

NO.C.19018/2/95-VIG
GOVERNMENT OF MIZORAM
VIGILANCE DEPARTMENT

.....

Aizawl, the 12th March 2008.

To,

- 1. All Administrative Departments.
- 2. All Heads of Departments.

Subject:- Central Civil Services (Classification Control and Appeal) Rules, 1965-
Advice of the Union Public Service Commission to be communicated
to the delinquent Government servant along with the final order of
penalty.

Sir,

I am directed to forward herewith a copy of office Memorandum issued under
Memo No.11012/10/2007-Estt(A) dt.7/1/2008 on the above subject received from Deputy
Secretary to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training) . New Delhi for information and guidance.

Encl: as above.

Yours faithfully,

Ltt 12/03/08.
(LAWMTHANGA)

Deputy Secretary to the Govt. of Mizoram,
Vigilance Department.

12/3

NO.11012/10/2007-Est.(A)

Government of India

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

North Block,
New Delhi- 110001
Dated the 7th January, 2008.

OFFICE MEMORANDUM

Subject : Central Civil Services (Classification, Control and Appeal) Rules, 1965 –
Advice of the Union Public Service Commission (UPSC) to be
communicated to the delinquent Government servant along with the
Final order or penalty..

The undersigned is directed to refer to the provisions of rule 32 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and to say that the nature of consultation with the Union Public Service Commission (UPSC) and the manner of communication of the advice of the UPSC to the delinquent Government servant have been subject matter of litigation in some cases in CAT/High Courts etc, The questions raised from time to time are whether consultation with the UPSC under Article 320 (3) © of the Constitution is mandatory and binding on the appropriate authority; and whether a copy of the UPSC's advice should be furnished to the Charged Officer before the order imposing a penalty is issued. The Hon'ble Supreme Court of India has finally decided the matter in its judgment dated the 19th April, 2007 in Civil Appeal No.2067 of 2007 (Union of India and Another vs. T.V.Patel).

2. In the above judgment, the Hon'ble Supreme Court referred to the cases of State of U.P. vs. Mandbodhan Lal Srivastava (Constitution Bench of the Hon'ble Supreme Court) [1958 SCR 533] and Ram Gopal Chaturvedi vs State of Madhya Pradesh (three Judge Bench) [1969 (2) SCC 240] and did not agree with the contentions on behalf of the respondent that non-supply of a copy of the advice tendered by the UPSC before the final order was passed deprived the delinquent officer of making an effective representation and that it, therefore, vitiates the order. The Hon'ble Supreme Court held as follows :-

“In view of the law settled by the Constitution Bench of this Court in the case of Srivastava (supra) we hold that the provisions of Article 320(3)© of the Constitution of India are not mandatory and they do not confer any rights on the public servant so that the absence of consultation or any irregularity in consultation process or furnishing a copy of the advice tendered by the UPSC, if any, does not afford the delinquent government servant a cause of action in a court of law.”

3. The Judgment of the Hon'ble Supreme Court in the case of S.N.Narula vs. Union of India and others [SLP{c}12188/2003], on the facts and circumstances of that case apparently did not lay down any law Whereas in the later judgment in T.V. Patel's case delivered on 19.4.2007, the Appex Court has laid down law relying on two earlier decisions of the Appex Court, one of the Constitution Bench and another of a three Judge Bench . In view of the judgment dated 19.04.2007 of the Hon'ble Supreme Court it clear that the Disciplinary Authority is not required to furnish a copy of the advice tendered by the Union Public Service Commission to the Charged Officer before the final order of penalty is passed.

4. All Ministries/Departments/Offices etc. are, therefore, requested to comply with the existing provisions of CCS(CCA) Rules, 1965 and bring the contents of this O.M. to the notice of all concerned for adopting a uniform stand and to make serious efforts to get the litigation cases on this subject disposed of by the various courts on the basis of the law laid down by the Hon'ble Supreme Court in the judgements referred to in the preceding paragraphs.

Sd/-P.Prabhakaran
Deputy Secretary to the Government of India.

To,

All Ministries/Departments of the Government of India.

Copy forwarded to:

1. Comptroller and Auditor General of India, New Delhi
2. Lok Sabha Secretariat/Rajya Sabha Secretariat/Ministry of Parliamentary Affairs.
3. Union Public Service Commission, New Delhi.
4. President's Secretariat/Vice President's Secretariat/Prime Minister's Office.
5. Election Commission of India New Delhi.
6. Central Vigilance Commission, New Delhi
7. Staff Selection Commission, New Delhi.
8. Central Bureau of Investigation, New Delhi.
9. Chief Secretaries of all State Governments/Union Territory Administrations.
10. All Attached and Subordinate Offices of the Ministry of Personnel Public Grievances and Pension and Ministry of Home Affairs..
11. All Officers and Sections in the Ministry of Personnel, PG and Pensions and Ministry of Home Affairs . (200 spare copies)