

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

North Block, New Delhi,
Dated the 28th April, 2014

OFFICE MEMORANDUM

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

The Department of Personnel & Training had in its O.M. No.22011/5/86-Estt (D) dated 10.04.1989 issued consolidated instructions on Departmental Promotion Committee and matters related thereto. Para 6.2.3 of said O.M. provides that "before making the overall grading after considering the CRs for the relevant years, the DPC should take into account whether the officer has been awarded any major or minor penalty or whether any displeasure of any superior officer or authority has been conveyed to him as reflected in the ACRs." These guidelines further provide that "the DPC should not be guided merely by the overall grading, if any, that may be recorded in the ACRs (now APARs) but should also make its own assessment on the basis of entries in the CRs (now APARs) because it has been noticed that sometimes the overall grading in a ACR (now APAR) may be inconsistent with the grades under various parameters or attributes".

2. It further provides that an officer whose increments have been withheld or who has been reduced to a lower stage in the time scale, cannot be considered on that account to be ineligible for promotion to the higher grade as the specific penalty of withholding promotion has not been imposed on him/her. The suitability of the officer for promotion should be assessed by the DPC as and when occasions arise for such assessment. In assessing the suitability, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of the general service record of the officer and the fact of the imposition of the penalty he should be considered suitable for promotion. However, even where the DPC considers that despite the penalty, the officer is suitable for promotion, the officer should not be actually promoted during the currency of the penalty.

3. Further this Department's O.M. No. No.22034/5/2004-Estt (D) dated 15.12.2004 provides that a Government servant, on whom a minor penalty of withholding of increment etc. has been imposed, should be considered for promotion by the Departmental Promotion Committee which meets after the imposition of the said penalty and after due consideration of full facts leading to imposition of the penalty, if he is still considered fit for promotion, the promotion may be given effect after the expiry of the currency of the penalty.

4. The procedure and guidelines to be followed for promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is

under investigation has been laid down in this Department's O.M. No.22011/4/91-Estt (A) dated 14.9.92 and O.M. No.22034/4/2012-Estt (D) dated 02.11.2012 and 23.1.2014.

5. The role of Departmental Promotion Committee(DPC) in assessment of the officers being considered for promotion, including the officer(s) against whom a chargesheet has been issued or on whom a penalty has been imposed, has been examined by the Supreme Court in several judgments. The observations of Supreme Court in some of the important cases are summarized as under:

(a) **In A.K. Narula case (AIR 2007 SC 2296)**, the Hon'ble Supreme Court has observed:

"the guidelines give a certain amount of play in the joints to the DPC by providing that it need not be guided by the overall grading recorded in the CRs, but may make its own assessment on the basis of the entries in the CRs. The DPC is required to make an overall assessment of the performance of each candidate separately, but by adopting the same standards, yardsticks and norms. It is only when the process of assessment is vitiated either on the ground of bias, malafide or arbitrariness, the selection calls for interference. Where the DPC has proceeded in a fair, impartial and reasonable manner, by applying the same yardstick and norms to all candidates and there is no arbitrariness in the process of assessment by the DPC, the court will not interfere".

(b) **In Union of India vs. K.V. Jankiraman case(AIR 1991 SC 2010)**, the Supreme Court has taken cognizance of role of DPC the case of an officer on whom a penalty has been imposed and has held that:

"An employee has no right to promotion. He has only 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 interest. An employee found guilty of misconduct cannot be placed on par with the other employees, and his case has to be treated differently..... In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified."

(c) **In UOI & Anr. Vs. S.K. Goel & Ors. (Appeal (Civil) 689/2007-SLP@-2410/2007)**, the Hon'ble Supreme Court has held that:

"DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it. Hence interference by High Court is not called for. "

While delivering the above judgement, the Division Bench has observed that:

"...It is now more or less well settled that the evaluation made by an Expert Committee should not be easily interfered with by the Court which do not have the necessary expertise to undertake the exercise that is necessary for such purpose."

6. It has been brought to the notice of this Department that DPCs have been adopting varying criteria in assessment of officials undergoing penalty that are not

consistent with the extant instructions of the DOPT for e.g., downgradation of grading in ACR/APAR, denying promotion for specified number of years, etc.

7. The matter has been examined in consultation with the Department of Legal Affairs. It is a settled position that the DPC, within its power to make its own assessment, has to assess every proposal for promotion, on case to case basis. In assessing the suitability, the DPC is to 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 effect of imposition of penalty, he/she should be considered suitable for promotion and therefore, downgradation of APARs by one level in all such cases may not be legally sustainable. Following broad guidelines are laid down in respect of DPC:

- a) DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them, including those officers on whom penalty has been imposed as provided in **DoPT O.M. dated 10.4.89** and **O.M. dated 15.12.2004**.
- b) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the ACRs/APARs but should make its own assessment on the basis of the entries in the ACRs/APARs as it has been noticed that sometimes the overall grading in a ACR/APAR may be inconsistent with the grading under various parameters or attributes. Before making the overall recommendation after considering the APARs (earlier ACRs) for the relevant years, the DPC should take into account whether the officer has been awarded any major or minor penalty. **(Refer para 6.2.1(e) and para 6.2.3 of DoPT OM dated 10.04.89)**
- c) In case, the disciplinary/criminal prosecution is in the preliminary stage and the officer is not yet covered under any of the three conditions mentioned in **para 2 of DoPT O.M. dated 14.09.1992**, the DPC will assess the suitability of the officer and if found fit, the officer will be promoted along with other officers. As provided in this **Department's O.M. dated 02.11.2012**, the onus to ensure that only person with unblemished records are considered for promotion and disciplinary proceedings, if any, against any person coming in the zone of consideration are expedited, is that of the administrative Ministry/Department.
- d) If the official under consideration is covered under any of the three condition mentioned in **para 2 of O.M. dated 14.09.1992**, 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. **(Para 2.1 of DoPT OM dated 14.9.92)**.
- e) **Para 7 of DoPT OM dated 14.09.92** provides that a Government servant, who is recommended for promotion by the DPC, but in whose case, any of the three circumstances on denial of vigilance clearance mentioned in para 2 of *ibid* O.M. arises after the recommendations of the DPC are received but before he/she is

actually promoted, will be considered as if his/her case had been placed in a sealed cover by the DPC. He/she shall not be promoted until he/she is completely exonerated of the charges against him/her.

- 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 **(para 3.1 of DoPT OM dated 14.9.92)**.
- 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 the officer is suitable for promotion, the officer will be actually promoted only after the currency of the penalty is over **(para 13 of DoPT OM dated 10.4.89)**.
- h) Any proposal for promotion has to be assessed by the DPC, on case to case basis, and the practice of downgradation of APARs (earlier ACRs) by one level in all cases for one time, where a penalty has been imposed in a year included in the assessment matrix or till the date of DPC should be discontinued immediately, being legally non-sustainable.
- i) While there is no illegality in denying promotion during the currency of the penalty, denying promotion in such cases after the period of penalty is over would be in violation of the provisions of Article 20 of the Constitution
- j) 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 the completion. **(Para 4 of O.M. dated 14.09.1992)**
- k) In 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 then subject to condition mentioned in Para 5 of this Department's O.M. dated 14.09.1992, the appointing authority

may consider desirability of giving him ad-hoc promotion (Para 5 of this Department's O.M. dated 14.09.1992).

8. All the administrative authorities in the Ministries/Department are advised to place relevant records, including chargesheet, if any, issued to the officer concerned, penalty imposed, etc., before the DPC/ACC who will decide the suitability of officer for promotion keeping in view the general service records of the officer including the circumstances leading to the imposition of the chargesheet or penalty imposed. If such an officer is found suitable, promotion will be given effect after the currency of the penalty is over.

9. All Ministries/Departments are, therefore, requested to keep in view the above guidelines while convening DPC for promotion of the Government servants on whom either penalty has been imposed or where there are adverse remarks in the reckonable ACRs/APARs.



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