

No.DOPT-1669704112515
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training
ESTT.(Estt. A-III)

(Dated 29 November, 2022)

OFFICE MEMORANDUM

Sharing of advice of UPSC with the Charged Officer

Hon'ble Supreme Court in its judgment, on 16.03.2011, while dismissing the Civil Appeal No. 5341 of 2006 in the matter of Union of India & Ors. vs S. K. Kapoor, held that it is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same. In compliance of the judgement of Hon'ble Supreme Court in S.K. Kapoor case, provisions regarding supply a copy of the advice of UPSC, in all cases where the Commission is consulted, to the Charged Officer were incorporated by amending the CCS (CCA) Rules, 1965 vide G.S.R. No. 769(E) dated 31.10.2014. After amending these rules two clarificatory instructions were also issued. The essence of these instructions in the matter has been summarized in the following paras for guidance and better understanding: -

1. The rule 15, 16, 17, 19, 27, 29 and 29-A were amended vide G.S.R. No. 769 (E) dated 31.10.2014. The amendment provides that a copy of the UPSC advice is to be supplied to the Government servant and his representation, if any, on such advice is to be considered by the Disciplinary/ Appellate/ Revisionary/ Reviewing Authority, as the case may be, before passing the final order.

[Para 3 of the OM No. 11012/8/2011-Estt.(A) dated 19.11.2014]

2. In brief, in the disciplinary cases, where the UPSC are to be consulted, the following procedure should be adopted:

(a) The Disciplinary Authority shall forward or cause to be forwarded to UPSC for its advice:

- (i) a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge; and
- (ii) comments on the representation of the Government servant on the Inquiry report and disagreement note, if any, with all the case records of the inquiry proceedings.

(b) On receipt of the UPSC advice, the Disciplinary Authority shall forward or cause to be forwarded a copy of the advice to the Government servant who shall be required to submit, if he so desires, his written representation/ submission to the Disciplinary Authority within fifteen

days. The Disciplinary Authority shall consider such representation and take action as prescribed in sub-rule (4), (5) and (6) of the Rule 15 of the CCS (CCA) Rules, 1965.

[\[Para 4 of the OM No. 11012/8/2011-Estt.\(A\) dated 19.11.2014\]](#)

3. Similarly, in matters relating to Appeal/ Revision/ Review, a copy of the UPSC advice, if consulted, may be supplied to the Government servant and his representation, if any, thereon may be considered by the Appellate/ Revisionary/ Reviewing Authority before passing final order.

[\[Para 5 of the OM No. 11012/8/2011-Estt.\(A\) dated 19.11.2014\]](#)

4. Cases decided before the date of this judgement, i.e., 16th March, 2011 need not be reopened. In cases decided after 16th March, 2011, where a penalty was imposed after relying upon the advice of UPSC, but where a copy of such advice was not given to the Charged Officer before the decision, the penalty may be set aside and inquiry taken up from the stage of supply of copy of the advice of UPSC.

[\[Para 3 of the OM No. 11012/05/2015-Estt.\(A-III\) dated 14.07.2016\]](#)

5. In cases where a penalty of dismissal, removal or compulsory retirement has been imposed, the Charged Officer, if he has not reached the age of superannuation, shall be deemed to be under suspension from the date of original penalty as per rule 10(4) of the CCS (CCA) Rules, 1965.

[\[Para 4 of the OM No. 11012/05/2015-Estt.\(A-III\) dated 14.07.2016\]](#)

6. Cases where the Government servant has retired shall be dealt with as per rule 69 of CCS (Pension) Rules, 1972 (*now Rule 8 of the CCS (Pension) Rules, 2021*). In the cases of any other penalties, only the penalty will be set aside, but no consequential benefits like arrears of pay shall be allowed. This will be decided by the Competent Authority after conclusion of the further inquiry. Similarly, in a case where a penalty of recovery has been imposed, if the recovery is being made in installments, the recovery shall be suspended pending finalization of further inquiry. No refund of recovery already effected will be made. Whether the money already recovered has been refunded will depend on the decision of the Disciplinary Authority. Where a penalty of withholding of increments has been imposed, if a withheld increment has become due, the same may be released. There is no question of release of any arrears till finalization of the proceedings.

[\[Para 5 of the OM No. 11012/05/2015-Estt.\(A-III\) dated 14.07.2016\]](#)

7. In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink of the OMs. List of the OMs mentioned in this document is as under:

(a) [OM No. 11012/8/2011-Estt.\(A\) dated 19.11.2014](#)

(b) [OM No. 11012/05/2015-Estt.\(A-III\) dated 14.07.2016](#)
