samsul Hoque,
2. Md. Taleb Ali Sheikh,
3. Sh. Abdus Salam Miah,
4. Sh. Mostafa Hussain,
5. Muhammad Ali Chowdhary,
6. Felix Peter Nongadhar,
7. Azizur Haque,
8. Sh. Razzaq Ali and
9. Afzal Hussain

19. Learned counsel for the petitioners vehemently urges that the names of the petitioners are not shown as accused in the FIR submitted by the CBI in the said CBI case before the Special Judge,

CBI, Guwahati. It is also strongly urged that till date, no Departmental Proceedings have been initiated against the petitioners in respect of the alleged discrepancies and/or on any other ground.

Learned counsel for the petitioners further urges that under such circumstances, there is no question of the findings of the DPC being put in sealed cover and thereby denying the petitioners their right to be considered for promotion to the next higher post.

20. In support of his contentions, learned counsel for the petitioners rely upon the judgment of the Apex Court rendered in ***Union of India and others Vs. K.V. Jankiraman and others, (1991) 4 SCC 109*** as well as ***Union of India and others Vs. Anil Kumar Sarkar, (2013) 4 SCC 161***.

21. Learned counsel for the petitioners also refers to the order dated 09.11.2015 by which the Court of Special Judge, CBI has recorded that three witnesses are present, they are examined, cross-examined and discharged and the next date fixed for further evidence is 11.12.2015.

22. Mr. Konwar, learned Additional Advocate General, appearing for the State submits that there is no infirmity in the order dated 30.10.2015 by which sanction for prosecution was granted in respect

of the present petitioners. He submits that sanction was granted on the basis of the request put up by the competent authority and the competent authority upon due perusal of the materials presented before it, granted sanction for prosecution. In so far as the department is concerned, since criminal trial is presently pending before the Court and Department has issued prosecution sanction in respect of the petitioners, unless the trial is concluded or some material to the effect is placed before the Department that the petitioners are no longer required in connection with the said CBI case, the Department will have to follow the procedure prescribed and, accordingly, the same were put in sealed cover.

Learned Additional Advocate General further submits that there is no bar for the trial Court to array the petitioners as accused persons at any point in time during the trial. As per the information available with the Department, trial is still pending in the competent Court. Therefore, there is no infirmity in the order dated 30.10.2015 or in the sealed cover procedure adopted in respect of the petitioners. Learned counsel appearing for the P&RD adopts the arguments made by the learned Additional Advocate General, Assam.

23. Upon hearing the learned counsels for the parties and upon perusal of the pleadings available on record, it is seen that the prayers made in the writ petition are two fold namely, setting aside the order dated 30.10.2015 whereby the sanction for prosecution was granted in respect of the writ petitioners and a prayer for a direction to the Department to promote the petitioners to the post of Assistant Engineer w.e.f. 26.12.2019 which is the date on which persons junior to the petitioners in the cadre were promoted and grant all consequential service benefits.

Although a prayer is made for interference of the order dated 30.10.2015 whereby prosecution sanction was granted by the department in respect of the petitioners, in the pleadings there are no grounds urged in respect of the first prayer namely interference with the order dated 30.10.2015 for grant of prosecution sanction. No specific arguments have also been made in support of the prayer for interference of the grant of prosecution sanction by the Department.

In the absence of any pleaded grounds and arguments made in support of the prayer for interference with the order of sanction for prosecution dated 30.10.2015, there is no necessity for this Court

to proceed to deal with the said issue. The said prayer will be treated to be not pressed.

24. It is seen from the pleadings that in the order granting the sanction for prosecution against the petitioners elaborate reasons are given in support thereof. The charge-sheet filed by the CBI shows as many as 9 persons who were put up as accused. However, the present petitioners were not shown as accused persons and they have only been summoned in the case as witnesses.

25. The order dated 09.11.2015 passed by the Special Judge, CBI, Assam, Guwahati although discharges the witnesses, the matter was shown to be fixed for further evidence and no orders have been placed before this Court to suggest that the Court has discharged the witnesses, particularly, the petitioners from appearing in the trial any further. No materials have been placed before this Court to suggest that the trial has been concluded before the competent Court and the judgment has been delivered. The submission of the respondents that the matter is still pending trial before the competent Court has not been disputed by the petitioners.

26. The law laid down by the Apex Court has elaborately expounded that sealed cover proceedings is adopted when an employee is due for promotion, but disciplinary or criminal

proceedings are pending against him. In **K.V. Jankiraman** (supra), the Apex Court held as under:-

“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 to 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.

18. We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal.”

27. The said judgment was further applied in a subsequent decision rendered by the Apex Court in ***Union of India and others Vs. Anil Kumar Sarkar, (2013) 4 SCC 161***, wherein the Apex Court held as under:-

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

15. Mr Mohan Jain, learned ASG submitted that Para 2 has to be read along with Para 7 of the Office Memorandum dated 14-9-1992. We have already extracted Para 7 of the memorandum which makes it clear that a government servant, who is recommended for promotion by the DPC if any of the circumstances mentioned in Para 2 of the said memorandum arises after the recommendations of the DPC are received, but before he is actually promoted, will be considered as if his case has been placed in a sealed cover by the DPC. After extracting Para 2, we also highlighted the three conditions prescribed therein. Though, the learned ASG has mentioned that four charge-sheets were issued to the respondent, enquires were completed and show-cause notices had already been served on the respondent, on the relevant date, namely, 21-4-2003, when his batchmates were promoted, none of the conditions was in existence in the case of the respondent. Admittedly, the respondent was not placed under suspension, charge-sheet had been issued only on 13-8-2003 i.e. nearly after 4 months, no disciplinary proceedings were initiated or were pending as on 21-4-2003. In such circumstances, we are of the view that the High Court is fully justified in issuing the direction based on

Para 2 of the memorandum. No doubt, the learned ASG heavily relied on the later part of Para 7 of the memorandum which reads as under:

“He shall not be promoted until the conclusion of disciplinary case/criminal proceedings and the provisions contained in this letter will be applicable in his case also.”

Inasmuch as none of the circumstances was in existence as on 21-4-2003, reliance placed on the later part of Para 7 cannot be accepted or even not be applicable.

16. *It is not in dispute that an identical issue was considered by this Court in Union of India v. K.V. Jankiraman [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] . The common questions involved in all those matters were: (SCC p. 114, para 8)*

“8. ... (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? and (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?”

Among the three questions, we are concerned about Question 1. 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.

17. *Inasmuch as we are concerned about the first question, the dictum laid down by this Court relating to the said issue is as follows: (K.V. Jankiraman case [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] , SCC p. 118, para 16)*

“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."

In para 17, this Court further held: (K.V. Jankiraman case [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] , SCC p. 119)

"17. ... Conclusion 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."

After finding so, in the light of the fact that no charge-sheet was served on the respondent employee when the DPC met to consider his promotion, yet the sealed cover procedure was adopted. In such circumstances, this Court held that: (K.V. Jankiraman case [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] , SCC p. 124, para 32)

"32. ... The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated 30-4-1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits. ... We see no reason to interfere with this order. The appeal, therefore, stands dismissed."

(emphasis supplied)

18. The principles laid down with reference to similar office memorandum are applicable to the case on hand and the contrary argument raised by the appellant Union of India is liable to be rejected.

19. In Coal India Ltd. v. Saroj Kumar Mishra [(2007) 9 SCC 625 : (2008) 2 SCC (L&S) 321 : AIR 2007 SC 1706] this Court, in AIR para 22, has held that: (SCC p. 632, para 18)

"18. A departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued."

20. In Coal India Ltd. v. Ananta Saha [(2011) 5 SCC 142 : (2011) 1 SCC (L&S) 750] this Court held as under: (SCC p. 155, para 27)

"27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide Union of India v. K.V. Jankiraman [(1991) 4 SCC 109 : 1993 SCC (L&S) 387 : (1993) 23 ATC 322] and UCO Bank v. Rajinder Lal Kapoor [(2007) 6 SCC 694 : (2007) 2 SCC (L&S) 550] .)"

21. We also reiterate that the disciplinary proceedings commence only when a charge-sheet is issued. Departmental proceeding is normally said to be initiated only when a charge-sheet is issued."

28. On a careful analysis of the position of law expounded by the Apex Court, it is seen that sealed cover procedure is adopted by a DPC in respect of any officer when any criminal or departmental proceeding is pending against such officer on the date when the DPC considers the case of the officer concerned for promotion. Under such circumstance, findings of the DPC are kept in sealed cover till the proceedings are concluded.

29. In *K.V. Jankiraman* (supra), the Apex Court has held that a criminal proceeding is considered to have commenced when a charge-sheet has been filed. Under the Code of Criminal Procedure, provisions with regard to filing of charge-sheet are elaborately prescribed under Section 173.

30. From a careful perusal of the law laid down by the Apex Court as extracted above, it is evident that upon due conclusion of investigation, the investigating agency is to present its report before a competent Court and in the event, the investigating agency finds materials in support of the allegations raised against the person(s) and their involvement in respect of an alleged offence, then charges are drawn up against the persons who are suspected to have committed the offences alleged and they are put up/shown as accused persons in the charge-sheet filed before the competent

Court. The Court, upon such a charge-sheet being filed as per procedure proscribed by law, takes cognizance of the same and proceeds to frame charges against the accused persons named in the charge-sheet by giving an opportunity to the accused persons of being heard. Once the accused persons plead “not guilty” and the competent Court upon hearing the accused persons comes to a finding that the matter is required to be tried in respect of the allegations made against the accused persons then charges are framed against the accused persons and the trial proceeding commences.

31. In so far as Government servants are concerned, in respect of a proceeding under Section 18 of the Prevention of Corruption Act, permission of the employer is necessary for prosecuting a Government servant, who is arrayed as an accused in a charge-sheet. Such prosecution sanction is necessary in respect of any Government servant where the offences committed are alleged to have been committed in the course of performing his official duties. If any sanction is sought for prosecution by any investigating authority, the employer will have to consider the materials placed before it by the investigating agency and thereupon decide to

sanction or refuse to grant prosecution sanction sought against the Government servant.

32. In the present case, although sanction for prosecution has been sought for and granted by the Government of Assam, it is seen that the prosecuting agency did not decide to prosecute the present petitioners. They were only shown as witnesses. No materials are placed before this Court to show that the petitioners did not cooperate with the trial. There are also no materials placed before this Court to suggest that the petitioners have been subsequently arrayed as accused during the course of the trial.

33. Under such circumstances, the cases of the petitioners not being considered for promotion by adopting the sealed cover procedure by the Department in the absence of any criminal or departmental proceeding pending against the petitioners does not merit acceptance. While it is not disputed that the Department granted sanction for prosecution as sought for against both the petitioners, it is also not disputed that as on date that no proceeding is pending against the petitioners either before any competent Court of criminal jurisdiction or before the Department in the form of any Departmental Proceedings. The stand of the Department that grant of prosecution is the only reason for adopting sealed cover

procedure cannot be accepted in the face of the law laid down by the Apex Court in ***K.V. Jankiraman*** (supra) read with ***Anil Sarkar*** (supra). The law laid down in ***K.V. Jankiraman*** (supra) still holds the field.

34. Under the circumstances, this Court is of the considered view that non-consideration of the claims for promotion to the next higher post as well as grant of ACPS and MACPS as claimed by the petitioners is unjustified and the same are contrary to the provisions of law. There is no justifiable reason as to why the petitioners were deprived of their rightful dues by adopting the sealed cover procedure. Grant of prosecution sanction cannot be a ground for adopting sealed cover procedure unless the prosecuting agency has proceeded to initiate prosecution against the petitioners against whom sanction for prosecution has been granted by the Department. The conclusion arrived at by the investigating agency in the facts of the present case as is evident from the charge-sheet, does not reflect involvement of the petitioners. The option to prosecute any officer pursuant to grant of prosecution sanction remains with the prosecuting agency. The prosecuting agency in its wisdom may choose not to prosecute the officer(s) against whom sanction for prosecution has been granted by the Department.

35. In view of such conclusion arrived at by this Court, it must be held that denial of promotion and consequential benefits as well as the benefits of ACPS and MACPS as claimed by the petitioners is wholly unjustified and contrary to law. The Department is, therefore, forthwith directed to implement the findings of the DPC by taking it out of the sealed cover and in the event the findings of the DPC are found to be in favour of the petitioners, then their cases shall be considered by giving promotion with effect from the date when their immediate juniors were promoted. If the petitioners are promoted with retrospective effect from the date when their immediate juniors were promoted, then all consequential pay and service benefits that they are entitled to in law are also directed to be released.

36. An averment was made by the respondents that in respect of the petitioner No.2, the relevant ACR/APR were not available for the concerned period. In that event, it is the duty of the Department to ensure that the relevant ACR/APRs are placed before the DPC at the time when the case of the petitioner No.2 was being considered for promotion. The Department is, therefore, directed to constitute a review DPC if required and ensure that the relevant ACR/APR be placed before the review DPC for taking into consideration of the claim of the petitioner No.2. If the DPC considers the case of the



petitioner No.2 positively, then petitioner No.2 is also required to be given promotion with retrospective effect from the date his immediate juniors were promoted and all consequential pay and service benefits be released accordingly.

37. The respondents are directed to place the cases of the petitioners before the review DPC, which is to be constituted within a period of four weeks from the date of receipt of a certified copy of this order. The review DPC will, thereafter, pass appropriate orders within a further period of two weeks therefrom. The consequential orders as may be required to be passed by the Department after recommendation/findings of the DPC be issued positively within two weeks thereafter.

38. The writ petition is, accordingly, partly allowed to the extent indicated above.

39. No order as to costs.

JUDGE

Comparing Assistant