

F. No. 7(8)/2012-E-III(A)
D/o Expenditure
M/o Finance
(E-III A Branch)

North Block, New Delhi
Dated the 16th May, 2012

Office Memorandum

Subject: Submissions before Courts/Central Administrative Tribunals and handling of Court cases on pay and allowances and service conditions etc.

The Allocation of Business Rules, 1961 forms the basis for transacting business of the Government of India by the different Departments/Ministries. Individual Departments/Ministries are responsible for discharging the business "allocated" to them on behalf of the Government of India and to handle the administrative issues relating to service conditions of the employees under its administrative control. In the context of CAT/Court cases related to pay scales, allowances and other service conditions of Government employees/ employees of autonomous bodies, etc., attention is invited to M/o Finance, D/o Expenditure OM No. 7(32)/E-III/92 dated 24th May, 1993 (copy enclosed) stipulating 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.

2. Of late it has been observed that Ministries/Departments are not following these instructions as a result of which either the Government's stand is weakened in the case or sometimes the Government is put in an embarrassing position. All Ministries/ Departments are therefore, requested to comply with the following while handling cases filed by Government servants or their Associations/Unions on matters related to pay and allowances and other service conditions:

- (i) Court/CAT cases should be handled expeditiously and within the required time frame. Sometimes, references are made to the nodal ministries/departments dealing with policy matters at the eleventh hour, i.e. 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 para-wise comments /counter-affidavit. Wherever necessary, the specific points on which comments of other nodal Departments like Department of Expenditure, Department of Personnel & Training, Department of Pensions and Pensioners' Welfare, etc. are required

may be brought out clearly. Thereupon, reference should be made to the concerned nodal Ministry/Department on priority basis. The matter may thereafter be referred to the Ministry of Law/ Standing Government Counsel engaged in the matter for vetting and filing the same before the Tribunal/Court.

- (ii) It has also been observed that at times the Standing Counsels appointed do not attend the Court hearings. In such an event, the matter must be taken up with the Department of Legal Affairs, Ministry of Law for taking action against Counsels who absent themselves from hearings without valid reasons. Further, the Ministry should ensure arrangements for appearance before the Court/Tribunal as and when the matter comes for hearing and for this purpose proper liaison with the Government counsel should always be maintained. In addition, the Counsels must necessarily be briefed thoroughly before they attend Court proceedings.
- (iii) All cases filed in CATs or Courts have to be defended by the Admn. Ministry/Department/Organisation where the Government servant is serving or has last served. In case other Ministries/Departments have been arrayed as respondents, they are to be treated merely as pro-forma parties and the matter has to be dealt with by the Admn. Ministry itself on behalf of the Government of India i.e. on behalf of all the other Ministries/Departments involved. In other words, there has to be only one counter affidavit submitted before the Court on behalf of the Government and it has to be prepared by the Ministry/Department where the applicant is serving / has last served. However, since other Ministries/Departments are also involved, they have to necessarily be consulted at the stage of formulating the draft counter reply.
- (iv) It has further been observed that while handling service matters/cases of the Government servants, the administrative Ministries/Departments in their communications to the Government servants/Associations 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 given 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. 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.

- (v) Similarly, in case of affidavits filed or oral submissions made before the Courts/CAT, a unified stand should be adopted instead of bringing out each Department's/Ministry's point of view in the said reply. 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 Admn. Ministry/Department. In one such instance, the Admn. Ministry has in its submissions before the Court stated that while it agrees "in principle" to concede to the demands of the petitioners/applicants, it is D/o Expenditure which is not agreeing to the proposal. This position was adopted even as consultations between the two Departments were still underway and the issue at hand was yet to be resolved. A situation like this must be avoided.
- (vi) In cases where the Court takes a decision against the Government, ~~the Admn. Ministry/Department should take immediate steps to~~ analyse the judgement and arrive at a view in consultation with the nodal Ministry/s concerned as to whether the same should be implemented or filing of an appeal or SLP is called for. The reference to nodal Ministry/s for their advice needs to be made well before the last date for filing Review Application before the CAT itself/an appeal before the High Court/SLP in the Supreme Court. The grounds on which the same are being filed have to necessarily be spelt out in the event of deciding that filing of such a Review application / SLP is necessary.
- (vii) In case a delay in filing the reply is apprehended, necessary steps to seek extension in time or stay orders should be taken on an urgent basis with the assistance of Standing Counsels.
- (viii) In certain cases, the Tribunal/Courts may not deliver substantive judgements in the matter and may direct the Government to consider/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 on this score, extension of time from Tribunal/Court should always be sought. In such cases also, it has to be ensured that the matter is referred to different nodal agencies/Departments well before the last date of taking a final decision
3. In a nutshell, 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. For this purpose, a proper mechanism for monitoring of court cases must be put in place by each Ministry/Department. Financial Advisers may ensure that cases requiring a reference to Department of Expenditure are invariably processed in a timely manner and the timelines monitored so that any contempt proceedings do not arise.

4. This issues with approval of Secretary (Expenditure).

Madhulika Prasad
(Madhulika P. Sukul)
Joint Secretary (Pers.)

1. Secretaries of all Ministries/Deptts.
2. ~~Chief Administrators of all UTs.~~
3. All Financial Advisers