

New Delhi, dated the 6th November, 2006

OFFICE MEMORANDUM

Subject: Guidelines for checking delay in grant of sanction for prosecution.

The Hon'ble Delhi High Court on its own motion has taken suo motu cognizance of a newspaper report, relating to long delays in grant of sanction for prosecution cases. The Hon'ble Court has expressed its concern over the non-action on the part of competent authorities in granting sanction for prosecution, despite the fact that the Hon'ble Supreme court in Vineet Narain Vs Union of India had directed that " time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any Law Officer in the AG's office".

2. Delay in the disposal of sanction of prosecution cases is not in the interest of the Government. The Government is keen that innocent officers should not needlessly face harassment through prosecution while at the same time the really culpable and guilty officers should not escape prosecution on account of failure of the competent authority to appreciate properly the fact brought out in the CBI investigation reports. In order to ensure that cases for grant of sanction for prosecution are disposed of quickly, it has been decided that the following measures should be adopted with immediate effect: -

(i) In cases investigated by the Central Bureau of Investigation against any public servant who is not removable from his office except with the sanction of the President, the CBI forwards its final report of investigation to the CVC and also simultaneously endorses a copy of the report to the administrative Ministry/Department concerned, the competent authority shall within three weeks formulate its tentative view

regarding the action to be taken and seek the advice of the CVC in the matter.

(ii) The CVC would tender its advice within ten days to the concerned administrative Ministry/Department, which shall finalize its view in the matter within a week and issue orders for sanction for prosecution accordingly.

(iii) The concerned Ministry/Department shall refer the case to CVC for reconsideration only in exceptional cases when new facts come to light. The Committee of experts proposed to be set up by the CVC, with experts drawn from the civil services, public sector undertakings and banks shall examine the CBI's recommendation and the tentative view of the concerned Ministry/Department in greater detail and CVC would render appropriate advice to the competent authority based on the findings of the expert committee, within a fortnight.

(iv) If the CVC on reconsideration advises for grant of sanction, the concerned Ministry/Department will issue the requisite orders immediately. However, if the concerned Ministry/Department proposes not to accept the reconsidered advice of the CVC, the case will be referred to the Department of Personnel and Training for a final decision, as per the DOP&T O.M. No/ 134/2/85-AVD-I dated 17.10.1986.

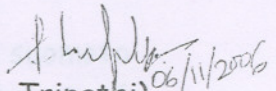
(v) The responsibility of processing cases for sanction of prosecution within the time limits laid down shall continue to remain with the Administrative Ministries/Departments. All pending cases for sanction of prosecution would be reviewed every month by the concerned Secretary to ensure that a decision in a case for grant of sanction for prosecution is taken within the given time frame.

(vi) The Central Vigilance Commission will call (as proposed by it) a meeting of Secretaries of such Departments, where there are delays in according sanction for prosecution, for a review from time to time and draw DOP&T's attention on such delays.

(vii) In case a decision is not taken by the Administrative Ministry/Department within the time limit laid down, the concerned

Secretary of the Department shall mandatorily forward a written explanation to the Cabinet Secretary for appropriate examination by the competent authority.

(ix) All such delayed cases will be placed before a Committee to be chaired by Secretary (Personnel) and comprising the Secretary of the Administrative Ministry/Department, Law Secretary and Director, CBI for scrutiny and recommendation. A copy of the explanation furnished by the Secretary of the Administrative Ministry/Department shall also be placed before the Committee. The recommendations of the Committee shall be forwarded to the Cabinet Secretary for orders of the competent authority.


(P. K. Tripathi)
Director (Vigilance)

To
(Secretary, by name), All Ministries/Departments of Government of India.

Copy to: (i) Secretary, CVC
(ii) Director, CBI
(iii) others as per standard list

Central Vigilance Commission will advise the Ministry/ Department concerned and it would be for that Ministry/Department to consider the advice of the CVC and to take a decision as to whether or not the prosecution should be sanctioned;

- (ii) In cases in which an authority other than the President is competent to sanction prosecution, and that authority does not propose to accord such sanction, it is required to report the case to the Central Vigilance Commission and take further action after considering the Central Vigilance Commission's advice, vide para 2(v.i)(b) of the Government Resolution by which the Central Vigilance Commission was set up and the Central Vigilance Commission's letter No. 9/1/64-DP, dated 13th April, 1984;
- (iii) In a case falling under (i) above, if the Central Vigilance Commission advises grant of sanction for prosecution but the Ministry/Department concerned proposes not to accept such advice, the case should be referred to this Department for a final decision;
- (iv) In a case falling under (ii) above, if the Central Bureau of Investigation has sought sanction for prosecution and the Central Vigilance Commission has recommended grant of sanction and yet, the competent authority proposes not to grant sanction, the case should be referred to this Department for a final decision;
- (v) Where two or more Government servants belonging to different Ministries/Departments, or under the control of different cadre controlling authorities are involved, the CBI will seek sanction from the respective Ministries/Departments or the respective competent authorities in accordance with the procedure laid down in the above paragraphs. Where sanction is granted in the case of one of the Govt. servants but sanction is refused in the case of the other or others, the CBI will refer the case to this Department for resolution of the conflict, if any, and for a final decision.

(157)

Department of Personnel & Training O.M. No. 134/2/85-AVD-I dated 15/17-10-1986.

The work relating to accord of Central Government's sanction for the prosecution of any person in a case investigated by the Central Bureau of Investigation which was centralised in the Department of Personnel & Training, has since been decentralised and vested in the Ministry/Department concerned *vide* Cabinet Secretariat's Notification No. CD-828/86, dated the 30th September, 1986 (annexed).

2.1 The Central Bureau of Investigation recommend prosecution of persons only in those cases in which they find sufficient justification for the same as a result of the investigation conducted by them. There are adequate internal controls within the CBI to ensure that a recommendation to prosecute is taken only after a very careful examination of all the facts and circumstances of the case. Hence, any decision not to accord sanction for prosecution in such cases should, therefore, be for very valid reasons.

2.2 The following guidelines may be kept in view while dealing with cases of sanction of prosecution.

- (i) In cases in which the sanction for prosecution is required to be accorded in the name of the President, the

ANNEXURE TO DEPARTMENT OF PERSONNEL & TRAINING O.M.
No. 134/2/85-AVD-I DATED 15/17-10-86.

RASHTRAPATHI BHAVAN NEW DELHI

Dep. No. CD--828/86

New Delhi, the 30th September, 1986.

NOTIFICATION

In exercise of the powers conferred by clause (3) of article 77 of the Constitution, the President hereby makes the following rules further to amend the Government of India (Allocation of Business) Rules, 1961, namely:—

1. (1) These rules may be called the Government of India (Allocation of Business) (One hundred and eighty seventh Amendment) Rules, 1986.

(2) They shall come into force at once.

2. In the Government of India (Allocation of Business) Rules, 1961,—

(1) In rule 3—

(i) In sub-rule (1), for the word, brackets and figure, "sub-rule (2)", the words, brackets and figures "sub-rules (2) (3) and (4)" shall be substituted;

(ii) After sub-rule (2), the following sub-rules shall be inserted, namely:—

“(3) Where sanction for the prosecution of any person for any offence is required to be accorded—

(a) If he is a Government servant, by the Department which is the Cadre Controlling authority for the service of which he is a member, and in any other case, by the Department in which he was working at the time of commission of the alleged offence;

(b) If he is a public servant other than a Government servant, appointed by the Central Government, by the Department administratively concerned with the organisation in which he was working at the time of commission of the alleged offence, and

(c) In any other case by the Department which administers the Act under which the alleged offence is committed:

Provided that where, for, offences alleged to have been committed, sanction is required under more than one Act, it shall be competent for the Department which administers any of such Acts to accord sanction under all such Acts.

(4) Notwithstanding anything contained in sub-rule (3), the President may, by general or special order, direct that in any case or class of cases the sanction shall be accorded by the Department of Personnel and Training”.

(II) In the second schedule—

(i) Under the heading “MINISTRY OF FOOD AND CIVIL SUPPLIES (KHADYA AUR NAGRIK POORTI MANTRALAYA)” under the sub-reading “A. DEPARTMENT OF FOOD (KHADYA VIBHAG)”, for entry 1, the following shall be substituted, namely:—

“1. Purchase of food stuffs for civil requirements and their disposal and also for military requirements of sugar, rice and wheat”;

(ii) under the heading “MINISTRY OF HUMAN RESOURCE DEVELOPMENT (MANAV SANSA-DHAN VIKAS MANTRALAYA)”, under the sub-heading “D. DEPARTMENT OF CULTURE (SANSKRITI VIBHAG)”, after entry 13, the following shall be inserted, namely:—

“13.A, Museum of Gems and Jewellery.”;

(iii) under the heading “MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (KARMIK, LOK SHIKAYAT TATHA PENSION MANTRALAYA)”, under the sub-heading “A. DEPARTMENT OF PERSONNEL AND TRAINING (KARMIK AUR PRASHIKSHAN VIBHAG)”, in Part III “VIGILANCE AND DISCIPLINE”, in entry 20, sub-entry (b) and the “Note” thereunder shall be omitted.