

GOVERNMENT OF RAJASTHAN
DEPARTMENT OF PERSONNEL
(A-Gr.II)

No.F.10(1)Karmik/Ka-II/75

Jaipur, dated :26.11.93

CIRCULAR-ORDER

Sub:- Procedure to be followed by the DPC/
Appointing Authorities regarding promotion
of Government servants against whom
disciplinary/Court Proceedings are pending
or whose conduct is under investigation.

Instructions regarding procedure to be followed
by the DPC/Appointing Authorities regarding promotion of
Government servants under suspension or against whom
disciplinary proceedings are pending or are to be initiated
were issued vide this department Circular order of even
number dated 17th July, 1989. These instructions have
been reviewed carefully in the light of Supreme Court
judgement dated 27.8.91 in Union of India etc. V/s
K.V.Jankiraman etc. (A.I.R.1991 SC/2010). As a result
of review and in supersession of this department circular
order noted above, the procedure to be followed in this
regard by the authorities concerned is laid down in the
following paras for their guidance :-

2. CASES OF GOVERNMENT SERVANTS TO WHOM SEALED COVER
PROCEDURE WILL BE APPLICABLE :-

At the time of consideration of the cases
of Government servants for promotion, details of
Government servants coming in the zone of consideration
for promotion falling under the following categories
should be specifically brought to the notice of the
DPC :-

- (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 and charge sheet is issued to the
employee by the Competent Court.

....2

2.1 PROCEDURE TO BE FOLLOWED BY DPC IN RESPECT OF GOVERNMENT SERVANTS UNDER CLOUB :-

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 for 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 Shri (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri 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.

2.2 PROCEDURE BY SUBSEQUENT DPCs :-

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

3. ACTION AFTER COMPLETION OF DISCIPLINARY CASE/ CRIMINAL PROSECUTION/RE INSTATEMENT :-

On the conclusion of the disciplinary case/ criminal prosecution which result in dropping of allegations against the Government servant, the sealed cover or covers ~~xxxxxx~~ shall be opened. In case the Government servant is completely exonerated, the

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 proceedings/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.

+
3.1.1

The vacancy reserved for such Government servant shall become unreserved and the next Departmental Promotion Committee shall fill the vacancy treating it to be vacancy for the year for which it was originally determined but could not be filled."

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.

8. SIX MONTHLY REVIEW OF 'SEALED COVER' CASES:-

It is necessary to ensure that the disciplinary case/criminal prosecution instituted against any Government servant is not unduly prolonged and all efforts to finalise expeditiously the proceedings should be taken so that the 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.

.....5

* Added vide Circular Number F.10(1)DOP/A-II/75 dated January 10, 2001.

5. PROCEDURE FOR ADHOC PROMOTION:-

In spite of the six monthly review referred 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 in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension to consider the desirability of giving him adhoc 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 adhoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the State 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 adhoc 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 years period to decide whether the officer is suitable for promotion

on adhoc basis. Where the Government Servant is considered for adhoc promotion, the Departmental Promotion Committee should make its assessment on the basis of totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

5.2

After a decision is taken to promote a Government servant on an adhoc basis, an order of promotion may be issued making it clear in the order itself that :-

- i) the promotion is being made on purely adhoc basis and the adhoc 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 adhoc 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 adhoc *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 adhoc 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 adhoc promotion granted to him should be brought to an end.

6. SEALED COVER PROCEDURE FOR CONFIRMATION:-

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.

7. + "Deleted."

Sd/-

(A.K.Pande)

Secretary to the Government.

.....8

Jain/271

+ Para 7 deleted vide circular number F.10(1)DOP/A-II/75 dt. 22.12.2000.

"7. SEALED COVER PROCEDURE APPLICABLE TO OFFICER COMING UNDER CLOUD AFTER HOLDING OF DPC BUT BEFORE PROMOTION:-

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 provision contained in this circular order will be applicable in his case also."

Copy forwarded to :-

- 1) All Secretaries to Government/Special Secretaries to the Government.
- 2) All Divisional Commissioners/Heads of the Department including all Collectors.
- 3) All Departments/Sections/Group of the Secretariat.
- 4) Accountant General Rajasthan, Jaipur.
- 5) Advocate General Rajasthan, Jaipur/Addl. Advocate General, Jaipur/Jodhpur.
- 6) Assistant Secretary to Government, Administrative Reforms (Codification) Department with 9 spare copies.
- 7) Law Department (Law Library) with 2 spare copies.

Sd/-
Deputy Secretary to Government.

Copy also forwarded to :-

- 1) Secretary, Rajasthan Public Service Commission, Ajmer.
- 2) Secretary, Rajasthan Legislature Assembly, Jaipur.
- 3) Secretary, Lokayukta Sachivalaya, Jaipur.
- 4) Registrar, Rajasthan High Court, Jodhpur/Jaipur.
- 5) Registrar, Rajasthan Civil Services (Service Matters) Appellate Tribunal, Jaipur.

Sd/-
Deputy Secretary to Government.

50/93

Jain/271