

No.142/4/2012-AVD.I
Government of India/Bharat Sarkar
Ministry of Personnel, Public Grievances and Pension
Department of Personnel and Training

New Delhi dated the 28th July, 2014

**The Chief Secretaries of all State Governments/
Union territory Administrations
(As per standard List)**

**Subject: Introduction of Single Window System in Department of Personnel & Training
for receiving proposals for Sanction for prosecution under the Prevention of
Corruption Act, 1988- comments of the administrative authority – regarding.**

Sir / Madam,

I am directed to say that proposals for Sanction for prosecution under the Prevention of Corruption Act, 1988 are received from State Governments and Investigating Agencies including the CBI seeking such sanction in respect of Group 'A' officers whose cadre control vests in the Central Government. In order to avoid delay in processing of such proposals due to procedural infirmities/shortcomings/discrepancies in the proposals, DOP&T has decided to switch over to Single Window System for accepting the proposals as per order of even no. dated 28.07.2014 alongwith Check Lists (copy enclosed).

2. As per the aforesaid order and enclosed check list, CBI has to submit the proposal alongwith the comments of the concerned administrative authority/State Government. In this regard kind attention is invited to this Department's instructions No. 107/8/99-AVD-I, dated 27-10-1999 (copy enclosed). Para 3 of the above instructions refer to IAS officers serving the affairs of the State Government, in whose case the sanction for prosecution under the PC Act is required. In this regard the instructions state that the "*Competent Authority under the State Government is required to examine the case on the basis of evidence on records and forward the documents to the Central Government along with their views/recommendations thereon and also enclosing the sanction, if any, issued by the State Government u/s 197(1) of the Cr.P.C.*"

3. The underlying object of the said instructions is that since the alleged offences are committed during the tenure of the public servant with the State Government while following the processes and regulating rules of such Government, it is the State Government which is better placed, in the first instance to confirm and corroborate the contentions of the investigating agency.

4. At present comments of the Administrative authority/State Government are not received alongwith the proposal and this Department has to seek the same from the concerned administrative authority. In many cases comments of the administrative authority are received after much time resulting in delay in processing of the proposal. In some cases comments are not received at all.

5. As stated above, comments of the Administrative authority/State Government are now to be submitted alongwith the proposal to be submitted by the CBI after obtaining the same from the concerned administrative authority. In case no comments are received by the CBI

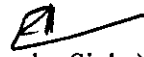
(No.142/4/2012-A VD.I)

within three weeks of submission of the proposal to the concerned administrative authority, the proposals alongwith reasons of not enclosing the comments of the administrative authority are to be submitted to DoPT under single window system. In that case it will be presumed that administrative authority has no comments to offer and proposal will be processed accordingly.

6. Therefore, all Administrative Authorities are requested to provide their comments/ views to the CBI within three weeks of receipt of proposal alongwith the details as per enclosed check list.


Yours faithfully,

Encl: As above


(Anshu Sinha)
Director (Vigilance - I)

Copy to:

1. All Ministries/Departments of Government of India (as per standard mailing list).
2. All CVOs with the request to instruct all organisations for compliance with these guidelines.
3. Secretary, Central Vigilance Commission, Satarkta Bhawan, Old GPO Complex, Block - A, INA, New Delhi with the request that keeping in view the observations in this communication, steps may be taken for revising the internal processing mechanism of the Commission.
4. Joint Director (Policy and Coordination), Central Bureau of Investigation, North Block, New Delhi, with the request that the above guidelines may please be circulated amongst the investigating units for due compliance.
5. Principal Secretaries (GAD)/Home Department of the State Governments for due circulation amongst investigating units for due compliance.


(Anshu Sinha)
Director (Vigilance-I)

CHECK LIST OF ITEMS IN PROSECUTION CASES IN RESPECT OF ADMINISTRATIVE AUTHORITIES/STATE GOVERNMENTS

[to be filled in by the concerned Administrative Authorities/State Government at the time of conveying their views and recommendations]

| Sl. No. | Head | Yes/No/Details | Folder No./Page No. |
|---------|--|----------------|---------------------|
| 1. | Date of receipt of proposal from the investigating agency. | | |
| 2. | Whether the complete case records were received from the investigating agency? If not, the date of receipt of complete proposal. | | |
| 3. | Whether any additional information was sought from the investigating agency? If Yes, details thereof. | | |
| 4. | Whether any criminal offences under the Indian Penal Code or other statutory provisions have been alleged by the investigating agency qua the officer? | | |
| 5. | Whether the administrative authority/State Government has obtained the approval of the competent authority with respect to the recommendation being made in respect of the proposal? | | |
| 6. | Whether the copies of such processing by the administrative authority/State Government have been enclosed? | | |
| 7. | Whether a specific sanction has been sought by the investigating agency under the provisions of section 197 of the Code of Criminal Procedure? | | |
| 8. | Whether the competent administrative authority/State Government has obtained any legal opinion in the matter? | | |
| 9. | If so, whether the copy of such legal opinion, if any, has been enclosed? | | |
| 10. | Whether the sanction u/s 197 of the Cr. P.C., if sought by the investigating agency, has been accorded by the competent administrative authority/State Government? | | |
| 11. | Whether such sanction is unequivocal and clear without any riders? | | |
| 12. | Date and number of the sanction so accorded/denied by the competent administrative authority/State Government. | | |

**** Signature** _____
Name of officer signing this statement

(in Block letters). _____
Designation _____
Telephone No. _____
Date: _____

****To be signed by an officer not below the rank of Secretary to the State Government (General Administration Department)/ Joint Secretary to the Government of India.**

Atmoya

Immediate/Confidential

No.107/8/99-AVD.I
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, Dated October 27, 1999

27 OCT 1999

e- To
7.10.99

The Chief Secretaries of
All State Governments/Union Territory Admns.
(As per list)

Sub. Sanction for prosecution under the P.C. Act, 1947/1988
against IAS officers- Proposal regarding.

Sir,

As you are aware, under Section 19 of the P.C. Act, 1988 (corresponding Section 6 of the P.C. Act, 1947), it is necessary for the prosecuting agency to seek the previous sanction of the appropriate administrative authority for launching prosecution against a public servant for the alleged P.C. Act offences mentioned in the Investigation Report. In respect of members of the Indian Administrative Service, such sanction is required to be accorded by the Department of Personnel & Training in the Central Government as in terms of Section 19(1) of the P.C. Act, 1988, the Central Government (Department of Personnel & Training) alone is competent to remove such officers from service.

2. Sanction of the Competent Authority under the Central or State Government is also necessary under Section 197 (1) of the Cr.P.C. Act, 1973, if such an IAS officer is accused of any IPC offence, alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. If such an officer at the time of committing the alleged IPC offences is or was employed in connection with the affairs of the Central Government, such sanction under Section 197 (1) of the Cr.P.C. is required to be accorded by the Central Government. If such a member of the All India Service is or was serving in connection

in the affairs of the State Government, such sanction u/s 197 (1) of the Cr.P.C. for the IPC offence shall be required to be accorded by the State Government concerned.

3. When such sanction under the P.C. Act is required against an IAS officer by the State Government and the concerned officer is serving in connection with the affairs of the State Government, the Competent Authority under the State Government is required to examine the case on the basis of evidence on records and forward the documents to the Central Government alongwith their views/recommendation thereon and also enclosing the sanction, if any, issued by the State Government u/s 197 (1) of the Cr.P.C.

4. It may also be relevant to mention in this connection that the requisite sanction u/s 6 of the P.C. Act, 1947 and under the corresponding section 19 (1) of the P.C. Act, 1988 against a retired IAS officer is not required to be accorded by the Competent Authority under the Central Government as such an officer has ceased to be public servant in terms of the Supreme Court judgement in *R.S. Nayak (Appellant) Vs. A.R. Antulay (Respondent)* (AIR 1984 S.C. 684). Therefore, proposals for obtaining sanction against retired IAS officer need not be referred to the Central Government for obtaining sanction of the Competent Authority.

5. It is seen from the proposals received in this regard from the various State Governments that while seeking sanction of the Competent Authority under the P.C. Act for prosecuting an IAS officer, this Department is receiving proposals in some cases which are not complete in as much as the relevant documents in original and the other supporting material/evidence are not made available to the Central Government. A check list of the items (copy enclosed) which has been prepared by this Department should be verified and enclosed in all cases while forwarding them to the Government of India for a decision.

6. It may also be relevant to mention in this regard that the Supreme Court in *Vineet Narain's* case has laid down a time limit

of three months (90 days) for taking a decision by the Competent Authority. Therefore, due to non-receipt of the relevant documents from the State Government in such cases, lot of delay takes place, which can be avoided if adequate precautions are taken by the State Government while referring the proposals to the Government of India for obtaining sanction of the Competent Authority.

7. In the light of the position stated above, you are requested to issue necessary instructions to the concerned authorities in this regard.

Yours faithfully,

D.P. Khatri
(D.P. Khatri)

Under Secretary to the Govt. of India

Tele: 3011842

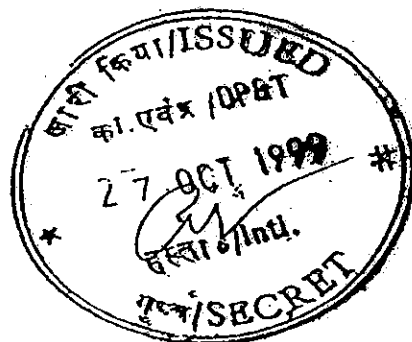
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27 OCT 1999

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Copy forwarded for information to sec
CVC, Satarkata Bhawan, GPO wr
Block - A, INA, New Delhi.

W

D.P. Khatri
(D.P. Khatri)
US to A



9/10
27/10/99

Check List of items in prosecution cases

1. Investigation report (in original). If the investigation report is in Hindi or any other language, a gist in English thereof will be required.
2. Case records (in original or authenticated copies thereof as mentioned in the investigation report, which are relevant for the purpose of determining the culpability of the officer for the alleged offence under the P.C. Act.
3. Draft Sanction Order (in English).
4. Version of the accused officer and comments of the investigating officer to rebut his contentions.
5. Opinion of State Law Department.
6. Whether the proposal for obtaining sanction of the Centre Government has been referred to Department of Personnel & Training with the approval of the Competent Authority under the State Government
7. Whether sanction of the Competent Authority under the State Government under Section 197 (1) of the Cr.P.C. for the alleged IPC offences, if committed by the officer, has been issued and if so, a copy of the same is to be enclosed with the proposal under reference. If the IAS officer has retired from service, sanction of the Competent Authority under the P.C. Act is not required to be accorded.