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SPMCIL/VIG/12(A)/09/

दिनांक: 24.05.2017
Date: 24.05.2017

परिपत्र संख्या 09/17/CIRCULAR NO.09/17

विषय/Sub: पदोन्नति हेतु सतर्कता अनापत्ति प्रमाणपत्र के संदर्भ मे/Vigilance Clearance Certificate for promotion - reg.

संदर्भ/Ref: परिपत्र संख्या 13/16/ CIRCULAR NO.13/16 दिनांक 03.06.2016

On receipt of Office Memorandum dated 2nd November, 2012 issued by DOPT, this Department has issued above referred Circular No.13/16 dated 03.06.2016 regarding vigilance clearance certificate for promotion.

2. As laid down in the above referred DOPT OM dated 02.11.2012, on the basis of procedure laid down by Supreme Court in K.V. Jankiraman case AIR 1991 SC 2010, it is reiterated 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.

3. It is further reiterated in Para 10 of this DOPT OM dated 02.11.2012 that after the disciplinary proceedings are concluded and penalty is imposed, vigilance clearance certificate will not be denied. The details of the penalty imposed are to be conveyed to the DPC.

4. Vide OM F.No.22011/4/2007-Estt. (D) dated 21.11.2016 issued by DOPT have further clarified that:

“In assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and

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24/05/17

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the fact of imposition of penalty, the officer should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as 'unfit' for promotion. However, where the DPC considers that despite the penalty the officer is suitable for promotion, the officer will be actually promoted only after the currency of the penalty is over."

5. In view of above, Competent Authority has directed that while according Vigilance Clearance in cases of promotion only the enclosed Proforma may be used.
6. This issues with the approval of the Competent Authority.

शशिभुषण बेहरा
(S.B. Behera) 24/05/17
Dy. Chief Vigilance Officer

The General Manager,
Mints/Presses/Paper Mill/CHO, SPMCIL

Copy to:

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2. EA to Director (HR/Tech/CVO)
3. Addl. GMs (CHO).
4. Dy. CVO
5. Chief Manager (CHO)
6. Managers (CHO)
7. All Vigilance Officials and Employees (CHO/Units).
8. Notice Board & Website.

फाइल क्रमांक

दिनांक:

नाम, पद, स्तर, इकाई का नाम

भाग ख:

17.	क्या कोई सतर्कता जांच लंबित है अथवा विचारधीन है जिसमें कर्मचारी प्रथम दृष्ट्या संलिप्त है? (कर्मचारी पिछले तीन वर्षों के दौरान जिन इकाइयों में तैनात था उनसे भी पूछताछ की जाए)	
18.	क्या कर्मचारी के विरुद्ध अन्य एजेंसी जैसे केन्द्रीय जांच ब्यूरो, पुलिस आदि के पास कोई अपराधिक मामला लंबित है?	
19.	क्या अधिकारी को सेवा अवधि के दौरान समत सूची अथवा संदेहास्पद के अधिकारियों की सूची में रखा गया है? यदि हाँ, पूर्ण विवरण दिया जाए।	
20.	क्या उसके विरुद्ध पिछले 10 वर्षों के दौरान सुस्पष्ट सतर्कता दृष्टिकोण के साथ दुराचार के किसी आरोप की जांच की गई थी तथा यदि हाँ, तो किस परिणाम के साथ।	

सतर्कता स्थिति

दिनांक:

(नाम एवं हस्ताक्षर)

वरिष्ठ सतर्कता अधिकारी भा.प्र.मु.मुनि.नि.लि.।

भाग ग: उप मुख्य सतर्कता अधिकारी को भेजा गया (जैसा लागू हो)

सतर्कता स्थिति

दिनांक:

(नाम एवं हस्ताक्षर)

उप मुख्य सतर्कता अधिकारी, भा.प्र.मु.मुनि.नि.लि.।

भाग घ: मुख्य सतर्कता अधिकारी को भेजा गया (जैसा लागू हो)

सतर्कता स्थिति

दिनांक:

(नाम एवं हस्ताक्षर)

मुख्य सतर्कता अधिकारी
भारत प्रतिभूति मुद्रण तथा मुद्रा निर्माण निगम लिमिटेड

शशिभूषण वैद्य
24/05/17

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

North Block,
New Delhi
Dated the 2nd November, 2012

OFFICE MEMORANDUM

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

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 25th 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

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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.

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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.

Virender Singh
2/11/2011
(Virender Singh)

Under Secretary to the Government of India
Tel. No. 2309 3804

To,

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No.22011/4/2007-Estt. (D)
Government of India
Ministry of Personnel, Public and Training
(Department of Personnel and Training)

North Block, New Delhi – 110 011

November 21, 2016

OFFICE MEMORANDUM

Sub: Guidelines on treatment of effect of penalties on promotion – role of Departmental Promotion Committee

The Department of Personnel & Training vide its OM of even number dated 28.4.2014 issued instructions on the above subject. Paragraph 7(d), 7(f) and 7(g) of the said OM provides as follows:

7(d) *If the official under consideration is covered under any of the three condition mentioned in paragraph 2 of OM dated 14.9.1992, the DPC will assess the suitability of Government servant 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 are kept in a sealed cover. [Paragraph 2.1 of DoPT OM dated 14.9.1992]*

7(f) *If any penalty is imposed on the Government servant as a result of the disciplinary proceedings or if he / she is found guilty in the criminal prosecution against him / her, the findings of the sealed cover / covers shall not be acted upon. His / her case for promotion may be considered by the next DPC in the normal course and having regard to the penalty imposed on him / her [paragraph 3.1 of DoPT OM dated 14.9.1992].*

7(g) *In assessing the suitability of the officer on whom a penalty has been imposed, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of general service record of the officer and the fact of imposition of penalty, the officer should be considered for promotion. The DPC, after due consideration, has authority to assess the officer as 'unfit' for promotion. However, where the DPC considers that despite the penalty*

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the officer is suitable for promotion, the officer will be actually promoted only after the currency of the penalty is over [paragraph 13 of DoPT OM dated 10.4.1989].

2. Questions have been raised by the Ministries and Departments asking whether this is applicable in the case of 'Censure' also. In this regard, it is reiterated that paragraphs 7(d), 7(f) and 7(g) cited above are applicable in all the recognized penalties under CCS (CCA) Rules including the minor penalty of Censure as well for which no currency has been prescribed, it would mean that as per para 7(g), if the DPC considers the officer fit for promotion notwithstanding the award of censure, he / she can be promoted without referring to the currency of penalty.

G. Jayanthi

(G. Jayanthi)

Director

Tel. no. 2309 2479

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Rajesh Sharma

(Rajesh Sharma)

Under Secretary to the Govt. of India

Tel no. 2304 0340