PETITIONER:
DELHI DEVELOPMENT AUTHORITY

Vs.

RESPONDENT:
H.C. KHURANA

DATE OF JUDGMENT07/04/1993

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
SINGH N.P. (J)

CITATION:
1993 AIR 1488 1993 SCR (2)1033
1993 SCC (3) 196 JT 1993 (2) 695
1993 SCALE (2)464

ACT:
Civil Services.
Civil servant--Promotion--O.M. Nos.--Dated January 12, 1988 and September 14, 1992--Rationale behind OMs explained--'Sealed cover procedure'--Applicability to government servants--Whether actual service of charge sheet necessary.
Words and phrases--'Issue of Chargesheet'--Meaning of.

HEADNOTE:
The respondent who was employed as an Executive Engineer in the DDA-appellant was served on 6.11.85 a preliminary memo alleging irregularities committed by him in the construction works, and that they were being investigated. On 11.7.90 a chargesheet was framed on the basis of these irregularities, and on 13.7.90 the chargesheet was despatched for being served on him. The respondent, however, proceeded on two months medical leave and, therefore, on 17.7.90 another Executive Engineer workIng in the same Wing as the respondent, received It and gave intimation that the respondent was on leave and adding the same would be handed over to the respondent on his return from leave.
A Departmental Promotion Committee met on 28.11.90, and in view of the earlier decision to Initiate disciplinary proceedings against the respondent, It followed the 'sealed cover procedure' in the case of the respondent.
Efforts to effect personal service of the chargesheet on the respondent on account of his non-availability continued and the same could be served personally on him only on 25.1.91.
As a result of the selection made by the D.P.C. certain persons were promoted to the post of Superintending Engineer, while the respondent's matter was kept In abeyance to await the result of the disciplinary proceedings.
The respondent riled a writ petition In the High Court for a writ of
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mandamus directing the. DDA to promote him as Superintending Engineer with effect from the date on which his juniors had been promoted to the said post on the basis of the selection by the D.P.C.
The High Court allowed the writ petition relying on Union of

India and Others v. K V. Jankiraman and Others, [1991] 4 SCC 109, and taking the view that the framing of charge would carry with it the duty to issue and serve the same on the employee, that there was no justification for the DDA to follow the sealed cover procedure in this case on 28.11.91 when the Departmental Promotion Committee met since actual service of the chargesheet was made only after the date on which the D.P.C. met. Accordingly, the High Court directed the DDA to open the sealed cover, and to promote the respondent as Superintending Engineer if otherwise found suitable by the D.P.C., and to give him seniority and all consequential benefits from the date on which his juniors were so promoted.

The DDA-appellant challenged the aforesaid, decision by special leave in this Court, and contended that fankiraman cannot be read to hold, in a case like the present one where the disciplinary proceedings have been initiated by framing the chargesheet and despatching the same that the chargesheet had not been issued and, therefore, the sealed cover procedure could not be followed by the D.P.C. on 28.11.90. On behalf of the respondent official it was urged that Jankiraman holds that without effective service of the chargesheet on the employee the disciplinary proceedings cannot be said to have been initiated, and reliance was also placed on the Office Memorandum dated 12.1.88 which required actual service and not mere issuance of the chargesheet for initiating the disciplinary proceedings.

Allowing the appeal, and setting aside the judgment of the High Court, this Court,

HELD : 1. The 'sealed cover' procedure is 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'. Thug, on a decision being taken to initiate disciplinary proceedings, the guidelines contained in OMs dated 14.9.92 and 12.1.88 attract the sealed cover procedure. [1040-D]

2. The decision to initiate disciplinary proceedings cannot be sub-

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sequent to the issuance of the chargesheet, since issue of the chargesheet is a consequence of the decision to initiate disciplinary proceedings. The service of the chargesheet 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, if service of the chargesheet to the government servant, after it has been framed and despatched, does not have the effect of delaying initiation of the disciplinary proceedings, inas-much as information to the government servant of the charges framed against him, by service of the chargesheet, is not a part of the decision making process of the authorities for initiating the disciplinary proceedings. [1041 B-D]

3.The plain meaning of the expression 'a decision has been taken to initiate disciplinary proceedings' used in clause (ii) of para 2 of O.M. dated 12.1.88, also promotes the object of the provision. The expression refers merely to the decision of the authority, and knowledge of the government servant, thereof, does not form a part of that decision. The change made in clause (ii) of para 2 in O.M. dated 14.9.92, merely clarifies this position by using the expression 'chargesheet has been issued' to indicate that service of chargesheet is not necessary; and issue of the chargesheet by its despatch indicates beyond doubt that the decision to initiate disciplinary proceedings was taken. Jankiraman takes the same view, and it is not possible to

read that decision otherwise. [1041 E-F]
4. The decision in Janiraman is based, interalia, on O.M. dated 12/1/88. 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 chargesheet 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 chargesheet was effected subsequent to the meeting of the D.P.C. [1041-H, 1042-A]
5. 'Issue' of the chargesheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the chargesheet and taking of the necessary action to despatch the chargesheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the
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chargesheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations. [1043 E-F]
6. The meaning of the word 'issued' has to be gathered from the context in which it is used. The issue of a chargesheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the chargesheet and despatching it to the government servant, the further fact of its actual service on the government 'servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'chargesheet has already been issued to the employees', in para 17 of the decision in Janakiraman. [1044 B-C]
7. The decision to initiate the disciplinary proceedings against the respondent had been taken and chargesheet had also been issued to the respondent prior to 28.11.90 when the D.P.C. adopted the sealed cover procedure. It cannot be held otherwise merely because service of the chargesheet framed and issued earlier could be effected on the respondent after 28.11.90, on account of the absence of the respondent. [1044-D]
Union of India and Others v. K.V Jankiraman and Others, [1991] 4 SCC 109, referred to and relied on. [1037-G]

JUDGMENT:
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1240 of 1993.
From the Judgment and Order dated 27.2.1992 of the Delhi High Court in C.W.P. No. 877 of 1991.
Arun Jaitley, Ms. Ayesha Khatri and Ms. Indu Malhotra (NP) for the Appellant.
P.P. Khurana and Arun K. Sinha for the Respondent.
The Judgment of the Court was delivered by
VERMA, J. The respondent, H.C. Khurana, was employed as Execu
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tive Engineer in the Delhi Development Authority (D.D.A.). A preliminary memo was served on the respondent on 6.11.1985, alleging some irregularities by him in the construction

works, and they were being investigated. A chargesheet was framed on 11.7.1990 against the respondent on the basis of irregularities in the constructions made in a housing colony. On 13.7.1990, the chargesheet was despatched for being served on the respondent. However, the respondent proceeded on two months' medical leave and, therefore, on 17.7.1990 another Executive Engineer R.K. Sood, working in the same Wing as the respondent, received it and gave the intimation that the respondent was on leave, adding that the same would be handed over to the respondent on his return from leave. On 28.11.1990, the Departmental Promotion Committee (D.P.C.) met, and in view of the earlier-decision to initiate disciplinary proceedings against the respondent, it followed the 'sealed cover procedure' in the case of respondent. It appears, that the effort to effect personal service of the chargesheet on the respondent on account of his non-availability continued, and the same could be served personally on the respondent only on 25.1.1991. As a result of the selection made by the D.P.C., certain persons were promoted to the post of Superintending Engineer, while the respondent's matter was kept in obeyance to await the outcome of the disciplinary proceedings.

In these circumstances, the respondent filed Writ Petition No. 877 of 1991 in the Delhi High Court claiming a mandamus directing the D.D.A. to promote him as Superintending Engineer with effect from the date on which his juniors had been promoted to the post of Superintending Engineer, on the basis of selection made by the D.P.C. The High Court has allowed that writ petition taking the view, that 'the framing of charge would carry with it the duty to issue and serve the same on the employee, there was no justification for the respondent to follow the sealed cover procedure in this case on 28.11.1991 when the Departmental Promotion Committee met', since actual service of the chargesheet on the respondent was made only after the date on which the D.P.C. met. According to the High Court, issuance of the chargesheet to the employee means its actual service on him, and this should be complete before following the sealed cover procedure. The High Court has read Union of India and Others v.K.V Jankiraman and Others, [1991] 4 SCC 109, to this effect, for taking the view, that on these facts, the disciplinary proceedings cannot be said to have been initiated prior to 29.11.1990, when the D.P.C. followed the sealed cover procedure. Accordingly, the High Court has directed the D.D.A. to

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open the sealed cover; to promote the respondent as Superintending Engineer, if he has been otherwise found suitable by the D.P.C.; and, in that event, to give him seniority with all consequential benefits from the date on which his juniors were so promoted. The judgment of the High Court is challenged by special leave, in this appeal.

The short question for consideration, is: Whether, in the present case, the High Court has correctly applied the decision in Jankiraman? Learned counsel for the appellant contended that Jankiraman cannot be read to hold, in a case like the present, where the disciplinary proceedings had been initiated by framing the chargesheet and despatching the same, that the chargesheet had not been issued; and, therefore, the 'sealed cover procedure' could not be followed by the D.P.C. on 28.11.1990. On the other hand, learned counsel for the respondent strenuously urged that Jankiraman holds that without effective service of the chargesheet on the employee, the disciplinary proceedings cannot be said to have been initiated against him. Learned

counsel for the respondent referred to the Office Memorandum No. 22O '11/4/91-Estt. (A) dated 14.9.1992 of the Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, Government of India, issued in supersession of the earlier. Office Memorandum No. 220 11/2/86- Estt. (A) dated 12.1.1988, consequent upon the judgment in Jankiraman, to support his submission that even though mere issuance or despatch of a chargesheet without the further requirement of its actual service on the employee would now be sufficient according to the O.M. dated 14.9.1992 for following the sealed cover procedure, yet the same was not sufficient earlier according to the O.M. dated 12.1.1988, which required actual service and not mere issuance of the chargesheet for initiating the disciplinary proceedings. Admittedly, the guidelines in the O.M. dated 12.1.1988 were in force, in the present case. The subject of the two memoranda, containing the guidelines, is the same, as under:

> "Promotion of Government servants against whom disciplinary/court proceedings are pending or whose Conduct is under investigation Procedure and guidelines to be followed"
> (emphasis supplied)

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Para 2 is the relevant portion in these memoranda. In 0.M. dated 12.1.1988, para 2 is as under :-

> "Cases of Government Servants,-to whom Sealed Cover Procedure will be applicable.
> 2.At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee :-
> (i) Government servants under suspension;
> (ii)Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings;
> (iii)Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution.
> (iv)Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI. or any other agency, departmental or otherwise."
> (emphasis supplied)
> The substituted clause (ii) in para 2, in O.M. dated 149.1992, is as under :-
> "(ii) Government servants in respect of whom a Chargesheet has been issued and the disciplinary proceedings are pending; and"
> (emphasis supplied)

It is the change made in clause (ii) of para 2 in the O.M. dated 14.9.1992, from which learned counsel for the respondent tried to find

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support for his submission.

Before we refer to Jankiraman, we may advert to clause (ii) of para 2 of O.M. dated 12.1.1988 which was the guideline

applicable at the material time, in the present case, and is as under :-

> "(a) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings,"
> (emphasis supplied)

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; and in case he is exonerated therein, 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 in such cases, to prevent the possibility of any injustice or arbitrariness.

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The question now, is: What is the 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 chargesheet, since issue of the chargesheet is a consequence of the decision to initiate disciplinary proceedings. Framing the chargesheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The chargesheet is framed on the basis of the allegations made against the government servant; the chargesheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, an enquiry is held into the charges-, if the charges are not proved, the proceedings are closed and the government servant exonerated; but if the charges are proved, the penalty follows. Thus, the service of the chargesheet 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 chargesheet to the government servant, after it has been framed and despatched, does not have the effect of delaying initiation of the disciplinary

proceedings, inasmuch as information to the government servant of the charges framed against him, by service of the chargesheet, is not a part of the decision making process of the authorities for initiating the disciplinary proceedings. This plain meaning of the expression used in clause (ii) of para 2 of O.M. dated 12.1.1988, also promotes the object of the provision. The expression refers merely to the decision of the authority, and knowledge of the government servant, thereof, does not form a part of that decision. The change made in clause (ii) of para 2 in O.M. dated 14.9.1992, merely clarifies this position by using the expression 'chargesheet has been issued' to indicate that service of chargesheet is not necessary; and issue of the chargesheet by its despatch indicates beyond doubt that the decision to initiate disciplinary proceedings was taken. In our opinion, Jankiraman takes the same view, and it is not possible to read that decision otherwise, in the manner suggested by learned counsel for the respondent.

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 chargesheet against the government servant was framed and direction given to despatch the same to the government servant as a result of the decision to

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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 chargesheet 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 v. Tejinder Singh, [1991] 4 SCC 129, decided on September 26, 1986, the Government of India in the Deptt. 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 DPC, 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.
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> 10.These differences in the two Memoranda have no bearing on the questions to be answered."
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> (emphasis supplied) (PP. 117-118)

Thereafter, in Jankiraman, the conclusions of the Full Bench of the Tribunal, under consideration, were quoted, and then while restating that the conclusions of the Tribunal could be reconciled, it was further stated, thus:

'17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No.1 should be read to mean that the promotion

etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To, deny the said benefit, they must be at the relevant time pending at the stage when charge-memolcharge-sheet has
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already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.'
(emphasis supplied)
PP. 119)

It will be seen that in Jankiraman also, emphasis is on the stage when a decision has been taken to initiate the disciplinary proceedings' and it was further said that 'to deny the said benefit (of promotion), they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee'. The word 'issued' used in this context in Jankiraman it is urged by learned counsel for the respondent, means service on the employee. We are unable to read Jankiraman in 'this manner. The context in which the word 'issued' has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the chargesheet leaving no doubt that the decision had been taken. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision. Obviously, the contrary view cannot be taken.

'Issue' of the chargesheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the chargesheet and taking of the necessary action to despatch the chargesheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the chargesheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations. The conclusions of the Tribunal quoted at the end of para 16 of the decision in Jankiraman which have been accepted thereafter in para 17 in the manner indicated above, do use the word 'served' in conclusion No.(4), but the fact of 'issue' of the chargesheet to the employee is emphasised in para 17 of the decision. Conclusion No.(4) of the Tribunal has to be deemed to be accepted in Jankiraman only in this manner.

The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from the
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context in which it is used. Meanings of the 'word issue' given in the Shorter Oxford English Dictionary include 'to give exit to; to send forth, or allow to pass out; to let out; .... to give or send out authoritatively or officially; to send forth or deal out formally or publicly-, to emit, put into circulation'. The issue of a chargesheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the chargesheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'chargesheet has already

been issued to the employee', in para 17 of the decision in Jankiraman.

In view of the above, we are unable to accept the respondent's contention, which found favour with the High Court, that the decision in Jankiramnan, on the facts in the present case, supports the view that the decision to initate the disciplinary proceedings had not been taken or the chargesheet had not been issued to the respondent prior to 28.11.1990, when the D.P.C. adopted the sealed cover procedure, merely because service of the chargesheet framed and issued earlier could be effected on the respondent after 28.11.1990, on account of his absence.

Consequently, the appeal is allowed and the judgment of the High Court is set aside, with the result that the writ petition of the respondent stands dismissed. No costs.

N.V.K.

Appeal allowed.

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