

Per(AP.B)B(15)-1/97
Government of Himachal Pradesh
Department of Personnel
(Appointment-II)

Dated Shimla-2, the 27th September, 2010

OFFICE MEMORANDUM

Subject:- Timely confirmation in various Central Civil Services – issue of guidelines.

The undersigned is directed to enclose a copy of Government of India, Ministry of Personnel, PG and Pensions, Department of Personnel and Training O.M. No.18011/1/2010-Estt.(C), dated 30th August, 2010 alongwith its enclosure, on the subject cited above, for information and strict compliance. The contents of this O.M. may also please be brought to the notice of all concerned for strict adherence.

Heedles
Deputy Secretary (Personnel) 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 H.P.
3. All the Divisional Commissioners in H.P.
4. All the Deputy Commissioners in H.P.

Copy of the Joint Secretary to the GOI, Ministry of Personnel, PG & Pensions (Department of Personnel & Training) O.M. No.18011/1/2010-Estt.(C), dated 30.08.2010 addressed to all Ministries/ Departments of GOI and endorsed to President's Sectt., Prime Minister's Office, Cabinet Sectt., Rajya Sabha Sectt. Lok Sabha Sectt., CAG, UPSC, etc. and all Chief Secretaries of States/Union Territories.

Subject:- Timely confirmation in various Central Civil Services – issue of guidelines.

The undersigned is directed to say that the Supreme Court in its judgement on 8.7.2010 in civil appeal No.596 of 2007 (appeal of Khazia Mohameed Muzammil v/s State of Karnataka & Anr.) examined the contention of automatic/deemed confirmation after the expiry of the probation period. After examining the various judgements, the Apex Court were of the considered opinion as to what view has to be taken would depend upon the facts of a given case and the relevant rules in force.

2. In Para 22 of the judgement, the Apex Court observed as follows:-

“Before we part with this file, it is required of this Court to notice and declare that the concerned authorities have failed to act expeditiously and in accordance with the spirit of the relevant Rules. Rule 5 (2) of 1977 Rules has used the expression 'as soon as possible' which clearly shows the intent of the rule framers explicitly implying urgency and in any case applicability of the concept of reasonable time which would help in minimizing the litigation arising from such similar cases. May be, strictly speaking, this may not be true in the case of the appellant but generally every step should be taken which would avoid bias or arbitrariness in administrative matters, no matter, which is the authority concerned including the High Court itself. Long back in the case of Shiv Kumar Sharma Vs. Haryana State Electricity Board (1988) Supp. SCC 669] this Court had the occasion to notice that due to delay in recording satisfactory completion of probation period where juniors were promoted, the action of the authority was arbitrary and it resulted in infliction of even double punishment. The Court held as under:

'While there is some necessity for appointing a person in government service on probation for a particular period, there may not be any need for confirmation of that officer after the completion of the probation period. If during the period a government servant is found to be unsuitable, his services may be terminated. On the other hand, if he is found to be suitable, he would be allowed to continue in service. The archaic rule of confirmation, still in

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force, gives a scope to the executive authorities to act arbitrarily or malafide giving rise to unnecessary litigations. It is high time that the Government and other authorities should think over the matter and relieve the government servants of becoming victims of arbitrary actions.'

We reiterate this principle with respect and approval and hope that all the authorities concerned should take care that timely actions are taken in comity to the Rules governing the service and every attempt is made to avoid prejudicial results against the employee/probationer. It is expected of the Courts to pass orders which would help in minimizing the litigation arising from such similar cases. Timely action by the authority concerned would ensure implementation of rule of fair play on the one hand and serve greater ends of justice on the other. It would also boost the element of greater understanding and improving the employer employee relationship in all branches of the States and its instrumentalities.'

3. In this Ministry's O.M.No.18011/186-Estt(D) dated 28.3.1988 (Copy enclosed), instructions have already been issued to the effect that confirmation will be made only once in service in the entry grade, but for some exceptions specified therein. Instructions on timely action to confirm or extend the probation have also been issued vide O.M. No. 18011/2/98-Estt. (C) dated 28.8.1998. Seniority has also been delinked from confirmation in the O.M.No.20011/5/90-Estt.(D) dated 4.11.92.

4. The above directions of the Apex Court are brought to the notice of all Ministries/Departments for ensuring compliance of the above instructions.

New Delhi, dated the 28th March, 1988

OFFICE MEMORANDUM

Subject: - Simplification of confirmation procedure - Delinking of confirmation from the availability of permanent posts.

The undersigned is directed to say that in the existing system, the prerequisite for confirmation is the availability of a permanent post on which no other Government servant holds a lien. With a view to finding a permanent post to confirm a Government employee, a periodic exercise is taken up to identify vacant permanent posts along with exact date from which these are available. The availability of a permanent post depends upon the factors such as retirement/resignation of a permanent Government employee, confirmation of a Government servant in a higher post, conversion of temporary posts into permanent ones, etc. Further, according to the present procedure, confirmation is not a one-time event in the career of a Government employee. He has to be successively confirmed in each and every post or grade to which he is promoted subject to the availability of a permanent post in each grade.

2. Thus, the exercise of identification of permanent vacant posts as well as convening of meetings of DPCs to consider the confirmation of employees against them has become a time-consuming and complicated procedure which has to be gone through under the existing rules before permanent status is conferred upon a Government employee. The delays and complexities involved in complying with the procedural requirements of confirmation often result in a situation where an employee continues to officiate in successive higher grades for years together while he is confirmed only in the grade he entered the service.

3. A Task Force (set up in 1976 vide Ministry of Finance Order No. F 1(5)/75-Spl. Cell dated 5.1.1976) went into the entire question of confirmation with a view to bring about some simplifications. Their main recommendations were:-

- (i) Confirmation of Government employees should be delinked from the availability of permanent vacant posts; and
- (ii) There should be only one confirmation in the career of a Government servant instead of multiple confirmations against successive posts/grades.

These recommendations were then considered in consultation with UPSC etc. but the case was not pursued as in the meantime orders were issued allowing pension to temporary employees superannuating after 20 years of service. In the context of the drive for simplification of rules and procedures, undertaken sometime back, the proposal was revived. It has now been decided to delink confirmation from the availability of a permanent vacant post and to have confirmation as one-time event in the career of a Government servant.

4. Pursuant to the above decision, a review of all the existing rules and instructions has been made and the revised procedure to be followed in respect of various matters such as probation, confirmation, seniority, lien, temporary service rules, etc. is indicated below:

4.1 CONFIRMATION:

(A) General

- (i) Confirmation will be made only once in the service of an official which will be in the entry grade.
- (ii) Confirmation is delinked from the availability of permanent vacancy in the grade. In other words, an officer who has successfully completed the probation may be considered for confirmation.

(B) Confirmation in the grade to which initially recruited:

- (i) As at present, the appointee should satisfactorily complete the probation.
- (ii) The case will be placed before the DPC (for confirmation).
- (iii) A specific Order of confirmation will be issued when the case is cleared from all angles.

(C) On Promotion:

- (i) If the recruitment rules do not prescribe any probation, an officer promoted on regular basis (after following the prescribed DPC etc. procedure) will have all the benefits that a person confirmed in that grade would have.
- (ii) Where probation is prescribed, the appointing authority will on completion of the prescribed period of probation assess the work and conduct of the officer himself and in case the conclusion is that the officer is fit to hold the higher grade, he will pass an order declaring that the person concerned has successfully completed the probation. If, the appointing authority considers that the work of the officer has not been satisfactory or needs to be watched for some more time, he may revert him to the post or grade from which he was promoted, or extend the period of probation as the case may be.

Since there will be no confirmation on promotion before an official is declared to have completed the probation satisfactorily, a rigorous screening of his performance should be made and there should be no hesitation to revert a person to the post or grade from which he was promoted if the work of the officer during probation has not been satisfactory.

4.2 CCS (TEMPORARY SERVICE) RULES:

- (i) As no officer otherwise eligible will have to wait for confirmation pending availability of a permanent vacancy, the need for following the existing procedure for declaring a person quasi-permanent ceases to exist. Accordingly, the provisions relating to the quasi-permanency in the CCS (Temporary Service) Rules will be deleted.
- (ii) As there will still be situations where appointments are made against posts/establishments which are created for definite and purely temporary periods e.g. Committees/Commissions of Enquiry, organisations created for meeting a particular emergency which is not expected to last for more than a few years, posts created for projects for specified periods, the remaining provisions of the Temporary Service Rules will continue to be in force.

4.3 LIEN

The concept of lien as the title of a Govt. servant to hold substantively a permanent post will undergo a change. Lien will now represent only the right/title of a Govt. servant to hold a regular post, whether permanent or temporary, either immediately or on the termination of the periods of absence. The benefits of having a lien in a grade will thus be enjoyed by all officers who are confirmed in the grade of entry or who have been promoted to a higher post declared as having completed the probation where it is prescribed, or those who have been promoted on regular basis to a higher post where no probation is prescribed under the Rules, as the case may be.

The above right/title will, however, be subject to the condition that the junior most person in the grade will be liable to be reverted to the lower grade if at any time the number of persons so entitled is more than the posts available in that grade. For example, if a person who is confirmed or whose probation in a higher post has been declared as having been completed or one who is holding a higher post for which there is no probation on a regular basis, reverts from deputation or foreign service and if there is no vacancy in that grade to accommodate him, the junior most person will be reverted. If, however, this officer himself is the junior most, he will be reverted to the next lower grade from which he was earlier promoted.

4.4 PENSION

Since all the persons who complete probation in the first appointment will be declared as permanent, the present distinction between permanent and temporary employees for grant of pension and other pensionary benefits will cease to exist.

4.5 RESERVATION FOR SCIST

As a result of introduction of confirmation only at the entry stage and the delinking of confirmation from the availability of permanent posts, the need for reservation at the time of confirmation in posts and services filled by Direct Recruitment as per the existing instructions will cease to exist as everyone who is eligible for confirmation will be confirmed.

4.6 SENIORITY

According to para 2.3 of the consolidated orders of seniority issued vide this Department's OM No. 22011/86-Estt (D) dated 3.7.86 where persons are confirmed in an order different from the order of merit indicated at the time of their recruitment or promotion, seniority shall follow the order of confirmation and not the original order of merit. Since there is confirmation in the entry grade, seniority will continue to be determined on the basis of confirmation in that grade.

5. The existing instructions/Rules in respect of the aspects mentioned above stand modified to the extent indicated in the preceding paragraphs. As regards rules relating to pension, Temporary Service, Lien, etc. suitable amendments will be notified separately.

6.1 The revised procedures relating to confirmation outlined above will not apply to the cases of appointments made on *ad hoc* basis, i.e., it is only the appointments made on regular basis which will come within the purview of these instructions.

6.2 Sometimes Establishments are created for a specific objective for a limited period, as in the case of Committees or Commissions to study or investigate a specific problem. Normally, posts in such Establishments are filled by deputation or contract basis, which would not result in regular incumbency. Even in a few cases, where regular appointments are made by framing the recruitment rules, appointments are made according to those rules, these instructions about confirmation would not apply. In other words, persons appointed against the posts in purely temporary organisations are outside the purview of the revised procedure outlined in this Office Memorandum.

7. These instructions will come into force with effect from 1st April 1988.

8. When the new procedure detailed in this OM comes into effect the administrative work involved in confirmation of officials in all Government offices every year will be eliminated. This would result in reduction of work load of various Ministries and Departments. All the Ministries and Departments are requested to review the position and intimate by 31st October, 1988 details of reduction of staff effected as a result of the rationalisation for reporting the matter to the Cabinet.

9. All the Ministries/ Departments are requested to bring the above position to the notice of all concerned, including those in the Attached and Subordinate Offices for guidance.

(S.K. Parthasarathy)

Joint Secretary to the Government of India

To

All Ministries/ Departments of the Government of India

No. 18011/1/86-Estt (D)

New Delhi, dated the 28th March 1988.

Copy to:-

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| 1. The Comptroller and Auditor General of India. | 2. Secretary, UPSC, New Delhi. |
| 3. President's Secretariat/Vice-President's Secretariat | 4. Lok Sabha/Rajya Sabha Secretariat. |
| 5. Central Vigilance Commission/Election Commission. | 6. All Union Territory Administrations. |
| 7. Secretary, National Council (Staff Side). | 8. All Members of the Staff Side of the National Council. |
| 9. All attached and subordinate offices of the Department of Personnel & Training. | |
| 10. All Sections of the Departments of Personnel and Training. | |

(S.K. Parthasarathy)

Joint Secretary to the Government of India