

No.142/16/2013-AVD.I
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi -110001
Dated : 21st Julyth, 2016

OFFICE MEMORANDUM

Subject : Proposals/Requests from private persons for sanction for prosecution of a IAS officer serving in the State Government / Central Government under the Prevention of Corruption Act,1988

It has been decided to solicit public opinion/comments in respect of processing of proposals/ requests received from private persons for sanction for prosecution of a IAS officer serving in the State Government/ Central Government under the Prevention of Corruption Act,1988. The draft instructions are attached. Before the instructions in the Draft O.M are finalized, all stakeholders, State Governments, Ministries/Departments are requested to offer their comments- views , if any in this regard,by 12th August, 2016 at the e-mail address sg.mulchandaney@nic.in .



(S.G.Mulchandaney)

Under Secretary to the Government of India
Telephone No: 011-23094192

To

- (i) All Ministries/Departments of Government of India
- (ii) The Chief Secretaries of all State Governments /Union Territory Administration

Copy to :

✓ NIC, DoP&T with the request to place the above said O.M alongwith its enclosures on the website of this Department on the homepage for 15 days (What is new?) with a specific heading “ **Inviting views of all concerned as regards guidelines proposed to be issued for handling requests received from private persons for sanction for prosecution**”.

No.142/16/2013-AVD.I
Government of India/Bharat Sarkar
Ministry of Personnel, Public Grievances and Pension
Department of Personnel & training

North Block, New Delhi

Dated : 2016

The Chief Secretaries of
All State Governments
Union Territory Administration
(As per standard list)

Subject : Proposals/Requests from private persons for sanction for prosecution of a IAS officer serving in the State Government under the Prevention of Corruption Act,1988

Sir/Madam.

I am directed to refer to the subject above and to state that Hon'ble Supreme Court in its judgement dt. 30.01.2012 in Civil Appeal No.1193 of 2012 (in SLP (C) No.27535 of 2010) in *Dr. Subramanian Swamy versus Dr. Manmohan Singh and another* observed that *"there is no provision either in the(Prevention of Corruption Act),1988 Act or the Code of Criminal Procedure, 1973 (Cr.PC) which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence"*.

2. The Apex Court further observed that *"If the Competent Authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If the satisfaction of the Competent Authority is otherwise, then it can refuse sanction. In either case, the decision taken on the complaint made by a citizen is required to be communicated to him and if he feels aggrieved by such decision, then he can avail appropriate legal remedy"*.

3. It was also observed by the Hon'ble Supreme Court in the matter that *"At the same time, we deem it proper to observe that in future every Competent Authority shall take appropriate action on the representation made by a citizen for sanction of the prosecution of a public servant, so as to identify and obviate the areas causing delays in processing of such proposals..."*.

4. Pursuant to the said decision, this Department is in receipt of requests from private persons seeking sanction for prosecution in respect of officers for which DoP&T is the Cadre Controlling Authority without any proper proposal and supporting documents.

5. It is observed that such requests, as are received from citizens are more in the nature of complaints sans any supporting details, evidence, which can at best merit inquiry of substantial facts as are evidenced i.e such requests are without any proposal and supporting documents.

6. In this connection, it may be appropriate to stress that, the Competent Authority has to take a decision as regards grant or otherwise of a sanction for prosecution requested for, in terms of provisions of section 19 of the Prevention of Corruption Act, 1988 . The existing guidelines as are already in place to consider such cases received from investigating agencies. The said instructions have been issued vide letter No.142/4/2012-AVD.I dated 28.07.2014 & 20.05.2016. These guidelines lay down the procedure to deal with the proposals received from Investigating agencies through Single window system.

7. Keeping in view the basic parameters & requirements for cases received from investigating agencies, it has been decided that the procedure for handling the requests for prosecution sanction received from the private persons may be streamlined as indicated below .

(a) A proposal from a private individual seeking sanction for prosecution of an IAS officer serving in the State Government may be routed through the concerned State Government as such State government is best placed to provide basic inputs as regards the alleged misconduct of the concerned public servant who is or was working under its administrative control.

(b) In case a proposal is received directly by DoPT by such private individuals will be forwarded to the State Governments for the preliminary examination by such State Government vis-à-vis the relevant records.

(c) If there is a prima facie case against an IAS officer, the State Government should prepare a detailed report & consider obtaining version of the concerned officer. Such report alongwith all relevant records and evidence should be forwarded to DoPT with the approval of the Competent Authority in the State Government.

(d) In case the concerned State Government after examination of relevant records and other evidence is of the view that prima facie no case is made out of any alleged misconduct which may constitute an offence under the Prevention of Corruption Act, 1988, that State Government shall inform the person who has made a request for sanction for prosecution under the said act and endorse a copy of the same to this Department.

(e) If a report, alongwith all relevant records and evidence with the approval of the concerned authority is received, wherein a prima facie case is made out, the same will be treated as a proposal as per existing procedures/ guideline issued vide letter no.142/4/2012-AVD.I dated 28.07.2014 & 20.05.2016 to initiate action for processing the matter for decision of the competent authority.

(f) A period of three months period for disposing of such proposals would commence from the date of receipt of complete proposal with all relevant material and the aforesaid report from the concerned State Governments.

Yours faithfully

(S.G.Mulchandaney)
Under Secretary to the Government of India
Telephone No: 011-23094192

Copy to :

1. Secretary, Central Vigilance Commission, Satrakta Bhawan, New Delhi-110001
2. Joint Director (Policy and Coordination), Central Bureau of Investigation
3. Principal Secretaries (GAD)/Home Department of the Central Government Ministries for due circulation amongst investigating units for due compliance.

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Ministry of Personnel, Public Grievances and Pension
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North Block, New Delhi

Dated : 2016

Office Memorandum

Subject : Proposals/Requests from private persons for sanction for prosecution of a IAS officer serving in the Central Government Ministries under the Prevention of Corruption Act, 1988

The undersigned is directed to refer to the subject above and to state that Hon'ble Supreme Court in its judgement dt. 30.01.2012 in Civil Appeal No.1193 of 2012 (in SLP (C) No.27535 of 2010) in *Dr. Subramanian Swamy versus Dr. Manmohan Singh and another* observed that "*there is no provision either in the (Prevention of Corruption Act), 1988 Act or the Code of Criminal Procedure, 1973 (Cr. PC) which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence*".

2. The Apex Court further observed that "*If the Competent Authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If the satisfaction of the Competent Authority is otherwise, then it can refuse sanction. In either case, the decision taken on the complaint made by a citizen is required to be communicated to him and if he feels aggrieved by such decision, then he can avail appropriate legal remedy*".

3. It was also observed by the Hon'ble Supreme Court in the matter that "*At the same time, we deem it proper to observe that in future every Competent Authority shall take appropriate action on the representation made by a citizen for sanction of the prosecution of a public servant, so as to identify and obviate the areas causing delays in processing of such proposals...*".

4. Pursuant to the said decision, this Department is in receipt of requests from private persons seeking sanction for prosecution in respect of officers for which DoP&T is the cadre Controlling Authority without any proper proposal and supporting documents.

5. It is observed that such requests, as are received, from citizens are more in the nature of complaints sans any supporting details, evidence, which can at best merit inquiry of substantial facts as are evidenced i.e. such requests are without any proper proposal and supporting documents.

6. In this connection, it may be appropriate to stress that, the Competent Authority has to take a decision as regards grant or otherwise of a sanction for prosecution requested for, in terms of provisions of section 19 of the Prevention of Corruption Act, 1988. The existing guidelines are already in place to consider such cases which are received from investigating agencies. The said instructions have been issued vide letter No.142/4/2012-AVD.I dated 28.07.2014 & 20.05.2016. These guidelines lay down the procedure to deal with the proposals received from investigating agencies through Single window system.

7. Keeping in view the basic parameters & requirements for cases received from investigating agencies, it has been decided that the procedure for handling the requests for prosecution sanction received from the private persons may be streamlined as indicated below:

(a) A proposal from a private individual seeking sanction for prosecution of an IAS officer serving in the Central Government Ministries may be routed through the concerned Central Government Ministry,/Department as such Ministry/Department is best placed to provide basic inputs as regards the alleged misconduct of the concerned public servant who is or was working under its administrative control.

(b) In case a proposal is received directly by DoPT by such private individuals will be forwarded to the concerned Central Government Ministry/Department for the preliminary examination by such Ministry/Department vis-à-vis the relevant records.

(c) If there is a prima facie case against an IAS officer, the Central Government Ministry/Department should prepare a detailed report & consider obtaining version of the concerned officer. Such report alongwith all relevant records and evidence should be forwarded to DoPT with the approval of the Competent Authority in the Central Government Ministry/Department. (Minister in charge or MoS as the case may be)

(d) In case the administrative Ministry/Department after examination of relevant records and other evidence is of the view that prima facie, no case is made out of any alleged misconduct, which may constitute an offence under the Prevention of Corruption Act, 1988, that Ministry/Department shall inform the person who has made a request for sanction for prosecution under the said act and endorse a copy of the same to this Department.

(e) If a report, alongwith all relevant records and evidence with the approval of the concerned authority is received, wherein a prima facie case is made out, the same will be treated as a proposal as per existing procedures/ guideline issued vide letter no.142/4/2012-AVD.I dated 28.07.2014 & 20.05.2016 to initiate action for processing the matter for decision of the competent authority.

(f) A period of three months period for disposing of such proposals would commence from the date of receipt of complete proposal with all relevant material and the aforesaid report from the concerned Central Government Ministry/Department.

(S.G.Mulchandaney)
Under Secretary to the Government of India
Telephone No: 011-23094192

Copy to :

1. All Ministries/Departments of Government of India (as per standard mailing list)
2. All CVOs with the request to instruct all organizations for compliance with these guidelines.
3. Secretary, Central Vigilance Commission, Satrakta Bhawan, New Delhi-110001
4. Joint Director (Policy and Coordination), Central Bureau of Investigation
5. Principal Secretaries (GAD)/Home Department of the Central Government Ministriess for due circulation amongst investigating units for due compliance.