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MOST IMMEDIATE

No.11012/11/85-Estt(A).
Government of India
Ministry of Personnel, Public Grievances
and Pensions
(Department of Personnel and Training)

New Delhi, the 4 April, 1986.

OFFICE MEMORANDUM

Subject:- Judgement of the Supreme Court in Civil Appeal
No. 6814 of 1983, Civil Appeal No.3484 of 1982 etc.
delivered on 11.7.1985 regarding the scope of second
proviso to Article 311(2) of the Constitution

The undersigned is directed to refer to paras 6 to 8 of this Department's O.M. of even number dated 11th November, 1985, wherein instructions are contained relating to factors that are relevant where action is taken under Clause (b) of the second proviso to Article 311(2) of the Constitution.

2. A question has been raised whether, in a case where clause (b) of the second proviso to Article 311(2) of the Constitution is invoked, the disciplinary authority may dispense with the issuing of charge memo listing the charges. Clause (b) is attracted in a case where the disciplinary authority concludes, "that it is not reasonably practicable to hold such an inquiry." The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. In the Tulsi Ram Patel case, the Supreme Court observed as under:-

"It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge sheet upon the Government servant or after he has filed his written statement thereto or even after the evidence had been led in part. In such a case also, the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry."

3. Article 311(2) of the Constitution concerns itself with the punishment of dismissal, removal or reduction in rank, which comes in the category of major punishment under the service rules providing the procedure for disciplinary action against Government servants. The first step in that procedure is the service of a memorandum of charges or a charge sheet, as popularly known, on the Government servant, listing the charges against him and calling upon him, by a specified date, to furnish a reply either denying or accepting all or any of the charges. An inquiry hence commences under the service

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rules with the service of the charge sheet. Obviously, if the circumstances even before the commencement of an inquiry are such that the disciplinary authority holds that it is not reasonably practicable to hold an inquiry, no action by way of service of charge sheet would be necessary. On the other hand, if such circumstances develop in the course of inquiry, a charge sheet would already have been served on the Government servant concerned.

4. In para 6(i) of this Department's O.M. dated 11th November, 1985, certain illustrative cases have been enumerated where the disciplinary authority may conclude that it is not reasonably practicable to hold the inquiry. It is important to note that the circumstances of the nature given in the illustrative cases, or other circumstances which make the disciplinary authority conclude that it is not reasonably practicable to hold the inquiry, should actually subsist at the time when the conclusion is arrived at. The threat, intimidation or the atmosphere of violence or of a general indiscipline and insubordination, for example, referred to in the illustrative cases, should be subsisting at the time when the disciplinary authority arrives at his conclusion. It will not be correct on the part of the disciplinary authority to anticipate such circumstances as those that are likely to arise, possibly later in time, as grounds for holding that it is not reasonably practicable to hold the inquiry and, on that basis, dispense with serving a charge sheet on the Government servant.

5. Ministry of Finance etc. are requested to bring the above clarifications to the notice of all the authorities serving under their control for their information, guidance and compliance.

6. Hindi version will follow.

A. Jayaraman
(A. JAYARAMAN)
DIRECTOR.

To

All Ministries/Departments of the Govt. of India etc., with usual number of spare copies.

No. 11012/11/85-Estt(A) New Delhi, the

4 April, 1986.

Copy, with usual number of spare copies forwarded for information to:

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2. UPSC, New Delhi.
3. Central Vigilance Commissions, New Delhi.
4. Lok Sabha Secretariat, New Delhi.
5. Rajya Sabha Secretariat, New Delhi.

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6. Staff Selection Commission, New Delhi.
7. All Union Territory Administrations.
8. All Chief Vigilance Officers.
9. All Attached/Subordinate Offices of Ministry of Personnel, Public Grievances and Pensions.
10. Administrative Vigilance Division, Dept. of Pers. & Trg.
11. JCA Section, Department of Personnel and Training.
12. All Administrative Section in Department of Personnel and Training.
13. All Members, National Council (JCM).
14. Secretary, Staff Side, National Council (JCM), 13-C Feroze Shah Road, New Delhi.
15. AIS.III Section, Department of Personnel and Trg.
16. All Attached/Subordinate Offices of Ministry of Home Affairs.
17. Ministry of Law (Department of Legal Affairs) with reference to their U.O.No.1434/86-Advice A dt. 11.3.86.

A. Jayaraman
(A. JAYARAMAN)
DIRECTOR.

esj/-