



2026:DHC:2244-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 17.02.2026
Judgment pronounced on: 18.03.2026

+ **W.P.(C) 569/2019**

DILIP VISHWANATH GONDNALEPetitioner
Through: Mr. Suresh Chandra Saxena,
Adv.

versus

UNION OF INDIA AND ORS.Respondents
Through: Mr. Jagdish Chandra, CGSC
along with Mr. Surjeet Kumar,
Adv.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

AMIT MAHAJAN, J.

1. Through the present writ petition, the Petitioner has assailed the correctness of order dated 29.10.2018 (hereafter '**impugned order**'), passed by the learned Central Administrative Tribunal in OA No. 1984/2018. The Petitioner has also sought issuance of directions to the Respondents to promote the Petitioner to the post of Additional Director General of Ordnance Factory & Member of the Board with effect from 01.12.2017 will all consequential benefits.

2. The brief facts of the present case are as follows:



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2.1. The Petitioner was an officer of Indian Ordnance Factory Service and he was working as Senior General Manager in the Higher Administrative Grade (HAG). The Petitioner's case was considered along with that of some of his juniors and seniors for promotion against six vacancies of HAG+ category in the vacancy year 2017-18. The Petitioner was found fit for promotion by the DPC, and subsequently, on 14.06.2017, Appointments Committee of the Cabinet (ACC) also approved the name of the Petitioner. Despite the same, the Petitioner was not promoted, due to which, he filed the Original Application bearing no. 1984/2018 seeking promotion with consequential benefits.

2.2. In the proceedings, a counter affidavit was filed on behalf of the Respondents indicating that the Petitioner was not promoted as his name figured in the 'Agreed List', however, one post was kept vacant for the Petitioner pending further verification.

2.3. By the impugned order, the learned Tribunal allowed the Original Application and directed that the recommendations of DPC and the clearance of ACC shall be implemented unless any of the factors mentioned in the Office Memorandums dated 14.09.1992 and 21.06.2013 exist.

2.4. Pursuant to the same, the Respondents passed a speaking order dated 28.11.2018 rejecting the Petitioner's appointment on account of him figuring in the 'Agreed List' for the years 2017 and 2018 for alleged irregularities in the Management of Public Fund Accounts of



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Rifle Factory, Ishapore. The rejection order indicates that the preliminary vigilance investigation revealed that cash books at the factory remained unaudited since the years 2010-2011 and the Petitioner had failed to ensure the Cash Drill Procedure from March, 2013 to October, 2015 at the factory. Further, during his surprise checks, the Petitioner had allegedly overlooked non-availability of balance sheets, liability statements and bank reconciliation statement. It was also noted that in the case registered by CBI, responsibility was attributed on the Petitioner for a multitude of factors, including, him not doing regular surprise checks or not doing so properly.

2.5. Aggrieved by the implementation of the DPC being made conditional on the factors prescribed in Office Memorandum dated 21.06.2013, the Petitioner has filed the present Writ Petition.

3. The learned counsel for the Petitioner submitted that although the original application filed by the Petitioner was allowed, the Tribunal has erred in allowing the Respondents to deny promotion on the basis of the factors listed in the prescribed Office Memorandum dated 21.06.2013, which does not apply to promotions. He further submitted that the scope of Agreed List remains ambiguous and the Petitioner cannot be denied the benefits of promotion on the basis of the same.

4. He submitted that Office Memorandums dated 07.07.2008 and 02.11.2012 make it clear that Office Memorandum dated 14.12.2007, which pertains to grant of vigilance clearance, does not cover cases of



promotion. He submitted that the case of promotion would be governed by Office Memorandums dated 14.09.1992 and 25.10.2004, which do not provide for denial of promotion to individuals who are on the Agreed List.

5. He submitted that the factors mentioned in Office Memorandum dated 21.06.2013, which includes the parameter of 'Agreed List', are contrary to the limited factors stipulated by the Hon'ble Apex Court in the case of *Union of India v. K.V. Jankiraman* : (1991) 4 SCC 109.

6. He further submitted that the Petitioner was not even named in the FIR registered by CBI, and no action has been taken against the Petitioner till date in the vigilance enquiries either even though he retired way back on 31.01.2019.

7. On the other hand, the learned counsel for the Respondents submitted that the matter was properly considered de novo by the Competent Authority as directed by the learned Tribunal, however, the Petitioner has failed to challenge the order dated 28.11.2018 and has wrongly challenged the clear and unambiguous direction of the learned Tribunal instead.

8. He submitted that the Office Memorandum dated 21.06.2013 applies to appointment to sensitive posts, which includes appointment by way of promotion. He submitted that fresh vigilance clearance was required as the post of Additional Director General/ Member, Ordnance Factory Board is a selection post and sensitive in nature as



it involves strategic decision making.

9. He submitted that the vigilance status of the Petitioner at the relevant time indicated that he had two pending vigilance cases against him.

10. He contended that one of the cases was in relation to irregularities in appointment of Shri Ramakat as Sr. DGM in the Office of Security Printing & Minting Corporation of India Limited in 2006, and the other was in relation to cash books at Rifle Factory, where the Petitioner served as the General Manager, being unaudited since the years 2010-11. He submitted that although the Petitioner was not named in FIR which was registered by CBI in relation to the latter allegations, the allegations in the same were attributable to the Petitioner.

11. He submitted that the Agreed List consists of individuals whose integrity is doubtful and the same is based on a myriad of factors. He submitted that the Department was not in favour of appointment of the Petitioner in order to maintain probity in public service.

ANALYSIS

12. The limited question before this Court is whether the Respondent Authorities are correct in denying promotion to the Petitioner, despite recommendation from DPC and approval from ACC, on account of him being placed in the Agreed List at the relevant time.



13. Although the original application was allowed by the learned Tribunal in the present case, however, the promotion was made contingent on case of the Petitioner not falling under any of the factors mentioned in the Office Memorandums dated 14.09.1992 and 21.06.2013.

14. Thus, to address the said issue, it is imperative to first take note of the relevant Office Memorandums, being, Office Memorandum dated 14.12.2007, as was amended by the subject Office Memorandum dated 21.06.2013.

15. The relevant portion of Office Memorandum dated 14.12.2007 is as under:

*“1. These orders regarding accordance of vigilance clearance to members of the Central Civil Services/posts shall be applicable with respect to (a) empanelment (b) any deputation for which clearance is necessary, (c) **appointments to sensitive posts** and assignments to training programmes (except mandatory training). In all these cases, the vigilance status may be placed before and considered by the Competent Authority before a decision is taken.*

2. The circumstances under which vigilance clearance shall not be withheld shall be as under:

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c) Vigilance clearance shall not be withheld unless (i) the officer is under suspension (ii) a chargesheet has been issued against the officer in a disciplinary proceeding and the proceeding is pending (iii) orders for instituting disciplinary proceeding against the officer have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of passing such order (iv) chargesheet has been filed in a Court by the Investigating Agency in a criminal case and the case is pending (v) orders for instituting a criminal case against the officer have been issued by the Disciplinary Authority



provided that the chargesheet is served within three months from the date of initiating proceedings (vi) sanction for investigation or prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter (vii) an FIR has been filed or a case registered by the concerned Department against the officer provided that the charge sheet is served within three months from the date of filing/registering the FIR/case and (viii) The officer is involved in a trap/raid case on charges of corruption and investigation is pending.”

Paragraph 1 of the said Memorandum stipulates the limited scenarios wherein the same will be applicable while Paragraph 2 provides for the parameters in which vigilance clearance may be withheld.

16. Para 2(c) of the aforesaid Office Memorandum was subsequently amended by way of Office Memorandum dated 21.06.2013. The relevant portion of the same is as under:

*“Vigilance clearance shall not be withheld unless (i) the officer is under suspension (ii) **the officer is on the Agreed List, provided that in all such cases the position shall be mandatorily revisited after a period of one year** (iii) a chargesheet has been issued against the officer in a disciplinary proceeding and the proceeding is pending (iv) orders for Instituting disciplinary proceeding against the Officer have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of passing such order (v) chargesheet has been filed in a Court by the investigating Agency in a criminal case and the case is pending (vi) orders for instituting a criminal case against the officer have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of initiating proceedings (vii) sanction for investigation or prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter (viii) an FIR has been filed or a case registered by the concerned Department against the officer provided that the chargesheet is served within three months from the date of filing/ registering the FIR/case (ix)*



the officer is involved in a trap/raid case on charges of corruption and investigation is pending”

17. Much emphasis has been placed by the Petitioner on the argument that the said Office Memorandums have no nexus with *promotions* to sensitive posts. It is asserted that promotion would rather be based on Office Memorandums dated 14.09.1992 and 25.10.2004, which encompass the guidelines of the Hon’ble Apex Court in *Union of India v. K.V. Jankiraman* (*supra*). Reliance has been placed on Office Memorandums dated 07.07.2008 and 02.11.2012 as well.

18. The relevant portion of Office Memorandum dated 07.07.2008 is as under:

*“(iv) The term 'empanelment' occurring in para 1 of DOPT's O.M. No. 11012/11/2007-Estt. (A) dated 14.12.2007 relating to guidelines on grant of vigilance clearance **does not cover cases of promotion. Cases of promotion of Government servants during the pendency of disciplinary proceedings would be regulated by DOPT'S O.M. No. 22011/4/91-Estt. (A) dated 14.09.1992, O.M. No. 22012/1/99-Estt. (D) dated 25.10.2004 and after imposition of any of the prescribed penalties as per O.M. No. 22034/5/2004-Estt. (D) dated 15.12.2004.**”*

19. The relevant portion of Office Memorandum dated 02.11.2012, which also makes reference to the Office Memorandums dated 14.09.1992 and 25.10.2004, is as under:

“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.

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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 an as not reached the stage of is issue of charge sheet etc. If in the matter of corruption/ dereliction of duty etc., there is a serious complaint and the matter is still under investigation, the Government is within its right to suspend the of 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 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.**

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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.**

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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. 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.”

(emphasis supplied)

20. Having perused the said Office Memorandums, this Court finds merit in the argument of the Petitioner that Office Memorandums dated 14.12.2007 and 21.06.2013 have no bearing on promotion of an employee.

21. Pertinently, the only reason the Petitioner was denied promotion was due to him being placed in the Agreed List for two years, which was a category introduced for denying vigilance clearance by way of Office Memorandum dated 21.06.2013. Although Office Memorandums dated 07.07.2008 and 02.11.2012 were passed prior to the issuance of the said Office Memorandum, it is important to note that Office Memorandum dated 21.06.2013 only relates to amendment of the criteria prescribed in Office Memorandum dated 14.12.2007.

22. While on first blush, the argument of the Respondents qua appointment being inclusive of cases of promotions appears to be meritorious, it cannot be ignored that Office Memorandums dated 07.07.2008 and 02.11.2012 specifically iterate that Office Memorandum dated 14.12.2007 would not apply to cases of promotion. The rationale for the same is provided in paragraph 11 of Office Memorandum dated 02.11.2012 which mentions that while promotion is a right, the empanelment, deputation, posting and



assignment for training (except mandatory training) of an employee is hinged on exigencies and suitability of the said employee. Similarly, the said reason would also stand true for Office Memorandum dated 21.06.2013 as no changes have been made to the *applicability* of the said rigors and it is only the parameters which have been expanded.

23. Although the Respondents have sought to stress upon the sensitivity of the post, considering the explicit strictures of the rigors of Office Memorandum dated 14.12.2007 not being applicable, this argument is of no benefit. No caveat is made on applicability of the said Office Memorandum in promotion irrespective of the sensitivity of the post.

24. Rather, Office Memorandums dated 14.09.1992 and 25.10.2004 hold the stage in regard to denial of vigilance in cases of promotion. As the Petitioner was not placed under suspension, chargesheeted in disciplinary proceedings and since no prosecution for a criminal charge was pending against him at the relevant time, his case does not fall in the limited criteria for denial of promotion, as is prescribed in *Union of India v. K.V. Jankiraman (supra)* and the aforesaid memorandums. Despite the assertions of the Respondents that the allegations in FIR were attributable to the Petitioner, it is pointed out that till date, no adverse action has been taken against the Petitioner in the FIR or in the vigilance enquiry.

25. It is also significant to note that the promotion of the Petitioner was also approved by the ACC. This Court fails to understand the



stubbornness of the department to deny benefit of promotion despite being approved by the DPC as well as ACC.

26. Even otherwise, the learned Tribunal has aptly appreciated that the scope of 'Agreed List' remains vague and omnibus. In comparison to the high standards of an employee being placed under suspension or charge sheeted, the said parameter does not indicate as to under what circumstances a person can be placed on the Agreed List. The opaque nature of this category leaves scope for the employer to create hurdles in promotion on mere doubt or suspicion, which is impermissible in law. Despite the emphasis of the learned Tribunal on the need for circumstances to be as grave as the other parameters for a person to be placed on the Agreed List and denied promotion, the Respondents mechanically denied promotion to the Petitioner on the same ground. This Court in the present case also has the benefit of hindsight brought on by lapse of time. Even after more than 7 years from when the impugned order was passed, there is no action against the Petitioner in relation to the allegations which resulted in him being placed on the Agreed List. The same further persuades this Court to decide in favour of the Petitioner.

27. In such circumstances, this Court is of the opinion that the Petitioner ought to have been promoted on the basis of the recommendation of the DPC.

28. In view of the above, considering that the Petitioner has already retired from service, the Respondents are directed to grant all the



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consequential benefits of notional promotion to the Petitioner. Needless to say, such promotion should be deemed to have taken effect from the date suggested by DPC.

29. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J.

ANIL KSHETARPAL, J.

MARCH 18, 2026