

F. No. J-11019/3/2024-Judicial
Government of India
Ministry of Law & Justice
Department of Legal Affairs
(Judicial Section)

Shastri Bhawan, New Delhi
Dated the 14th November, 2024

OFFICE MEMORANDUM

Subject: Engagement of Panel Counsel in criminal proceedings against Delhi Police Personnel in matters connected with their official duties - Reg.

With reference to this Department's OM of even number dated 10.07.2024 extending the panel of this Department for conducting cases of Delhi Police in Civil & Service matters, Delhi Police has requested for engagement of panel counsel as defense counsel for Delhi Police Personnel in criminal proceedings connected with their official duties.

2. The matter has been examined in light of above referred OM dated 10.07.2024, the terms and conditions applicable to Panel Counsel of this Department and Ministry of Home Affairs OM No. 45/5/53-Ests. (A) dated 08.01.1959 (copy enclosed) and after due consideration, the undersigned is directed to convey that henceforth on the request of Delhi Police, in each and every case, containing specific approval of the Ministry of Home Affairs in terms of aforesaid OM dated 08.01.1959, Panel Counsel may be engaged in defence of Delhi Police Personnel in criminal proceedings related to their official duties, before various courts in the country.

3. This is issued with the approval of Hon'ble Minister of State (I/C) for Law & Justice.

Encls: As above.


14.11.24

(M.C. Prusty)

Senior Government Advocate

To,

1. The In-charge, Branch Secretariats at Mumbai, Kolkata, Chennai & Bengaluru.
2. The In-charge, Litigation (High Court / Lower Court) Sections.
3. The Additional Solicitors General for India (as per list).
4. The Deputy Solicitors General of India (as per list).
5. The Standing Government Counsels (as per list).

Copy (through email) to:

1. PS to Hon'ble MoS (I/C) L&J.
2. Secretary, Ministry of Home Affairs.
3. The Commissioner of Police, Delhi / Dy. Commissioner of Police (Legal Division), Delhi w.r.t. their letter No. 3398/Legal Cell/PHQ dated 10.10.2024.
4. PSO to Law Secretary / All Additional Secretaries and Joint Secretaries and Legal Advisers in the main secretariat of DoLA.
5. Ld. Attorney General for India / Ld. Solicitor General for India.
6. To upload on website of this Department i.e. www.legalaffairs.gov.in under tab 'Judicial Section' in the link 'Circulars pertaining to litigation'.
7. Hindi Section for providing Hindi version of this order.
8. Office / spare copies.


14.11.2024

(Kumar Gaurva)

Section Officer (Judicial)

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APPENDIX-I

ORDERS REGARDING ASSISTANCE TO GOVERNMENT SERVANTS INVOLVED IN LEGAL PROCEEDINGS

[Referred to in Decision No. (1) below Rule 19.]

1

G.I., M.H.A., O.M. No. F. 45/5/53-Ests. (A), dated the 8th January, 1959, read with C.L. 313 to G.F.R. [G.I., M.F., File No. F. 23 (1)-E. II (A)/76]

Subject: Government servants involved in legal proceedings — provision for legal and financial assistance.

1. The question has been raised whether, and if so under what circumstances, Government should provide legal and financial assistance to a Government servant for the conduct of legal proceedings by or against him. The following decisions, which have been taken in consultation with the Ministries of Law and Finance and the Comptroller and Auditor-General, are circulated for information and guidance:—

2. (a) *Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government servant.*— Government will not give any assistance to a Government 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 may, if they 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, reimburse the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence.

(b) *Proceedings in respect of matters not connected with official duties or position of the Government servant.*— Government will not give any assistance to a Government servant or reimburse the expenditure incurred by him in the conduct of proceedings in respect of matters not of, or connected with, his official duties or his official position, irrespective of whether the proceedings were instituted by a private party against the Government 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 case, consider that it will be in the public interest that Government should

themselves undertake the defence of the Government servant in such proceedings and if the Government servant agrees to such a course, the Government 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.

- (ii) 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, Government 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, Government may sanction, at their discretion, an interest-free advance not exceeding ₹ 500 or the Government servant's substantive pay for three months, whichever is greater, after obtaining from the Government servant a bond in the form reproduced in 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 an 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 Instruction No. (1) below Rule 19]. The question whether costs incurred by the Government 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 Government 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 Government servant suo motu, with the previous sanction of Government 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 Government 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. (c) (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 Union Public Service Commission of 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 or purporting to be done in the execution of his duty. In other cases consultation with Union 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 (2) (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 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; the act must bear such relation to the official duties 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 decision in each case will be the Administrative Ministry of the Government of India concerned or Administrators who will consult the Finance and Law Ministries, where necessary. The Comptroller and Auditor-General of India will exercise the powers of an Administrative Ministry in respect of the personnel of the Indian Audit and Accounts Department.