

No. 36012/1/2020-Estt. (Res-II)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

North Block, New Delhi- 110 001
Dated the 26th April, 2023.

Office Memorandum

Subject: Litigation involving reservation in promotion to Persons with Benchmark Disabilities (PwBD)-regarding

The undersigned is directed to say that in pursuance of the Order, dated 28.9.2021 delivered by the Hon'ble Supreme Court of India in the 'Application for Clarification' in the matter of '*Siddaraju vs. State of Karnataka*' in the Civil Appeal No.1567/2017 and in pursuance of the provisions contained in Section 34 of the Rights of Persons with Disabilities Act, 2016, this Department has issued detailed guidelines for providing reservation in promotions to Persons with Benchmark Disabilities (PwBDs), vide O.M. No.36012/1/2020-Estt (Res.-II), dated 17.5.2022. However, before the issuance of the aforesaid O.M., dated 17.5.2022, certain contempt petitions had been filed by some affected parties. In addition, there are certain Orders given by Hon'ble High Courts and Hon'ble Supreme Court of India directing the Government to implement their orders in the matter of reservation in promotion for PwBDs. There may be some other cases also which may have been filed by the affected parties in various Courts before the issuance of the aforementioned O.M., dated 17.5.2022, and some directions might have been issued by different Courts which have not been brought to the notice of this Department.

2. It is stated that the judgment/orders given by the Hon'ble Courts are required to be complied with within the time frame given by the Hon'ble Courts. In case, any Department finds any difficulty in implementing the order of the Hon'ble Court, the Department is required to consult the Department of Legal Affairs in the matter and file a suitable affidavit before the Court of Law within time bringing out the difficulties being faced by it in implementing the said order. However, it is not appropriate to neither implement the Order of the Hon'ble Court nor to bring it to the notice of the Hon'ble Court within the time frame indicating the difficulty in implementing the order in such case. In one such case, it has come to the notice of this Department that neither the order of the Hon'ble Court was implemented nor any legal remedy was sought on the said order, which invited the displeasure of the Hon'ble Court.

3. In view of the above, all the Ministries/Departments of the Government of India, including their attached/subordinate offices,

CPSEs, autonomous bodies and other organizations are requested to ensure that all such cases, where the Hon'ble Court has given some directions, may be examined for implementation of the same and in case of any difficulty in implementing such orders of the Hon'ble Courts, appropriate legal remedy may be obtained in consultation with Department of Legal Affairs within the time frame provided by the Hon'ble Court and submit an affidavit before the Hon'ble Court explaining the difficulty in implementing the orders passed by the Hon'ble Court.

4. It is also stated that this Department has issued instructions to all the Ministries/Departments regarding handling of Court cases by them, vide OM No. 28027/1/2016-Estt. A.III, dated 16.03.2016 (copy enclosed). It is reiterated that the Department of Personnel and Training is the nodal Department that formulates policies on service matters and issues instructions on reservation matters from time to time. These instructions are to be followed by the Ministries/Departments of the Central Government scrupulously. All the Court cases filed by employees have to be defended on the basis of the facts available with the Administrative Ministry/Department concerned, keeping in view the instructions issued on the subject by this Department. Attention is also invited to the Cabinet Secretariat's D.O letter, dated 25.02.1994, and 16.06.2016 (copies enclosed), addressed to all the Secretaries to the Government of India, requesting that a common counter reply may be filed in each case, unless otherwise directed by the Court, so that the different Departments do not take divergent positions/individual interpretation in court cases.

5. This issues with the approval of Secretary (P).

Encls. As above.



(Debabrata Das)

Under Secretary to the Government of India

To

1. The Secretaries of all the Ministries/Departments of the Government of India for ensuring strict compliance of the above instructions.
2. The Secretary, Department of Financial Services, Jeevan Deep Building, Sansad Marg, New Delhi.
3. The Secretary, Department of Public Enterprises, Lodhi Estate, CGO Complex, New Delhi.
4. The Secretary, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.

5. The Secretary, Union Public Service Commission, Shahjahan Road, New Delhi.
6. The Secretary, Staff Selection Commission (HQ), CGO Complex, Lodhi Road, New Delhi.
7. Office of Comptroller and Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi.
8. Supreme Court of India/Election Commission of India/ Lok Sabha Secretariat/ Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's Secretariat/ Vice President's Secretariat/ Prime Minister's Office/ Niti Aayog.
9. Office of Chief Commissioner for Persons with Disabilities (Divyangjan) 5th Floor, NISD Building, Plot No. G-2, Sector-10, Dwarka, New Delhi-110075.
10. The Director, ISTM.

Copy also to:

1. The Director (AIS), DoPT. *Rej Kumar 26/4/23*
2. The Director (Admn), DoPT
3. Deputy Secretary (CS-I), DoPT, LOK NAYAK BHAWAN, New Delhi.
4. Deputy Secretary (CS-II), DoPT, LOK NAYAK BHAWAN, New Delhi.

Amin
26/4/23

P/L

कार्मिक एवं प्रशिक्षण विभाग Deptt. of Personnel & Trg. प्राप्ति और निष्पन्न अनुभाग Receipt & Issue Section
26 APR 2023 <i>3.40 PM</i>
जारी किया/ISSUED हस्ताक्षर/Sig.

36012/1/2022-Estt.(Res-1)

2401877/2022/ESTT. (RES-1)

IMMEDIATE

S.No.2(C)



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

D.O.No.6/1/1/94-Cab.

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

25th February, 1994.

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 D.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 even though 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 Govt.

Separate note to Ministry
Dr.

MOST IMMEDIATE

प्रादीप कुमार सिन्हा
PRADEEP K. SINHA



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.

Typ

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.

see 9

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.

23/6

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.

15/6/16

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

With regards,

Yours sincerely,

US GST-M

Encl. - As above.

Pl put up in file related to court matters.
(Pradeep K. Sinha)

Dr. Hasmukh Adhia
Secretary,
Department of Revenue
New Delhi

MW
27/6/2016
80 (copy)

MS
27/6/16
80 (copy)
Dr. Gaur

File with
US (copy) 1-C
AP

F.No.28027/1/2016-Estt.A-III
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training
Establishment Division

North Block, New Delhi-110001

Dated: 16th March, 2016

OFFICE MEMORANDUM

Subject: Court orders against Government of India instructions on service matters-consultation with Ministry of Law and Department of Personnel and Training on question of filing appeals.

The undersigned is directed to refer to this Department's O.M.No.28027/9/99-Estt.(A) dated 1st May, 2000 on the above subject (copy enclosed) and to say that the Department of Personnel and Training is the nodal Department that formulates policies on service matters and issues instructions from time to time. These instructions are to be followed by the Ministries/Departments of the Central Government scrupulously. All the Court cases filed by employees have to be defended on the basis of the facts available with the Administrative Ministry/Department concerned, keeping in view the instructions issued on the subject by this Department.

2. Reference is also invited to the Cabinet Secretariat's D.O letter No. 6/1/1/94-Cab dated 25.02.1994 and the Department of Expenditure's O.M. No. 7(8)/2012-E-II(A) dated 16.05.2012 inter-alia provide 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. It further provides that 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.

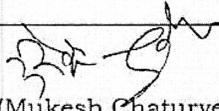
3. However, it is noticed that the Ministries/Departments are making several references to this Department seeking interpretation of the guidelines without exercising due diligence. **The Ministries/Departments are advised not to make any references to this Department unless there are difficulties relating to interpretation/application of these guidelines or any relaxation in Rules/instructions is warranted to mitigate a genuine hardship faced the Government servant.** While seeking advice of this Department, instructions contained in this Department's O.M. number 43011/9/2014-Estt (D) dated 28.10.2015 may be followed.

4. The court cases may be further handled in the following manner:-

36012/1/2022-Estt.(Res-I)

2401859/2022/ESTT. (RES-1)

Sl. No.	Orders of Court	Action to be taken
1.	A decision/order has been quashed by Tribunal/Court on the ground that it is violative of the Rules/Government instructions, but Government's policy has not come in for adverse comments.	The Administrative Department may implement the CAT Order/Judgement if it is in consonance with Government policy and the Government case has been lost due to Administrative infirmities.
2.	Where the policy of DoPT has not been quashed, but the judgment/order of the Tribunal/ High Court/ Supreme Court has gone in favour of Respondents/Applicants. (a) Where in above, the Administrative Ministry is in favour of implementing the judgement (b) Where in above, a decision to file Writ Petition/ Special Leave Petition (as the case may be) has to be taken	The Administrative Ministry may take a decision in consultation with DoPT and DoLA. The Administrative Department may take a decision to file Writ Petition/Special Leave Petition (as the case may be) in consultation with Department of Legal Affairs (DOLA) and DoP&T.
3.	Where the judgment has gone in favour of Applicant/Petitioner/Respondent and a scheme/guideline/OM outlining Government policy has been quashed.	The Administrative Department may take a decision to file WP/SLP (as the case may be) in consultation with DoPT and DOLA. The references to this Department should be sent at least one week in advance so that it can be properly examined in DoP&T.
4.	CAT or a Higher Court has upheld Government's stand	DoPT may only be informed with all details.


(Mukesh Chaturvedi)
Director (E)
Tele: 2309 3176

To

The Secretaries of All Ministries/Departments (as per the standard list)

No.28027/9/99-Estt.(A)

Government of India

Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

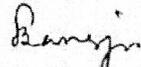
New Delhi, dated the 1st May 2000.

OFFICE MEMORANDUM

Subject: Court orders against Government of India instructions on service matters – consultation with Ministry of Law and DoP&T on the question of filing appeals, before implementation of Court's orders.

The undersigned is directed to say that it has come to the notice of this department that in cases where the Courts have passed orders against the Government of India instructions, the administrative Ministry/Department has not consulted the Law Ministry on the question of filing appeal against such orders, before implementation of such orders.

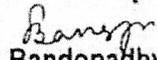
2. The matters has been considered in this Department and it has been decided that whenever there is any Court order against the Government of India instructions on service matters, the administrative Ministry/Department/Office shall consult the Department of Legal Affairs and the Department of Personnel and Training on the question of filing appeal against such an order, as far as possible, well in time, that is before the time limit, if any, prescribed in such order or before the time limit for filing appeal. No such orders shall be implemented by the concerned Departments/Ministries without first referring the matter to the Department of Legal Affairs for advice and to Department of Personnel and Training.
3. The Ministries/Departments are requested to note the above instructions for strict compliance.
4. These instructions are issued in consultation with the C&AG, in regard to its applicability to Indian Audit and Accounts Department.


(Smt.S.Bandopadhyay)
DIRECTOR

To
All Ministries/Departments of the Government of India .

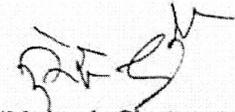
Copy to:

1. Comptroller and 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. All Attached and Subordinate Offices of the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.


(Smt.S.Bandopadhyay)
DIRECTOR

Copy to:

1. President's Secretariat, New Delhi.
2. Vice-President's Secretariat, New Delhi.
3. The Prime Minister's Office, New Delhi.
4. Cabinet Secretariat, New Delhi.
5. Rajya Sabha Secretariat/Lok Sabha Secretariat, New Delhi.
6. The Comptroller and Auditor General of India, New Delhi.
7. The Secretary, Union Public Service Commission, New Delhi.
8. The Secretary, Staff Selection Commission, New Delhi.
9. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
10. Secretary, National Council (JCM), 13, Feroze Shah Road, New Delhi.
11. CVOs of all Ministries/Departments.
12. ADG (M&C), Press Information Bureau, DoP&T
13. NIC, Department of Personnel & Training, North Block, New Delhi (for uploading the same on the website of this Ministry under the Head OMs & Orders → Establishment → Miscellaneous
14. Hindi Section, DoP&T


(Mukesh Chaturvedi)
Director (E)
Tele: 2309 3176