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Promotion:
Procedure to be followed in the cases of persons whose conduct is under investigation, or against whom departmental enquiries are pending -

GOVERNMENT OF MAHARASHTRA
General Administration Department,
Circular No. SRV-1075/X,
Sachivalaya, Bombay-400 032.

Dated the 2nd April, 1976. CR1976040201

CIRCULAR OF GOVERNMENT

According to the existing practice, Government servants whose conduct is under investigation or against whom a departmental enquiry is pending, are ordinarily not considered for promotion. This practice is, however, likely to cause hardship in the case of Government servants who are otherwise fit for promotion and the charges against whom may not be so serious as to disqualify them for provisional promotion during the pendency of the investigation or enquiry. The question has been examined. There are three stages at which action will have to be taken viz.:

1. The stage of preparing the select list
2. Interim promotion during the pendency of the proceedings, and
3. The final action to be taken after the conclusion of the investigations and the departmental enquiry if any.

Action as below should be taken in respect of these three stages

2. The Stage of preparation of select list :

(a) At the time of drawing up of the select list, the case of a person facing an investigation or departmental enquiry should be considered in the same manner in which the cases of other persons are considered i.e. on the basis of his previous record of service. If on the basis of his record, he is found fit for promotion, his name should be included in the select list at the appropriate place; but this inclusion should be considered to be purely provisional, to be reviewed after the conclusion of the departmental enquiry or investigation if on conclusion of the investigation it is decided that a departmental enquiry is not necessary. This position will apply to all persons irrespective of whether they are under suspension or not.

(b) If the state of his record is such that, because of his suspension, his record for the past 2 or 3 years is not available and so no decision either way can be taken, then Selection Committee should keep his case 'open' i.e. to be considered at a later date without prejudice to him because of the delay.

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(c) If, on the basis of his record, he is not found fit for promotion, no further question arises.

3. Interim promotion during the pendency of the proceedings :

If the person is found fit and his name is provisionally included in the select list;

(a) During the pendency of the proceedings, the question of promoting a person under suspension does not arise. Such a person shall not be promoted.

(b) In respect of a person who is not under suspension, the competent authority should take a conscious decision, after taking into consideration the nature of the charges levelled whether the person should be promoted without waiting for the conclusion of the enquiry. If it is decided that he should be so promoted, such promotion will be provisional and will be reviewed on the conclusion of the investigation or enquiry.

4. On conclusion of the investigations and/or departmental enquiry :

(a) If a person is completely exonerated the following consequences should follow:

(i) If he was provisionally promoted, his provisional promotion should be treated as regular.

(ii) If such a person had become due for promotion but was not promoted, he should be promoted at the first opportunity. He should retain the seniority of his position in the select list. His pay should also be fixed at a stage which he would have reached had he been actually promoted according to his rank in the select list, but he should not be entitled to any arrears of pay on this account.

(b) If he is not completely exonerated, then his case should be re-examined and a fresh decision should be taken as to whether, in view of the result of the investigations or enquiry, he is fit to be promoted;

(i) If he is not found fit in such a re-examination and if he was provisionally promoted earlier, the provisional promotion should come to an end. If he was not so promoted, no further question arises.

(ii) If he is found fit, the competent authority should indicate his revised place in the select list. This revised place is expected to be lower than the original provisional place in most cases because of the taint resulting from the proceedings. If such a person was already provisionally promoted earlier, he should be deemed to be

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promoted according to his revised position in the select list and the period of his earlier promotion should be treated as fortuitous. If such a person was not already promoted, he should be promoted according to his revised position in the select list and the same consequence as in clause (a)(ii) above should follow.

(c) Cases which are kept 'open' should be decided expeditiously.

By order and in the name of the Governor of Maharashtra,

K.P. Nadkarni

(K.P. Nadkarni)
Joint Secretary to Government.

The Secretary to the Governor,
The Secretary to the Chief Minister,
All Heads of Departments under the several Departments of the Secretariat,
All Departments of the Secretariat,
The General Administration Department (Desk No. XI).

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6 MAY 1976

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for S. CHAIR

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