

प्रदीप कुमार सिन्हा
PRADEEP K. SINHA



सत्यमेव जयते



MOST IMMEDIATE

मंत्रिमंडल सचिव
भारत सरकार

CABINET SECRETARY
GOVERNMENT OF INDIA

D.O. No. 1/50/3/2016-Cab.

16th June, 2016

Dear Secretary

I would like to draw your attention to this Secretariat's D.O. letter No. 6/1/1/94-Cab. dated 25.02.1994 (copy enclosed) wherein it was mentioned that the business of the Government of India is transacted in the Ministries and Departments in accordance with the Allocation of Business Rules, 1961. As the Ministries and Departments conduct the 'allocated' business on behalf of the Government of India, all Ministries / Departments were requested to ensure that (i) a unified stand is taken before Courts of Law rather than bringing out the point of view of each Ministry/Department in the counter-affidavit/reply; and (ii) a common counter-reply is filed on behalf of the Union of India by the Ministry/Department concerned instead of separate affidavits being filed by each Ministry/Department named as Respondents.

2. It has, however, been observed that at times different Departments take up divergent positions/ individual interpretations in court cases thereby causing avoidable confusion in the submissions finally deliberated upon before the Courts. It may be noted that it is primarily the responsibility of the Administrative Ministry/ Department to take timely action at each stage including filing of a counter affidavit during a Court case after completing necessary consultations with the other Ministries/ Departments concerned.

3. If in any case, separate counter-affidavits are required to be filed by orders of the Court, it should be ensured that this is done in consultation with the Ministries/ Departments concerned for a coordinated approach. In such cases, a short affidavit endorsing the views of the Administrative Ministry/Department can also be filed.

4. In this regard, attention is also drawn to instructions issued by the Ministry of Law, Department of Legal Affairs from time to time where it has been stipulated that the Ministry/ Department is required to get the counter affidavit vetted from the Department of Legal Affairs before filing.

5. I would therefore request you to ensure that differences, if any, in the stand of Ministries/ Departments in any particular court matter are resolved through mutual consultation, as brought out above. It may also be ensured that the counter affidavits are filed only after appropriate vetting by the Department of Legal Affairs.

6. Please ensure that these instructions are noted and disseminated to all concerned for strict compliance.

With regards,

Yours sincerely,

(Pradeep K. Sinha)

Encl. - As above.

To

All Secretaries to the Government of India.



P.P. Prabhu,
Additional Secretary
(Tel. 3012697)

IMMEDIATE

S.No.2(C)

अपर सचिव
मंत्रिमण्डल सचिवालय
राष्ट्रपति भवन, नई दिल्ली
ADDITIONAL SECRETARY
CABINET SECRETARIAT
RASHTRAPATI BHAVAN
NEW DELHI

25th February, 1994.

D.O.No.6/1/1/24-Cab.

Dear Shri

The business of the Government of India is transacted in the Ministries and Departments in accordance with the Allocation of Business Rules, 1961. In other words, Ministries and Departments conduct the 'allocated' business on behalf of the Government of India. It was in this spirit that the Ministry of Finance, Department of Expenditure issued instructions vide their O.M.No.7(32)-E.III/92 dated 24th May, 1993 (copy enclosed) that (i) a unified stand should be taken before Courts of Law rather than bringing out each concerned Ministry's/Department's point of view in the counter-affidavit; and (ii) a common counter-reply should be filed on behalf of the Government by the concerned Ministry/Department instead of separate affidavits by each Ministry/Department named as Respondents.

2. It has come to notice that these instructions are not being followed by a number of Ministries/Departments. There have been instances where statements/submissions made before Court/CAT indicated that the matter has been recommended to the Ministry of Finance or the Department of Personnel & Training or that while the Administrative Ministry/Department recommended the proposal, Ministry of Finance had not approved. In one case where certain employees had filed an Application before the CAT for revision of scales of pay, the administrative Ministry made a submission that the cadre review proposals had been submitted for approval of the Ministry of Finance. Ministry of Finance could not, however, agree to the recommendations of the administrative Ministry in this case and the Secretary of that Department was put in an embarrassing position. In another case, a submission was made before the CAT that they had found the Applicant suitable and had recommended to the Ministry of Finance to extend the Flexible Complementing Scheme to the Applicant. The above affirmation led the Tribunal to decide the matter in favour of the Applicant eventhough the Ministry of Finance held a view to the contrary. Such situations could have been avoided had the administrative Ministry/Department given the final view of the Government of India rather than their individual position.

3. It is, therefore, desirable that counter-replies filed before Courts/CAT are carefully dealt with at appropriate level, strictly in accordance with the Ministry of Finance, Department of Expenditure O.M. No.7(32)-E.III/92 dated 24th May, 1993 referred to above.

This issues with the approval of Cabinet Secretary.

With regards,

Yours sincerely,

(P.P. Prabhu)

All Secretaries to GoI.

Separate note to Ministry

F.No.7(32)-E.III/92
Government of India
Ministry of Finance
Department of Expenditure

New Delhi, the 24 May, 1993.

OFFICE MEMORANDUM

Subject : Communications to Government servants or their Associations/Unions and submissions before Courts/Central Administrative Tribunal.

As per the Allocation of Business Rules, each Ministry/Department is responsible to discharge the functions allocated to it as well as to handle the administrative problems relating to service conditions of the employees under its administrative control. Similarly, U.T. Administration is responsible for all matters concerning staff under their control. The Decision-making process, however, involves consultation with/concurrence of other Ministries/Departments. In such cases, the views/comments of the Ministry/Department which has been consulted in the matter may be advisory in nature while in other cases such views/comments may be mandatory. In case there is a difference of opinion between two Ministries/Departments, these differences are sorted out by following such procedure as is laid down in this behalf. In all such cases whatever be the final decision, it is the decision of the Government and not the decision of any individual Ministry/Department.

2. It has been observed that while handling service matters/cases of the Government servants, the administrative Ministries/Departments in their communications to the Government servants/Association etc. or even in the affidavits filed/submissions made before the Supreme Court/Tribunal etc. make specific references to a Ministry/Department under whose advice/directives a particular decision has been taken. This gives an impression that the decision is that of the Ministry/Department which has been consulted and not that of the Government. Such allusions place the Government in an embarrassing position particularly when legal aspects are involved. It is, therefore, stressed that while communicating decision(s) on the representation(s)/complaint(s) etc. submitted by the Government servants or their Associations, etc. the final decision should be in the name of the appropriate authority and in no circumstances, the communication should convey or give an impression that the decision was based on the advice of a particular Ministry/Department which accepted/rejected the demand(s). Exceptions may be made in respect of the sanctions etc. where according to financial regulations, under rules/or other mandatory provisions, it may be obligatory to mention the name of the specific authority with whose concurrence, or in consultation with whom the sanction has been issued.

Contd.....

3. Similarly, in case of affidavits filed or oral submissions made before Courts/Central Administrative Tribunal in matters pertaining to writ petitions/applications filed by the Government servants or their Associations etc., the submissions should be made on behalf of the Government. In no case, the name of any specific Ministry/Department be mentioned in these submissions. Even in cases where the matter is pending before a Ministry/Department, the submissions made should be that the matter is under consideration of the Government and not that of any particular administrative Ministry/Department.

4. In service matters/cases filed by Government servants/Associations, Government of India is one of the Respondents. All such cases have to be defended by the Administrative Ministry/Department/Organisation where the Government servant is serving or served last. In case other Ministries/Departments have been made respondents they are to be treated as pro-forma Respondents and the matter has to be defended by the administrative Ministry on behalf of the Government of India i.e., on its behalf as well as on behalf of other Ministries/Departments. In brief, there has to be only one counter-affidavit on behalf of the Government and it has to be prepared and filed by the Ministry/Department etc. where the petitioner/applicant is serving. However, where more than one Ministry/Department has been made parties, those Ministries/Departments should be consulted or the draft counter reply should be shown to them.

5. Further, it is observed that Court/CAT cases are not handled expeditiously and within the time schedule. Sometimes references are made to the nodal Ministries/Departments dealing with policy matters or to the Ministry of Law at the last moment viz. a few days before the last date fixed by the Court/Tribunal. This does not give sufficient time to these Ministries/Departments to carefully examine the issues involved. It is, therefore, stressed that on receipt of the Notice along with the original Application/Petition, the administrative Department/authority should immediately prepare parawise comments counter-affidavit. Wherever necessary the specific points may be brought out clearly on which comments of other nodal Ministries like Finance or Department of Personnel & Training etc. are required. Thereupon reference should be made to the concerned Ministry/Department on priority basis. Thereafter, the matter may be referred to the Ministry of Law/Standing Government Counsel engaged in the matter for necessary vetting and filing the matter before the Tribunal/Court. The Ministry should also make arrangements for appearance before the Court/Tribunal as and when the matter comes for hearing and for this purpose proper liason with the Government counsel should always be maintained.

6. In cases where the matter is decided against the Government, immediate steps should be taken to analyse the judgement and a view taken in consultation with the nodal Ministry concerned as to whether the judgement

is should be implemented or a SLP needs be filed in the matter. The reference to nodal Ministry for their advice should be made well before the last date for filing Review Application before the CAT, itself or SLP in Supreme Court. In cases where it/decided to file Review Application/SLP, the grounds on which the SLP need be filed should be clearly brought out and the matter referred to Ministry of Law for their advice. It is the primary duty of the administrative Ministry concerned to follow the matter at every stage and ensure filing of the counter-affidavit or SLP within the time schedule laid down by the Tribunal/Court. In case delay in filing the reply is apprehended, necessary steps to seek extension in time or stay orders may be taken with the assistance of Standing Counsels.

7. In certain cases, the Tribunal/CAT may not deliver substantive judgement in the matter and may direct the Government to take a final view in the matter based on certain guidelines etc. The Tribunal/Court may desire final decision by a specific date. In all such cases, it is essential to ensure compliance of the orders within the specified time. In case any delay is expected in reaching a final decision in the matter, extension of time from Tribunal/Court should always be sought for. In such cases also, it has to be ensured that the matter is referred to different consulting agencies/Departments well before the last date of taking a final decision.

8. In brief, the administrative Ministry has to ensure that in all cases timely action is taken and in no case the litigation is allowed to prolong to the extent that it results in contempt proceedings.

9. All the Ministries and U.T. Administrations are requested to ensure that these instructions are strictly followed by all concerned under their administrative control.


(D. SWARUP)

Joint Secretary to the Govt. of India

To

1. All Ministries/Departments of Govt. of India.
2. All U.T. Administrations.