

Government of Orissa
General Administration Department

No. 19993 /Gen. Bhubaneswar, the 6th October, 2009.
SC/3 - 30/2009

From : Sri T.K.Mishra, I.A.S., Chief Secretary.

To : All Departments of Governments
All Heads of Departments
All Collectors.

Sub - Starting of Departmental proceeding simultaneously with criminal proceeding based on same set of facts.

Instances have come to the notice of Government that in many cases Government servants prosecuted on charges of criminal misconduct and corruption under the Prevention of Corruption Act, 1988 are acquitted by the trial courts because the prosecution fails to prove the charges beyond reasonable doubts. As no disciplinary proceeding is initiated against such Government servants for serious charges involving gross misconduct, dereliction in duty, disobedience of orders of competent authority, misappropriation / misutilisation of Government money by starting departmental proceeding simultaneously with the criminal proceeding, it is not possible to take any disciplinary action under the relevant CCA Rules. Besides, no recovery of financial loss to the Government can be effected through criminal prosecution.

2. Instructions have been issued earlier in the erstwhile P & S (A.T.) Department circular No.298/AT dated 28.08.1962 that in the absence of any legal bar, a departmental inquiry 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 or the charge in the criminal case is of a grave nature which involves complicated questions of law and fact. In such cases, it would be desirable to stay the departmental proceedings till conclusion of the criminal case. In circular No.

50/AT dated 25.02.1963 of the erstwhile P & S (A.T.) Department it was stated that acquittal of a delinquent officer in a criminal case does not *ipso facto* put a stop to any proceeding that Government may contemplate taking against him. In circular No.10641/Gen. dated 26.07.1971 of the erstwhile P & S (A.T.) Department it was mentioned that an officer already acquitted may be found guilty in a departmental enquiry as in the later, a less rigorous standard of evidence is insisted upon.

Further in G.A. Department circular No.14596/Gen. dated 03.05.2001 it was instructed that while sanctioning prosecution either under section 197(1) of Cr.P.C, 1973 or under section 19(1) of the P.C.Act,1988 the prosecuting authorities have to invariably send draft charges alongwith articles of charges, statement of allegations and memo of evidence to the concerned disciplinary authorities for initiating proceeding under rule 15 of the OCS(CC&A) Rules,1962 and for serving a copy of the charge-memo on the delinquent employee immediately in order to safeguard the interest of Government. In spite of the above instructions, appropriate actions are not being taken by the concerned authorities. As a result, delinquencies on the part of erring Government servants meet safe escape. In the process, guilty is allowed to go unpunished for want of action on the part of the disciplinary authority.

3. It is therefore impressed upon all concerned that the instructions prescribed in the circulars referred to above should be followed meticulously and that departmental proceedings must start simultaneously against Government servants facing criminal proceedings on the same set of facts.

T. Anis
Chief Secretary
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Memo No. 19994 Dated 6th October, 2009

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g.s.
Additional Secretary
26/10/2009