

New Delhi, 8<sup>th</sup> May, 2015

**OFFICE MEMORADUM**

Subject:- Deletion of the name of Cabinet Secretary from the array of respondents in  
Litigation/Court Cases - regarding

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It has been brought to the notice of this Department that Cabinet Secretariat has been receiving a large number of cases from different Courts/Tribunals which would generally fall in either of the following categories in so far as enlisting of respondents is concerned:-

- (i) Union of India (UOI) through Cabinet Secretary is arrayed as a proforma respondent, with the Ministry/Department specifically concerned with the subject of the case having been made the main respondent;
- ii) UOI through Cabinet Secretary is arrayed as the only respondent and the Ministry/Department concerned is **NOT** impleaded as a respondent;
- (iii) UOI along with a Ministry/Department which is not in fact, concerned with the case, is arrayed as a respondent, resulting in the Notice for hearing being served to the Department which is not in a position to effectively defend the case on behalf of UOI, and
- (iv) UOI along with a PSU/subordinate office under the Ministry/Department proper is impleaded as the respondent, resulting in failure/inability of the Ministry/Department proper to defend the case on behalf of UOI.

2. Cabinet Secretariat has been forwarding copies of the OA/WP/CP as the case may be, along with the Notice to the concerned Ministries/Departments with the request to defend the case on behalf of the Union of India and to get the name of Cabinet Secretary who is not directly concerned with the subject of the case, deleted from the list of respondents.

3. There have been instances where the Ministry/Department referred the proposal (i.e. for deletion of the name of Cabinet Secretary from the array of respondents) to the Government Counsel for his/her views. There has not been consistency in the views expressed by the Government Counsel. Some of them express the view that deletion of the name of Cabinet Secretary from the array of respondents would not be possible, even as they fail to cite any reasons for the averment. The drafting of the counter-affidavit usually takes a considerable time on account of the need to consult different Departments and to take inputs from them. In some cases, the Court gives very limited timeline for filing reply.

4. In view of the above, it has been decided for the guidance of the Administrative Ministries that:-

- (i) All the Ministries/Departments will seek the deletion of the name of Cabinet Secretary from the array of respondents and defend the interest of UOI, after receiving the instructions from the Cabinet Secretariat on receipt of the Notice of the case.
- (ii) The Ministry/Department will immediately engage the services of Law Officers/panel counsel, only through the Officer in charge, Central Agency Section for the cases before the Supreme Court, In- charge, Litigation (High Court) of Delhi/CAT, Principal Bench & Lower court section, Branch Secretariats at Bengaluru/Chennai/Mumbai/ Kolkata or the concerned Additional/ Assistant Solicitors General for the cases before other High Courts.

- (iii) Once the Government Counsel is engaged, the Ministry/Department will get an application drafted in consultation with the Government Counsel to implead itself as a respondent (in case it has not already been impleaded as respondent) and also to seek deletion of the name of Cabinet Secretary from the array of respondents, incorporating a prayer to the Hon'ble Court/Tribunal on the following lines:

"..... It is submitted that the President of India has formulated two sets of Rules under Article 77 (3) of the Constitution of India for convenient transaction of Business of the Union. Under the Govt. of India (Allocation of Business) Rules, 1961, Business of the Govt. of India is allocated by assigning one or more Departments in the charge of a Minister. Under the Govt. of India (Transaction of Business) Rules, 1961, the business of the Department is disposed of by or under the general or special directions of the Minister- in- charge (Ref: Rule 3). In short, the business allocated to Ministry/Department is disposed of by the Minister-in-charge after following the Rules cited above. Therefore, the name of Cabinet Secretary, to whom the subject matter of the instant petition is not allocated, may be deleted as a Respondent...."

- (iv) The Ministry/Department will also simultaneously prepare para-wise reply in consultation with all concerned. The parawise comments prepared by the administrative Department/Ministry will be forwarded to the Government Counsel so as to enable him to prepare counter affidavit/reply in accordance with the rules of the Court/Tribunal. Thereafter, the same may be got vetted from the Department of Legal Affairs. The Legal Adviser who vets the counter affidavit has to ensure that the legal defence which are available to the Union Government are properly reflected in the counter. The Counter affidavit will also contain a paragraph containing the prayer that the name of Cabinet Secretary be deleted from the array of Respondents, by reproducing the text as given in (iii) above.
- (V) The Ministry/Department will keep the Cabinet Secretariat informed of further development of the case, including status of compliance of interim directions, if any, given by the Hon'ble Court/Tribunal. The Court case Module of e-Samiksha hosted by the Cabinet Secretariat will also be kept updated by the Ministries/Departments at periodic intervals.

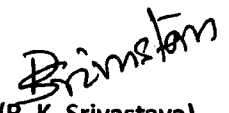
5. This issues with the approval of Hon'ble Minister for Law and Justice.

  
(Suresh Chandra)

Joint Secretary and Legal Adviser to the Government of India

To

1. All Ministries/Departments as per the list.
2. All the Law Officers as per the list
3. All Assistant Solicitors General as per the list.
4. Incharge, Branch Secretariats at Bengaluru/Chennai/Mumbai/Kolkata.
5. The Cabinet Secretariat w.r.t. their U.O. No. A-60025/1/2014-CC dated 24.2.2015
6. NIC to upload the same on the Ministry's website.

  
(R. K. Srivastava)  
Deputy Legal Adviser (Judl)