

No. 428/07/2021 - AVD.IV(B)
Bharat Sarkar/ Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi
The 3rd September, 2021

To,

The Chief Secretaries of all State Governments/
Union territory Administrations
(As per standard Mailing List)

Subject: Standard Operating Procedures (SOPs) for processing of cases under section 17A of the Prevention of Corruption Act, 1988 - regarding

Sir/ Madam,

The undersigned is directed to state that the Prevention of Corruption Act, 1988 was amended by the Prevention of Corruption (Amendment) Act, 2018 and after the Presidential assent thereto has been brought into force from the 26th July, 2018. It may be recalled that the amendments inter alia, include insertion of a new section 17A which reads as follows:

“17A. Enquiry or Inquiry or Investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—

No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month”.

2. So as to standardise and operationalise procedures with a view to achieving uniform and effective implementation for prior approval processes under section 17A of the Act, a set of SOPs are hereby conveyed.

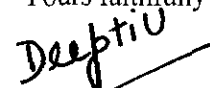
3. The SOPs provide for –

- i. Stage-wise processing of information received by a Police officer;
- ii. Specifying the rank of police officer to seek prior approval under section 17A in respect of different categories of public servants;
- iii. Consideration of the proposals under section 17A of the Act by the Appropriate Government or Authority;
- iv. Laying down of single window procedure to specify receipt stage of the proposal; and
- v. Check List for submitting proposals under section 17A.

4. All Administrative Authorities, including Ministries and Departments of the Central and the State Governments and the Investigating Agencies are requested to take note of the SOPs, as appended herewith and bring the same to the notice of all concerned, including subordinate and autonomous statutory bodies and PSEs/ PSBs under their respective control for strict compliance.

Encl: as above

Yours faithfully



(Deepti Umashankar)

Additional Secretary to the Government of India

Copy to:

1. Secretaries, All Ministries/ Departments with the request that these SOPs may be given wide publicity and may be circulated to all concerned including all subordinate and attached offices and organisations under the administrative control of respective Ministries/ Departments/ Organisations for compliance.
2. Director, CBI with the request that all field Units may kindly be apprised of these SOPs for strict compliance.
3. Central Vigilance Commission.
4. Secretaries, GAD with the request that these SOPs may be given wide publicity and may be circulated to all concerned including all subordinate and attached offices and organisations under the administrative control of respective Ministries/ Departments/ Organisations for compliance.

STANDARD OPERATING PROCEDURES FOR HANDLING INFORMATION IN RESPECT OF A PUBLIC SERVANT, ALLEGING OFFENCES UNDER PREVENTION OF CORRUPTION ACT, 1988 – SEEKING OF PREVIOUS APPROVAL FOR CONDUCT OF ENQUIRY OR INQUIRY OR INVESTIGATION UNDER SECTION 17A OF THE ACT

The information received by a police officer alleging offences under Prevention of Corruption Act (hereinafter referred to as the Act), against public servants will be processed in the manner as laid down by the Standard Operating Procedures (SOPs) hereunder.

2. It may be emphasized here that the provisions of section 17A stipulate a mandatory requirement for a Police Officer to seek previous approval for conducting any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under the Prevention of Corruption Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties.

3. **PROCESSING OF INFORMATION RECEIVED BY A POLICE OFFICER**

3.1. A Police Officer upon receipt of such information shall verify, whether the same –

- (a) pertains to or the information avers to the allegation of the commission of an offence(s) by a public servant under provisions of the Act;
- (b) prima facie reveals actual commission of an offence under the Act;
- (c) contains information to identify –
 - i. the public servant(s) against whom the offence has been alleged;
 - ii. the present status of such public servant against whom an offence under the Act has been alleged so as to determine the rank of appropriate Police Officer for seeking previous approval for conducting enquiry, inquiry or investigation under section 17A of the Act. For this purpose, in case the person who has ceased to be public servant the position/office last held by him shall be determined;
 - iii. specific act(s) of commission or omission attributable to such public servant(s);
 - iv. whether such act(s) are relatable to the official function or duty discharged by such public servant(s) specific to the office/post held at the time of commission of the alleged offence;
 - v. the specific recommendation(s) made or decision taken by such public servant(s); and
 - vi. deriving of an undue advantage for self or any other person to fulfil the ingredients of offences alleged against a public servant.

3.2. Deriving of an undue advantage by the public servant for self or for others is a key ingredient for establishing an offence against him and in absence of fulfilment of this condition any act of omission or commission amounts to an administrative misdemeanour only.

3.3. The **Police** Officer in receipt of an information shall place the matter before the **Police** Officer of Appropriate Rank for seeking previous approval under section 17A of the Act, by such **Police** Officer of Appropriate Rank.

3.4. The **Police** Officer of Appropriate Rank who shall make a proposal to the Appropriate Government/Authority under Section 17A of the Act, in respect of a person who is or has been a public servant, will be as specified in **Annexure-I**. Specifying ranks of police officers for seeking previous approval shall ensure due diligence for the purpose of processing proposals under section 17A of the Act.

4. PROCESSING OF 'INFORMATION' RECEIVED BY A POLICE OFFICER OF APPROPRIATE RANK

4.1. The **Police** Officer of Appropriate Rank as referred to above shall decide upon whether information received, merits to be –

- a) enquired; or
- b) inquired into; or
- c) investigated

4.2. "Enquiry" for the purposes of these SOPs, means any action taken, for verifying as to whether the information pertains to commission of an offence under the Act.

4.3. The proposal of the **Police** Officer of Appropriate Rank shall contain the following information -

- i. the office held by the public servant(s) when the offence was alleged to have been committed;
- ii. the present rank and status of the public servant; or
- iii. the post/ office last held by the person who ceases to be a public servant; and
- iv. the appropriate Government or Authority, before whom the proposal of previous approval is to be made in accordance with the provisions of clauses (a) to (c) of section 17A of the Act.

4.4. The **Police** Officer of Appropriate Rank shall make a proposal to the Appropriate Government or Authority, as the case may be, through the single window procedure as laid down by these SOPs and shall ensure that the proposal is in accordance with the requirements laid down in the Check List and encloses clear, legible and authenticated documents, as may be required.

4.5. Separate proposals shall be submitted for enquiry, inquiry or investigation, as the case may be.

4.6. Separate proposals shall be made in respect of each public servant, where a composite offence is alleged against more than one public servant.

4.7. The complete proposal shall be submitted in a sealed cover in accordance with the Check List as attached at **Annexure II**.

4.8. The Police Officer of Appropriate Rank shall submit the proposal for previous approval under section 17A of the Prevention of Corruption Act, 1988 to the officer designated by the Appropriate Government or Authority for the said purpose.

5. ACTION TO BE TAKEN ON PROPOSAL UNDER SECTION 17A OF THE ACT BY THE APPROPRIATE GOVERNMENT OR AUTHORITY – SINGLE WINDOW PROCEDURE

5.1. “Appropriate Government or Authority” means the Central or the State Government or an authority competent to remove a public servant from his office as stipulated by clauses (a) to (c) of section 17A.

5.2. The Central or the State Government may, by a general or special order, delegate powers for consideration of matters under section 17A in respect of public servants of different rank or status, as may be specified by such Government.

5.3. Appropriate Government or Authority shall designate an officer, serving such Government or Authority, not below the rank of an Under Secretary for receiving the proposals relating to previous approval under section 17A of the Act.

5.4. Incomplete proposals shall be returned for removing inadequacies and deficiencies for being addressed by the Police Officer of the Appropriate Rank within a reasonable period of time and expeditious submission of the complete proposal.

5.5. The statutory timelines for processing of the proposal shall be from the date of receipt of complete proposal duly acknowledged by the designated officer.

5.6. All appropriate measures shall be taken by the Appropriate Government or Authority for completing the examination of the proposal within the statutory timelines.

5.7. Legal consultations, if required, will be undertaken in accordance with procedures of the Appropriate Government or Authority. The Appropriate Government or Authority shall take due diligence to maintain secrecy at all stages including the legal consultation process.

5.8. The Appropriate Government or the Authority, as the case may be, shall examine the proposal, by independent application of mind and take an appropriate decision under section 17A of the Act, for being conveyed to the Police Officer of Appropriate Rank.

RANKS OF POLICE OFFICER FOR SEEKING PREVIOUS APPROVAL UNDER SECTION 17A IN RESPECT OF DIFFERENT CATEGORIES OF PUBLIC SERVANTS

| S. No. | Designation/ Rank or equivalent | Rank and Status of persons who are or have been Public Servants |
|---------------|--|--|
| 1. | Director General of Police or equivalent | <ul style="list-style-type: none"> i. Union Ministers ii. Appointees carrying the rank equivalent to Cabinet Ministers/Minister of State iii. Members of Parliament iv. Chief Ministers of State Governments v. Ministers of State Governments vi. Members of State Legislature vii. Judges of the Supreme Court and High Court viii. Public Servants at the level 16 as per the Seventh Pay Commission and above and their equivalent ix. Chairpersons/ Managing Directors of Public Sector Enterprises (both Central and State) and Public Sector Banks (Board level) |
| 2. | Director General of Police or Addl. Director General of Police or equivalent | <ul style="list-style-type: none"> i. Public servants drawing pay at level 14 and 15 as per the Seventh Pay Commission and its equivalent ii. Board level (Directors), Senior Management level appointees, (Pay level E 7 to E 9) viz. General Managers, Senior Managers, Executive Directors, Deputy Managing Directors of Public Sector Enterprises (both Central and State) and Public Sector Banks and their equivalent |
| 3. | Inspector General of Police or equivalent | <ul style="list-style-type: none"> i. Public servants drawing pay at level 11 to 13 and 13A as recommended by the Seventh Pay Commission and its equivalent. ii. Middle management level officers of Public Sector Enterprises (Pay level E3 to E 6) (both Central and State) and Public Sector Banks and their equivalent |
| 4 | Deputy Inspector General of Police, SSP, SP or ASP | <ul style="list-style-type: none"> i. Public servants drawing pay below level 11 as recommended by the Seventh Pay Commission and its equivalent. ii. Junior management level officers of Public Sector Enterprises (Pay level E0 to E 2) (both Central and State) and Public Sector Banks and their equivalent. iii. All other staff of Public Sector Enterprises and Public Sector Banks and their equivalent. iv. All other public servants. |

NOTE: *Persons authorised to investigate will not be below the rank of officers as stipulated under section 17 of the Act.*

CHECK LIST OF ITEMS FOR MATTERS RELATING TO SECTION 17A OF THE PREVENTION OF CORRUPTION ACT, 1988

| S. No. | Head | Yes/No | Folder No./ Page No. |
|---------------|---|---------------|-----------------------------|
| 1. | Name, designation or office held by the public servant against whom the allegation of an offence under the Prevention of Corruption Act, 1988 has been made. If the person has ceased to be a public servant, the post or office last held by such person may also be indicated. | | |
| 2. | The post or office held by such public servant at the time of alleged commission of offence under the Prevention of Corruption Act. Please furnish the details of the Appropriate Government or Authority the public servant was serving at the relevant point of time. | | |
| 3. | (i) Whether the request is based on a complaint received? Please enclose a copy thereof. (ii) If yes, please enclose an authenticated translation thereof where the original complaint has been made in a vernacular language. | | |
| 4. | Whether the complaint prima facie reveals deriving of an undue advantage by a public servant for self or any other person? Please furnish details. | | |
| 5. | Whether any information is available in respect of the bribe giver? If so, please furnish details. | | |
| 6. | Mention clearly, the offences under specific provisions of the Prevention of Corruption Act, 1988 as alleged against the person who is or has been a public servant. | | |
| 7. | Please provide specific details of the recommendation made or decision taken by a public servant, which is relatable to the offence alleged against the public servant. | | |
| 8. | In case any preliminary enquiry/ inquiry was undertaken at any earlier stage, please enclose the findings thereof and it may also be confirmed as to whether prior approval was sought for such PE/ inquiry? | | |

| S. No. | Head | Yes/No | Folder No./ Page No. |
|--------|---|--------|----------------------|
| 9. | Whether any criminal offences under the Indian Penal Code or offences under any other law have also been alleged against the public servant? If so, please furnish details thereof. | | |
| 10. | Any other information which is considered to be relevant for consideration of the proposal. | | |
| 11. | Name, designation and contact details of person authorized by the Police Officer of Appropriate Rank to rectify inadequacies and deficiencies in the proposal seeking Previous Approval, as pointed out by the Officer designated to receive the proposal by Appropriate Government or Authority. | | |

Signature_____

Date:_____

Name of Police officer authorised
to seek prior approval
(in Block letters) _____

Designation_____

Telephone No._____

email ID_____