

F.No.22034/4/2012 -Estt. (D)  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
(Department of Personnel & Training)

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North Block,  
New Delhi  
Dated the 2<sup>nd</sup> November, 2012

**OFFICE MEMORANDUM**

**Subject :Comprehensive review of instructions pertaining to vigilance clearance for promotion-regarding.**

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Instructions issued vide O.M. No. 22012/1/99-Estt. (D) dated 25.10.2004 based on the O.M. No. 22011/4/1991-Estt. (A) dated 14.09.1992 (issued on the basis of procedure laid down by Supreme Court in K.V. Jankiraman case AIR 1991 SC 2010) makes it clear that vigilance clearance for promotion may be denied only in the following three circumstances:-

- (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.

Withholding of vigilance clearance to a Government servant who is not under suspension or who has not been issued a charge sheet and the disciplinary proceedings are pending or against whom prosecution for criminal charge is not pending may not be legally tenable in view of the procedure laid down in the aforesaid O.Ms.

2. Existing instructions provide for processing the cases of disciplinary proceedings in a time bound manner. A number of cases have however, come to notice where initiation of disciplinary proceedings/issue of chargesheet/processing of the case is considerably delayed by the administrative Ministries/Departments. Such delays allow an officer whose conduct is under cloud, to be considered for promotion. It becomes essential in respect of officer(s) in whose case disciplinary proceedings are contemplated or pending and are included in consideration zone for promotion, necessary action be taken for placing the proposal before the DPC so that vigilance clearance is not allowed as per conditions mentioned in para 1 above.

3. The Hon'ble Supreme Court in its judgment dated 27.08.1991 in Union of India Vs. K.V. Jankiraman etc.(AIR 1991 SC 2010) has held

"5. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is therefore, no discrimination when in the matter of promotion, he is treated differently".

4. The issue of promotion of an officer who may be technically cleared from vigilance angle but in whose case it may not be appropriate to promote him/her in view of doubtful integrity or where a charge-sheet is under consideration etc. has been under examination in this Department.

5. The O.M No. 22012/1/99-Estt. (D) dated 25<sup>th</sup> October, 2004 further provides that a DPC shall assess the suitability of the Government servant coming within the purview of the circumstances mentioned in para 2 of the Office Memorandum No. 22011/4/91-Estt.(A) dated 14.09.1992, alongwith other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution pending. 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, 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.

6. When a Government servant comes under a cloud, he may pass through three stages, namely, investigation, issue of charge sheet in Departmental Proceedings and/or prosecution for a criminal charge followed by either penalty/conviction or exoneration/acquittal. During the stage of investigation prior to issue of charge sheet in disciplinary proceedings or prosecution, if the Government is of the view that the charges are serious and the officer should not be promoted, it is open to the Government to suspend the officer which will lead to the DPC recommendation to be kept in sealed cover. The sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued or the officer is

placed under suspension. The pendency of preliminary investigations prior to that stage is not sufficient to adopt the sealed cover procedure.

7. The law on sealed cover based on the judgment of the Apex Court in Union of India vs. K.V. Janakiraman etc. (AIR 1991 SC 2010), is by now well settled. The O.M. dated 14.9.92 confined the circumstances for adopting sealed cover to the three situations mentioned in para 2 of the said O.M. Even after recommendation of the DPC, but before appointment of the officer if any of the three situations arise, the case is deemed to have been kept in sealed cover by virtue of para 7 of the O.M. dated 14.9.92.

8. As regards the stage when prosecution for a criminal charge can be stated to be pending, the said O.M. dated 14.9.92 does not specify the same and hence the definition of pendency of judicial proceedings in criminal cases given in Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 is adopted for the purpose. The Rule 9 (6)(b)(i) of CCS (Pension) Rules, 1972 provides as under :-

- “(b) judicial proceedings shall be deemed to be instituted –
  - (i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made”.

9. For the purpose of vigilance clearance for review DPC, instructions exist in O.M. No. 22011/2/99-Estt.(A) dated 21.11.2002 that review DPC will take into consideration the circumstances obtaining at the time of original DPC and any subsequent situation arising thereafter will not stand in the way of vigilance clearance for review DPC. However, before the officer is actually promoted it needs to be ensured that he/she is clear from vigilance angle and the provision of para 7 of O.M. No. 22011/4/91-Estt.(A) dated 14.09.1992 are not attracted.

10. Opening of sealed cover on conclusion of proceedings, is covered in the instructions in para 3 of the O.M. dated 14.9.92. In cases where by the time the Departmental Proceedings are concluded and the officer is fully exonerated but another charge sheet has been issued, the second charge sheet will not come in the way of opening of sealed cover and granting promotion notionally from the date of promotion of the junior and para 7 of O.M. dated 14.9.92 will not apply as clarified in the O.M. No. 22011/2/2002-Estt.(A) dated 24.2.2003. After the disciplinary proceedings are concluded and penalty is imposed, vigilance clearance will not be denied. The details of the penalty imposed are to be conveyed to the DPC.

11. This Department has issued separate instructions for accordance of vigilance clearance to a member of Central Civil Services/holder of Central Civil post with respect to (a) empanelment (b) deputation (c) appointments to sensitive posts and assignments to training programmes (except mandatory training) vide O.M. No. 11012/11/2007-(Estt. A) dated 14.12.2007. It has been further clarified in the O.M. No. 11012/6/2008-Estt. (A) dated 07.07.2008 that these instructions do not apply to promotions. While consideration for promotion is a right of an employee but empanelment, deputation, posting and assignment for training (except mandatory training) is not a right of an employee and is decided keeping in view the suitability of the officer and administrative exigencies.

12. It may thus be noted that vigilance clearance cannot be denied on the grounds of pending disciplinary/criminal/court case against a Government servant, if the three conditions mentioned in para 2 of this Department's O.M. dated 14.09.1992 are not satisfied. The legally tenable and objective procedure in such cases would be to strengthen the administrative vigilance in each Department and to provide for processing the disciplinary cases in a time bound manner. If the charges against a Government servant are grave enough and whom Government does not wish to promote, it is open to the Government to suspend such an officer and expedite the disciplinary proceedings.

13. All Ministries/Departments are, therefore, requested to keep in view the above guidelines while dealing with cases of vigilance clearance for promotion of the Government servants.

  
2/11/2011  
(Virender Singh)

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