

No.FinCB(15)10/2010
Government of Himachal Pradesh
Finance (Regulations) Department

.....
Dated, Shimla-171002, the ~~3rd~~ ^{3rd Jan.} ~~December~~, 2010

From:-

Principal Secretary (Finance) to the
Government of Himachal Pradesh.

To

1. All the Administrative Secretaries
' to the Government of Himachal Pradesh.
2. All the Heads of Departments in HP.
3. All the Deputy Commissioners in HP.

Subject: Procedure and guidelines to be followed in the matter of promotions of government servants against whom the disciplinary/ criminal proceedings are pending and whose cases relating to service matters are pending in the Court of Law.

Sir,

I am directed to refer to the subject cited above and to say that the proposals are being received from the Administrative Departments for creation of supernumerary or tenure posts in order to grant benefit of promotion from a retrospective date especially in following eventualities:-

1. In case the recommendations of DPC are placed in a sealed cover on account of suspension, disciplinary proceedings or criminal proceedings and junior official is promoted on officiating basis and subsequently the senior is to be promoted on being exonerated of the charges, the supernumerary posts/ tenure posts are demanded by the Departments in order to grant benefit of such promotion.
2. In case an official approaches the Courts for redressal of the service matters including the disputes arising out of the

promotions or seniority, and the judgment goes in his favour and he is to be given the consequential benefit of promotion from a retrospective date, the Departments usually move the proposals for creation of supernumerary or tenure posts.

It is clarified that following types of promotion cases are recommended by the DPCs for placing in the sealed cover.

- a. The Government servants under suspension.
- b. Government servants in respect of whom a charge-sheet has been issued and disciplinary proceedings are pending; and
- c. Government servant in respect of whom prosecution of a criminal charge is pending.

It is clarified that the Government in Department of Personnel has issued the instructions to deal with the cases of promotions falling under sealed cover vide OM No. Per (AP-II)A(3)-1/79 dated 26.11.1991 and OM No. Per (AP-II)A(3)-1/79-III dated 3.12.1992, These instructions are contained in the book on Personnel matters volume-I. When the proposals are examined in FD for creation of the posts as are demanded by the Departments, it has been observed that the Departments are not examining the proposals in the light of the instructions issued by the Government from time to time. In the cases referred at (1) above, it has been observed that the procedure given in the instructions relating to "sealed cover procedure" is not strictly followed. The procedure and guidelines as circulated by the Government are to be followed in the matter of promotion of Government servants in respect of whom disciplinary proceedings/ court proceedings are pending or whose conduct is under investigation.

As per the procedure and guidelines circulated by the Government vide OM dated 26.11.91/ 3.12.1992,ibid, at the time of consideration of the cases of Government servants for promotion the details of the officials in the zone of consideration for promotion are to be brought to the notice of the DPC who will assess the suitability of the

Government servants coming within the purview of the circumstances narrated in the instructions and the findings of the committee are to be kept in the sealed cover. The DPC may advise the competent authority to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC are kept in sealed cover in respect of a person who is not considered for promotion due reasons as explained. Similar procedure is to be followed by the subsequent DPCs till the disciplinary proceedings or the criminal proceedings are concluded in respect of the official.

When the proceedings are concluded and the allegations are dropped against the officials concerned in whose case the recommendations of DPC are placed in sealed cover, the case of his promotion will be considered. In case the official is completely exonerated, the due date of promotion will be determined with reference to the position assigned to him in the findings of DPC which are kept in sealed cover. The Government servant may be promoted, if necessary, by reverting the junior most officiating person. The official is to be promoted notionally with reference to the date of promotion of his junior. The question of payment of arrears is to be decided by the competent authority by recording the decision to this effect. It is clear in respect of such cases where the findings of the DPC are placed in a sealed cover and the official is exonerated of the charges that in order to promote such official, no post of any kind is required to be created and he is to be considered for promotion by reverting the junior most official and so will he be fitted at his actual place of promotion with reference to his junior and as per the recommendations of DPC.

In another situation as explained at point No. (2) above, it is observed that normally the officials approach the Hon. Courts for redressal of their service matters or grievances regarding promotions or the seniority. If the cases are decided in favour of the officials and the directions are given by the Courts to promote them from a retrospective

date, in such eventualities the cases are to be examined in the light of the provisions of FR-31-A and Government of India's decisions thereunder and provision in this regard is also contained in para 16.12 of the Handbook on Personnel Matters- Vol-I. Such cases are to be considered in the review DPC, required to be convened for this purpose. There arises hardly any necessity to create a post of any type in normal course as by way of review DPC, the post will automatically become available. There may be instances where the officials already promoted stand retired and by convening of review DPC, their reversion is not possible, only in that eventuality, the issue of creation of a post of any type may arise and such cases may be the rarest of the rare and in those cases the feasibility of creation of a post may be considered on merit and not in a casual and routine manner.

All the Administrative Department are requested that they may ensure that such cases are examined as per the procedure given in the instructions on the issue and the proposals for creation of posts may not be referred to Finance Department in a casual and routine manner.

This may be brought to the notice of all concerned for strict compliance, please.

Yours faithfully,

Myra
Principal Secretary (Finance) to the
Government of Himachal Pradesh.

Endst. No. No.FinOB(15)10/2010, Shimla-2, the
Copy for information to:-

1. Department of Personnel (Apptt.-I, II, III, IV).HP Secretariat.
2. All the Section Officers in HP Secretariat.
3. All Section Officers in Finance Department.

3rd Jan
December, 2010
Deputy Secretary (Finance) to the
Government of Himachal Pradesh.