

PETITIONER:
UNION OF INDIA ETC. ETC.

Vs.

RESPONDENT:
K.V. JANKIRAMAN ETC. ETC.

DATE OF JUDGMENT 27/08/1991

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
MISRA, RANGNATH (CJ)
KANIA, M.H.

CITATION:
1991 AIR 2010 1991 SCR (3) 790
1991 SCC (4) 109 JT 1991 (3) 527
1991 SCALE (2) 423

ACT:

Civil Services: Government of India (Deptt. of Personnel and Training) Office Memorandum No. 22011/1/79 Estt. (A) dated 30. 1.82--Promotion--Sealed cover procedure--When could be resorted to--Exoneration from all charges--Notional promotion from the date the juniors were promoted--Arrears of salary from date of notional promotion--Grant of--Proceedings delayed because of the employee's acts or acquitted on benefit of doubt or owing to non-availability of evidence due to employee's acts--Entitlement to back wages--To be decided by the authority concerned--Employee visited with penalty in disciplinary proceedings or found guilty by court--Findings contained in sealed cover--not to be acted upon--Consideration for promotion--Whether authority could take into account past record including penalty awarded earlier.

Constitution of India, 1950: Article 20(2)--Non-promotion of employee till the date on which he was held guilty--Whether amounts to double jeopardy.

Fundamental Rules: Rule 17(1)--No work no pay rule Applicability of--Where employee willing but not allowed to work.

HEADNOTE:

When an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time, the findings of his entitlement to such benefit are kept in a sealed cover to be opened after the proceedings in question are over.

According to this procedure, while the findings are kept in the sealed cover, the vacancy which might have gone to the officer concerned is filled only on an officiating basis. If on the conclusion of the departmental/court proceedings, the officer concerned is completely exonerated, and where he is under suspension it is also held that the suspension was wholly unjustified, the sealed cover is opened and the recommendations of the DPC are acted upon. If the officer could have been promoted earlier, he is promoted to the post which is Idled on an

officiating basis, the officiating arrangement being terminated. On his promotion, the officer gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course, but for the pending disciplinary/court proceedings. However, no arrears of salary are paid in respect of the period prior to the date of actual promotion.

Sometimes the cases in the courts or the departmental proceedings take unduly long time to come to a conclusion and the officers undergo considerable hardship, even where it was not intended to deprive them of promotion for such a long time. The Government in consultation with the Union Public Service Commission examined how the hardship caused to the Government servant in such circumstances could be mitigated and laid down certain procedures by an Office Memorandum No. 2201111179-Eatt. (A) dated January 30, 1982.

In interpreting the Memorandum as to what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee; as to what would be the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal; and as to what benefits an employee who is completely or partially exonerated is entitled to and from which date, different Benches of the Central Administrative Tribunal recorded their findings and while doing so, the Full Bench of the Tribunal struck down two provisions of the said Memorandum dated January 30, 1982, which related to a prohibition against acting upon the findings contained in the sealed cover in case the officer was imposed penalty as a result of disciplinary proceedings or found guilty in the Court proceedings against him and regarding arrears of pay for the period of notional promotion.

Aggrieved by the decisions of the various Benches of the Tribunal, the Union of India and other authorities preferred the present appeals and special leave petitions. Disposing of them matters, this Court,

HELD: 1. 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. The preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept

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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. If the charges are that serious, the authorities have the power to suspend the employees 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. [799F-H; 800A-B]

2. When an employee is completely exonerated meaning thereby that he is not found blame worthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are delayed at the instance of the employee or the clearance in the discipli-

nary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of nonavailability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary..To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary lot the intervening period is to undermine discipline in the administration and jeopardise public interests. The Tribunal was not right in holding that to deny the salary to an employee would in all circumstances be illegal. [802G-H; 803A-D]

3. The normal rule of "no work no pay" is not applicable to cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own' reasons, although the work is offered to him. It is for this reason that F.R. 17(1).will also be inapplicable to such cases. [802F-G]

4. The Tribunal erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of
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dismissal will vary from reduction in rank to censure. The Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of reduction in rank. [804F-G]

5. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is therefore, no discrimination when in the matter of promotion, he is treated differently. [804G-H; 805A]

6. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in presenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. [805B-C]

7. While considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If the promoting authority can take into consideration the penalty or penalties awarded to

an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it' is imposed at a later date because of the pendency of the proceedings, although it. is for conduct prior to the date the authority considers the promotion. [805C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil "Appeals Nos. 30 18-21 of 1987.

From the Judgment and Orders dated 24.4.87, 2.3.87, & 1.4.87 of the Central Administrative Tribunal, Hyderabad in Original Applica-

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tion No. 121/86, T.A. Nos. 958& 180 of 1986 and O.A. No. 140 of 1986.

WITH

CA Nos. 3016/88 & 51-55/90 with CA Nos. 3083 & 4379 of 1990 and S.L.P. (C) Nos. 1094, 2344/90, 11680 of 1991.

Altar Ahmed, Additional Solicitor General, V.C. Mahajan, J.D.

Jain, C.V.S. Rao, Hemant Sharma, B. Parthasarthy, A. Subba Rao,

M.N. Krishnamani, Pravir Choudhary, Ms. Indu Malhotra, Ms. Shirin Jain, T.V.S.N. Chari, Ms. Suruchi Aggarwal and Ms. Manjula Gupta for the appearing parties.

The Judgment of the Court was delivered by

SAWANT, J. Civil Appeals Nos. 3019/87, 3020/87 and 3016/88 arise out of the judgment dated March 2, 1987 delivered by the Full Bench of the Central Administrative Tribunal (hereinafter referred to as the 'Tribunal').

Civil Appeals Nos. 3018/87 and 3021/87 arise out of the judgments dated April 24, 1987 and April 1, 1987 respectively of the Tribunal, Hyderabad Bench.

Civil Appeals Nos. 3083/90 and 4379/90 arise out of the judgments dated March, 2, 1989 and September 15, 1989 of the Madras and Hyderabad Bench of the Tribunal respectively and which are based on the aforesaid decision of the Full Bench of the Tribunal.

Civil Appeals Nos. 51-55 of 1990 arise out of the decision dated July 12, 1989 of the Tribunal, Chandigarh Bench.

Special Leave Petition (C) No. 1094 of 1990 arises out of the decision dated June 29, 1989 of the Tribunal; Bombay Bench.

Special Leave Petition (C) No. 2344 of 1990 arises out of the decision dated 18th September, 1989 given by the Tribunal, Principal Bench, New Delhi.

Special Leave Petition (C) No. 11680 of 1991 arises out of the decision dated January 25, 1991 given by the Tribunal, Principal Bench, New Delhi.

2, The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are:--(1) what is the date from which it can be said that disciplinary/criminal proceedings are

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pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?' The 'sealed cover procedure' is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal

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

3. The Union of India and the other appellant-authorities have by these appeals challenged the findings recorded by the different Benches of the Tribunal in reply to one or the other' of or all the aforesaid three questions, in the decisions impugned therein. While recording its findings, the Full Bench of the Tribunal has also struck down two provisions of the Central Government Memorandum of 30th January, 1982 on the subject. We may, therefore, first refer to the said memorandum.

4. The Government of India (Deptt. of Personnel & Training) issued an Office Memorandum No, 22011/1/79. Estt. (A) dated January 30, 1982 on the subject of promotion of officers in whose cases "the sealed cover procedure" had been followed but against whom disciplinary/court proceedings were pending for a long time. The Memorandum stated that according to the existing instructions, cases of officers (a) who are under suspension or (b) against whom disciplinary proceedings are pending or a decision has been taken by the competent disciplinary authority to initiate disciplinary proceedings or, (c) against whom prosecution has been launched in a court of law or sanction for prosecution has been issued, are considered for promotion by the Departmental Promotion Committee (hereinafter referred to as the 'DPC') at the appropriate time but the findings of the Committee are kept in a sealed cover to be opened after the conclusion of the disciplinary/court proceedings. While the findings are kept in the sealed cover, the vacancy which might have gone to the officer concerned is filled only on an officiating basis. If on the conclusion of the departmental/court proceedings, the officer concerned is completely exonerated, and where he is under suspension it is also held that the suspension was wholly unjustified, the sealed cover is opened and the recommendations of the DPC are acted upon. If the officer could have been promoted earlier, he is promoted to the post which is filled on an officiating basis, the officiating arrangement being terminated. On his

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promotion, the officer gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course, but for the pending disciplinary/ court proceedings. However, no arrears of salary are paid in respect of the period prior to the date of actual promotion. The Memorandum goes on to state further that it was noticed that sometimes the cases in the courts or the departmental proceedings take unduly long time to come to a conclusion and the officers undergo considerable hardship, even where it is not intended to deprive them of promotion for such a long time. The Government, therefore, in consultation with the Union Public Service Commission examined how the hardship caused to the Government servant in such circumstances can be mitigated and has laid down the following procedure in such cases:

- "3. (i)(a) It may be ascertained whether there is any departmental disciplinary-proceedings or any case in a court of law pending against the individual under consideration, or
(b) there is a prima-facie case on the basis of which a decision has been taken to proceed against the official either departmentally or

in a court of law. '

(ii) The facts may be brought to the notice of the Departmental Promotion Committee who may then assess the suitability of the official(s) for promotion to the next grade/post and for the purpose of this assessment, the D.P.C. shall not take into consideration the fact of the pending case(s) against the official. In case an official is found "unfit for promotion" on the basis of his record, without taking into consideration, the case(s) pending against him, the findings of the D.P.C. shall be recorded in the proceedings. In respect of any other kind of assessment, the grading awarded by the D.P.C. may be kept in a sealed cover.

(iii) After the findings are kept in a sealed cover by the Departmental Promotion Committee subsequent D.P.Cs., if any, held after the first D.P.C. during the period the disciplinary/court proceedings may be pending, will also consider the officer's case and record their findings. which will again be kept in sealed cover in the above manner.

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In the normal course, on the conclusion of the disciplinary/court proceedings, the sealed cover or covers may be opened, and in case the officer is completely exonerated i.e. no statutory penalty, including that of censure, is imposed, the earliest possible date of his promotion but for the pendency of the disciplinary/court proceedings against him, may be determined with reference to the position(s) assigned to him in the findings in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The officer concerned may then be promoted, if necessary by reverting the juniormost officiating person, and he may be given a notional promotion from the date he would have been promoted, as determined in the manner indicated above. But no arrears of pay shall be payable to him for the period of notional promotion proceeding the date of actual promotion.

If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the findings in the sealed cover/covers shall not be acted upon. The officer's case for promotion may be considered in the usual manner by the next D.P.C. which meets in the normal course after the conclusion of the disciplinary/court proceedings. The existing instructions provide that in a case where departmental disciplinary proceedings have been held under the relevant disciplinary rules, "warning" should not be issued as a result of such proceedings. If it is found as a result of the proceedings that some blame attaches to the officer, then the penalty of censure at least should be imposed. This may be kept in view so that no occasion arises for any doubt on the point whether or

not an officer has been completely exonerated in disciplinary proceedings held against him."

Clause (iv) of Para 3 of the Memorandum then lays down the procedure for ad hoc appointment of the concerned officer when the disciplinary/court proceedings are not concluded even after the expiry of two years from the date of the DPC which first considered him for promotion and whose findings are kept in the sealed cover, provided however that the officer is not under suspension. It is not necessary to reproduce that clause in extenso here. Suffice it to say that the Memorandum urges that in making the ad hoc promotion in such cases, his case should be placed before the DPC which is held after the

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expiry of the said period of two years, and the ad hoc promotion has to be made on the basis of the totality of the record of service etc.

Para 4 of the Memorandum states that if the officer concerned is acquitted in the court proceedings on the merits of the case or exonerated in departmental disciplinary proceedings, the ad hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the ad hoc promotion with all attendant benefits. In such cases, the sealed cover may be opened and the official may be assigned his place in the seniority list as he would have got in accordance with the recommendation of the DPC.

Paras 5, 6 and 7 of the Memorandum then read as follows:

"5. Where the acquittal in a court case is not on merits but purely on technical grounds, and the Government either proposes to take the matter to a higher court or to proceed against the officer departmentally, the appointing authority may review whether the ad-hoc promotion should be continued.

6. Where the 'acquittal by court is on technical grounds, if the Government does not propose to go in appeal to a higher court or to take further departmental action, action should be taken in the same manner as if the officer had been acquitted by the court on merits.

7. If the officer concerned is not acquitted/exonerated in the court proceedings or the departmental proceedings, the ad-hoc promotion already granted should be brought to an end by the issue of the "further order" contemplated in the order of ad-hoc promotion (Please see para 3(vi) above) and the officer concerned reverted to the post from which he was promoted on ad-hoc basis. After such reversion, the officer may be considered for future promotion in the usual course by the next D.P.C."

5. To bring the record upto date, it may be pointed out that in view of the decision of this Court in *Union of India & Anr. v. Tajinder Singh*, [1986] 2 Scale 860 decided on September 26, 1986, the Government of India in the Deptt. of Personnel & 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

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including the Office Memorandum dated 30th January, 1982 referred to above. There is no difference in the instructions contained in this and the earlier aforesaid Memorandum

of January 30, 1982, except that this Memorandum provides in paragraph 4 for a six-monthly review of the pending proceedings against the Government servant where the proceedings are still at the stage of investigation and if as a result of the review, the appointing authority comes to the conclusion on the basis of material and evidence collected in the investigation till that time, that there is no prima facie case in initiating disciplinary action or sanctioning prosecution, the sealed cover is directed to be opened and the employee is directed to be given his due promotion with reference to the position assigned to him by the the DPC. 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 DPC, but before he is actually promoted, he is either placed under suspension or disciplinary proceedings are taken against him or 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.

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

6. 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 chargesheet 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

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instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. 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:

"(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 crimi-

nal proceedings against an official;

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

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

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

7. The Full Bench of the Tribunal, while considering the earlier Memorandum dated 30th January. 1982 has, among other things, held that the portion of paragraph 2 of the memorandum which says "but no arrears are allowed in respect of the period prior to the date of the

801 actual promotion" is violative of Articles 14 and 16 of the Constitution because withholding of salary of the promotional post for the period during which the promotion has been withheld while giving other benefits, is discriminatory when compared with other employees' who are not at the verge of promotion when the disciplinary proceedings ' were initiated against them.

The Tribunal has, therefore, directed that. on exoneration. full salary should be paid to such employee which he would have on promotion if he had not been subjected to disciplinary proceedings.

We are afraid that the Tribunal's reference to paragraph 2 of the Memorandum is incorrect. Paragraph 2 only recites the state of affairs as existed on January 30, 1982 and the portion of the Memorandum which deals with the relevant point is the 'last sentence of the first sub-paragraph after clause (iii) of paragraph 3 of the Memorandum which is reproduced above. That sentence reads as follows:

"But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion".

This sentence is preceded by the observation that when the' employee is completely exonerated on the conclusion of the disciplinary/court proceedings, that is, when no statutory penalty, including that of censure, is imposed, he is to be given a notional promotion from the date he would have been promoted as determined by the Departmental Promotion Committee. This direction in the Memorandum has also to be read along with the other direction which follows in the next sub-paragraph and which states that if it is found as a result of the proceedings that some blame attaches to the officer then the penalty of censure at least, should be imposed. This direction is in supersession of the earlier instructions which provided that in a case where departmental disciplinary proceedings have been held, "warning"

should not be issued as a result of such proceedings.

There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blame worthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R. 17(1)' of the Fundamental

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Rules and Supplementary Rules which reads as follows:

"F.R. 17(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed Under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/

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criminal proceedings. However, there may be cases' where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to

decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore however, such circumstances when they exist and lay down' an inflexible rule that in every case when an employee is exonerated in disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all

circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz.. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

To this extent we set aside the conclusion of the Tribunal on the said point.

8. The Tribunal has also struck down the 'following portion in the second sub-paragraph after clause (iii) of paragraph 3 which reads as follows: "If any penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the court proceedings against him, the findings in the sealed cover/covers shall not be acted upon" and has directed that if the proceedings result in a penalty, the person concerned should be considered for promotion in a

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Review DPC as on the original date in the light of the results of the sealed cover as also the imposition of penalty and his claim for promotion cannot be deferred for the subsequent DPCs as provided in the instructions. It may be pointed out that the said sub-paragraph directs that "the officer's case for promotion may be considered in the usual manner by the next DPC which meets in the normal course after the conclusion of the disciplinary/court proceedings". The Tribunal has given the direction in question on the ground that such deferment of the claim for promotion to the subsequent DPCs amounts to a double penalty. According to the Tribunal, "it not only violates Articles 14 and 16 of the Constitution compared with other employees who are not at the verge of promotion when the disciplinary proceedings are initiated against them but also offends the rule against double jeopardy contained in Article 20(2) of the Constitution". The Tribunal has, therefore, held that when an employee is visited with a penalty as a result of the disciplinary proceedings there should be a Review DPC as on the date when the sealed cover procedure was followed and the review DPC should consider the findings in the sealed cover as also the penalty imposed. It is not clear to us as to why the Tribunal wants the review DPC to consider the penalty

imposed while considering the findings in the sealed cover if, according to the Tribunal, not giving effect to the findings in the sealed cover even. When a penalty is imposed, amounts to double jeopardy. However, as we read the findings of the Tribunal, it appears that the Tribunal in no case wants the promotion of the officer to be deferred once the officer is visited with a penalty in the disciplinary proceedings and the Tribunal desires that the officer should be given promotion as per the findings in the sealed cover.

According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an

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unblemished record. That is the minimum expected to ensure a clean

and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in present. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second subparagraph after clause iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal.

In the circumstances, the conclusions arrived at by the Full Bench of the Tribunal stand modified as above. It is needless to add that the modifications which we have made above will equally apply to the Memorandum of January 12, 1988

9. In the result, in Civil Appeals Nos. 3019/87, 3020/87 and 30 16/88 which arise out of the decision of the Full Bench, the Division Bench of the Tribunal to which the matters are remanded by the Full Bench., will dispose of the cases of the employee/s involved in the appeals in the light of what we have held hereinabove.

Civil Appeal No. 3018 of 1987

In this case, no charge-sheet was served on the respondent-employee when the DPC met to consider the respondent's promotion.

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Yet, the sealed cover procedure was adopted. The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated April 30, 1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits. The Tribunal has further stated in the impugned order that its order would not mean that the disciplinary proceedings instituted against the respondent-employee should not go on. We see no reason to interfere with this order. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs.

Civil Appeal No. 3021 of 1987

In this case, the DPC did not consider the case of the respondent-employee for crossing efficiency bar w.e.f. 14th September, 1983 on the ground that disciplinary proceedings were contemplated against him. We are, therefore, of the view that the Tribunal's direction that the DPC should be convened to consider the case of the respondent for crossing the efficiency bar w.e.f. 14th September, 1983 on the basis of his confidential record at the relevant date and without reference to the contemplated disciplinary proceedings is both proper and valid. In this case also the Tribunal has given the said direction without prejudice to the right of the appellant-authorities to take any disciplinary action as might have been contemplated. This order also does not require any interference from this Court. Hence, the appeal stands dismissed. In the circumstances of the case, however, there will be no order as to costs.

Civil Appeal No. 3083 of 1990

In this case, the respondent-employee's case was considered for promotion by the DPC in August 1982. However, the result was kept in

a sealed cover in view of the pending disciplinary proceedings against him. According to the employee, on October 11, 1985 the disciplinary proceedings ended in complete exoneration. Thereafter, a DPC was again constituted in March 1986 which, after consideration of the employee's case, recommended him for promotion w.e.f. July 26, 1986. This was obviously contrary even to the instructions contained in the Memorandum. He was entitled to promotion from the date his immediate junior was promoted in or after August 1982 if he was in August 1982 found fit for promotion by the DPC. The Tribunal has,

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therefore, rightly directed the appellant to open the sealed cover and if the DPC in 1982 had found him fit for promotion, to give him the promotion from the date on which his immediate junior was promoted. However, while doing so, the Tribunal has also directed arrears of salary to be paid for intervening period along with all consequential benefits. Since we have held disagreeing with the decision of

the Full Bench of the Tribunal that the benefit of the arrears of salary will not flow automatically but will depend upon the circumstances in each case, we modify the said order to the extent it directs the payment of arrears of salary, and direct the appellant-authority to consider whether the employee in the circumstances of the case was entitled to any arrears of salary and to what extent. The authority will, of course give reasons for denial of the whole or part of the arrears of salary. The appeal is, therefore, allowed partly with no order as to costs.

Civil Appeal No. 4379 of 1990

In this case, the respondent-employee was not recommended for promotion by the DPC in its meeting held on February-1, 1988. Instead, the DPC had kept the results in a sealed cover because of the pending disciplinary proceedings. Admittedly, no charge-memo was served on the employee till the date the DPC met on February 1, 1988. It was issued only in March 2, 1989. The Tribunal has, therefore, rightly directed the authorities to open the sealed cover. We are, however, unable to understand the direction of the Tribunal to convene a Review DPC for considering the employee's case as on February 1, 1988. If the DPC had considered the case of the employee on February 1, 1988 and withheld the result because of the pending disciplinary proceedings, the proper direction would have been to ask the appellant-authority to open the sealed cover and if the employee was found fit for promotion, to direct the authority to promote him from the date on which his immediate junior was promoted as a result of the recommendation of the DPC on February 1, 1988. In case he is so found fit, he would be entitled to the benefits of seniority etc. on a notional basis. However, whether he would be entitled to the arrears of salary for the intervening period and to what extent will have to be decided by the appellant authority in the light of what we have stated above. In case the authority denies to the employee the salary in full or in part, it will, of course, record its reasons for doing so. The appeal is therefore, allowed partly as above with no order as to costs.

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Civil Appeals Nos. 51-55 of 1990

These appeals are filed against five respondent-employees.

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disciplinary proceedings as well as criminal prosecution were launched against each of them for lodging false Leave Travel Concession claims and for using forged documents to support them. The employees were suspended from service on 15th July, 1983. They admitted guilt and pleaded revocation of their suspension on depositing the amount of Rs. 1600. They were reinstated in service in November, 1983. Keeping in view the deposit of the amount voluntarily in October 1983, a lenient view was taken and the criminal prosecutions against them were dropped by the Administration by an order of January 14, 1985. However, this was done without prejudice to the departmental proceedings which were subsequently initiated and the formal chargesheet was issued to the employees on December 24, 1987.

The Departmental Promotion Committee met in July 1986 to consider the cases of the employees for promotion but resorted to sealed cover procedure in view of the pendency of the disciplinary proceedings against them. There is no dispute that the formal chargesheet was issued either on August or December 24, 1987. Conflicting months have been mentioned in the decision of the Tribunal.

However, we find that the Tribunal has taken a mechani-

cal view and applied the decision of the Full Bench and directed the promotions to be given to the employees on the basis of the recommendations, if any, of the DPC of July 1986. We are of the view that in the present case when the DPC met in July 1986, the Committee had before it the record of the refund of the amount by the respondent-employees and the consequent withdrawal of the prosecutions without prejudice to the authorities' right to institute departmental proceedings.

In view of the aforesaid peculiar facts of the present case, the DPC which met in July 1986 was justified in resorting to the sealed cover procedure, notwithstanding the fact that the charge-sheet in the departmental proceedings was issued in August/December, 1987. The Tribunal was, therefore, not justified in mechanically applying the decision of the Full Bench to the facts of the present case and also in directing all benefits to be given to the employees including payment of arrears of salary. We are of the view that even 'if the results in the sealed cover entitle the employees to promotion from the date their immediate juniors were promoted and they are, therefore, so promoted and given notional 'benefits of seniority etc., the employees in no case should be given any arrears of salary. The denial of the benefit of salary will, of course, be in addition to the penalty, if any, imposed on the employees at the end of the disciplinary proceedings. We,

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therefore, allow these appeals as above with no order as to costs.

S.L.P. (Civil) No. 1094 of 1990
Special leave granted.

The respondent-employee in this case was a Sepoy in the Department of Central Excise and Customs. He passed his Departmental examination for the post of Lower Division Clerk against 10% vacancies and by letter of October 14, 1981, he was informed about his selection for the said post against the said vacancies reserved for educationally qualified Group-D staff. However, he was informed that his appointment order as L.D.C. would be issued if he was exonerated from the disciplinary proceedings which were then pending against him. In the Departmental Inquiry, he was exonerated of all the charges and by an order of June 6, 1985 he was appointed to officiate as Lower Division Clerk. By a subsequent order of July 3, 1985, the earlier order of June 6, 1985 was made effective from September 25, 1981. By yet another order of July 29, 1985, his pay was fixed by giving him increment from September 25, 1981 but he was denied arrears of pay from that date till June 2, 1985. The employee did not challenge the said order denying him arrears of pay till he made his representation on February 18, 1988. To his representation a reply was sent that since he had not worked as LDC during the said period he was not entitled to the arrears of salary. By the impugned decision, the Tribunal has directed the authorities to grant to the respondent-employee his pay and allowances from September 25, 1981 to June 2, 1985.

In view of what we have held above, the appeal is allowed, the impugned order is hereby set aside and instead the appellant-authorities are directed to examine the question whether the respondent-employee was entitled to any salary and if so to what extent in the light of the view taken by us. The appellant-authorities will, of course, have to record reasons if the arrears of salary in its entirety or in part are denied to the employee. In the circumstances of the case, however, there will be no order as to costs.

S.L.P. (Civil) No. 11680of1991
Special leave granted'.

The order impugned in this appeal is an interim one whereby the Tribunal has directed the appellant-Union of India to open the sealed

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cover and if the result shows that the DPC has found the respondent-employee fit for promotion to the post of Commissioner of Income-tax, to give effect to the said recommendations. The admitted facts are that the DPC which met in 1988 had considered the respondent-employee's case for promotion to the post of Commissioner of Income-tax. However, since some departmental proceedings were pending against him, he was not given the said promotion. It was for the first time in 1990, that the appellants served on him a memorandum asking his explanation in respect of certain alleged acts of misconduct to which he sent a reply on May 18, 1990. Till the date of the 'impugned order of the Tribunal, i.e., January 1, 1991, no charge-sheet was served upon the respondent-employee. However, 12 persons junior to him were promoted by an order dated April 16, 1990. The Tribunal has, as stated above, therefore, made the impugned order. There is no direction in the order to pay him the arrears of salary for the interregnum. In the circumstances of the case, we do not think it necessary to interfere with the impugned order. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no Order as to costs.

S.L.P. (Civil) No. 2344 of 1990
Special leave granted.

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

On June 3, 1988, the DPC met for considering 'the promotion' to the Selection Grade. Pursuant to this meeting, by an order of July 28, 1988 some juniors were given the Selection Grade with retrospective effect from July 30, 1986. The respondent-employee's name was kept in a sealed cover and was, therefore, not included in the list of the promotee officers.

The Tribunal has found fault with the authorities on two

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grounds. The Tribunal has observed that although when the DPC met in June 1988, the employee was already served with a charge-sheet on February 22, 1988 and, therefore, the sealed cover procedure could not be faulted, since admittedly his juniors were given promotion with retrospective effect from July 30, 1986, the DPC should not have excluded the respondent's name from consideration when it met on June 3, 1988. The second fault which the Tribunal has found is that since the penalty of stoppage of increment was imposed at the end of the disciplinary proceedings, it was not open for the authorities to deny the 'respondent his promotion to the Selection Grade as that amounted to 'double penalty. Having taken this view, the Tribunal has directed that a Review DPC should consider the 'respondent's case for promo-

tion w.e.f. July 1986 when his juniors were given promotion taking into account his performance and confidential records up to 1986. We are afraid the Tribunal has taken an erroneous view of the matter. Admittedly, the DPC met in June 1988 when the employee was already served with the charge-sheet on February 22, 1988. The charge-sheet was for misconduct for the period between 1982 and 1985. Admittedly further, the employee was punished by an order of August 19, 1988 and his one increment was withheld. Although, therefore, the promotions to his juniors were given with retrospective effect from, July 30, 1986, the denial of promotion to the employee was not unjustified. The DPC had for the first time met on June 3, 1988 for considering promotion to the Selection Grade. It is in this meeting that his juniors were given Selection Grade with retrospective effect from July 30, 1986, and the sealed cover procedure was adopted in his case. If no disciplinary proceedings were pending against him and if he was otherwise selected by the DPC he would have got the Selection Grade w.e.f. July 30, 1986, but in that case the disciplinary proceedings against him for his misconduct for the earlier period, viz., between 1982 and 1985 would have been meaningless. If the Tribunal's finding is 'accepted it would mean that by giving him the Selection Grade w.e.f. July 30, 1986 he would stand rewarded notwithstanding his misconduct for the earlier period for which disciplinary proceedings were pending at the time of the meeting of the DPC and for which again he was visited with a penalty. We, therefore, allow the appeal and set aside the finding of the Tribunal. There will, however, be no order as to costs.

Before we part with these appeals, we make it clear that if any of the respondent-employees in any of the above appeals has/have been given any benefits the same will not be disturbed.

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Appeals disposed