

No.22011/2/2002 -Estt. (A)
Government of India
Ministry of Personnel, P.G. & Pensions
(Department of Personnel & Training)

New Delhi, dated the 24th February, 2003

OFFICE MEMORANDUM

Sub : Sealed Cover Procedure – Judgment of the Supreme Court in the case of Delhi Jal Board Vs. Mohinder Singh [JT 2002 (10) SC 158].

The undersigned is directed to refer to para 7 of this Department's OM No. 22011/4/91-Estt. (A) dated 14th September, 1992 which envisage as follows :-

"A 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 arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this OM will be applicable in his case also."

2. In the case of Delhi Jal Board Vs. Mohinder Singh the Supreme Court [JT 2000 (10) SC 158] has held as follows :-

"The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officers would have to be given effect to as they obviously relate back to the date on which the charges are framed. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the seal was opened to give effect to it, another departmental inquiry was started by the department, would not come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection."

3. It is, therefore, clarified that para 7 of the O.M. dated 14th September, 1992 will not be applicable if by the time the seal was opened to give effect to the exoneration in the first enquiry,

another departmental inquiry was started by the department against the Government servant concerned. This means that where the second or subsequent departmental proceedings were instituted after promotion of the junior to the Government servant concerned on the basis of the recommendation made by the DPC which kept the recommendation in respect of the Government servant in sealed cover, the benefit of the assessment by the first DPC will be admissible to the Government servant on exoneration in the first inquiry, with effect from the date his immediate junior was promoted.

4. It is further clarified that in case the subsequent proceedings (commenced after the promotion of the junior) results in the imposition of any penalty before the exoneration in the first proceedings based on which the recommendations of the DPC were kept in sealed cover and the Government servant concerned is promoted retrospectively on the basis of exoneration in the first proceedings, the penalty imposed may be modified and effected with reference to the promoted post. An indication to this effect may be made in the promotion order itself so that there is no ambiguity in the matter.

5. In so far as the persons serving in the Indian Audit and Accounts Department are concerned these instructions are issued after consultation with the Comptroller and Auditor General of India.

P. Mohan

(Smt. Pratibha Mohan)
Director

To

All Ministries/Departments of the Government of India.

Copy to :

1. Comptroller and Auditor General of India, New Delhi.
2. Union Public Service Commission, New Delhi.
3. Central Vigilance Commission, New Delhi.
4. Central Bureau of Investigation, New Delhi.
5. All Union Territory Administrations.
6. Lok Sabha/Rajya Sabha Secretariat.
7. All attached and Subordinate Offices of the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.
8. All officers and sections in the Ministry of Personnel, Public Grievances and Pension and MHA.

P. Mohan

(Smt. Pratibha Mohan)
Director