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

Case No. : WP(C)/4772/2025

MOHOSIN AHMED LASKAR
S/O- LATE ABDUL LATIF LASKAR, R/O- H.NO-46, WARD NO-7, WATER
WORKS ROAD, P.O AND P.S- SILCHAR, ASSAM, PIN-788001

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-06 ,ASSAM

2:THE COMMISSIONER AND SPECIAL SECRETARY
TO THE GOVT. OF ASSAM
PWRD DEPARTMENT
DISPUR
GUWAHATI-06
ASSAM

3:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
PWRD DEPARTMENT
ESTABLISHMENT BRANCH
DISPUR
GUWAHATI-06
ASSA M

BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocates for the petitioner : Mr. F Khan, Advocate

Advocate for the respondents : Mr. P Nayak, Addl. AG

- **Date on which Judgment was reserved** : **Open Court Dictation**
- **Date of Pronouncement of Judgment** : **29.05.2026**
- **Whether the pronouncement is of the Operative Part of the Judgment** : **No**
- **Whether the full Judgment has been Pronounced** : **Yes**

JUDGMENT AND ORDER

Heard Mr. F Khan, learned counsel for the petitioner. Also heard Mr. P Nayak, learned Additional Advocate General, Assam.

2] The petitioner, before the Court, is serving as an Assistant Executive Engineer under the PWD Roads and he is posted at Majbat Rural Roads Sub-Division, Udalguri. In connection with completion certificate issued by the petitioner in respect of works undertaken by a contractor, which according to the Department was contrary to the records, a vigilance case was instituted against the writ petitioner being Vigilance Police Station Case No. 01 of 2024, registered under section 120B/420/468/481/406/409 IPC read with Sections

13(1)(a)/13(2) of the Prevention of Corruption Act, 1988. The matter is at the stage of investigation and prosecution sanction was also accorded by the competent authority when, the petitioner's case came to be considered for promotion to the next higher post, namely, the post of Executive Engineer, PWD Roads, along with other similarly situated persons. His case was placed before the Departmental Promotion Committee (DPC). The DPC, upon considering the materials in respect of the petitioner, kept his case under *sealed cover* in view of the materials placed before the DPC, that prosecution sanction has been granted in respect of the petitioner on the day when the DPC had undertaken the process of selection and recommendation. It is this action of the State of resorting to *sealed cover* procedure that is assailed before the Court.

3] Learned counsel for the petitioner, referring to the judgments rendered by the Apex Court in *Union of India vs. KV Jankiraman* reported in (1991) 4 SCC 109, as also a recent judgement of the Apex Court rendered in *Union of India and Ors. vs. Doly Loyi* in Civil Appeal No.8387/2013 on 24.09.2024, submits that as per the law laid down, the stage for resorting to the *sealed cover* procedure in respect of any employee arises only after a charge sheet/charge memo has been filed/issued. It is submitted that on the date when by the DPC the matter was under consideration, no charge sheet was filed, only prosecution sanction was granted. As such, the Department, contrary to the law laid down by Apex

Court, had kept the case of the petitioner under *sealed cover*. It is submitted that the petitioner is unaware of whether he has been recommended for promotion as his case was kept under *sealed cover* even before the charge sheet was filed and, as a consequence, the petitioner was deprived of his promotion to the next higher post along with his batchmates and, thereby, he lost his seniority in service.

4] Per contra, Mr. P Nayak, learned Additional Advocate General, submits that the contentions of the writ petitioner that charge sheet was not issued is incorrect because subsequently the charge sheet has been submitted before the Court and the matter is presently pending disposal before the competent court of criminal jurisdiction. It is submitted that the Department had considered it fit to keep the case of the petitioner's case in *sealed cover* in view of the fact that the prosecution sanction was issued and the investigation was proceeding in right earnest, which will ultimately lead to filing of the charge sheet against the petitioner. He therefore submits that since the charge sheet has already been filed in the meantime, the petitioner's case should be considered only after the completion of the trial.

5] Learned counsel for the parties have been heard. Pleadings available on record have been carefully perused. Judgments pressed into service have also

been carefully noted.

6] The Apex Court in Jankiraman (*supra*) was examining the Office Memorandum dated 30.01.1982, which came to be subsequently explained by another Office Memorandum dated 12.01.1988. It was in the context of interpretation of the Office Memorandum dated that the Apex Court had rendered a finding that until and unless a charge sheet in a criminal proceeding or a charge memo in a disciplinary proceeding is issued, the stage for putting the case under *sealed cover* is not to be resorted to. This judgement has been referred to and followed by subsequent judgement rendered by the Apex Court arising in *Doly Loyi (supra)* wherein, a similar Office Memorandum came up for consideration as the case of the respondent's therein was kept under *sealed cover* without any charge memo being issued. In that case also, the Apex Court by referring to and relying upon the earlier precedents of the Apex Court had dismissed the appeal preferred by the appellants upholding the judgement rendered by the Delhi High Court.

7] Coming to the facts of the present case the State of Assam Department of Personnel (B) had issued an Office Memorandum dated 09.05.2006. At Clause 2, the Office Memorandum provides for three categories of officers. In respect of all officers falling within the categories mentioned therein, the recommendations

of the DPC are to be kept under *sealed cover*. These 3 (three) categories are quoted herein below:

2) At the time of consideration of the cases of Govt. Servants in the zone of consideration for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee/Selection Committee/Appointing Authority :

(i) Government Servants under suspension .

(ii) Government Servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending ; and

(iii) Government servants in respect of whom prosecution for a criminal charge is pending.

8] Mr. P. Nayak, learned Additional Advocate General, Assam, has fairly submitted that this Office Memorandum dated 09.05.2006 has not been superseded. He submits that on the date when the DPC had considered the case of the petitioner, the case of the petitioner fall under any of the categories mentioned in Clause 2 of the said Office Memoraumd. However, Clause 6 of the said Office Memorandum therefore, provides that if the conditions specified in Paragraph 2 of the said OM had arisen only after the Departmental Promotion Committee or Selection Committee or Appointing Authority has made its recommendations, and therefore, the recommendations could not be placed in the sealed cover, the recommendations of the Departmental Promotion Committee/ Selection Committee/ Appointing Authority shall be deemed to be

placed in a sealed cover and he shall not be promoted until he is exonerated of the charges. The relevant clauses of the Office Memorandum dated 09.05.2006, Clause 1, 2, 3 and 6 are extracted below:

“The undersigned is directed to refer to the office Memorandum No. ABP. 230/75/6 dated 6.7.1976 and political (A) Deptts. Letter No. PLA (V) 5793/31 dtd. 23.8.94 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of Government servants against whom departmental / Court proceedings are pending reviewed carefully . Govt. have also noticed the judgement dtd. 27. 8 . 1991 of the Supreme Court in Union of India etc. vsK.V. Jankiraman etc. (AIR 1991 SC 2010) . As a result of the review and in suppression of all the earlier instructions on the subject , the procedure to be followed in this regard by the authority concerned is laid down in the subsequent paras of this O.M. for their guidance .

2) At the time of consideration of the cases of Govt. Servants in the zone of consideration for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee/Selection Committee/Appointing Authority :

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

3) The Departmental promotion Committee/Selection Committee/Appointing Authority shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned in para-2 above, along with other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution pending . Therefore it is made clear that only bare statement that case of an employee in the zone of consideration /extended zone of consideration is covered by any of the three situations indicated in para-2 above is to be furnished to the Departmental promotion committee / Selection Committee /

Appointing Authority to enable it to place its recommendations in the sealed cover . No. other details about the pending inquiry or the nature of Charges etc. are to be furnished to the Departmental Promotion committee /Selection Committee/Appointing Authority list these details weigh with the Departmental Promotion Committee/Selection committee /Appointing Authority in making its recommendations, which are to be placed in the sealed cover.

.....

6) If the conditions indicated in para-2 above arisen only after the Departmental Promotion Committee /Selection Committee or the Appointing Authority has made its recommendations and therefore, the recommendations could not be placed in the sealed cover, the recommendations of the Departmental promotion Committee/Selection Committee/Appointing Authority shall be deemed to have been placed in the sealed cover and he shall not be promoted until he is exonerated of the charges . Therefore , after the recommendations of the Departmental promotion committee/Selection Committee/Appointing Authority have been approved by the Competent authority, it is necessary to again seek the status position from the concerned vigilance division before issuing promotion order in respect of any officer included in the approved panel of names to ensure that there is no hindrance in issuing the promotion order in respect of the concerned officer /Government Servant.”

9] As has been discussed above, the judgement of *Doly Loyi* (supra) was rendered by the Apex Court is although as regards the interpretation of the Office Memorandum dated 14.09.1992 governing the government servants who were before the Court, the principle laid down by the Apex Court in *Jankiraman* (supra) has been followed in a catena of subsequent judgments to submit that the sealed cover procedure can be resorted to only where a charge sheet has been filed in criminal proceedings before a court of competent criminal jurisdiction, or where a charge memo has been issued by the competent

authority in disciplinary proceedings against the concerned Government servant.

Coming to the facts of the present case, the Office Memorandum dated 09.05.2006 was issued by the Department of Personnel, Government of Assam specifically lays down the categories in respect of the officers cases in which Sealed Cover Procedure is to be followed by the DPC. But what is to be noted is the Clause 6 of the Office Memorandum dated 09.05.2006 provides that if the conditions mentioned in paragraph 2 of the said Office Memorandum in respect of any officer is satisfied after the DPC had made its recommendations, then the recommendations of the DPC shall be deemed to be kept under the *sealed cover* and the officer concerned will not be promoted until he is exonerated of the charges. This Office Memorandum dated 09.05.2006 has not been assailed nor has any material been brought before the Court to suggest that this Office Memorandum dated 09.05.2006 has been superseded. No judgement has been placed before the Court to show that this OM has been questioned and an interpretation has been rendered by this Court or any other Court that the conclusions in the OM will be restricted only to the extent of the law laid down by the Apex Court in *Jankiraman (supra)* and *Doly Loyi (supra)*.

10] The judgement has to be read for what it decides. The judgement of the Court is not required to be interpreted as a statute. Therefore, what is binding on a Court would be the ratio laid down by a Higher Court. Examining the

judgments of *Jankiraman (supra)* which was followed in *Doly Loyi (supra)*, the Apex Court therein was interpreting the effect of the Office Memorandum dated 14.09.1992 as also subsequent communication dated 15.09.2011. While the ration laid down by the Apex Court in these judgments to the effect that the "sealed cover procedure" is to be adopted only when any chargesheet is filed in any criminal proceedings and/or when the chargesheet is issued in any departmental proceedings is binding on this Court, however, in the present case, the Office Memorandum dated 09.05.2006 clearly stipulates the procedure to be followed by the Departmental promotion committee as also appointing authority etc. What is equally specified is that is the event that at the time of consideration of the case of the officer concerned by the DPC, the three conditions mentioned in Caluse-2 of the said Office Memorandum were not in existence and subsequent to the recommendation undertaken by the DPC if all or any of the clauses came into existence after consideration of the matter by the DPC, the departmental authorities would consider the case of the petitioner to be "deemed to be kept under sealed cover" and promotion, if any, shall not be given effect to until the office is exonerated of the charges. This Office Memorandum dated 09.05.2006 was not subject matter of consideration before the Apex Court more particularly when Clause 6 of this OM is not *pari material* with the OMs dated 14.09.1992 & 15.09.2011 which were under consideration

before the Apex Court.

11] In the facts of the present case, there is no quarrel that after the charge sheet has been filed, the matter is presently pending before the Court of competent criminal jurisdiction. As on date, the petitioner has not been exonerated of the charges levelled against him.

12] Under such circumstances, this Court irrespectfully accepts the ratio laid down in *Jankiraman* (supra) which was followed in *Doly Loyi* (supra) as a binding precedent as the principle laid down by the Apex Court in respect of stage at which the findings of the DPC in respect of any delinquent officer is to be kept under sealed cover. However, this Office Memorandum extends the sealed cover procedure even to cases where, on the date of consideration by the DPC, the parameters for resorting to the sealed cover procedure although are not satisfied, namely, where no charge sheet in criminal proceedings or charge memo in disciplinary proceedings has been issued, notwithstanding that if after the DPC resolution or recommendation, if any of the conditions mentioned at Clause-2 of the said Office Memorandum dated 09.05.2006 are applicable in respect of any of the officer whose cases are considered by the DPC then the DPC recommendations in respect of that officer will be deemed to be kept in 'sealed cover' and the benefits of any

recommendations in favour of the delinquent officer cannot be availed of till the exoneration of charges either in criminal or departmental proceedings or both. Consequently, in view of Clause 6 of the Office Memorandum dated 09.05.2006, even if, on the date of consideration of the officer's case by the DPC, the conditions specified in Clause 2 of the said Office Memorandum are not applicable to the said officer, the claim made by such an officer cannot be entertained in view of this specific provision of Clause 6 of the said Office Memorandum.

13] In the facts of the present case the dates in respect of the events are very relevant. Sequence of the events in respect of the petitioner are enumerated as under:

Sl No.	Date	Relevant Events
1.	20.12.2022	Suspension Order issued
2.	26.01.2023	Show-cause Notice issued
3	14.08.2023	Penalty imposed
4.	16.08.2023	Suspension revoked
5.	08.02.2024	FIR lodged in vigilance case lodged registered as Vigilance P.S. Case No.01/2024.
6.	11.07.2024	Notice issued under Section 41(A) of Cr.PC
7.	06.03.2025	DPC conclusion were kept under Sealed cover
8.	24.06.2025	Batchmates of the petitioner promoted on

		in pursuant to the DPC.
9.	13.08.2025	Writ petition was filed
10.		The charge sheet in the vigilance case was filed during the pendency of the writ petition.

14] From the sequence of events extracted above, it is clear that on the date when the DPC held its meeting, the conditions mentioned in Clause-2 of the Office Memorandum dated 09.05.2006 was not attracted in so far as the writ petitioner is concerned. The said conditions will stand effected by a deeming fiction in view of the Clause-6 of the said Office Memorandum only after the any of the conditions specified under Clause-2 of the Office Memorandum dated 09.05.20006 are satisfied including filing of the charge-sheet. However, on a date prior to filing of the charge sheet, the batchmates of the petitioner who were recommended by the DPC vide minutes of the meeting held on 06.03.2025 stood promoted on 24.06.2025. Therefore, had the petitioner's case not been placed under sealed cover by the DPC on a wrong interpretation of the law as laid down by the Apex Court in *Jankiraman (supra)* and *Doly Loyi (supra)*, and had there been any favourable recommendation by the DPC in favour of the writ petitioner, there was every positively that the petitioner would also have been promoted along with his batchmates. Clause 6 of the Office Memorandum dated

09.05.2006 would not act as a bar had the DPC had recommended the petitioner for promotion in the minutes of the DPC meeting held on 06.03.2025 and the competent authority considered such recommendations made in favour of the writ petitioner along his batchmates.

15] Under such circumstances, this Court is of the considered view that the accrued right of the writ petitioner for being considered on equal terms along with his batchmates by the appropriate authority had been wrongly denied by adopting the sealed cover procedure by the DPC on a wrong interpretation of the law laid down by the Apex Court in *Jankiraman* (supra) and which was followed in the judgment rendered in *Doly Loyi* (supra) and also the Office Memorandum dated 09.05.2006 on the ground that grant of prosecution sanction is sufficient to resort to sealed cover procedure. Since the case of the petitioner has been kept in a sealed cover, the conclusion of the DPC by its minutes of meeting held on 06.03.2025 is not known to the petitioner. In the event the recommendation are in favour of the writ petitioner, his entitlement to be considered equally with his batchmates stands crystallized in view of the law laid down by *Jankiraman* (supra) which was followed in *Doly Loyi* (supra), as admittedly the charge-sheet in the Vigilance Police Station Case NO.01/2024 was not filled at that relevant point in time.

16] Accordingly, the writ petition stands disposed of directing the respondents authorities to examine the findings of the DPC by taking it out of the *sealed cover* and if the findings are found to be in favour of the writ petitioner then necessary steps be taken by the Appointing Authority for issuance of promotion order of the writ petitioner to the next higher post of Executive Engineer with effect from the date 24.06.2025 i.e. the date when the promotion of other similarly situated persons were given effect to after being recommended by the said DPC subject to the rules of seniority being adhered to. This exercise be conducted by the respondents Department within a period of 30 (thirty) days from the date of receipt of a certified copy of this order.

17] Writ petition accordingly stands disposed of in terms of the above and no order as to cost.

JUDGE

Comparing Assistant