

No.202/28/2016(1)-AVD-II
Bharat Sarkar/ Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

North Block, New Delhi, 24th October, 2016

OFFICE MEMORANDUM

Subject: Directions of the Hon'ble Supreme Court regarding "Prosecution Agency" and recommendations of the Independent Review Committee-Implementation of – in respect of Central Bureau of Investigation (CBI) - eligibility criteria for selection to the post of Director of Prosecution and in CBI in view of amendment to the provisions of the Delhi Special Police Establishment Act, 1946-regarding

The undersigned is directed to state that the provisions of the Delhi Special Police Establishment (DSPE) Act, 1946 have since been amended in terms of Part II of the Schedule to the Lokpal and Lokayuktas Act, 2013 (1 of 2014). In this regard a new section 4BA regarding Director of Prosecution has been inserted under the DSPE Act, 1946.

2. In this regard, it may be stated that this Department's OM No. 201/5/2000-AVD-II dated 9th July, 2001 read with OM No.201/5/2000-AVD-II dated 16th November, 2001, inter alia, provided the mechanism of selection for the post of Director of Prosecution in the CBI, as under –

- (d) selection shall be made from officers of the rank of Additional Secretary or Joint Secretary and Legal Adviser, with at least 3 years' service in that grade, in the Department of Legal Affairs, who are eligible for appointment as Special Public Prosecutor within the meaning of sub-sections (8) and (9) of section 24 of the Code of Criminal Procedure, 1973;
- (e) the tenure of appointment as Director of Prosecution shall be for a period of three years from the date he assumes office; and
- (f) selection of the Director of Prosecution will be recommended by a Selection Committee headed by the Central Vigilance Commissioner and having Secretary (Personnel), Home Secretary and Law Secretary as Members of the said Committee, with Director, CBI being the Member Convenor of the said Committee.

3. It is observed that in view of the aforesaid amendment to the DSPE Act, the provisions contained in the OM No. 201/5/2000-AVD-II dated 9th July, 2001 read with OM No.201/5/2000-AVD-II dated 16th November, 2001 have become inconsistent as the aforesaid new section provides –

- (a) that an officer not below the rank of the rank of Joint Secretary to the Government of India shall be considered for appointment as Director of Prosecution;
- (b) the tenure of appointment as Director of Prosecution shall be for a period of not less than two years from the date he assumes office; and
- (c) Selection of the Director of Prosecution shall be on the recommendation of the Central Vigilance Commission.

4. Accordingly, it has become necessary that the said OMs which, inter alia, laid down the eligibility criteria for appointment as Director of Prosecution and the methodology of making selection for the said post, are modified/omitted so as to ensure conformity with the aforesaid statutory provision, as indicated below:

(i) This Department's OM No.201/5/2000-AVD-II dated 9th July 2001 stands modified as follows:

I. Para 4(c) is substituted as follows:

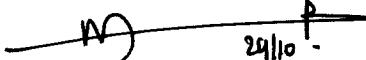
"The Central Government shall appoint the Director of Prosecution on the recommendation of the Central Vigilance Commission."

II. Para 4(d) is substituted as follows:

"The Director of Prosecution shall notwithstanding anything to the contrary contained in the rules, relating to his conditions of service, continue to hold office for a period of not less than two years from the date on which he assumes office."

(ii) In consultation with the Department of Legal Affairs, Ministry of Law and Justice, in supersession of this Department's OM No. 201/5/2000-AVD-II dated 15th November, 2001 the eligibility of officers for consideration for appointment as Director Prosecution, to head the Directorate of Prosecution, in the Central Bureau of Investigation stands modified and that the following officers henceforth be eligible for consideration for appointment as Director (Prosecution) in the CBI:

"An officer not below the rank of Joint Secretary to the Government of India and the officers who are eligible for appointment as Special Public Prosecutor within the meaning of Sub-Section 8 and 9 of Section 24 of Code of Criminal Procedure 1973."


29/11/01

(Dr B V R C Purushottam)
Deputy Secretary to the Government of India
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To

1. All Secretaries to the Government of India.
2. Secretary, CVC, Satarkata Bhawan, New Delhi.
3. Director, Central Bureau of Investigation, CGO Complex, New Delhi.