No. 39023/02/2006-Estt (B)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi, 05th December, 2006

OFFICE MEMORANDUM

Subject:- **Consultation with Union Public Service Commission (UPSC)- Procedure to be followed while disagreeing with the advice of the Commission.**

1.	18/4/49-Estt (B) dt. 05.02.49	The undersigned is directed to say that this Department's OM.No. 39028/26/93-Estt (B) 10.11.95, recirculated vide OM No. 39028/26/93-Estt (B) dated 19.2.97 prescribes the procedure to be followed for not accepting the advice of the UPSC tendered in response to a reference made to it in appointment and disciplinary case.
2.	18/18/48-Estt (B) dt. 20.08.49	
3.	11/02/50-RE dt. 02.06.50	
4.	18/42/50-Estt (B) dt. 27.11.50	
5.	18/6/70-Estt (B) dt. 09.12.70	The procedure to be followed has been reviewed and it has been decided to amend the procedure laid down in the aforesaid instructions as given below.
6.	22011/6/75-Estt (D) dt. 30.12.76	
7.	39028/26/93-Estt (B) dt.10.11.95	
8.	39028/26/93-Estt (B) dt.19.02.97	

(I) APPOINTMENT CASES (DIRECT RECRUITMENT/DEPUTATION/ PROMOTION ETC.)

(a) Cases referred to ACC by Ministries/Departments/concerned Divisions of Department of Personnel and Training, where ACC approval is required for appointment.

Where the ACC has disagreed with the advice of UPSC or of the Departmental Promotion Committee/Selection Committee in which Chairman/Member of the UPSC is the Chairman of such Committee, the decision of the ACC should be intimated by the Ministry concerned to the UPSC by endorsing a copy of the order issued in pursuance of the ACC decision.

(b) Cases where approval of ACC is not required for appointment.

Where the Appointing Authority proposes to disagree with the advice of UPSC for any valid reason, case(s) should be referred to the ACC, alongwith a self contained note, through EO's office in Department of Personnel and Training, for decision. In respect of cases covered under (a) and (b), where the final decision by the ACC involves disagreement with the advice of UPSC, reasons for non-acceptance of the Commission's advice will also be intimated by the Ministry/Department/concerned Division of Department of Personnel and Training to the UPSC while communicating the decision of the ACC, unless it has been decided to withhold the reasons for disagreement in public interest.

(II) DISCIPLINARY AND OTHER CASES

(a) General Procedure for Ministries/Departments (other than Ministry of Personnel, Public Grievances and Pensions)

Where it is proposed by the Disciplinary Authority (in disciplinary cases)/Competent Authority to disagree with the advice of UPSC, a reference shall be made to the Department of Personnel and Training (Establishment Division) in the relevant file indicating reasons for the proposed disagreement and its advice taken into consideration before a final order is passed. In respect of disciplinary cases relating to Group 'A' officers, provisions of entry 39(ii) of the Transaction of Business Rules, 1961 requiring approval of the Prime Minister in certain cases, shall also be kept in view.

If the final decision involves disagreement with the advice of UPSC, reasons for such disagreement will also be intimated by the Ministry/Department concerned to the UPSC while communicating the decision to the UPSC.

(III) Procedure relating to cases involving services/cadres/posts under the control of the Ministry of Personnel, Public Grievances and Pensions.

If in the opinion of the Secretary of the Ministry of Personnel, Public Grievances and Pensions, there is a case for disagreement with the advice of UPSC in a disciplinary or other matter (other than appointment cases) in respect of services/posts for which it is the controlling authority, a proposal will be placed before the Committee of Secretaries for its consideration. Thereafter, the case will be submitted to the Minister-in-charge/Prime Minister, as the case may be, along with the opinion of the Committee of Secretaries. In cases of appointment, however, the matter will be placed before the Minister-in-charge/Prime Minister directly and if the decision of Minister involves non-acceptance of the advice of the Commission, the case would be referred to the ACC for a final decision.

The decision of ACC in appointment cases and of Minister-in-charge/Prime Minister in disciplinary or other cases, will be implemented by issuance of a formal order. If the final decision involves disagreement with the advice of the Commission, the decision will be conveyed to the UPSC alongwith the reasons, wherever applicable, for non-acceptance of the Commission's advice, unless in a case referred to the ACC, the reasons have been withheld in public interest.

Note:- In all the cases, other than cases covered under I (a), where the initial opinion of the Appointing Authority/Disciplinary Authority/competent Authority/Secretary, Department of Personnel and Training, as the case may be, is based on a new fact/evidence having a bearing on the case which became available after the recommendation of the Commission was received or which became available earlier but the Commission could not be informed of the same before it made its recommendations, the case will be referred back to the Commission for reconsideration of its recommendation/advice alongwith all relevant details. If it is still proposed to depart from the recommendation/advice of the Commission given on reconsideration of the matter, the procedure laid down in the preceding paras may be followed.

(C.A. Subramanian)
Director

To

The Secretaries, All Ministries/Departments Government of India

Copy forwarded to:-

1. The President's Secretariat, Rashtrapati Bhavan, New Delhi
2. Vic-President's Secretariat, New Delhi
3. The Prime Minister's Office, South Block, New Delhi
4. The Cabinet Secretariat, Rashtrapati Bhavan, New Delhi
5. The Secretary, Central Vigilance Commission, INA, New Delhi.
6. The Secretary, Union Public Service Commission, New Delhi.
7. The Lok-Sabha Secretariat, New Delhi
8. The Rajya Sabha Secretariat, New Delhi.
9. The Comptroller and Auditor General of India, New Delhi
10. All Attached offices under Ministry of Personnel, Public Grievances and Pensions.
11. All Officers and Sections in the Ministry of Personnel, Public Grievances and Pensions.
12. Website Section, NIC, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi.
13. 250 spare copies.

(B.M. Sehgal)
Under Secretary to the Government of India