

PERSONNEL POLICIES

(b) Conduct, Discipline & Appeal Rules

9. Sanction for prosecution of a public servant.

The Ministry of Home Affairs have brought it to our notice that in a recent case the sanction for prosecution of a public servant who could be removed from his office by the Board of Directors of a Public Sector Corporation was held by a Court of Law as null and void on the ground that there was no proper application of mind by the sanctioning authority viz. the Board of Directors, as the necessary materials viz. documents and other evidence collected by the prosecution, to accord sanction for prosecution were never placed before the Members of the Board of Directors and consequently they could not have applied their minds to the issue. It was stated that the Chairman of the Board of Directors had merely narrated the facts of the case to the Members of the Board giving his assessment that it was a fit case for prosecution, and the members had approved the sanction for prosecution.

2. Section 6 of the Prevention of Corruption Act, 1947 provide that previous sanction of the authority competent to remove a public servant from his office is necessary for his prosecution under section 161 or 164, or Section 165 of the Indian Penal Code or under sub-section (2) or sub-section (3-A) of Section 5 of the Prevention of Corruption Act. In order to avoid a lacunae of the type referred to above, the following procedure has been evolved in consultation with the Ministry of Law, for adoption by the Public Sector Enterprises in respect of the public servants who can be removed from their office by the Board of Directors.

a. A distinct item regarding the grant of sanction for prosecution of the concerned public servant should be on the regular agenda of the meeting of the Board of Directors so that all the members present may be aware of the subject matter which will come up for discussion.

b. Relevant papers, documents, evidence or any other material furnished by the Prosecution, should be placed before the members of the Board of Directors.

c. All the members of the Board of Directors in the light of the documents, evidence before them are required to apply their mind to the facts and circumstances of the case. Having done that, they are to take a decision, unanimously or by a majority vote, to grant the sanction or to withhold it.

d. A record of the proceedings of the meeting regarding (a) to (c) above, should be kept properly in the minute book, as an adequate evidence of the collective application of mind by the Board of Directors.

(BPE DO No. 2(3)/79-BPE(GM-I) dated 6th March, 1979)
