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Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi
Dated: June 27, 2008

OFFICE MEMORANDUM

Sub: Sanction for prosecution u/s 19 (1) of the P.C. Act

Section 19 of the Prevention of Corruption Act, 1988, regulating the requirement of taking prior sanction of the competent authority before prosecution of a public servant provides as under :

" 19 (1) No court shall take cognizance of an offence punishable under sections 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."

2. Hon'ble Supreme Court , in the case of R.S. Nayak vs A.R. Antulay (1984) 2 SCC 183, while interpreting the corresponding provisions of Prevention of Corruption Act, 1947, in regard to requirement of a sanction in a case where the accused public servant had ceased to hold the office which he is alleged to have misused or abused , though holding another office at the time when the Court is called upon to take cognizance of an offence, held that upon a true construction of Section 6 of P.C.Act, 1947, it is implicit therein that sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which he is alleged to have been misused or abused for corrupt motive and for which a prosecution is intended to be launched against him. It held that if the accused has ceased to hold that office by the date the Court is called upon to take cognizance of the offences alleged to have been committed by such public servant, no sanction under Section 6 would be necessary despite the fact that he may be holding any other office on the relevant date which may make him a public servant as understood in Section 21. The Hon'ble Court further held that some earlier judgements to the effect that if a public servant ceases to hold the earlier office abused by him but continuous to be a public servant by holding another office, sanction of the competent authority to remove him from latter office is required, as not laying down correct law and cannot be accepted as making a correct interpretation of Section 6 of the Prevention of Corruption Act, 1947 (corresponding to Sec. 19 of Prevention of Corruption Act, 1988).

3. These issues again came up before the Hon'ble Supreme Court in the cases of Parkash Singh Badal and Another vs State of Punjab 2006(13) SCALE 54, K. Karunakaran Vs. State of Kerala 2006 (13) SCALE 88 and in the case of Lalu Prasad Yadav Vs. State of Bihar 2006 (13) SCALE 91. The Hon'ble Supreme Court endorsed the above propositions in the R.S. Nayak case and did not agree that the views expressed in R.S. Nayak vs. A.R. Antulay case are not correct or that the said decision should be taken as per incuriam or that it was a case of "causis omissus".

4. A question has been raised whether the ratio of above cited judgements is applicable to civil servants who, while being member of a service or cadre, hold different posts on transfer or promotion etc. at different points of time in the course of their service. A perusal of the various judgements shows that in these cases, the litigating parties were political personalities who held offices like Chief Minister or MP or MLA etc. at different points of time and, therefore, though they were public servants

in terms of section 21 of the IPC while holding such offices, they were treated as holding different 'offices' at the time of taking of cognizance of the offence than one held and allegedly abused by them in respect of which the prosecution is sought to be launched. It is in the context of the nature of public offices held by the public figures involved in the above cases that the issues relating to public servant holding plurality of offices , or holding another office as a public servant etc. arose. These judgements did not discuss the case of a civil servant, who as a member of service/cadre holds different positions/posts on transfer or promotion in the course of his career in Government service. The issue whether holding of these different posts amounts to holding different 'offices' within the meaning of the relevant Sections of Prevention of Corruption Act was also not before the Hon'ble Court in the above cited cases.

5. The question raised has been examined in consultation with the Ministry of Law & Justice . It is, hereby clarified that while holding different posts on transfer or promotion, a civil servant can not be treated as holding different 'offices' within the meaning of the relevant Sections of the said Act. The only office held by him is that of the member of the service to which he belongs as a civil servant, irrespective of the post held on transfer/promotion etc. Therefore, the requirements of seeking sanction of the competent authority under Section 19 of the Prevention of Corruption Act continues to be applicable so long as the officer continues to be a member of civil service and the protection under Section 19 (1) of Prevention of Corruption Act cannot be said to have been taken away only on the consideration that at the time the officer holds charge of another post on transfer or promotion, than one alleged to have been abused. All the investigating agencies may, therefore, ensure that for seeking prosecution of a civil servant, they obtain sanction of the competent authority under Section 19 (1) of Prevention of Corruption Act before the Court is called upon to take cognizance of an offence under Section 7,10,11,13 and 15 of Prevention of Corruption Act.


(Vijay Kumar)

Under Secretary to the Government of India

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