No: 12/14/89-PER
Government of Goa,
Directorate of Personnel,
Secretariat,
Panaji – Goa.

Dated: 23-8-1993.

OFFICE MEMORANDUM

The Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, office Memorandum No. 22011/4/91-Estt(A) dated 14-9-1992 is reproduced here below and circulated for information and necessary action to:-

1. All Head of Departments/Offices.
2. All Departments in the Secretariat.

Sd/-
(S.S. Keshkamat)
Under Secretary (Personnel)

No. 22011/4/91-Estt.(A)
Government of India,Ministry of Personnel,
Public Grievances & Pensions,
Department of Personnel & Training.
North Block , New Delhi – 110 001.

Dated: 14- 9-1992.

OFFICE MEMORANDUM

Subject: Promotion of Government servants against whom Disciplinary / Court /proceedings are pending of 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

The undersigned is director to refer to Department of Personnel and Training O.M 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 Government Servants against whom disciplinary/Court proceedings are pending or whose conduct is under investigation have been reviewed carefully.

Government have also noticed the judgement dated 27-08-1991 of the Supreme Court in Union of India Vs. K.V. Jankiraman etc. (AIR 1991 SC 2010). As a result of the review and in suppression of all the earlier instructions on the subject (referred to 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.

Cases of Government Servants to whom Sealed Cover Procedures is to be applicable.

2. At the time of consideration of cases of the 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 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 criminal charge is pending.

Procedure to be followed by DPC in respect of Government Servants under cloud.	2.1 The Departmental Promotion Committee shall assess the suitability of the Government Servants coming within the purview of the circumstances mentioned above along with 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 not 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 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 case/criminal prosecution.	3. On the conclusion of the disciplinary case/criminal prosecution which results in dropping of allegations against Government Servant, the sealed cover or covers shall be opened. In case the Government 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 his 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 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 DPC in the normal course and having regard to the penalty imposed on him.

3.2 It is also clarified that in 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 proceedings, that some blame attaches to the Government Servant, at least the penalty of 'censure' should be imposed.

Six monthly review of 'Sealed Cover' cases.

4. 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 the sealed cover is limited to the barest minimum. It has, therefore, been decided that the appointing authorities concerned should review comprehensively the case Government Servants, whose suitability for promotion to higher grade has been kept in a sealed cover on the expand of 6 months form 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 6 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 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 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 the conclusion in the near future;
d) Whether the delay in the finalization 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 should also consult the Central Bureau of Investigation and take their reviews into account where the disciplinary proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to the 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 for 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 totality of the individual's record of the service without taking into account the pending disciplinary case/prosecution against him.

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

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 reserves the right to cancel the ad-hoc promotion and revert at the time of 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 ad-hoc promotion with all attendant benefits. In case the Government servant could not have normally got his regular promotion from a date prior to a 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 a sealed cover by DPC.

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

7. The 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 arises after the recommendations of the DPC are received but before he is actually promoted, will the considered as if his case had been placed in the sealed cover by DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provision contained in this OM will be applicable to 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

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