

Per(AP-II)A(3)-1/79-III
Government of Himachal Pradesh
Department of Personnel (Apptt.-II)

Dated Shimla-2,

28.1.2005


OFFICE MEMORANDUM

Subject:- Cases of persons whose conduct is under investigation or against whom a charge sheet is pending – consideration for promotion regarding.

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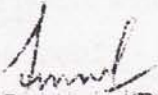
In continuation of this Department Office Memorandum of even number dated 03.12.1992, I am directed to enclose a copy of Govt. of India, Ministry of Personnel, Public Grievances and Pensions O.M No.22012/1/99-Estt.(D), dated 25.10.2004 alongwith copy of its enclosures, on the subject noted above.

2. The Governor, Himachal Pradesh is pleased to approve the adoption of instructions contained in the O.M. dated 25.10.2004 and to make applicable to the employees of the State Govt. with immediate effect.
3. These instructions may kindly be brought to the notice of all concerned.


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 Himachal Pradesh.
3. All the Deputy Commissioners in Himachal Pradesh.
4. All the Divisional Commissioners in Himachal Pradesh.
5. All the Chairmen/Managing Directors/Registrars of Boards/ Corpsns./ Universities in Himachal Pradesh.


Deputy Secretary (Personnel) to the
Government of Himachal Pradesh.

Copy of Government of India, Ministry of Personnel, Public Grievances and Pensions, New Delhi Office Memorandum No.22012/1/99-Estt.(D), dated 25.10.2004 addressed to All Ministries/Departments of Govt.of India and endorsed to the President's Secretariat, New Delhi, Prime Minister's Office, New Delhi, Central Vigilance Commission, All State Governments, Cabinet Secretariat, New Delhi, Rajya Sabha Sectt./Lok Sabha Sectt., New Delhi, Registrar General, The Supreme Court of India etc.

New Delhi, Dated 25 October, 2004

OFFICE MEMORANDUM

Subject:- Cases of persons whose conduct is under investigation or against whom a charge sheet is pending - consideration for promotion - clarification regarding.

The undersigned is directed to refer to the Department of Personnel and Training Office Memorandum No.22011/4/91-Estt-A dated 14th September, 1992 (copy enclosed) which has been issued pursuant to the judgement of the Hon'ble Supreme Court in the case of Union of India vs. K.V.Jankiraman etc. (AIR 1991 SC 2010), and is in supersession of all previous instructions on the subject, and to say that para 2.1 of the said Office Memorandum provides that the DPC shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned in para 2 of the Office Memorandum, along with other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution pending. Therefore, it is made clear that only a bare statement that case of an employee in the zone of consideration/extended zone of consideration is covered by any of the three situations indicated in para-2 of the said Office Memorandum is to be furnished to the DPC to enable it to place its recommendations in the sealed cover. No other details about the pending inquiry or the nature of charges etc. are to be furnished to the DPC lest these details weigh with the DPC in making its recommendations, which are to be placed in the sealed cover.

2. Considerable doubts also persist about the furnishing of the vigilance clearance and integrity certificate to the DPC. It is clarified that the DPC is required to consider the cases of all persons who are otherwise eligible in terms of the Recruitment Rules as on the relevant crucial date and are in the zone of consideration. If, however, case of an employee in the zone of consideration is covered by any of the three situations, only this fact is to be furnished to the DPC so that the recommendations could be placed in sealed cover. Where none of the three situations has arisen, a simple vigilance clearance would need to be furnished. Vigilance clearance status would have no other significance and would not be a factor in deciding the fitness of the officer for promotion on merit.

3. It is also clarified that there is no requirement of furnishing a separate integrity certificate to the DPC. In terms of the judgment of the Hon'ble Supreme Court in the case of Union of India vs. K.V. Janakiraman etc. (AIR 1991 SC 2010), no promotion can be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the stage of issue of charge sheet etc. If in the matter of corruption/derelection of duty etc., there is a serious complaint and the matter is still under investigation of CBI or otherwise, the Government is within its right to suspend the official. In that case, the officer's case for promotion would automatically be required to be placed in the sealed cover.

4. If the conditions indicated in para-2 of DoPT Office Memorandum dated 14th September, 1992, arise only after the DPC has made its recommendations and therefore, the recommendations could not be placed in the sealed cover, para-7 of the said Office Memorandum provides that the recommendations of the DPC shall be deemed to have been placed in the sealed cover and he shall not be promoted until he is exonerated of the charges. Therefore, after the recommendations of DPC have been approved by the competent authority, it is necessary to again seek the status position from the concerned vigilance division before issuing promotion order in respect of any officer included in the approved panel of names to ensure that there is no hindrance in issuing the promotion order in respect of the concerned officer.

5. Hindi version will follow.

Sd/-
(Alok Saxena)
Director

Copy of Government of India, Ministry of Personnel, Public Grievances and Pensions, New Delhi Office Memorandum No.22011/4/91-Estt.(A), dated 14.09.1992 addressed to All Ministries/Departments of Govt.of India and endorsed to Central Vigilance Commission, New Delhi, Central Bureau of Investigation, New Delhi, Union Public Service Commission, New Delhi, CAG, New Delhi, President's Sectt./Vice President's Sectt./ Lok Sabha Sectt./ Rajya Sabha Sectt./Prime Minister's Office, Chief Secretaries of all States and Union Territories and All Officers and Administrative Sections in the Ministry of Personnel, PG & Pensions and Ministry of Home Affairs.

New Delhi, Dated 14th Sept., 1992.

OFFICE MEMORANDUM

Subject:- Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation- Procedure and guidelines to be followed.

O.M.No.
39/3/59-Estt.A
Dt. 31.8.60
7/28/63-Estt.A
Dt.22.12.64
22011/3/77-
Estt.A dt.
14.7.77
22011/1/79-
Estt.A dt.
31.1.82
22011/2/86-
Estt.A dt.
12.1.88
22011/1/91-
Estt.A
dt.31.7.91

Cases of Government servants to whom Sealed Cover Procedure will be applicable.

Procedure to be followed by DPC in respect of Government servants under cloud.

The undersigned is directed to refer to the Department of Personnel & Training OM No.22011/2/86-Estt.(a) dated 12th January, 1988 and subsequent instructions issued from time to time on the above subject and to say that the procedure and guidelines to be followed in the matter of promotion of the Government servants against whom disciplinary /court proceedings are pending or whose conduct is under investigation have been reviewed carefully. Government have also noticed the judgment dated 27.08.1991 of the Supreme Court in Union of India etc. vs. K.V.Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in supersession of all the earlier instructions on the subject (referred to in the margin), the procedure to be followed in this regard by the authorities concerned is laid down in the subsequent paras of this OM for their guidance.

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

2.1 The Departmental Promotion Committee shall assess the suitability of the Government servants coming within the purview of the circumstances mentioned above alongwith other eligible candidates without taking into consideration the disciplinary case/criminal prosecution pending. The assessment of the DPC, including 'Unfit of Promotion' and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of.....in respect of Sh.....(name of the Government servant). Not to be

opened till the termination of the disciplinary case/criminal prosecution against Sh..... The proceedings of the DPC need only contain the note 'The findings are contained in the attached sealed cover'. The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover.

Procedure by subsequent DPCs

2.2 The same procedure outlined in para 2.1 above will be followed by the subsequent Departmental Promotion Committees convened till the disciplinary case/criminal prosecution against the Government servant concerned is concluded.

Action after completion of disciplinary cases/ criminal prosecution.

3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against the Govt. servant, the sealed cover or covers shall be opened. In case the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The Government servant may be promoted, if necessary, by reverting the junior-most officiating person. He may be promoted notionally with reference to the date of promotion of his junior. 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 appointing 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. It is not possible to anticipate and enumerate exhaustively all the circumstances under which such denials of arrears of salary or part of it may become necessary. 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. These are only some of the circumstances where such denial can be justified.

3.1 If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, The findings of the sealed cover/covers shall not be acted upon. His case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him.

3.2 It is also clarified that in a case where 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 Government servant, at least the penalty of 'censure' should be imposed.

Six Monthly review of

4. It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all

need for keeping the case of a Government servant in a sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the cases of Government servants, whose suitability for promotion to a higher grade has been kept in a sealed cover on the expiry of 6 months from the date of convening the first Departmental Promotion Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also every six months. The review should, inter alia, cover the progress made in the disciplinary proceedings/criminal prosecution and the further measures to be taken to expedite their completion.

Procedure for
ad-hoc
promotion.

5. In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspects:-

- a) Whether the promotion of the officer will be against public interest;
- b) Whether the charges are grave enough to warrant continued denial of promotion;
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- d) Whether the delay in the finalisation of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and
- e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad-hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two year period to decide whether the officer is suitable for promotion on ad-hoc basis. Where the Government servant is considered for ad-hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending

- i) The promotion is being made on purely ad-hoc basis and the ad-hoc promotion will not confer any right for regular promotion; and
- ii) The promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel the ad-hoc promotion and revert at any time the Government servant to the post from which he was promoted.

5.3 If the Government servant concerned is acquitted in the criminal prosecution on the merits of the case or is fully exonerated in the departmental proceedings, the ad-hoc promotion already made may be confirmed and the promotion treated as a regular one from the date of the adhoc promotion with all attendant benefits. In case the Government servant could have normally got his regular promotion from a date prior to the date of his ad-hoc promotion with reference to his placement in the DPC proceedings kept in the sealed cover(s) and the actual date of promotion of the person ranked immediately junior to him by the same DPC, he would also be allowed his due seniority and benefit of notional promotion as envisaged in para 3 above.

5.4 If the Government servant is not acquitted on merits in the criminal prosecution but purely on technical grounds and /Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the ad-hoc promotion granted to him should be brought to an end.

Sealed cover procedure for confirmation.

6. The procedure outlined in the preceding paras should also be followed in considering the claim for confirmation of an officer under suspension, etc. A permanent vacancy should be reserved for such an officer when his case is placed in sealed cover by the DPC.

Sealed cover procedure applicable to officers coming under cloud after holding of DPC but before promotion.

7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee, but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also.

8. In so far as the personnel serving in the Indian Audit and Accounts Department are concerned, these instructions have been issued after consultation with the Comptroller and Auditor General of India.

9. Hindi version will follow.

Sd/-
(M.S. Bali)
Director