



GOVERNMENT OF KERALA



No:69/EL2/2023/Elec
Election (General) Department
Thiruvananthapuram,
Dated:09-06-2023

CIRCULAR

Sub: Election Commission of India - Disciplinary proceedings against Officials appointed for Election related activities - Preparation of Electoral Rolls and Conduct of Elections - Consolidated instructions - reg

Ref: Letter No. 04/2023/SDR/Vol-I dated 31.05.2023 from Election Commission of India.

Lapses on the part of officials who are deployed for the preparation of electoral rolls and election-related activities are a matter of concern. It would impede the process of the election. In order to avoid such circumstances, the Hon'ble Election Commission of India has pointed out the legal provisions and powers regarding disciplinary proceedings in a consolidated manner for the awareness of the concerned, vide the letter referred to above. The instructions from the Hon'ble Election Commission of India are enclosed herewith for the notice and necessary action of all concerned.

SHARMILA C
ADDITIONAL SECRETARY & ADDITIONAL CHIEF ELECTORAL
OFFICER

To:

All Additional Chief Secretaries/ Principal Secretaries/ Secretaries
All Heads of the Department (Through Administrative Departments)
State Police Chief & DGP, Kerala
All District Collectors & District Election Officers
All Commissioners of Police/ Superintendents of Police (Through State Police Chief)
All Electoral Registration Officers & Tahsildars (Through District Election Officer)
All Departments in Secretariat/ All Sections of Election Department
e-office notice board.

Forwarded / By order,

Signed by

Shivlal R V

Date: 12-06-2023 12:35:05

Section Officer.

Speed Post/E-mail

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No.4/2023/SDR/Vol.I

Dated: 31st May, 2023

To,

1. The Chief Secretaries of
all States & UTs
2. The Chief Electoral Officers of
all States & UTs

**Sub: Disciplinary proceedings against officials appointed for election related activities-
Consolidated instructions- regarding.**

Reference:

1. Order No. 4/2001/JS-II dated 07.02.2001
2. Letter No. 4/2009/SDR dated 07.11.2009
3. Letter No. 4/2009/SDR dated 02.02.2010
4. Letter No. 464/INST/2009/EPS dated 31.03.2009, and
5. Letter No. 464/INST/2019/EPS dated 17.12.2019

Madam/Sir,

Under Article 324(1) of the Constitution of India superintendence, direction and control of the preparation of the electoral rolls and the conduct of all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice President shall be vested in the Election Commission. Conduct of election and preparation of electoral rolls involve diverse activities at various levels which require sizable number of officials and field level functionaries of the State Governments involved in such exercises. For this purpose, Article 324(6) further provides that the President or the Governor of the State, shall, when so requested by the Election Commission; make available such staff as may be necessary for the discharge of the above functions conferred on the Election Commission.

2. In pursuance of the above constitutional provisions, a well defined structure of electoral machinery has been provided in the election laws, contained in Part II(A) (Sec.13A to 13CC) of R.P.Act, 1950 and corresponding provisions given in Part IV (Sec.20 to 29) of R.P.Act, 1951.
3. The officials shall be on deemed deputation to Election Commission of India.

3.1 In this connection, attention is invited to Section 13CC of the R.P. Act, 1950 which is reproduced as under: -

Section 13CC of the Representation of the People Act, 1950. Chief Electoral Officers, District Election Officers, etc., deemed to be on deputation to Election Commission.—The officers referred to in this Part and any other officer or staff employed in connection with the preparation, revision and correction of the electoral rolls for, and the conduct of, all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

3.2 A similar provision is contained in Section 28A of the R.P. Act, 1951 which states as follows:

Section 28A of the Representation of the People Act, 1951. Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission.—The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

3.3 In view of Section 28A of 1951 Act, all the State Govt. officials who have been involved in elections in any capacity, also shall deemed to be on deputation to the Commission. These include the Chief Secretary, Home Secretary and all police officers / police personnel starting from the DGP/IGP/Commissioner of police at the top level to Inspectors, Sub-Inspectors and Constables (including home guards). They are thus by law, officers of the Commission being on deputation to it and are subject to its control, superintendence and discipline and are answerable

to the Commission, for any act of Commission on their part while performing any election related duties.

4. **Extent of disciplinary/jurisdiction of ECI -**

4.1 The question of true purport and extent of discipline jurisdiction of the Commission under Section 13CC of the RP Act, 1950 and Section 28A of the RP Act, 1951, was raised before the Hon'ble Supreme Court in WP(C) No. 606 of 1993 (Election Commission of India Vs. Union of India and others).

4.2 The Hon'ble Supreme Court, by its Order dated 21.09.2000 disposed of the above writ petition in terms of the Terms of Settlement arrived at between the Commission and the Union Government.

The Terms of Settlement referred to above are reproduced below:

“That the disciplinary functions of the Election Commission of India over officers, staff and police deputed to perform election duties during election period shall extend to-

- (a) Suspending any officer/official/police personnel for insubordination or dereliction of duty;*
- (b) Substituting any officer/official/police personnel by another such person, and returning the substituted individual to the cadre to which he belongs, with appropriate report on his conduct;*
- (c) Making recommendation to the competent authority, for taking disciplinary action, for any act of insubordination or dereliction of duty, while on election duty. Such recommendation shall be promptly acted upon by the disciplinary authority, and action taken will be communicated to the Election Commission, within a period of six months from the date of the Election Commission's recommendations;*
- (d) The Government of India will advise the State Governments that they too should follow the above principles and decisions, since a large number of election officials are under administrative control.”*

4.3 In pursuance of the Hon'ble Supreme Court's above said Order dated 21.09.2000, the Govt. of India (Department of Personnel & Training) issued an OM on 7.11.2000 and a letter dated 8.11.2000 to all State Govt. / UT Administration asking them to comply with the above

terms of settlement. Consequently the Commission has issued an Order No. 4/2001/JS-II dated 07.02.2001 (copy enclosed) that the disciplinary action against officers, staff and police personnel deputed to perform election duties during an election shall be governed by the above principles and decisions agreed to between the Union Government and the Election Commission and as held by the Supreme Court in the said Order dated 21.09.2000.


4.4 DoPT vide OM dated 07.11.2000 had clarified that it was not necessary to amend the service rules for exercise of powers of suspension by the Commission since these powers were derived from the provisions of Section 13CC of the RP Act, 1950 and Section 28A of the RP Act, 1951, which would have overriding effect over the disciplinary rules. Despite the unambiguous position regarding the Commission's disciplinary jurisdiction, there have been some cases where the certain disciplinary authorities didn't comply with in letter and spirit and the officials who were placed under suspension on the orders of the Commission were reinstated by the State Governments unilaterally without consulting the Commission. Therefore, in this context, the Commission addressed a letter to Cabinet Secretary to reiterate the position regarding the disciplinary jurisdiction of the Commission over the election related officers as brought out and explained in the DoPT OM dated 07.11.2000.

4.5 Consequently Ministry of Personnel, Public Grievances and Pensions (DoPT) vide their OM No. 11012(4)/2008-Estt.(A) dated 28.07.2008 conveyed to all ministries/departments of Govt. of India that it shall be mandatory for the disciplinary authority to consult with Election Commission. The matter is proposed to be closed on basis of written explanation given by officer concerned to enable the Commission to provide necessary inputs to the disciplinary authorities before the disciplinary authorities take a final decision. Further, Ministry of Personnel, Public Grievances and Pensions, DoPT, vide their Communication no. 11012 (4)/2008-Estt. (A) dated 08.12.2009 advised the Chief Secretary of all states to obtain the Commission's consent before reinstating any officer who is placed under suspension on the orders of the Commission.

5. The Commission has been bringing the above instructions to the notice of Chief Secretary of State/UTs from time to time; the latest being vide letter no. 464/INST/2019/EPS dt. 17.12.2019 (copy enclosed).

6. Therefore, I have been directed by the Commission that above instructions may be brought to notice of all concerned including DEOs/SPs and other officers engaged for election related work, for their information and strict compliance.

Yours faithfully,



(Narendra N. Butolia)
Sr. Principal Secretary

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ELECTION COMMISSION OF INDIA

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वेबसाइट/Website: www.eci.gov.in

निर्वाचन सदन.
अशोक रोड, नई दिल्ली -110001
Nirvachan Sadan, Ashok Road,
New Delhi -110001

सं./No.464/INST/2019/EPS
To

दिनांक/Dated: 17th December 2019

The Chief Secretary
Himachal Pradesh, Shimla

(Reference: 1. 51/8/6/2019-EMPS dated 19.07.2019
2. 464/INST/2009-EPS dated 31.03.2009)

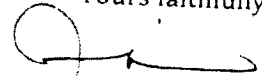
Subject: Disciplinary Proceedings against Officials appointed on election duty- reg.
Sir,

I am directed to refer your letter no. Per(A-I) B (14)-2/2019 dated October, 2019, tendering unconditional apology for not consulting Election Commission of India before dropping the disciplinary proceedings against Sh. Mukesh Repaswal, SDO(C). The disciplinary proceedings were dropped on the basis of written explanation given by officer concerned and same was intimated to the Commission vide Government of Himachal Pradesh order dated 27.06.2019, which was in contravention to the Commission's existing instructions (464/INST/2009-EPS dated 31.03.2009) and other provisions mentioned therein. While accepting the apology in this case, the Commission has taken a serious note of the action of the State Government in not following the due process.

2. Your attention is invited to section 13CC of the Representation of the People Act, 1950 and section 28A of the Representation of the People Act, 1951, and the Commission's order no. 4/2001-J.S-II dated 07.02.2001 issued in light of the Order dated 21.09.2000 of the Hon'ble Supreme Court in Writ Petition (C) No. 606 of 1993 (Election Commission of India Vs. Union of India and Ors.), taking on record the terms of settlement arrived at between the Election Commission and Union Government in the matter of disciplinary control of the Commission over officers appointed to perform election duties. Reference is also invited to the OM No. 11012/7/98-Estt (A), dated 08.11.2000 (copy enclosed).

3. Further, Ministry of Personnel, Public Grievances and Pensions, DoPT, vide their OM no. 11022 (4)/2008-Estt. (A) dated 28.07.2008 directed that it shall be mandatory for the disciplinary authorities to consult the Election Commission of India if the matter is proposed to be closed only on the basis of a written explanation given by officer concerned to enable the Commission to provide necessary inputs to the disciplinary authorities before the disciplinary authorities take a final decision.
4. Accordingly, it should be ensured that disciplinary authorities should mandatorily consult the Election Commission before closing any matter arising out of disciplinary proceedings initiated on the recommendation of the Commission. Reference in such cases may be routed through the Chief Electoral Officer of the State.
5. The Chief Electoral Officer shall refer each such reference as and when received from the State govt. to Commission with his/her comments.

Yours faithfully,



(SANJEEV KUMAR PRASAD)
UNDER SECRETARY

Copy to: The Chief Electoral Officer of all States/UTs with a direction to bring this to the notice of the Chief Secretary & report compliance.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 464/INST/2009-EPS

Dated: 31st March, 2009.

To,

- (1) The Chief Secretaries of
All States and Union Territories.
- (2) The Chief Electoral Officers of
All States and Union Territories.

Sub: - Disciplinary proceedings against officials appointed on election duty.

Sir,

I am directed to state that the Commission has recently received inputs that some of the State Governments are taking or proposing to take, action to suspend or initiate disciplinary proceedings for acts of omission /commission committed by them in past, against certain officers/ officials and Police Personnel who are or likely to be deployed on election duty, on their own without intimating the Commission. The Commission has taken a serious note of it and it does not approve of such unilateral action by the state Govts.

2. Your attention is invited to Sec 13cc of R.P. ACT 1950 and Sec 28A of R.P. ACT 1951, and Commission's Order No. 4/2001-J.S-II dated 07.02.2001 issued in the light of observation of Supreme Court of India Order dated 21.9.2000 in writ Petition (C) No 605 of 1993 (Election Commission of India Vs. Union of India and Others), reproduced as item 16 of Compendium of Instruction Vol-III which is available in the Commission's website also.

3. The Commission, having considered the matter has directed that written prior permission of the Commission is mandatory before suspending/ initiating any disciplinary proceedings against officer/official connected with conduct of elections is during the period of election.

4. The CEOs shall refer each such reference as and when received from the State Govt to Commission with their comments.

Kindly acknowledge the receipt.

Yours faithfully

(SUMIT MUKHERJEE)

S. No. 19 (4)

my sked text

ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001

No. 51/8/6/2019-EMPS | 213

Dated: 19th July, 2019

To

The Chief Secretary to
 The Government of Himachal Pradesh,
 Shimla.

Ref: ECI's letter No. 51/8/6/2019-EMPS, dated 11th March, 2019.

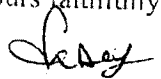
Subject: **Immediate transfer and Disciplinary Proceedings against Sh. Mukesh Repaswal, Sub Division Magistrate, Chopal- regarding.**

Sir,

With reference to your Order No. Per(A-1)B(14)-2/2019, dated 27/06/2019, regarding dropping of the disciplinary proceedings initiated against Sh. Mukesh Repaswal, IAS, I am directed to draw your kind attention to para 2 of the Department of Personnel and Training's Office Memorandum No. 11012(4)/2018-Estt.(A), dated 28th July, 2008 (copy enclosed), which state that it shall be mandatory for the disciplinary authorities to consult the Election Commission if the matter is proposed to be closed only on the basis of a written explanation given by officer concerned to enable the Commission to provide necessary inputs to the disciplinary authorities before the Disciplinary Authorities take a final decision.

The Commission has directed that you may kindly explain why the Department of Personnel and Training's Office Memorandum No. 11012(4)/2018-Estt.(A), dated 28th July, 2008, was not considered before closing the matter.

Yours faithfully,



(Suman Kumar Das)
 Secretary



No. 11012(4)/2008-Estt. (A)
 Government of India
 Ministry of Personnel, Public Grievances and Pensions
 (Department of Personnel and Training)

North Block,
 New Delhi,
 Dated the 28th July, 2008

OFFICE MEMORANDUM

Subject : Disciplinary jurisdiction of Election Commission of India over Government servants deputed for election duties.

The undersigned is directed to refer to the Department of Personnel and Training's O.M. of even number dated 20.03.2008 on the above mentioned subject and to say that attention was drawn therein to the principles and decisions agreed to between the Union Government and the Election Commission of India in respect of disciplinary action against the Government servants deputed for election duties. The relevant **Terms of Settlement** have been cited in para 1 of DOPT's O.M. No. 11012/7/98-Estt. (A) dated 07.11.2000. As per part(c) of these Terms of Settlement,

(a) the disciplinary functions of the Election Commission over the officers, staff and police deputed to perform election duties shall extend, *inter alia*, to making recommendation to the competent authority for taking disciplinary action for any act of insubordination or dereliction of duty while on election duty.; and

(b) such recommendation shall be promptly acted upon by the disciplinary authority and the action taken will be communicated to the Election Commission within a period of six months from the date of the Commission's recommendation.

The instructions issued in this regard were reiterated in the DOPT's O.M. dated 20-3-2008 wherein it was emphasized that the aforementioned Terms of Settlement have to be complied with while adhering to the provisions of the relevant disciplinary rules.

2. The matter concerning departmental proceedings against officials appointed on election duty has recently been further considered by the Government. It has now been decided that it shall be mandatory for the disciplinary authorities to consult the Election Commission if the matter is proposed to be closed only on the basis of a written explanation given by officer concerned to enable the Commission to provide necessary inputs to the disciplinary authorities before the Disciplinary Authorities take a final decision.