

**DEPARTMENTAL ENQUIRIES (ENFORCEMENT OF
ATTENDANCE OF WITNESSES AND PRODUCTION OF
DOCUMENTS) ACT, 1972**

18 of 1972

[1st May, 1972]

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STATEMENT OF OBJECTS AND REASONS The Santhanam Committee recommended that powers to summon and compel attendance of witness and production of documents should be conferred on the inquiring authorities in departmental proceedings, by suitable legislation The Central Vigilance Commission had also stressed the need for conferring such powers on the inquiry Officers. Inquiry Officers appointed to conduct departmental inquiries have at present no statutory powers to enforce the attendance of witnesses or to compel the production of documents. Experience has shown that persons, not in Government employment are very unwilling to attend departmental inquiries and they try to avoid attendance on one plea or the other. It is, therefore, necessary to clothe inquiring authorities with statutory powers to enforce the attendance of witnesses and the production of documents. The Bill seeks to achieve the said objects. S.O.R. Gaz. of India, 24-11-71. Pt. II. S. 2. F.xt.. p. 757.

1. Short title and extent :-

(1) This Act maybe called the Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1972.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Departmental inquiries to which the Act shall apply :-

The provisions of this Act shall apply to every departmental inquiry made in relation to

(a) persons appointed to public services or posts in connection with the affairs of the Union;

(b) persons who, having been appointed to any public service or post in connection with the affairs of the Union, are in service or pay of.

(i) any local authority in any Union territory,

(ii) any corporation established by or under a Central Act and owned or controlled by the Central Government,

(iii) any Government company within the meaning of Section 617 of the Companies Act, 1956 , in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or any company which is a subsidiary of such Government company,

(iv) any society registered under Societies Registration Act, 1860. which is subject to the control of the Central Government.

3. Definitions :-

For the purposes of this Act,

(a) "departmental inquiry" means an inquiry held under and in accordance with

(i) any law made by Parliament or any rule made thereunder, or

(ii) any rule made under the proviso to article 309, or continued under article 313 of the Constitution of India, into any allegation of lack of integrity against any person to whom this Act applies;

(b) "inquiring authority" means an officer or authority appointed by the Central Government or by any officer or authority subordinate

to that Government to hold a departmental inquiry and includes any officer or authority who is empowered by or under any law or rule for the time being in force to hold such inquiry;

(c) "lack of integrity" includes bribery or corruption.

4. Power of Central Government to authorise the exercise of powers specified in section 5 :-

(1) Where the Central Government is of opinion that for the purposes of any departmental inquiry it is necessary to summon as witnesses, or call for any document from any class or category of persons, it may, by notification in the Official Gazette, authorise the inquiring authority to exercise the power specified in section 5 in relation to any person within such class or category and thereupon the inquiring authority may exercise such power at any stage of the departmental inquiry.

(2) The power conferred on the Central Government by sub-section (1) may also be exercised by such authority, not being an authority inferior to the appointing authority in relation to the person against whom the departmental inquiry is being held, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

5. Power of authorised inquiring authority to enforce attendance of witnesses and production of documents :-

(1) Every inquiring authority authorised under section 4 (hereafter referred to as the "authorised inquiring authority") shall have the same powers as are vested in a civil Court under Code of Civil Procedure, 1908 , while trying a suit, in respect of the following matters, namely:-

(a) the summoning and enforcing the attendance of any witness and examining him on oath:

(b) requiring the discovery and production of any document or other material which is producible as evidence;

(c) the requisitioning of any public record from any court or office.

(2) Notwithstanding anything contained in sub-section (1), the authorised inquiring authority shall not compel the Reserve Bank of India, the State Bank of India, any subsidiary bank as defined in clause (k) of S.2 of the State Bank of India (Subsidiary Banks) Act,

1959, or any corresponding new bank constituted under S.3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 offices under the control of the Comptroller Auditor-General on the basis of initial and subsidiary accounts received by them from the treasuries. This system worked fairly well when governmental business was limited. With the increase in the volume and variety of government business and the continual step-up of developmental outlays the system has proved inadequate to the administration's tasks.

(3) The scheme of separation of accounts from audit is to be implemented in the Ministry of Communications, Ministry of Tourism and Civil Aviation and the Ministry of Industry and Civil Supplies from 1st April, 1976. The remaining Ministries will also be covered gradually by the 1st October, 1976, The taking over of accounting functions from the Comptroller and Auditor-General involve the transfer of a large number of employees of the Indian Audit and Accounts Department to the Ministries and Departments of the Government of India and offices under them. The transfer of so many employees working under the Comptroller and Auditor-General has to be effected in such a manner that it does not entail serious administrative problems. To achieve this object, the Departmentalisation of Union Accounts (Transfer of Personnel) Ordinance, 1976 (2 of 1976) was promulgated by the President on 1st March, 1976.

(4) The Ordinance empowers the Central Government to transfer officers and employees from the Indian Audit and Accounts Department to any Ministry or Department of the Central Government or any of its attached and subordinate offices. on the advice of a Committee. It provides for constitution of one or more Advisory Committees to assist the Government in the selection of personnel to be transferred.. Persons transferred from the Indian Audit and Accounts Department will cease to be employees of the said Department and will hold office in the Ministry, Department or office thereunder with such designations as the Central Government may specify. The transferred officers and employees will be entitled to be appointed to posts carrying scales of pay not less favourable than those of the Post held by them immediately before the date of such transfer. Substantive status, if any will be protected.

(5) The Bill seeks to replace the Ordinance mentioned above. S.Q.R. Gaz. of India. 23-3-76. II s. 2. Ext.. p. 725.

