

No.219/12/2009-AVD-II
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

...
New Delhi dated the 13th May, 2009.

OFFICE MEMORANDUM

Subject: - Authorization of the Central Government to file an application u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of the money or property procured by means of the scheduled offence.

...

The undersigned is directed to say that for attachment and forfeiture of illegally acquired property of public servants, the CBI/Prosecution Agency is presently invoking the provisions of the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No. 38 of 1944).

2. It has been observed that although, "Central Government" has not been defined in the said Ordinance, the Central Bureau of Investigation (CBI) has been requesting the Department of Personnel & Training seeking authorization of the Central Government to file an application u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of the money or property procured by means of the scheduled offence, in the cases investigated by the CBI. It has now been decided to issue these instructions to clarify and settle the definition of Central Government for the purpose of the Prevention of Corruption Act, 1988 and Criminal Law (Amendment) Ordinance, 1944.

3. Under Section 5(6) of the Prevention of Corruption Act, 1988, a Special Judge while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law (Amendment) Ordinance, 1944 (Ordinance 38

of 1944). As per Section 19 of the P.C. Act, 1988 previous sanction is necessary -

(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

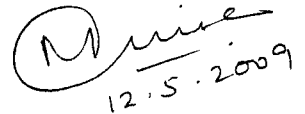
(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

4. Under Section 3 of the Criminal Law (Amendment) Ordinance, 1944, if the State Government or the Central Government, as the case may be, has reason to believe that any person has committed (whether after commencement of this ordinance or not) any scheduled offence, the State Government or the Central Government, as the case may be, may whether or not any court has taken cognizance of the offence, authorize for making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment under this ordinance of the money or other property which the State Government or the Central Government believes the said person to have procured by means, of the offence, or if such money or property cannot for any reason, be attached or other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

5. The matter has been considered in consultation with the Ministry of Law and Justice, as to which Ministry/Department/Authority may be considered the "Central Government" for the purpose of Section 3 of Criminal Law (Amendment) Ordinance, 1944. In the light of the said provisions of the PC Act, 1988, admittedly the sanction for prosecution in respect of a public servant under PC Act has to be given by such Government or authority which would be competent to remove the

public servant from his office. Since the properties referred to in Section 3 would have a correlation with the offence committed under the PC Act, the obvious conclusion would be that the authorization u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 (Ordinance No. 38 of 1944) would also have to be given by such authority who would be competent to accord sanction u/s 19 of PC Act, in a given case.

6. In accordance with the above, it has been decided that henceforth, all references seeking authorization of Central Government to file an application u/s 3 of the Criminal Law (Amendment) Ordinance, 1944 for attachment of the money or property procured by means of the scheduled offence by the person, who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, shall be addressed to the competent authority who accorded sanction of prosecution under section 19(1) of the PC Act, 1988.


12.5.2009

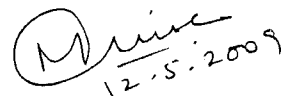
(Manisha Saxena)

Deputy Secretary to the Govt. of India

Tele:23094319

To

1. All Ministries/Departments of the Government of India.
2. Director, CBI, CGO Complex, New Delhi.
3. Joint Director (Policy), CBI, Room No.27, North Block, New Delhi.
4. All Directors/Deputy Secretaries/Under Secretaries/Section Officers of the Vigilance Division, Deptt. of Personnel & Training, New Delhi.
5. Director, NIC, North Block, New Delhi with the request to put the OM on the website of DOPT under "Circulars" head of the Vigilance Division.
6. 100 Spare copies.


12.5.2009

(Manisha Saxena)

Deputy Secretary to the Govt. of India