No.Per (AP-II) A(3)-1/79-III
Government of Himachal Pradesh
Department of Personnel (Apptt.-II)

Dated Shimla-2, the 31 August, 2007

OFFICE MEMORANDUM

Subject:- Simultaneous action of prosecution in a court and initiation of departmental proceedings.

The undersigned is directed to enclose a copy of Government of India, Ministry of Personnel, PG and Pensions O.M.No.11012/6/2007-Estt.(A), dated 1st August, 2007 on the subject cited above and to request that these guidelines may please be brought to the notice of all concerned for information and strict compliance.

Brijmohan
Deputy Secretary (Personnel) to the
Government of Himachal Pradesh.

Copy to:-

1. All the Administrative Secretaries to the Govt. of Himachal Pradesh, Shimla-2.
2. All the Divisional Commissioners in Himachal Pradesh.
3. All the Heads of Departments in Himachal Pradesh.
4. All the Deputy Commissioners in Himachal Pradesh.
5. All the Chairmen/ Managing Directors/ Secretaries/ Registrars of all Boards/Corporations/Autonomous Bodies in Himachal Pradesh.

Brijmohan
Deputy Secretary (Personnel) to the
Government of Himachal Pradesh.

Copy of GOI, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi O.M. No.11012/6/2007-Estt. (A) dated 1st August, 2007 addressed to all Ministries/Departments of Government of India, and endorsed to CAG of India, UPSC, President's/Vice president's Sectt./PMO, ECI, CVC, CBI, all UTs and Chief Secretaries of all State Governments/Lok Sabha/Rajya Sabha Secretariat etc.

Subject:- Simultaneous action of prosecution in a court and initiation of departmental proceedings.

The undersigned is directed to refer to the M.H.A. O.M. No. 39/30/54-Ests. Dated the 7th June, 1955 and No. 39/8/64-Ests.dated the 4th September, 1964, on the above subject which state that prosecution should be the general rule in all cases which are found fit to be sent to Court and in which the offences are of bribery, corruption or other criminal misconduct involving loss of substantial public funds and that in such cases, departmental action should not precede prosecution. References are being received in this Department seeking clarification as to whether departmental action can also be taken, where the same matter has been taken up in a court of competent jurisdiction for prosecution of the Government servant concerned.

2. What may be deduced from the above instructions is that in serious cases involving offences such as bribery/corruption etc., action should be launched for prosecution as a matter of course. The Hon'ble Supreme Court had held in their various judgements, the important ones being, State of Rajasthan Vs. B.K.Meena & Others (1996 6 SCC 417), Capt. M.Paul Anthony Vs. Bharat Gold Mines Limited (1999 3 SCC 679), Kendriya Vidyalaya Sangthan & Others Vs. T.Srinivas (2004 (6) SCALE 467) and Noida Entrepreneurs Association Vs. Noida (JT 2007 (2) SC 620), that merely because a criminal trial is pending, a departmental inquiry involving the very same charges as is involved in the criminal proceedings is not barred. The approach and objective in the criminal proceedings and disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against the Government servant are established and if established, what sentence can be imposed on him. In serious nature of cases like acceptance of illegal gratification, the desirability of continuing the concerned Government servant in service in spite of the serious charges leveled against him may have to be considered by the Competent Authority to proceed with departmental action.

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3. However, if the charge in the criminal case is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. This will depend upon the nature of offence and the evidence and material collected against the Government servant during investigation or as reflected in the charge-sheet. If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were kept pending on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest, if the case so warrants.

4. In the case of Hindustan Petroleum Corporation Ltd. Vs. Sarvesh Berry (2004 (10) SCALE Page 340), it has been held in Para 9 that "it is not desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the back drop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law." The apex court has referred to the conclusions given in Para 22 of Captain M.Paul Anthony's case.

5. It is, therefore, clarified that stay of disciplinary proceedings is not a must in every case, where there is a criminal trial on the very same charges and the concerned authority may decide on proceeding with the departmental proceedings after taking into consideration the fact and circumstances of each case and the guidelines given by the Hon'ble Supreme Court, as mentioned in the preceding paragraphs.

6. All Ministries/Departments are, therefore, requested to keep in view the above guidelines while dealing with cases of criminal misconduct of Government servants.

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