

Immediate

F.No.43011/9/2014-Estt.D
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training

North Block, New Delhi
Dated the 30th October, 2014

Office Memorandum

Subject: Processing of files referred to DOP&T for advice/clarification-procedure to be followed.

This Department had issued detailed instructions prescribing the procedure to be followed by various Ministries/Departments of Government of India for referring the files to this Department for advice/clarification, vide O.M.No.20034/2/2010-Estt(D) dated 13th August, 2010. These instructions were followed by instructions prescribing the procedure to be followed by various Ministries/Departments of Government of India for referring the files to this Department for advice/clarification to facilitate processing of court cases, issued vide O.M.No.20034/2/2010-Estt(D) dated 30th November, 2011.

2. In spite of these instructions, the Ministries/Departments continue to refer the files to this Department without following the procedure enunciated in the above mentioned two OMs, resulting in avoidable procedural delays, grievances and unwanted litigations. To avoid such a situation and avoidable delays in decision making and disposal of the cases, it is proposed to issue fresh instructions as per enclosed Draft O.M.

3. Before the instructions in the Draft O.M are finalized, Secretaries of all Ministries/Departments are requested to offer their comments/views, if any, in this regard by 17th November, 2014 at the e Mail address dire1-dopt@nic.in.


(Mukta Goel)
Director(E-I)
Tel: 2309 2479

To

All Ministries/Departments of the Government of India.

Copy to:-

NIC, DoP&T with the request to place the above O.M alongwith its enclosures on the website of this Ministry on the homepage(What is New?)

DRAFT OM

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OFFICE MEMORANDUM

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This Department had issued detailed instructions prescribing the procedure to be followed by various Ministries/Departments of Government of India for referring the files to this Department for advice/clarification, vide O.M.No.20034/2/2010-Estt(D) dated 13th August, 2010. These instructions were followed by instructions prescribing the procedure to be followed by various Ministries/Departments of Government of India for referring the files to this Department for advice/clarification to facilitate processing of court cases, issued vide O.M.No.20034/2/2010-Estt(D) dated 30th November, 2011.

2. In spite of these instructions, the Ministries/Departments continue to refer the files to this Department without following the procedure enunciated in the above mentioned two OMs, resulting in avoidable procedural delays, grievances and unwanted litigations. To avoid such a situation and avoidable delays in decision making and disposal of the cases, while reiterating the above mentioned instructions, all the Ministries/Departments are advised to henceforth observe the following procedure for referring the proposals including court cases to this Department:-

- i. All the proposals should be referred to DOP&T with the approval of the Joint Secretary of the Administrative Ministry/Department.
- ii. All the pages should be properly numbered, docketed, referenced/cross referenced.
- iii. A legible copy of orders/rules/instructions/circulars/O.M. etc. issued by the Administrative Department or DOP&T etc.

and cited in the noting portion should be placed on file under reference. Besides flagging the cited documents, page numbers should also be invariably indicated in the noting portions.

- iv. Telephone number of the concerned Director/Deputy Secretary/Under Secretary level officer who has processed the case should be indicated in the noting portion.
- v. The Proposal relating to amendments of Recruitment Rules etc., for which a proforma has been prescribed, should be referred to DOP&T in the prescribed proforma only.
- vi. Any proposal having financial implications referred to DOP&T for advice/clarifications, should have approval or comments of the concerned Financial Adviser(FA) in the Ministry/Department.
- vii. The proposal for advice/clarifications should be referred to DOP&T only on file.
- viii. All the proposals referred to DOP&T should invariably indicate, in the concluding paras, the relevant rule position and the difficulty faced in its interpretation which necessitated the referral to DOP&T i.e. the point(s) of doubt in respect of which clarification/advice of DOP&T has been sought should be clearly brought out.

3. Further, as regards Court Cases referred for advice to this Department by various Ministries/Departments, it may be mentioned that this Department's O.M.No.20036/23/1988-Estt(D) dated 06.01.1989 provides that since each court case is to be contested on the basis of the specific facts and circumstances relevant to it, the administrative Ministry/Department will be in a better position to defend the case. If, however, any clarification is required on the interpretation or application of the rules or instructions relevant to the case, the concerned Department in the Ministry of Personnel, Public Grievances and Pensions may be approached for that purpose. It further provides that the primary responsibility, however, for contesting such cases on behalf of the Government will be that of the administrative Ministry/Department concerned. Also, the Cabinet Secretariat's D.O letter No. 6/1/1/94-Cab

dated 25.02.1994 and the Department of Expenditure's O.M. No. 7(8)/2012-E-II(A) dated 16.05.2012 inter-alia provide that (i) a common counter reply should be filed before a Court of Law on behalf of the Union of India by the concerned administrative Department/Ministry where the petitioner is serving or has last served; and (ii) a unified stand should be adopted instead of bringing out each Department's/Ministry's point of view in the said reply. It further provides that it is primarily the responsibility of the Administrative Ministry to ensure that timely action is taken at each stage a Court case goes through and that a unified stand is adopted on behalf of Government of India at every such stage. In no case should the litigation be allowed to prolong to the extent that it results in contempt proceedings.

4. All the Ministries/Departments are advised to keep the procedure/instructions mentioned in the preceding paragraph in mind while dealing with Court Cases. Further, while referring Court Cases for advice to this Department, the referring note should invariably indicate:

- i. Brief history and facts of the case;
- ii. Relief sought by the petitioner/applicant;
- iii. Earlier advice/opinion of DOP&T/DOLA in the matter;
- iv. Stand taken by the Department before the Court/CAT;
- v. Opinion of the Government Counsel on the Court/CAT order;
- vi. Operative part of the judgment/direction;
- vii. Action proposed to be taken by the Department .
- viii. Present rule position and specific point on which advice/opinion of DOP&T is sought.

5. The content of this O.M. may be given wide publicity and brought to the notice of all concerned.

(Rakesh Moza)
Under Secretary to the Government of India
Tele: 2304 0339

Copy to :

1. All Ministries/Departments of the Government of India
2. All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions and all attached/subordinate offices of the Ministry.
3. President's Secretariat/Vice President's Secretariat/Prime Minister's Office/Supreme Court/ Rajya Sabha Secretariat/Lok Sabha Secretariat/Cabinet Secretariat/UPSC/CVC/C&AG/Central Administrative Tribunal(Principal Bench), New Delhi.
4. Estt(D) Section – 100 copies.
5. NIC, DOPT, North Block for placing this OM on the Website of DOP&T.
6. Hindi Section for Hindi version.