

(1993) 09 GUJ CK 0055
In the Gujarat High Court

Shantilal K. Naik

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 01-09-1993

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66(1)(b), 66(1)(b) , 85(1)(3), 85(1)(3)
Constitution of India, 1950 — Article 226

Citation : (1993) 2 GLR 1418

Hon'ble Judges : M.S. Parikh, J

Bench : Single Bench

Judgement

M.S. Parikh, J.—Leakages in a dam and delays in inquiry" may aptly be described as a title to this petition under Article 226 of the Constitution of India. What is prayed for by the petitioner may be reproduced:

(b) Be pleased to issue a writ of mandamus or any other appropriate writ, order or directions by quashing and setting aside the charge-sheet dated 1-12-1992 Annexure "A" and further be pleased to direct the respondents to consider and promote the petitioner to the post of Executive Engineer with effect from the date his immediate juniors are promoted, with all consequential and incidental benefits;

(c) Pending admission, hearing and final disposal of this petition, be pleased to direct the respondents not to withhold the promotion of the petitioner if otherwise found fit by the Departmental Promotion Committee, on the ground of charge-sheet at Annexure "A" and not to adhere to sealed cover procedure and be pleased to direct the respondents to promote the petitioner if found fit as per rules and further be pleased to restrain the respondents from proceeding further with the inquiry by suspending its continuation.

2. On 1-12-1992 impugned charge-sheet came to be issued to the petitioner and other concerned employees in respect of serious and grave negligence on their part in the carrying out of, supervision, measurements regarding and presentation of bills concerning the earthen work in the construction of Lakhigam

dam/Lakhi dam which was constructed in 1979-82, resulting in leakage emerging through weep holes provided in the downstream retaining wall on both the sides. Detailed allegations in this respect are contained in the statement of imputations annexed with the charge-sheet.

3. The petitioner's case is: The petitioner was appointed as a Junior Engineer in February, 1970. In December 1978 he was promoted as Deputy Executive Engineer. In 1986 he became due for promotion to the post of Executive Engineer. Even then the petitioner did not protest against promotions of his seniors to that post but as the petitioner came to know that his case has not been put up before the Departmental Promotion Committee (for short "D.P.C.") which met in October 1992, he inquired into the matter and learnt, that his case has not been considered because of the contemplated issuance of charge-sheet. The petitioner was served with the impugned charge-sheet dated 1-12-1992 on 11-12-1992. It is the petitioner's case that he was posted at Ukai Circle in February 1980 and worked there upto June 1981, whereas the Lakhigam dam was completed in 1982, i.e., within about three years of its commencement, the initial work was done under petitioner's supervision but substantial work of construction of superstructure was done under the supervision of other officers who succeeded him. When the preliminary inquiry was held in 1988 he had an occasion to give reply. It is the petitioner's say that there is slight difference in the charges under the preliminary inquiry and the impugned charge-sheet. It is, therefore, the case of the petitioner that there is no justification at the end of the respondent to proceed with the charges after a delay of about a decade particularly when the petitioner is on the verge of his promotion.

4. As regards the delay aspect, the stand of the respondents is that the Lakhi dam which was constructed in the year 1979-82 with final measurements having been taken in September 1982 was found to be sub-standard as a result of which leakage was found at several places in the said dam. The then Chief Secretary, therefore, gave instructions to the Chief Engineer (Quality Control) to visit the Lakhigam dam for inspection. The Chief Engineer inspected the said dam on 24-4-1984 alongwith other officers and submitted inspection report dated 28-10-1984. As per the inspection report it was noticed that there were substantial leakages through weep holes provided in the downstream retaining wall on both the sides. Considerable portion of retaining wall) was observed to be wet and sweating and small jets of water were also observed in masonry joint in some places. Necessary photographs were taken in 1984. The Superintending Engineer (Central Design Organisation) also visited dam on 28-7-1984 and sent his inspection note to the S.E., Ukai Civil Circle with suggestions to take immediate action, as in his opinion the dam did not appear to be in a sound condition. As per the said report necessary remedial measures were not taken by appreciating the gravity of the situation. He also gave detailed instructions for the measures to be taken for the safety of the dam. He suggested to critically monitor the performance of the embankment and report the observation every fortnight. It is the say of the respondents that such recommendation made by

the S.E. (C.D.O.) were not fully carried out and efforts were not made to attend to the leakage problem. It was noticed from the observations of the preliminary records such as measurement books, registers of density, R.A. bill files, etc. and site visit that the earth work and U.C.R. masonry work had not been carried out according to the specification though the final bill had been paid. From the records, it was ultimately found that the following officers were responsible for the sub-standard quality of the earth work and U.C.R. masonry work

2 Executive Engineers

2 Dy. Executive Engineers

1 Additional Assistant Engineer

1 Overseer.

An independent authority recommended to initiate departmental proceedings under Rules 9 and 10 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 which came to be accepted by the Government on 27-11-1990. It is the say of the respondents that the petitioner being Class II officer, the procedure for initiating inquiry is lengthy and cumbersome and has to be followed in view of the Rules of Business. The Chief Engineer (Q.C.) and Joint Secretary visited the Lakhigam dam on 25-9-1984 as per the instructions of the Secretary (I.D.). The inspection report was submitted on or about 28-10-1984. The report was in English. Therefore, on 9-11-1984 he was asked to submit his report in Gujarati alongwith the details of the responsibility of the officers who were involved in the matter. Ultimately, the Chief Engineer (Q.C.) and Joint Secretary scrutinised the proposal and submitted his report in Gujarati alongwith the details of the responsibility of the officers on 19-7-1987. Ultimately the petitioner and other responsible officers were asked to submit detailed explanation vide Government letter dated 30-1-1988. After the explanations were received from the petitioner and other officers, the matter was referred to an Independent Authority on 5-7-1989 for its opinion. The Independent Authority recommended to initiate departmental proceedings under the aforesaid Rules against the delinquent officers as per its letter dated 28-8-1989. The recommendations made by the Independent Authority came to be accepted by the Government on 27-11-1990. After acceptance of the recommendations the charge-sheet came to be put up and after approval, the petitioner and other officers were charge-sheeted on 1-12-1992. The petitioner submitted his defence statement on 30-1-1993 and the inquiry is pending against the petitioner as also other officers.

5. With regard to the promotion, it is the stand of the respondents that the petitioner being Deputy Executive Engineer (Civil) Class II has promotional avenue to the post of Executive Engineer (Civil) Class I which post was being filled in by one direct selection and two by promotion on the basis of proved merit and efficiency. The petitioner was at serial No. 1247 in the seniority list of Deputy Executive Engineer (Civil) published by the Government circular dated 8-10-1991. Accordingly the case of the petitioner for promotion for the post of

Executive Engineer could never have been considered in the year 1986. The petitioner came within the zone of consideration for promotion of Executive Engineer (Civil) for the first time in the year 1992 and was considered by the D.P.C. which met on 11-6-1992. The finding/recommendation of the D.P.C. has been kept in a sealed cover, since a conscious decision was already taken by the competent authority to initiate disciplinary proceedings against the petitioner on the basis of the preliminary inquiry as provided in the Government Resolution (G.A.D.) dated 23-9-1981. Hence, the action of the respondents in putting the case of the petitioner in a sealed cover is quite just, legal and proper and no direction can be issued for opening of the sealed cover in view of the fact that the inquiry is pending against the petitioner.

6. I have heard the learned Advocate for the petitioner and learned A.G.P. for the respondents at length. The submissions may appropriately be divided into two parts. One part relates to the substantial relief of quashing the charge-sheet and pending inquiry and the other relates to interim relief with regard to the opening of the sealed cover in respect of the petitioner's promotion to the post of Executive Engineer. The submissions concerning the first part relate to the delay aspect of the inquiry. Therefore, the same may be first dealt with.

7. On behalf of the petitioner Mr. Y.N. Oza, learned Advocate has submitted several orders and decisions of This Court for consideration. It would be appropriate to take them one by one. The first one is in the case between William A. Vyas v. The District Superintendent of Police and Anr in Spl. Civil Application No. 21.66 of 1979 (Coram: A.M. Ahmadi, J. as he then was). The decision came to be rendered on 27-6-1986. That was a case of misbehaviour on the part of a P.S.I, who at the relevant point of time was alleged to have misconducted himself under the influence of alcohol and as a result of his behaviour, furniture and crockery were broken and had caused nuisance and annoyance to the inmates in the club premises. He was prosecuted for the commission of offence punishable under Sections 66(1)(b) and 85(1)(3) of the Bombay Prohibition Act, 1949. The evidence was recorded before the trial Magistrate who by his judgment and order dated 16-10-1976 acquitted the said P.S.I, by extending benefit of doubt to him. Appeal was preferred against that judgment and order being Criminal Appeal No. 123 of 1974 and the same was disposed of on 28-7-1975. The acquittal was confirmed on the ground that the mandatory requirement of Rule 4 of the Bombay Prohibition (Medical Examination and Blood Test) Rules, 1959 had not been followed. With regard to charge u/s 85(1)(3) the Court confirmed the view of the trial Magistrate inasmuch as it was found that the Police Club was not a public place. The appeal was accordingly dismissed on 28-7-1975. The P.S.I, who was under suspension was not reinstated in service immediately and the Department decided to initiate departmental proceedings against him and served him with a charge-sheet dated 23-1-1976. The incident was of 10-4-1972 in respect of which aforesaid judicial proceedings went through. The P.S.I, filed a writ petition for quashing the charge-sheet. Interim stay against proceeding with the departmental inquiry was granted and the said P.S.I, came to be promoted in

the next higher post of P.I. on 9-9-1982. In the background of such facts, it was observed as under:

Having regard to the passage of time, nearly fourteen years, it would be extremely difficult for both the Department as well as the petitioner, to produce evidence at the departmental inquiry. Witnesses may not be easily available, if available, their memory in regard to the actual incident may have faded and it would also be difficult for the petitioner to call defence witnesses, if any. For all these reasons, apart from the other contentions raised in the petition, it seems to me that the petitioner has suffered enough and it would not be advisable after such a long lapse of time to proceed with the departmental inquiry....

8. One more decision which Mr. Oza could press into service is contained in the case of *The State of Madhya Pradesh Vs. Bani Singh and another*, . However, the decision can be borne in mind for a general proposition to the effect that the delay per se would not vitiate the action of the initiation of the departmental proceedings. It is only when there is inordinate delay and when there is no satisfactory explanation that it would be unfair to permit departmental inquiry to be proceeded with.

9. One more decision on the question of delay which deserves a mention and which has been relied upon by Mr. Sompura, learned A.G.P. for the respondents is one rendered by the Hon'ble Supreme Court in the case of *U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan*, . That was a case with regard to suspension from service and in that context following observations of the Supreme Court deserve careful note on the question of delay. The same may be reproduced from para 5:

Ordinarily, when there is an accusation of defalcation of the monies, the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow the disciplinary proceedings to continue unhindered. It is possible that in some cases, the authorities do not proceed with the matter as expeditiously as they ought to, which results in prolongation of the sufferings of the delinquent employee. But the remedy in such cases is either to call for an explanation from the authorities in the matter, and if it is found unsatisfactory, to direct them to complete the inquiry within a stipulated period and to increase the suspension allowance adequately. It is true that in the present case, the charge-sheet was filed after almost a year of the order of suspension. However, the facts pleaded by the appellants show that the defalcations were over a long period from 1986 to 1991 and they involved some lakhs of rupees. It also appears that the authorities have approached the Police and in the Police investigation, the amount of defalcation is found to be still more. Since the matter is of taking accounts which are spread over from 1986 to 1991 and of correlating the entries

with the relevant documents, and several individuals are involved, the framing of charges was bound to take some time. The Court has to examine each case on its own facts and decide whether the delay in serving the charge-sheet and completing the inquiry is justified or not. However, in the present case, the High Court has not quashed the order of suspension on the ground of delay in framing the charges. As stated earlier, it has set aside the order of suspension on the ground that the authority had no power to pass the second order of suspension in the same case. We are afraid that the High Court has misconstrued the nature and purpose of the power of suspension vested in the management. It is not disputed that at present all officers concerned are served with the charge-sheets and have been suspended. There is no discrimination between the officers on that account. The charges are also grave and the authorities have come to the conclusion that during the disciplinary proceedings, the officers should not continue in employment to enable them to conduct the proceedings unhindered. Hence, we are satisfied that the order in appeal was not justified.

10. The legal position that can be visualised from the aforesaid decisions of the Supreme Court is that delay per se would not vitiate the action of the initiation of the departmental proceedings. When there is inordinate delay and when there is no satisfactory explanation for the same, it would be unfair to permit departmental inquiry to be proceeded with depending upon the facts and circumstances of each case. The Court has to examine the facts and decide whether serving of charge-sheet and completing inquiry is justified or not.

11. Between 1984 and 1990 there is one interesting explanation that has come forth in the relevant affidavit-in-reply and that is that the file was sent back for sending of Gujarati version of the report. We are blessed with so many language and it cannot be said that the persons working in the Government Departments till upto the level of Clerk and Section Officer would not understand reading of English. In the present case leakages were noticed when inspection was carried out somewhere in the year 1984. It was reported in the month of July 1984 and remedial measures ought to be taken were not taken. In September, 1984 when the Chief Engineer had an occasion to visit the dam photographs showing the leakages were also taken somewhere in the year 1984. It is interesting to note that the Government machinery moves even in such a emergent matter in a fashion which can hardly deserve any commendation. In fact, it is high time that appropriate directions are issued for the purpose of seeing that the persons working in Government Departments understand their respective responsibilities and attend to their duties scrupulously, honestly and with complete zeal.

12. In between, as can be seen from further affidavit-in-reply that, some further information was called for from the Superintending Engineer (Ukai Civil Circle) and submit his report, as per the communication dt. 6-4-1985. Such information report again came to be awaited by the Government for which the reminders were sent to the Superintending Engineer on 6-1-1986, 21-2-1986, 23-4-1986, 22-5-1986, and 14-7-1986 and ultimately the report was received on 28-8-1986.

Again it was examined by the Executive Engineer (Quality Control) for its opinion on 11-9-1986 and again the file was sent to the Superintending Engineer (C.D.O.) for its technical opinion on 8-10-1986 and the same was received on 15-5-1987. The whole file was then sent to the Chief Engineer (Quality Control) for its preliminary report on the said irregularities and the report was received on 19-7-1987. Thus, the time passed during 1985-1986 and upto July 1987 is explained in two fold manner. Firstly in the manner as stated above and secondly in the manner now stated. On the basis of the preliminary report that was received on 19-7-1987, the aforesaid delinquent (petitioner) was asked to submit his explanation for the irregularities found to have been committed, as per Government letter dated 17-10-1987 and the delinquent (petitioner) sent explanation somewhere on or about 31-3-1989. Thus, he has taken time of about one year and 4 to 5 months in sending his explanation. The explanations of petitioner and other delinquents were not accepted by the Chief Engineer (Quality Control) having found the same to be not satisfactory. Then the Government entrusted the matter to Independent Authority for its opinion on 5-7-1989 and the opinion with the recommendations of the Independent Authority was received on 28-8-1989. The Independent Authority framed not less than five charges of the irregularities found to have been committed by the concerned delinquents. The magic of movement of file does not end here. It was then referred to E-4 Branch on 1-9-1989 by E-4 Cell. The concerned branch submitted the matter on 19-9-1989 to the Government through General Administration Department for acceptance of the recommendations of the Independent Authority. The General Administration Department cleared the case on or about 4-11-1989, which was submitted to the Government. The said recommendations were accepted at the level of Minister of Water Resources on 15-12-1989 and put up before the then Chief Minister on 15-12-1989, who is the Competent Authority to accept recommendations as one of the concerned delinquents was of Class I cadre. The elections of General Assembly intervened, New Government was formed and the whole Ministry was reshuffled with the result that the file again returned to the Department and the Secretary of the Department decided to submit this case before the new Government, with the result that the file was again referred to the new Chief Minister on 6-3-1990. The file was misplaced from the office of the Chief Minister and was found on 28-2-1992. The period between 6-3-1990 and 28-2-1992 was utilised for the reconstruction of the file. A note was prepared and put up to the Chief Minister for finding out the file on SIS" 1990 and the reply was received on 27-6-1990 stating that the file was not available in that office. Again a note was submitted on 24-7-1990. A copy of recommendations of the Independent Authority was called for vide letter dated 12-11-1990 for the purpose of reconstruction of the file. Such a copy was received on 14-11-1990. The file was accordingly reconstructed and the recommendations for initiating inquiry was accepted by the Government at the level of Hon"ble Chief Minister on 27-11-1990 when it was decided to issue the charge-sheet as per the charges framed by the Independent Authority. Thus, conscious decision was taken to initiate inquiry on

27-11-1990. In the meantime. Minister of Water Resources asked to submit explanation of misplaced file alongwith the responsibility of the concerned officers. Such explanation was submitted to the Minister on 20-12-1990 which was returned on 7-1-1991. The Independent Authority had been informed on 14-2-1991 about the acceptance of the recommendations made by the Independent Authority. Meanwhile reference was received from the Independent Authority on 22-2-1991 and it was decided to take this matter regarding misplacement of the file in its Annual Administration Report. The proposal regarding inclusion of this matter into the Annual Administration Report of the Independent Authority was examined in consultation with the General Administration Department and it was decided to request Independent Authority not to include the said matter in its Annual Administration Report on 6-1-1992. There was one delinquent who was due to retire on 30-3-1992 and it was, therefore, decided to serve him a charge-sheet before he retire and consequently a charge-sheet was served upon him on 27-3-1992. By the time the original file which was misplaced, was found along with the other files from the cup-board of the office of the Chief Minister on 28-2-1992. Thereafter, it was decided to move both the files, original as well as the reconstructed and to take action in one file on 5-9-1992. It was then decided to serve the charge-sheets to all the delinquents as per the impugned charges on 22-9-1992, which was finally served on 1-12-1992. The defence statement of the petitioner dated 30-1-1993 was received on 15-2-1993 by the Government. There are stages which speak of culpable negligence in the matter of movement of the relevant file and the shelving thereof. There is a stage where even the delinquent (petitioner) committed delay in submitting his explanation. The inquiry is not against the petitioner only but also against several officers who are as many as six in number. The petitioner has approached This Court by way of this petition as aforesaid while the regular departmental inquiry is pending against him. In my opinion, the reasons for delay can be summarised below:

- (1) Technical matters intervening and deciding to fasten responsibility.
- (2) Negligence on the part of the concerned persons/officers in the movement of file and in the matter of placing the same in the cupboard of the Chief Minister without bearing in mind the seriousness of the matter
- (3) Some delay on the part of the delinquent.

Thus, the actual passage of time in the matter of initiation of the regular departmental inquiry is between 1987 and 1992, i.e., five years which time has been worked out from the date of sending of show cause notice to the delinquent in the year 1987 and actual serving of the charge-sheets in the year 1992 as stated above.

13. A faint effort was made to submit that this is a case of no evidence, but then ultimately realising that the merits of the matter would be required to be examined and that might prejudice the petitioner and other delinquents in the

inquiry, the effort was not pursued. I am therefore, not expressing any opinion except to say that the leakages found soon after the completion of the dam speak for themselves. The material and evidence regarding fastening of the responsibility would consist mainly of documentary evidence. With regard to the apportionment of the responsibility no opinion is expressed. It would be entirely for the petitioner and other delinquents to set up their case about the prejudice, if any, that might have resulted to them in defending the inquiry on account of delay. The short conclusion is that, in the facts of the case as noted above, the inquiry already pending cannot be stayed and pending the inquiry the impugned charge-sheet cannot be quashed. Therefore, so far as the main relief is concerned, the petition should, fail.

14. The second part relates to the interim relief with regard to opening of the sealed cover. The facts are not denied. Although the charge-sheet was served after the D.P.C. met, the conscious decision was taken by the Government to initiate disciplinary proceedings before the D.P.C. met. It is not in dispute that the relevant clause in the Government Resolution applicable here also speaks of decision being taken to initiate disciplinary proceeding. Under such circumstances, the sealed cover procedure has been followed in respect of the petitioner's promotion to the post of Executive Engineer. The decision that has been followed in this respect consistently by This Court in a single jurisdiction as also in Division Bench jurisdiction is one contained in the case of Union of India Vs. K.V. Jankiraman, etc. etc., , which has been relied upon by Mr. Oza, learned Advocate for the petitioner. In reply, Mr. Sompura, learned A.G.P. has relied upon a decision contained in the case of Delhi Development Authority Vs. H.C. Khurana, . Another decision that has been referred to is in the case of Union of India Vs. Kewal Kumar, . The clause for following sealed cover procedure in Jankiraman's case was as under:

Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings.

Explaining this clause the Hon"ble Supreme Court also explained the decision in Jankiraman's case as stated below in the case of H.C. Khurana (supra):

8. These words clearly indicate that the sealed cover procedure was applicable, in cases where the "disciplinary proceedings are pending" in respect of the Government servant, or "a decision has been taken to initiate disciplinary proceedings". Thus, on a decision being taken to initiate disciplinary proceedings, the guidelines attract the sealed cover procedure. The reason is obvious-Where a decision has been taken to initiate the disciplinary proceedings against a Government servant, his promotion, even if he is found otherwise suitable, would be incongruous, because a Government servant under such a cloud should not be promoted till he is cleared of the allegations against him, into which an inquiry has to be made according to the decision taken. In such a situation, the correctness of the allegation being dependent on the final outcome of the disciplinary proceedings, it would not be fair to exclude him from consideration

for promotion till conclusion of the disciplinary proceedings, even though it would be improper to promote him, if found otherwise suitable, unless exonerated. To reconcile these conflicting interests, of the Government servant and public administration, the only fair and just course is, to consider his case for promotion and to determine if he is otherwise suitable for promotion, and keep the result in abeyance in sealed cover to be implemented on conclusion of the disciplinary proceedings, to promote him with all consequential benefits, if found otherwise suitable by the Selection Committee. On the other hand, giving him promotion after taking the decision to initiate disciplinary proceedings, would be incongruous and against public policy and principles of good administration. This is the rationale behind the guideline to follow the sealed cover procedure, to prevent the possibility of any injustice or arbitrariness.

9. The question now, is: What is Stage, when it can be said, that a decision has been taken to initiate disciplinary proceedings? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the charge-sheet, is the step taken for holding the inquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of the allegations made against the Government servant; the charge-sheet is then served on him to enable him to give explanation; if the explanation is satisfactory, the proceedings are closed and the Government servant exonerated, but if the charges are proved, the penalty follows. Thus the service of the charge-sheet on the Government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. The delay, if any, in service of the charge-sheet to the Government servant after it has been framed and despatched, does not have the effect of delay in initiation of the disciplinary proceedings, inasmuch as information to the Government servant of the charges framed against him, by service of the charge-sheet, is not a part of the decision making process of the authorities for initiating the disciplinary proceedings.

(Emphasis supplied)

In para 11 Jankiraman's case (supra) has been explained in the following manner:

11. The decision in Jankiraman is based inter alia, on O.M. dated 12-1-1988. The facts of the cases dealt with in the decision in Jankiraman do not indicate that the Court took the view, that even though the charge-sheet against the Government servant was framed and direction given to despatch the same to the Government servant as a result of the decision to initiate disciplinary proceedings taken prior to the meeting of the D.P.C. that was not sufficient to attract the sealed cover procedure merely because service of the charge-sheet was effected subsequent to the meeting of the D.P.C. Moreover, in Jankiraman itself, it was stated thus:

14. To bring the record up to date, it may be pointed out that in view of the decision of This Court in Union of India (UOI) Vs. Tejinder Singh, , decided on September 26, 1986, the Government of India in the Department of Personnel and Training issued another Office Memorandum No. 22011/2/86. Estt. (A) dated January 12, 1988 in supersession of all the earlier instructions on the subject including the Office Memorandum dated January 30, 1982... A further guideline contained in this Memorandum is that the same sealed cover procedure is to be applied where a Government servant is recommended for promotion by the D.P.C. but before he is actually promoted, he is either placed under suspension or disciplinary proceedings are taken against him or a decision has been taken to initiate the proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken.

15. These differences in the two Memorandum have no bearing on the questions to be answered.

In Kewal Kumar's case (supra) H.C. Khurana's case (supra) was referred to and in paras 4 and 5 of the citation following observations appear:

4. The question to examine in each case, is: Whether, the decision to initiate the disciplinary proceedings had been taken or steps for criminal prosecution were initiated before the date on which the D.P.C. made the selection? The decision would depend on the facts of the case, keeping in view the objects sought to be achieved by adopting the sealed cover procedure. It would be incongruous to hold that in a case like the present, where the C.B.I. had recorded the F.I.R. sent the same to the superior authority of the respondent for taking necessary action; and the competent authority had taken the decision, on the basis of the V.I.R., to initiate disciplinary proceedings against the respondent for imposition of a major penalty, there can be any doubt that the sealed cover procedure is attracted to avoid promoting the respondent unless exonerated of those charges. These facts, which led to the adoption of the sealed cover procedure, are undoubtedly very material to adjudge the suitability of a person for promotion to a higher post. A decision to follow the sealed cover procedure in the circumstances cannot, therefore, be faulted.

5. It is unnecessary in the present case to discuss at length the decision in Jankiraman to indicate its inapplicability to the respondent, since it has been done in the recent decision in Civil Appeal No. 1240 of 1993- Delhi Development Authority v. H.C. Khurana - pronounced on April 7, 1993.

15. However, Mr. Oza referred to a decision of the Division Bench of This Court rendered on 12-7-1993 in L.P.A. No. 283 of 1993 (Coram Hon''ble S. Nairar SundaTam, CJ. and S.D. Dave, J.). Kewal Kumar's case has been explained by the Division Bench as under:

As pointed out by the Supreme Court in Union of India Vs. Kewal Kumar, , it will depend upon the facts and circumstances of each case as to whether a sealed cover procedure should be allowed to be followed or not.

Whereas it is true that following of sealed cover procedure would depend on facts and circumstances of each case. It is now a settled legal position that taking of conscious decision for initiating departmental proceeding would be a relevant stage at which sealed cover procedure can be invoked.

16. Finally, Mr. Sompura has relied upon an order dated 17-12-1992 passed by N.B. Patel, as he then was, in Special Civil Appln. No. 6611 of 1992. The alleged acts of delinquency before the Court were in respect of the period 1984-85 and the chargesheet in respect of such acts came to be served on or about 26-5-1992. Quashing of the charge-sheet was demanded on the ground that there is inordinate delay and the charges levelled against the petitioner were not so serious as to justify launching of departmental proceedings against him at such a belated stage. It has been observed that it was primarily for the Disciplinary Authority to consider whether the charges were so serious as regard launching of departmental proceedings against the concerned delinquent even at that stage and the judgment of the concerned authority in that respect could not be interfered with lightly. It was held that the Court could not interfere with the decision of the authority to hold inquiry against the petitioner. It was further observed that mere delay would not entitle the delinquent to avoid inquiry.

17. In the present case, the seriousness of the incident resulting in issuing of the charge-sheet cannot be overlooked. Machchhu disaster is yet not forgotten by the people of this State. Having gone through all the unreported decisions which have been submitted by Mr. Oza and particularly the decision of the Division Bench as aforesaid, the relief and mat too interim relief with regard to opening of the sealed cover would follow the facts and circumstances of each case and are taken into consideration in issuing the following directions in this respect:

(i) The petition with regard to quashing of the charge-sheet is dismissed.

(ii) The Government is hereby directed to see that files should move at every stage as expeditiously and as fast as possible. It is further directed that such emergent matters as have consequences on human life should be taken care of by highlighting the emergency on the files themselves so that the concerned employees/officers and authorities who are dealing with the files may be cautioned against inadvertence or lethargy which might be displayed by them in the matter of dealing of files. The Government is also directed to consider and issue necessary instructions for appropriate co-ordination between different departments of the Government in respect of speedy movement of files. This part of the directions shall be given one of the top priorities for the purpose of following them.

(iii) The prayer for opening of the sealed cover is refused. But the pending inquiry against the petitioner and other delinquents is directed to be proceeded with as expeditiously as possible and to be completed within a period of nine months from today, but while calculating period of nine months, the time and adjournments taken by the petitioner and other delinquents in proceeding with

the inquiry shall be excluded. Any officer who is junior to the petitioner and is given promotion to the post of Executive Engineer must be informed that his promotion shall be subject to consideration of the petitioner's case lying in the sealed cover.

(iv) Hearing of this petition has lasted for several days and the learned Asstt. Government Pleader Mr. T.H. Sompura has rendered appreciable assistance to the Court by making painstaking efforts. In view of special services rendered by him to This Court for considerable period, he had not been able to attend to other work. In view of such services rendered by him I recommend to the Government to pay him special remuneration of Rs. 5,000/- and it is recommended that the respondents shall carry out such directions and pay the special remuneration to Mr. T.H. Sompura, learned. A.G.P.

Rule is discharged subject to aforesaid directions with no order as to cost.