
(2024) 08 JH CK 0011

Jharkhand High Court

Case No: Writ Petition (C) No. 1479 Of 2024

Rahul Kumar

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Aug. 12, 2024

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 311(2)
- Prevention of Corruption Act, 1988 - Section 7, 13(i)(d), 13(2)
- Jharkhand Government Servants (Classification, Control & Appeal) Rules, 2016 - Rule 14

Hon'ble Judges: Deepak Roshan, J

Bench: Single Bench

Advocate: Ajit Kumar, Ratnesh Kumar, Rajendra Krishna, Harsh, Abhishek Kumar

Final Decision: Disposed Of

Judgement

Deepak Roshan, J

1. Heard learned counsel for the parties.

2. The instant writ application has been preferred by the petitioner praying therein for quashing and setting aside the notification as contained in memo

No.108 dated 24.01.2024 (Annexure-11); whereby a punishment has been imposed upon the petitioner for withholding of three increments without

cumulative effect, when the fact remains that for the very same set of allegations as alleged in the departmental proceeding, the petitioner has been

honourably acquitted in the criminal case. The petitioner has further prayed for a direction upon the respondents to include and consider the name of

the petitioner, the senior most in the cadre, for the purpose of promotion into the rank of Deputy Chief Inspector of Factories.

It has further been prayed for quashing of the Notification dated 05.01.2024 (Annexure-13); whereby the respondent No.4, a junior officer than the

petitioner, has been made In-charge on the post of Chief Inspector of Factories, Jharkhand.

3. The brief facts of the case are that the petitioner was appointed at the post of Inspector of Factories Class-II Gazetted under Jharkhand Labour

Service Technical Cadre in the year 2007 and he was initially appointed on probation and the period of probation was 2 years; however, the service of

petitioner was confirmed only in the year 2021 vide notification dated 27.01.2021 after a delay of about 14 years.

On 22.03.2013, while the petitioner was posted at Hazaribagh, he was accused of demanding bribe/illegal gratification for which a trap was setup for

the petitioner and the petitioner was caught red handed. Subsequently, a vigilance case was lodged against him being Ranchi Vigilance P.S.

No.07/2013 for demanding bribe/illegal gratification and subsequently the petitioner was arrested as well.

Pursuant to lodging of the criminal case against the petitioner, a decision was taken by the respondent authorities to initiate departmental proceeding

against him and the same was initiated vide resolution dated 29/31.01.2014 and was communicated to the petitioner. Along with the Resolution dated

31. 01.2014, the petitioner was also served with a memo of charge in the form of Prapatr-K containing the statement of charges. The stand of the

petitioner is that the same was not approved by the competent authority; rather was issued at the level of the Deputy Secretary.

The petitioner upon receiving show cause, submitted his reply vide letter dated 20.08.2014, before the concerned authority and in the said letter the

petitioner had denied all the charges levelled against him. Thereafter, the Under Secretary, Labour Employment Training and Skill Development i.e.

respondent No.3 cum presenting officer forwarded the details of the case of the petitioner along with his opinion vide his letter dated 06.01.2015, to

the enquiry officer. The respondent No.3 in his opinion has stated that the explanation given by the petitioner is not acceptable and hence it was

rejected. Thereafter, the respondents concluded the departmental proceeding on 28.05.2015 and in the enquiry report it was found out that the

allegation levelled against the petitioner is true.

4. The case of the petitioner is that the Enquiry Officer held that the charges as proved but without examining any witness in the departmental

proceeding. It has been stated in the enquiry report that the petitioner will get adequate chance to examine the evidence, witness produced by the

prosecution at the time of trial of Ranchi Vigilance P.S. No. 07/2013.

The further case of the petitioner is that during pendency of the trial of the petitioner in respect to Ranchi Vigilance P.S. No. 07/2013 before the

Vigilance Court, the departmental proceeding against the petitioner was kept in abeyance. Thereafter, about eight years, the learned Court of Special

Judge, Vigilance (ACB) Hazaribagh, vide order dated 15. 06.2023 acquitted the petitioner in connection with Ranchi Vigilance P.S. Case No. 07/2013.

As per the petitioner, the acquittal was ""honourable acquittal"" and upon getting acquitted for the Ranchi Vigilance P.S. Case No. 07/2013, the

petitioner conveyed the same to the respondent vide letter dated 13.07.2023. However, when the petitioner informed the respondents about his

acquittal in the vigilance case, to his utter surprise, he was served with a second show cause notice vide letter dated 30.10.2023 and was asked to

submit his reply within fifteen days so that the departmental proceeding can be concluded.

The petitioner in compliance of the letter dated 30.10.2023, submitted a detailed reply to the second show cause notice denying all charges levelled

against him. However, according to the petitioner, the respondents without considering the detailed reply/clarification submitted by the petitioner with

regard to the aforesaid charges, issued impugned notification/ order as contained in memo No.108 dated 24.01.2024, wherein it has been stated that in

light of the charges levelled against the petitioner and in terms of the Rule 14 of the Jharkhand Government Servants (Classification, Control &

Appeal) Rules, 2016, a decision has been taken to withhold three increments of the petitioner without cumulative effect.

Meanwhile, the respondent department vide letter dated 18.10.2023 has initiated the process for promotion of the candidates in the department.

5. The grievance of the petitioner is that the respondents only with an intention to debar the petitioner from being considered for promotion has

inflicted the punishment to withhold three increments without cumulative effect. On 05.01.2024, the junior to the petitioner i.e. Manish Kumar has

been granted additional charge of the higher post being Chief Factory Inspector, on which post, it was the right of the petitioner to be considered for

promotion as the petitioner is senior most person in his cadre/department. The petitioner has also contended by bringing on record the seniority list of

his department which shows the name of the petitioner at serial no. 10, whereas all other persons placed above the petitioner in the list have now

retired making petitioner the sole candidate to be considered for promotion based on seniority.

6. A Counter affidavit has been filed in this case on behalf of respondent No.2 and 3 and it has been stated therein that the petitioner has been caught

red handed on the spot by ACB Team while taking bribe of Rs.5000/- for which Special Vigilance Case No.07/2013 has been initiated for offence

under Sections 7 and 13(2) read with Section 13(i)(d) of the Prevention of Corruption Act, 1988, wherein charge has been framed for offence under

Sections 7 and 13(2) read with Section 13(i)(d). The order of acquittal of the petitioner transpires that the prosecution has failed to bring evidence to

prove the charges.

Further, enquiry has been initiated on 30.10.2023 wherein the allegation of misconduct was found to be true as per Rule-3 of Govt. Servant Conduct

Rule, 1976. Illegal gratification other than legal remuneration is considered to be misconduct. Pursuant to lodging of the criminal case against the

petitioner, a decision was taken by the respondent to initiate departmental proceeding against him and the same was initiated vide resolution dated

29/31.01.2014 and same was communicated to the petitioner. After the opinion of the Dept. of Personnel Administrative and Rajbhasha, the petitioner

was served a notice vide letter No. 1767 dated 30.10.2023 to which he replied; however, the same was found unsatisfactory.

It has further been stated in the counter affidavit that in the notification, as contained in memo No.108, minor punishment has been imposed against the

petitioner for withholding of three increments without cumulative effect.

It has further been stated in the counter affidavit that the charges in departmental proceedings to that in criminal case are distinct and different. Apart

from the other charges, the charge in the departmental proceeding is to use the government position to suppress the file for granting license while

criminal proceeding is strictly focused on the raid conducted by the vigilance team.

7. With regards to the in-charge posting of Respondent No. 4; it has been stated in the counter affidavit that he has just been given the charge of

Chief Inspector of Factories and has not been promoted to Dy. Chief Inspector of Factories. Presently, no one has been given the promotion in the

cadre and the petitioner would be considered for promotion after the completion of his minor penalty period as per rules.

It has been further stated that the disciplinary action taken by the employer for allegation of charges that the petitioner has demanded Rs. 15,000/-

from one Jitendra Kumar for issuing license for opening of factory of manufacturing ""Kadahi"" and the petitioner has been apprehended red handed by

the ACB team while he was receiving the bribe of Rs. 5000/- which is a violation of Rule-3 of Government Service Conduct Rules, 1976.

8. Mr. Ajit Kumar, Ld. Sr. Counsel for the petitioner submits that on the one hand; the respondents, after conclusion of departmental proceeding,

chose to inflict a minor punishment of stoppage of three increments without cumulative effect and on the other hand; making the junior of the

petitioner taking charge as Chief Factory Inspector instead of the petitioner, who is the senior most candidate in his cadre in the garb of impugned

order; this amounts to double jeopardy.

He further submits that the imposition of punishment as prescribed in the punishment order (Annexure-11) dated 24. 01.2024 is not sustainable in the

eyes of law as for the same set of allegations as alleged in the memo of charge the petitioner has been honourably acquitted in a full-fledged criminal

trial in the vigilance case.

He further contend that the issuance of the second show cause notice dated 30.10.2023 is not sustainable in the eyes of law when it has been issued

without consideration of the subsequent development that had taken place after the enquiry report dated 28.05.2015 and seeking reply of the petitioner

upon the enquiry report dated 28.05.2015 and not considering the fact that the petitioner has been acquitted in the vigilance case itself shows the

whimsical and malicious approach of the respondents against the petitioner.

He submits that the impugned order dated 24.01.2024 is against the ratio laid down in a catena of decisions rendered both by the Jharkhand High court

and the Hon'ble Apex Court which states that when the charges of departmental enquiry and criminal court are identical, evidence, witness and

circumstance are also same and the officer has been acquitted after full consideration of prosecution, evidence and material, then imposition of

punishment in the departmental proceeding is highly unjust and oppressive.

Relying upon the above analogy and the judgment; he contended that the petitioner deserves consideration of his name for promotion in the rank of

Deputy Chief Inspector of Factories, Jharkhand, in any case and non-consideration of his name will amount to a major punishment/double jeopardy.

9. Learned counsel further submits that the non-consideration of the name of the petitioner, who is the senior most in the cadre for the purpose of

promotion in the rank of Deputy Chief Inspector of Factories, will amount to violation of Article 14 and 16 of the Constitution of India.

He further submits that even if the impugned order of punishment dated 24.01.2024 is sustained for the sake of argument still, the petitioner deserves

consideration of his name for promotion into the higher rank as he having been cleared from the criminal case and having been inflicted only minor

punishment. He submits that the petitioner cannot be forced to work under his junior who has been made In-Charge Chief Inspector of Factories and

if not so, then the petitioner deserves to be given such In-Charge posting even as a temporary measure.

10. Before concluding his argument, Mr. Kumar, Ld. Sr. Counsel has also alleged that Charge-sheet is not approved by competent authority. In this

regard, he relied upon the judgment passed in the case of Union of India vs. B.V. Gopinath reported in (2014) 1 SCC 351. Further, the Enquiry

Officer has not given proper opportunity to the petitioner to cross-examine the witness on the ground that he has not asked for cross-examination and

the Enquiry Officer held that the charges as proved but without examining any witness in the departmental proceeding. It has been stated in the

enquiry report that the petitioner will get adequate chance to examine the evidence, witness produced by the prosecution at the time of trial of Ranchi

Vigilance P.S. No. 07/2013. Accordingly, he prays for quashing of the impugned order of punishment and also for his consideration for promotion in

the upcoming DPC.

11. Mr. Ratnesh Kumar, S.C. (L&C)-I representing the respondent-State submits that in the notification as contained in memo No.108, dated

24.01.2024, a minor punishment has been imposed against the petitioner for withholding of three increments without cumulative effect. He further

submits the contention of the petitioner that since he has been acquitted in the criminal proceedings, he should not have awarded punishment; is

misconceived for the reason that the charges in departmental proceedings and that in criminal case are distinct and different. He relied on the

judgment rendered in the case of State of Karnataka & Ors. V. Umesh the Hon'ble Court wherein it has been held that ""Acquittal by the criminal

court would not debar an employer from exercising the power to conduct departmental proceeding in accordance with rule and regulation.

On this issue, it has further been argued by Mr. Kumar that apart from other charges, the charges in departmental proceeding are to use the

government position to suppress the file for granting license while the criminal proceeding is strictly focused on the raid conducted by the vigilance

team and getting caught red handed with a bribe of Rs.5000/-, which is punishable under Prevention of Corruption Act.

Learned counsel further submits that it is a well settled law and as per the Explanation (2), Clause (iv) of Rule 14 of the Jharkhand Government

Servant (Classification, Control and Appeal) Rules 2016, the name of the candidate shall not be considered for the promotion during the period of

operation of the penalty. Moreover, the respondent No.4, who is from the same batch as of petitioner and the date of joining, is also the same; and for

the time being, he has been made in-charge of Dy. Chief Inspector of Factories. He reiterated that he has not been promoted but just been given the

charge of Chief Inspector of Factories.

12. It has further been reiterated by learned counsel for the respondent-State that acquittal by a criminal court would not debar an employee from

exercising the power to conduct departmental proceeding in accordance with the rules and regulations. The two proceedings are entirely different in

nature and they operate on different fields and have different objectives; as such the contention of the petitioner that both the proceedings are of same

and similar nature and the result of the criminal proceeding will certainly affect the departmental proceeding is misconceived.

13. On the question of competency of issuing officer of chargesheet it has been contended by Mr. Kumar that merely one document is not signed with

the Ã, etails by the () does not mean that the charge-sheet has been issued by a non-competent officer. As a

matter of fact, Annexure-3, which is the resolution dated 31.01.2014, in paragraph 2 it has been mentioned that the permission has been accorded by

the Government, therefore, it is immaterial that in Prapatra-K, there is no mention about the permission of the Government. As a matter of fact, the

signatory of the Prapatr-K has issued the same after the approval of Government; as such this contention of the petitioner is non est in the eye of law.

14. Further, on the question of role of Enquiry Officer with regards to permitting the petitioner for cross-examination, it has been submitted that the

petitioner has never asked for examining any witness and he has not denied the documents relied by the Enquiry Officer; and thus, there is no

procedural irregularity. The reply/clarification submitted by the petitioner were well examined by the enquiry officer and after considering all the

evidences and proof, concluded the enquiry and submitted the report vide letter dated 28.05.2015. It is very clear from the last page (page-22) of the

enquiry report that sufficient opportunity was given to the petitioner during enquiry (28.04.2014 to 09.02.2015) to produce evidence and witness to

support the petitioner's statement for defense but the petitioner failed to produce any such evidence. In support of his argument, he relied upon the

judgment passed in the case of State Bank of India and Ors. V. Narendra Kumar Pandey reported in (2013) 2 SCC 740 wherein at para 23 the

Hon'ble Apex Court has held as under:-

“23. The inquiring authority has examined each and every charge levelled against the charged officer and the documents produced by the presenting officer

and came to the conclusion that most of the charges were proved. In a departmental enquiry, the disciplinary authority is expected to prove the charges on

preponderance of probability and not on proof beyond reasonable doubt. Reference may be made to the judgments of this Court in Union of India v. Sardar

Bahadur [(1972) 4 SCC 618] and R.S. Saini v. State of Punjab [(1999) 8 SCC 90 : 1999 SCC (L&S) 1424] . The documents produced by the Bank, which were

not controverted by the charged officer, support all the allegations and charges levelled against the charged officer. In a case, where the charged officer had

failed to inspect the documents in respect of the allegations raised by the Bank and not controverted, it is always open to the inquiring authority to accept the same. ¶

15. He concluded his argument by submitting that that the acquittal of the petitioner is not honourable acquittal as the prosecution witness P.W.-2,

P.W.-3 along with the complainant (P.W.-4) turned hostile and cited the Apex Court judgment in Commissioner of Police, New Delhi & Anr. V.

Mehar Singh (2013) 7 SCC 685 and Laxman Harizan v. State of Jharkhand W.P.(S) No. 6780 of 2019. He reiterated that as per provisions of

Explanation (2), Clause (iv) of Rule 14 of the Jharkhand Government Servant (Classification, Control and Appeal) Rules, 2016, debarring a

government employee from promotion during the period of penalty (minor) imposed on him due to misconduct of service rule would not amount to

major and double punishment. Relying upon the aforesaid arguments; he prays that no interference is required with the impugned order of punishment

and as per the Explanation (2), Clause (iv) of Rule 14 of the Jharkhand Government Servant (Classification, Control and Appeal) Rules 2016, the

name of the petitioner cannot be considered for the promotion during the period of operation of the penalty.

16. Mr. Rajendra Krishna, learned counsel for the respondent No.4 has relied upon the arguments advanced by the State counsel and further submits

that so far as his presence in the instant case is concerned, he has been made respondent only for the reason that he has been made In-Charge of the

said post. He also opposed the argument of the learned counsel for the petitioner and submits that unless and until the delinquent asked for proof of

any document, the same is not required. In other words, uncontroverted document is deemed to be accepted by the delinquent and in the instant case,

the whole of enquiry report does not transpire that the petitioner has even asked the enquiry officer to prove the documents.

On the question of competence of chargesheet, he also supported the contention of the State Counsel that only on the ground that one document is not

signed with the details by the () does not mean that the charge-sheet has been issued by a non-competent

officer. In the resolution dated 31.01.2014, in paragraph 2 it has been categorically mentioned that the permission has been accorded by the

Government, therefore, it is immaterial that in Prapatra-K, there is no mention about the permission of the Government.

He lastly submits that the respondent no.4 has been made in-charge and not promoted to the post of the Deputy Chief Inspector of Factories for

which regular DPC is going to be held and when the petitioner has been imposed punishment; he cannot appear in the upcoming DPC.

17. Having heard learned counsel for the parties and after going through the documents available on record, it appears that Mr. Ajit Kumar, learned

senior counsel for the petitioner has mainly argued on following issues:-

(I) Charge-sheet is not approved by competent authority. In this regard, he relied upon the judgment passed in the case of Union of India vs. B.V.

Gopinath reported in (2014) 1 SCC 351.

(II) Opportunity to examine witnesses during enquiry not given, vitiates the departmental proceeding. In this regard, he relied upon the judgment

passed in the case of Roop Singh Negi V. Punjab National Bank reported in (2009) 2 SCC 570.

(III) Non-consideration of honourable acquittal in criminal proceeding which was based on same set of charges and depended upon same set of

witnesses. In this regard, he relied upon the judgment passed in the case of G.M. Tank V. State of Gujarat reported in (2006) 5 SCC 446.

(IV) Minor punishment cannot be an impediment in consideration of delinquent for promotion. In this regard, he relied upon the judgment passed in the

case of Shiv Kumar V. Haryana State Electricity Board, Chandigarh and Ors. reported in 1988 Supp SCC 669.

(V) A junior cannot be assigned a higher post even on an ad-hoc basis. In this regard, he relied upon the judgment passed in the case of Jaibir

Mishra V. L.N. Mithila University and two others reported in 1987 SCC Online Pat 73.

18. So far as the issue that the charge-sheet has not been issued by competent authority; in this regard it is evident that the resolution issued under

memo No.211 dated 31.01.2014, which is for initiation of Departmental Proceeding clearly indicates that after the permission of the Government the

proceedings has been initiated. Only for the reason that in Prapatra-K, there is no mention about the permission of the Government will not declare the

initiation of departmental proceeding as null and void. The judgment relied upon by the Ld. Sr. Counsel for the petitioner is not applicable, inasmuch as,

the said Pratra-K was part of the resolution as the same was annexed with the resolution which was duly issued by the Government.

On this issue, this Court is with the State Respondent, inasmuch as, merely one document is not signed with the details (

) does not mean that the charge-sheet has been issued by a non-competent officer. As a matter of fact, Annexure-3, which is the resolution

dated 31.01.2014, in paragraph 2 it has been clearly mentioned that the permission has been accorded by the Government, therefore, it is immaterial

that in Prapatra-K, which was also annexed with the said resolution, there is no mention about the permission of the Government. As such this ground

of the petitioner for quashing the charge-sheet fails.

19. However, on the question of principle of natural justice, learned counsel for the State could not dispute the fact that the documents which have

been considered by the Enquiry Officer have not been proved by any oral evidence. As a matter of fact, after perusing the entire enquiry report, it is

crystal clear that the documents relied upon by the Enquiry Officer has not been proved by any oral evidence. Further, the Enquiry Officer has not

given proper opportunity to the petitioner to cross-examine the witness since no witness was examined by the department and the Enquiry Officer held

that the petitioner will get adequate chance to examine the evidence, witness produced by the prosecution at the time of trial of Ranchi Vigilance P.S.

No. 07/2013. The law regarding role of enquiry officer is by now well settled and in this regard, it would be profitable to extract para 28, 29 and 30

from the judgment delivered by the Hon'ble Apex Court in the case of State of Uttar Pradesh and Ors. V. Saroj Kumar Sinha reported in (2010)

2 SCC 772. For brevity, para 28, 29 and 30 is quoted hereinbelow:-

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the

department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official

to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed.

Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges

have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of

natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings

which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be

conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that

justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which

may culminate in imposition of punishment including dismissal/removal from service.

20. After going through the aforesaid order, it is clear that the Hon'ble Apex Court in unequivocal term, has stated that even in the absence of the

delinquent official to see as to whether unrebutted evidence is sufficient to hold that the charges are proved and if no oral evidence has been

examined, the documents have not been proved and could not have been taken into consideration to conclude that the charges have been framed.

This law has been further set at rest in the case of Roop Singh Negi (supra), wherein the Hon'ble Apex Court has laid down the law that

presentation of document is not enough and should be proven through examination of witness. In that case also, no witness was examined to prove the

said documents. For brevity para 14 is extracted hereinbelow:-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled

against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the

materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself

could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely

tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been

treated as evidence.”

21. Coming back to the facts of this case, admittedly, the documents which has been relied upon by the Enquiry officer, has not been proved by any

oral witness. Further, by going through the enquiry report, it appears that the Enquiry Officer himself has given a statement which transpires that he

has proved the charge in whimsical manner, inasmuch as, he has categorically stated that the petitioner will get adequate chance to examine the

evidence, witness produced by the prosecution at the time of trial of Ranchi Vigilance P.S. No. 07/2013.

22. Taking into consideration the aforesaid facts, this court is under no hesitation in holding that the principle of natural justice has not been followed in

the instant case; as such, though the petitioner has raised several limbs of argument for quashing the impugned order, but without going further to

deliberate on the different limbs of argument of the petitioner, on this score alone i.e., the principle of natural justice has not been followed, the

impugned order deserves to be, and is, hereby quashed and set aside.

23. Accordingly, the impugned order of punishment is hereby quashed and set aside and the matter is remitted back to the disciplinary authority to start

the proceeding from the stage of enquiry and the disciplinary authority should ensure that the enquiry should be conducted strictly in accordance with

the applicable Rules and after following principle of natural justice and thereafter, fresh order be passed in the departmental proceeding.

24. During course of argument, it has also been contended by the petitioner that only to accommodate respondent No.4, he has been harassed by the

department and if the case will be remitted to the enquiry officer, then again, he will be deprived from promotion and his junior, who is holding the post

as In-Charge, will be benefitted.

This Court does not agree with such contention. Remittance of a case before the disciplinary authority takes the character of pendency of disciplinary

proceeding and in that regard, the law is now well settled that if any departmental proceeding is pending against any delinquent, any DPC which is to

be held; the case of such delinquent shall be kept in sealed cover. For brevity, para 16 of the judgment rendered in the case of Union of India V.

K.V.Jankiraman reported in (1991) 4 SCC 109 is quoted hereinbelow:-

“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;

““(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;

25. In the instant case also, since the order of punishment has been quashed and remitted back to start it afresh from the stage of enquiry proceeding;

it partakes the character of pendency of departmental proceeding. As such, in view of the law laid down in the case of K.V. Jankiraman (supra), the

DPC which is going to be held, the case of the petitioner shall be kept in sealed cover.

It is further directed that the respondents shall conclude the enquiry proceeding as early as possible and not later than 16 weeks from the date of

receipt/production of copy of this order. The petitioner is also directed to fully cooperate in the proceedings.

It goes without saying that if the case of the petitioner is decided in his favour, then he will be entitled to get promotion as per the sealed cover

procedure.

26. Accordingly, the instant writ application stands allowed and disposed of in the manner indicated herein above. Pending I.A., if any, is also closed.