

No.22011/2/78-Estt(A)
Government of India/Bharat Sarkar
Department of Personnel and Administrative Reforms
(Karmik aur Prashasnik Sudhar Vibhag)

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New Delhi, the 16th Feb., 79.

OFFICE MEMORANDUM

Subject:-Promotion to a higher grade or post - Clarification in regard to sealed cover procedure - Effect of warning, censure etc. on promotion.

The attention of the Ministry of Finance etc. is invited to M.H.A. O.M.No.39/3/59-Estt(A) dated 31.8.1960, O.M.No.7/28/63-Estt(A) dated 22.12.1964, and O.M.No.22011/3/77-Estt(A) dated 14.7.1977, which lay down the guide-lines for following the 'sealed cover' procedure and for granting benefits with retrospective effect on the "complete exoneration" of the official concerned. The scope of the term "complete exoneration" was very wide, resulting in denial of benefits even to those who had not been awarded any of the prescribed penalties as a result of disciplinary proceedings but were only issued a warning. There is also in vogue the practice of issuing "recordable warning" to Government employees which affects their career prospects. The matter has, therefore, been examined carefully and the following decisions have been taken:

(i) As clarified in the Ministry of Home Affairs O.M.No. 39/21/56-Estt(A) dated 13.12.1956, warning is administered by any authority superior to a Government employee in the event of minor lapses like negligence, carelessness, lack of thoroughness, delay etc. It is an administrative device in the hands of superior authorities for cautioning the Government employees with a view to toning up efficiency and maintaining discipline. There is, therefore, no objection to the continuance of this system. However, where a copy of the warning is also kept in the Confidential Report dossier, it will be taken to constitute an adverse entry and the officer so warned will have the right to represent against the same in accordance with the existing instructions relating to communication of adverse remarks and consideration of representations against them.

(ii) Where a departmental proceeding has been completed and it is considered that the officer concerned deserves to be penalised, he should be awarded one of the statutory penalties as given in Rule 11 of CCS(C) Rules, 1965. In such a situation, a recordable warning should not be issued as it would for all practical purposes, amount to a recordable formal punishment and which can only be awarded by competent disciplinary authority after the procedure prescribed in the relevant rules.

The Delhi High Court has, in the case of *Union of India*, also expressed the view that a warning kept in the C.R. dossier has all the attributes of "censure". In the circumstances, as already stated, where it is considered after the conclusion of disciplinary proceedings that some blame attaches to the officer concerned which necessitates cognizance of such fact the disciplinary authority should award the penalty of "censure" at least. If the intention of the disciplinary authority is not to award a penalty of "Censure", then no recordable warning should be awarded. There is no restriction on the right of the disciplinary authority to administer oral warnings or even warnings in writing which do not form part of the character roll.

(iii) Where the departmental proceedings have ended with the imposition of a minor penalty, viz., denial of pecuniary loss to the Government, withholding of increments of pay and withholding of promotion, recommendation of the DPC in favour of the employee kept in the sealed cover, will not be given to him. But the case of the employee concerned for promotion confirmation may be considered by the DPC when it meets after the conclusion of the departmental proceedings. If the findings of the DPC are in favour of the employee, he may be promoted in his turn. If the penalty is that of "censure" or "recovery of pecuniary loss caused to the Government by negligence or breach of orders". In the case of employees who have been awarded the minor penalty of "withholding of promotion", promotion can be made only after the expiry of the penalty.

(iv) If a recordable warning has been issued to an officer as a result of disciplinary proceedings before the issue of this Office Memorandum and the case of the officer concerned for promotion is still under consideration, he should be treated as having been "censured". The officer will also have the right of representation against such warning and such representation should be dealt with by the competent authority as if it were an appeal under the relevant disciplinary rules.

2. In so far as personnel serving in the Budget and Accounts Department are concerned, these classifications have been issued after consultation with the Comptroller and Auditor General of India.

(R.C. 10/11)

Deputy Secretary to the Govt. of India

To

All Ministries/Departments of the Govt. of India with usual number of copies.