

GOVERNMENT OF ORISSA

POLITICAL AND SERVICES (A. T.) DEPARTMENT

No. 298-A.T.—P-23/62

Dated Bhubaneswar, the 28th August 1962

FROM

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JOINT SECRETARY TO GOVERNMENT

To

ALL DEPARTMENTS OF GOVERNMENT
ALL HEADS OF DEPARTMENT

SUBJECT—Whether Departmental Proceedings and a criminal prosecution based on same set of facts can be continued simultaneously

The undersigned is directed to say that the question whether departmental proceedings can be started simultaneously with a criminal case arising out of the same set of facts or incident, was under consideration of Government since some time.

After careful consideration of the issue Government holds the view that in the absence of any legal bars, a departmental enquiry can be started or continued when a criminal case is subjudice, on the same set of facts, provided no scope is allowed, to cause any embarrassment to the Court trying the criminal case, as a result of the departmental proceedings.

In this connection the principles to be followed in this State henceforward, are formulated below :—

- (a) Whenever any misconduct or misdemeanour on the part of a Government servant is detected it will be appropriate for the department concerned to initiate departmental enquiry against him and dispose it of as early as possible. In some cases it may be possible that the misconduct so noticed does not amount to an offence under the law. In such a contingency the case will have to be one for departmental proceeding only.
- (b) Even after a departmental enquiry is completed and the penalty is imposed as a result thereof, Government may consider the question of prosecution in the light of material available both before the departmental enquiry started and material if any gathered during the departmental enquiry.
- (c) In cases where departmental proceeding runs side by side with a criminal case on the same facts, care has to be taken to ensure that the departmental proceeding does not interfere even in the least with the Police Investigation, on which the latter are to submit a report in the manner prescribed.
- (d) In cases covered by paragraph (c) above the authorities concerned should bring the matter to the notice of the Government and seek orders as to whether they will proceed simultaneously along with the criminal case or will await the decision of the Criminal Court.
- (e) If in any case recovery of financial loss to Government is to be made, then a criminal prosecution will be of no help, as the remedy can be obtained only through a departmental proceedings or a civil suit. In such a case it may be permissible to run the departmental proceeding concurrently with the criminal case provided that if there be any action which may or is likely to cause embarrassment to the accused and tends to prejudice the fair and impartial trial of the criminal case the departmental proceeding will have to be stayed.

Government wish to bring the above to the notice of all concerned so that the procedure outlined therein may be followed by them in dealing with disciplinary proceedings against the Government servants. The offices under the control of the departments concerned may also be informed of the above procedure.

R. N. MOHANTY

Joint Secretary to Government