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Government of Orissa
Political and Services Department

MEMORANDUM Np, 13983/Gen
Bhubaneswar, dated the 14th November, 1959.

Sub:- Government servants involved in legal proceedings
Provision for legal and financial assistance.

The question of providing legal and financial assistance Government servants involved in legal proceedings has been under the consideration of Government and after careful consideration the following decision has been made in consultation with the Law and Finance Departments.

(a) Proceedings initiated by Govt. in respect of matters connected with the official duties or position of the Govt. servant.

Government will not give any assistance to a Govt. servant for his defence in any proceedings civil or criminal instituted against him by the State in respect of matters arising out of or connected with his official duties or his official position. Should however, the proceedings conclude in favour of the Government servant, Government will entertain his claim for reimbursement of costs incurred by him for this defence and Government are satisfied from the facts and circumstances of the case that the Government servant was subjected to the strain of the proceedings without proper justification, they will consider whether the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence should be reimbursed to him.

(b) Proceedings in respect of matters not connected with official duties or position of the Govt. servant.

Government will not give any assistance to a Govt. servant or reimburse the expenditure incurred by him in the conduct of proceedings in respect of matters not arising out of or connected with his official duties or his official position, irrespective of whether the proceedings were instituted by a private party against the Govt. servant or vice versa.

(c) Proceedings instituted by a private party against a Government servant in respect of matters connected with his official duties or position.

(i) If the Government on consideration of the facts and circumstances of the case consider that it will be in the public interest that Govt. should themselves undertake the defence of the Government servant in such proceedings and if the Government agrees to such a course, the Govt. servant should be required to make a statement in writing as in Annexure 'A' and thereafter Government should make arrangements for the conduct of the proceedings as if the proceedings had been instituted against Government.

(11) If the Government servant proposes to conduct his defence in such proceedings himself the question of reimbursement of reasonable costs incurred by him for his defence may be considered in case the proceedings conclude in his favour. In determining the amount of costs to be so reimbursed, Govt. will consider how far the court has vindicated the acts of the Government servant. The conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.

To enable the Government servant to meet the expenses of his defence, Govt. may sanction, at their discretion, an interest free advance not exceeding Rs. 500/- or the Govt. servant's substantive pay for three months, whichever is greater, after obtaining from the Government servant a bond in the form reproduced as Annexure 'B'. The amount advanced would be subject to adjustment against the amount if any, to be reimbursed as above.

The Government servant may also be granted any advance from any provident fund to which he is a subscriber not exceeding three months pay or one half of the balance standing to his credit, whichever is less; this advance will be repayable in accordance with the rules of the fund.

(d) Proceedings instituted by a Government servant on his being required by Government to vindicate his official conduct.

A Government servant may be required to vindicate his conduct in a court of law in certain circumstances vide Political & Service (General) Department Memorandum No. 13985(89) Gen., dated the 14th November, 1959. The question whether costs incurred by the Govt. servant in such cases should be reimbursed by the Government and if so, to what extent should be left over for consideration in the light of the result of the proceedings. Government may however, sanction an interest free advance, in suitable instalments, of an amount to be determined by them in each case on the execution of a bond by the Government servant in the form reproduced in Annexure 'B'.

In determining the amount of costs to be reimbursed on the conclusion of the proceedings, the Government will consider to what extent the court has vindicated the acts of the Govt. servant in the proceedings. Conclusion of the proceedings in favour of the Government servant will not by itself justify reimbursement.

(e) Proceedings instituted by a Govt. servant sue moto with the previous sanction of Govt. to vindicate his conduct arising out of or connected with his official duties or position.

If a Government servant resorts to a Court of law with the previous sanction of Govt. to vindicate his conduct arising out of or connected with his official duties or position, though not required to do so by Government, he will not ordinarily be entitled to any assistance but Government may in deserving cases, sanction advances in the manner indicated in sub-para (ii) above but no part of the expenses incurred by the Government servant will be reimbursed to him, even if he succeeds in the proceedings.

3. Clause (d) of article 320(3) of the Constitution requires consultation with the Orissa Public Service Commission on any claim by a Government Servant for the reimbursement of the costs incurred by him in defending legal proceedings instituted against him in respect of acts done on purporting to be done in the execution of his duty. In other cases consultation with the Orissa Public Service Commission is not obligatory, but it will be open to Government to seek the Commission's advice if considered necessary.

4. The question whether a case falls under article 320 (d) of the Constitution so as to require consultation with the Commission may at times be difficult to determine. It may be stated generally that the consultation is obligatory in a case where a reasonable connection exists between the act of the Government servant and the discharge of his official duties, though the act must bear such relation to the official duties that the Government servant could lay a reasonable but not a pretended or a fanciful claim that he did it in the course of the performance of his duties.

5. The appropriate authority for taking decisions in each case will be the administrative department of the Government concerned who will consult the Finance and Law Departments where necessary.

6. This may be brought to the notice of all concerned.

Sd/- S.N. Sharma

Deputy Secretary to Government

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ANNEXURE (A)

(Here enter description of the proceedings)

The Government of Orissa having been pleased to undertake my defence in the above proceedings, I hereby agree to render such assistances to Government as may be required for my defence and further agree that I shall not hold Government in any way responsible if the proceedings end in a decision adverse to me.

Signature of the Government servant

ANNEXURE 'B'

By this Bond I(here give the name and other particulars of the Government servant including post held by him) acknowledge myself bound to the Government of Orissa in the sum of Rs.....(here enter a sum representing double the amount advanced) to the said Government.

Now the above written Bond is conditioned to be void in case the above bounden(Government servant)his personal representatives or any person acting for and on behalf of the above bounden(Government Servant)shall, on demand pay to the said Government or its representation or assigns or their attorney authorised to receive the same, the said sum of Rs..... but in the event of the above bounden(Government) servant or his personal representatives or any person acting for and on his behalf failing to pay the said sum on demand, the above written Bond shall remain in full force and effect.

Dated this theday of 19

Signature of the Government servant

Witnesses.

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