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No.22012/1/99-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions.
(Department of Personnel and Training)

Dated 25th 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.

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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 judgment of the Hon'ble Supreme Court in the case of Union of India vs. K.V. Janakiraman 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/dereliction 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.

(Alok Saxena)
Director

To

All Ministries/Departments of Government of India.

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1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. Central Vigilance Commission
4. All State Governments
5. Cabinet Secretariat, New Delhi
6. Rajya Sabha Secretariat/ Lok Sabha Secretariat., New Delhi.
7. The Registrar General, The Supreme Court of India.
8. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi.
9. The Comptroller and Audit General of India, New Delhi.
10. Secretary, Union Public Service Commission, (20 copies).
11. Secretary, Staff Selection Commission, New Delhi.
12. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
13. National Commission for SC/ST, New Delhi.
14. Secretary, National Council(JCM), 13, Ferozeshah Road, New Delhi
15. Establishment Officer & A.S.(10 copies)
16. National Commission for OBCs, New Delhi.
17. All Officers and Sections in the Department of Personnel and Training.
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