No.11012/7/98-Estt.(A)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

....

New Delhi, dated the 7th, November, 2000

OFFICE MEMORANDUM

Subject: Disciplinary jurisdiction of Election Commission of India over Government servants deputed for election duties.

The undersigned is directed to say that one of the issues in Writ Petition (C) No.606/1993 in the matter of Election Commission of India Vs. Union of India & Others was regarding jurisdiction of Election Commission of India over the Government servants deputed for election duties under section 28A of the Representation of the People Act, 1951 and section 13CC of the Representation of the People Act, 1950. The Supreme Court by its order dated 21.9.2000 disposed of the said petition in terms of the settlement between the Union of India and Election Commission of India. The said Terms of Settlement are as under:-

"The disciplinary functions of the Election Commission over officers, staff and police deputed to perform election duties shall extend to –

a) Suspending any officer/official/police personnel for insubordination or dereliction of duty;

b) Substituting any officer/official/police personnel by another such person, and returning the substituted individual to the cadre to which he belongs, with appropriate report on his conduct;

c) making recommendation to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendation shall be promptly acted upon by the disciplinary authority, and action taken will be communicated to the Election Commission; within a period of 6 months from the date of the Election Commission's recommendation.

d) the Government of India will advise the State Governments that they too should follow the above principles and decisions, since a large number of election officials are under their administrative control."

2. The implication of the disposal of the Writ Petition by the Supreme Court in terms of the above settlement is that the Election Commission can suspend any officer/official/police personnel working under the Central Government or Public Sector Undertaking or an autonomous body fully or

substantially financed by the Government for insubordination or dereliction of duty and the Election Commission can also direct substituting any officer/official/police personnel by another person, besides making recommendations to the Competent Authority for taking disciplinary action for insubordination or dereliction of duty while engaged in the preparation of electoral rolls or election duty. It is also clarified that it is not necessary to amend the service rules for exercise of powers of suspension by the Election Commission in this case since these powers are derived from the provisions of section 13CC of the Representation of the People Act, 1950 and section 28A of the Representation of the People Act, 1951 since provisions of these Acts would have overriding effect over the disciplinary rules. However, in case there are any conflicting provisions in an Act governing the disciplinary action, the same are required to be amended suitably in accordance with the Terms of Settlement.

3.   All Ministries/Departments are requested to bring the above Terms of Settlement to the notice of all concerned for information and compliance.
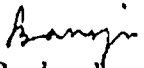
(Smt. S. Bandopadhyay)
Director

To

1.   All Ministries/Departments of the Government of India.

Copy to :

1.   Comptroller & Auditor General of India, New Delhi.
2.   Union Public Service Commission, New Delhi.
3.   Central Vigilance Commission, New Delhi.
4.   Central Bureau of Investigation, New Delhi.
5.   All Union Territory Administrations.
6.   Lok Sabha/Rajya Sabha Secretariat.
7.   The Chief Secretaries to all the State Governments
8.   All Officers and Sections in the Ministry of Personnel Public Grievances & Pensions and MHA.
9.   All Attached and Subordinate Offices of Ministry of Personnel, Public Grievances and Pensions & MHA.

(Smt. S. Bandopadhyay)
Director