

New Delhi,

Dated the 14th May, 2007

OFFICE MEMORANDUM

Subject : Imposition of penalty of reduction to a lower time scale of pay, grade, post or service.

Attention of the Ministries/Departments is invited to the provisions of rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Clause (vi) thereof provides for the imposition on a Government servant of a penalty of reduction to lower time scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced, and his seniority and pay on such restoration to that grade, post or Service.

2. The Staff side of the National Council (JCM) has made a request that the penalty of reduction to lower time scale of pay in the said clause (vi) should not be imposed on the Charged Officer on a permanent basis on the ground that it is harsh and does not allow the employee to be promoted to the next grade even if he improves his working and the Competent Authority later finds him fit for promotion. The Staff Side has suggested that the penalty in question should be for a specified time-period with clear directions regarding restoration to the higher grade.

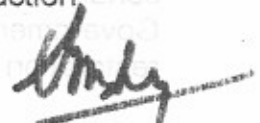
3. The existing rule position is that the imposition of the penalty of reduction to a lower grade, post or service is normally a bar to the promotion to a higher grade, post or service (from which he was reduced) unless the conditions of restoration are specified. It is open to the Disciplinary Authority to prescribe the conditions of restoration to the higher grade in deserving cases.

4. The minor penalties and major penalties in rule 11 of the CCS (CCA) Rules, 1965 have been graded in order of the severity to be awarded to a charged Government servant in proportion to the gravity of misconduct/negligence which has given rise to the charge-sheet. While the major penalties of compulsory retirement, removal from service and dismissal from service have been included as clauses (vii), (viii) and (ix) of the said rule 11, the penalty of reduction to a lower time scale of pay, grade, post or Service has been incorporated therein as clause (vi). This clause also provides that while imposing this penalty, the Disciplinary Authority or the Appellate/Revision Authority is also required to indicate in

the penalty order whether or not the individual charged Government servant would be eligible for restoration to the grade/post or Service from which he was reduced and his seniority and pay on such restoration and the conditions for such restoration. It will, therefore, be seen that the penalty has been provided to be awarded to an individual who may not be sent out of Government service (through dismissal/removal etc.) but who needs to be given a very severe penalty in view of the gravity of his misconduct.

5. Attention in this connection is also invited to the Government of India, MHA O.M. No. 9/13/92-Estt. (D) dated 10.10.1962 and No. 9/30/63-Estt. (D) dated 07.02.1964 (copies enclosed) which stipulates that an order imposing the penalty of reduction to a lower service, grade or post or to a lower time-scale should invariably specify the period of reduction unless the clear intention is that the reduction should be permanent or for an indefinite period. These instructions also indicate the manner in which the order should be framed when the reduction is for specified period or indefinite period. In case the intention of the Competent Authority is to award the penalty of reduction on permanent basis, the same may be specifically stated in the order so that the intention is conveyed to the Government servant in unambiguous terms and he is afforded full opportunity for submission of his appeal as provided in the rules.

6. Ministries/Departments are requested to please bring the above to the notice of all concerned for information and necessary action.



(P. PRABHAKARAN)

Deputy Secretary to the Government of India

To

All Ministries/Departments of the Government of India.

Copy to :

1. Comptroller and Auditor General of India, New Delhi
2. Lok Sabha Secretariat/Rajya Sabha Secretariat/Ministry of Parliamentary Affairs..
3. Union Public Service Commission, New Delhi.
4. President's Secretariat/Vice-President's Secretariat/ Prime Minister's Office.
5. Election Commission of India, New Delhi.
6. Central Vigilance Commission, New Delhi.
7. Staff Selection Commission, New Delhi.
8. Central Bureau of Investigation, New Delhi.
9. Chief Secretaries of all State Governments/Union Territory Administrations.
10. All Attached and Subordinate Offices of the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.
11. All Officers and Sections in the Ministry of Personnel, PG and Pensions and Ministry of Home Affairs.

(200 spare copies).

No. 9/12/62-Estt. (D)
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

New Delhi-11, the 10th October, 1962
18th Asvina, 1884

OFFICE MEMORANDUM

subject:- Fixation of Seniority of a Government servant reverted to a Lower post /grade/service for a specified period as a measure of penalty and subsequently promoted to higher post after the expiry of the period of punishment.

The undersigned is directed to invite a reference to Clause (iv) of Rule 13 of the Central Civil Services (Classification, Control and Appeal) Rules 1957 which provides for the imposition of a penalty of:-

- (i) Reduction to a lower stage in a time-scale or
- (ii) Reduction to a lower service, grade or post, or to a lower time-scale.

F.R.29(1) provides that if a Government servant is reduced as a measure of penalty to a lower stage in his time-scale, the authority ordering such reduction shall state the period for which it shall be effective and whether on restoration, the period of reduction shall operate to postpone his future increments and if so to what extent. In such cases, the seniority of the person concerned remains unaffected.

F.R.29(2) regulates the pay of a Government servant reduced to a lower service, grade or post or to a lower time-scale. The scope of this rule has been clarified by the Ministry of Finance in their Office Memorandum No.F.2(47)E.III/60 dated 16th August, 1960 and F.2(18)-E.III/61, dated 17th May, 1961.

2. Certain doubts have, however, arisen regarding the consequence of an order of reduction to a lower service, grade or post or to a lower time-scale and it has also been found that there has been no uniformity in determining the consequence of such reduction. Where such an order is passed two questions often arise for consideration, namely

- (i) when should the Government servant so punished be considered eligible for re-promotion; and
- (ii) how should the seniority of such a Government servant be determined on re-promotion.

3. The order imposing the penalty of reduction to a lower service, grade or post or to a lower time-scale may or may not specify the period of reduction. Where the order does not specify the period of reduction and there is coupled with it an order declaring the Government servant permanently unfit for promotion, the question of re-promotion will, obviously not arise. In other cases where the period of reduction is not specified, the Govt. servant should be deemed to be reduced for an indefinite period, i.e. till such date as, on the basis of his performance subsequent to the order of reduction he may be considered fit for promotion. On re-promotion the seniority of such a Govt. servant should be determined by the date of re-promotion. In all such cases, the person loses his original seniority in the higher service, grade or post in entirety. On re-promotion, the seniority of such a Govt. servant should be determined by the date of re-promotion without regard to the service rendered by him in such service, grade or post prior to his reduction.

4. The more common course is to specify the period of reduction and except when it is intended to debar a Govt. servant from promotion permanently, it is the preferable course. The late Home Department letter No. 9/41-Ests. dated 18th March, 1941 (copy enclosed), amongst other things prescribed that:-

(i) while reduction of seniority as an independent penalty not provided for in the rule cannot be imposed as such, the loss of seniority as a result of an order of reduction to a lower post or time-scale, being inherent in the order of reduction cannot be avoided.

(ii) The seniority on re-promotion of an officer reduced to a lower post or time-scale should be determined by the date of such re-promotion. He should not be restored to his original position unless this is specifically laid down at the time the order of punishment is passed or revised on appeal.

The above instructions require that a Government servant reduced for a specified period, should not, on re-promotion, be restored to his original position in the order of seniority even if permanent forfeiture of seniority was not provided for in the original order. The question of the propriety and fairness of such enlargement of the penalty, originally imposed, has been considered in all its aspects in consultation with the Ministry of Law and Finance and it has been decided that, in future, an order imposing the penalty of re-

reduction to a lower service grade or post or to a lower time-scale should invariably specify-

- (i) the period of reduction, unless the clear intention is that the reduction should be permanent or for an indefinite period;
- (ii) where the period of reduction is specified whether on the expiry of the period the Govt. servant is to be promoted automatically to the post from which he was reduced; and
- (iii) whether on such repromotion, the Govt. servant will regain his original seniority in the higher service, grade or post or higher time-scale which had been assigned to him prior to the imposition of the penalty.

In cases where the reduction is for a specified period and is not to operate to postpone future increment, the seniority of the Government servant may, unless the terms of the order of punishment provide otherwise, be fixed in the higher service, grade or post or the higher time scale at what it would have been but for his reduction.

Where the reduction is for a specified period and is to operate to postpone future increments, the seniority of the Government servant on repromotion may, unless the terms of the order of punishment provide otherwise, be fixed by giving credit for the period of service rendered by him in the higher service, grade or post or higher time-scale.

5. In cases where an order of punishment passed prior to the issue of these instructions does not specifically cover the points referred to in para 4, the Govt. servant on whom the penalty of reduction for a specified period is imposed, will on completion of such period be promoted automatically and his seniority will be determined as follows:-

- (a) if the period of reduction is to operate to postpone future increments, the seniority of the Govt. servant should be determined on repromotion, by giving credit for the period of service rendered by him in the higher grade, etc. prior to his reduction.
- (b) if the period of reduction does not operate to postpone future increments

the Government servant, on re-promotion will regain his seniority as it existed before his reduction.

6. These instructions supersede the instructions contained in the Home Department's letter No.9/41-Ests, dated the 18th March 1941 and will have effect from the date on which the Central Civil Services (Classification Control and Appeal) Rules, 1957 were issued, i.e. 28th February, 1957.

7. It is requested that these instructions may also be brought to the notice of the attached and subordinate offices under the Ministry of Finance etc.

8. In so far as the persons serving in the Audit and Accounts Department are concerned these orders have been issued after consultation with the Comptroller and Auditor General.

(L.M.Nedkarni)

Joint Secretary to the Govt. of India.

- To
- (i)*All Ministries of the Govt. of India etc.etc. (including all Attached and Subordinate Offices of the Ministry of Home Affairs, U.P.S.C. Commissioner for Scheduled Castes/Tribes, Commissioner Linguistic Minority Affairs and Zonal Councils.).
 - (ii) Union Territory Administrations.
 - (iii) All Service Sections (including Adm. Sections) of the Ministry of Home Affairs.

Copy to AVD (with 100 spare copies).

- *With usual no. of spare copies which will follow.
- With 3 spare copies to Cabinet Sectt. (O&M Division).
- With 6 spare copies to Director Sectt. Training School.
- With 25 spare copies to U.P.S.C.

No.9/30/63- Estt(D)
Government of India
Ministry of Home Affairs

...

New Delhi-11, the 7th February, 1964
18th Megha, 1885.

OFFICE MEMORANDUM

Subject:- Fixation of seniority of a Government servant reverted to a lower post/grade/service for a specified period as a measure of penalty and subsequently re-promoted to a higher posts/grade/service after the expire of the period of punishment.

...

The undersigned is directed to refer to this Ministry's Office Memorandum No.9/13/62-Estt(D), dated 10th October, 1962, the subject noted above, and to say that in the second part paragraph 4 of that Office Memorandum, it has been stated that the competent authority at the time of imposing a penalty of reduction to a lower service, grade or post or to a lower time-scale should invariably specify the period of reduction and where the period of reduction is specified, whether on the expiry of the period the Government servant is to be promoted automatically to the post from which he was reduced. This implies that where the order of reduction is for a specified period, re-promotion is not automatic but that such re-promotion has to be specified in the order of punishment. In other words this means that where the period of reduction has been specified, re-promotion can be subject to certain conditions prescribed by the competent authority.

The question whether any condition can be imposed for re-promotion when the penalty of reduction is for a specified period or whether re-promotion after the period of reduction is automatic in such cases was considered in consultation with the Ministry of Law. It has been held that if the punishment order directs reduction for a period but imposes a further condition that the person concerned shall not be restored to the higher service, grade or post until he is found fit for restoration or subject to any other similar conditions, such a condition would be beyond the scope of the rules and invalid. Therefore, where the period of reduction has been specified, the Government servant should, on the expiry of the period, be re-promoted or restored to his original position automatically. Accordingly, item (ii) of the second part of para 4 of this Ministry's Office Memorandum dated 10th October 1962, should be deleted and the existing item (iii) renumbered as item (ii).

3. If the order of reduction is intended for an indefinite period the order should be framed as follows:-

"A is reduced to the lower post/grade/service of X until he is found fit by the competent authority to be restored to the higher post/grade/service of Y."

In cases where it is intended that the fitness of the Government servant for re-promotion or restoration to his original position will be considered only after a specified period, the order should be made in the following form:-

"A is reduced to the lower post/grade/service of X until he is found fit, after a period of _____ years from the date of this order, to be restored to the higher post of Y."

4. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders are issued after consultation with the Comptroller and Auditor General of India.

Sd/- B.D. Nayal
Deputy Secretary to the Govt. of India

To

All Ministries of the Govt. of India etc. etc.

....

'L.K.'
1.11.69.

Copy of Ministry of Home Affairs Office Memorandum No.51/4/64-Ests(A) dated the 21st June, 1965 to All Ministries and Departments of the Government of India, etc.

.....

Subject: Filling in the column "Assessment of integrity" in the Annual Confidential Report Form and further action to be taken in cases of doubtful integrity - Recommendations made by the Committee on Prevention of Corruption regarding.

.....

Instructions were issued in Ministry of Home Affairs Office Memorandum No.51/7/59-Ests(A), dated the 7th January, 1959, that a column should be added in the Confidential Report Form, where it did not exist, in the following terms:-

"Assessment of integrity

(If anything adverse has come to your notice, please specify it also)."

It was also provided that any adverse remarks made about the integrity of a Government servant should be communicated to him.

2. The Committee on Prevention of Corruption have made the following recommendations in paras 6.12 and 6.15 of their Report:-

6.12 - Every officer of superior status under whom a number of Gazetted officers are working directly should take steps to ascertain personally whether there is any reason to doubt or suspect the integrity of any of those officers. This would bring the superior officers in greater contact with their junior officers and this would help in ensuring that they do not stray from the path of virtue.

6.15 - At present, there is a column in the annual confidential report regarding every public servant where the superior officer has to comment on his integrity. But under the present practice, it is difficult for him to fill this column even when he has reasonable grounds to be doubtful of the integrity of his subordinate in the absence of definite proof. So it is usual to say something non-committal. We recommend that in cases where the reporting officer is not in a position to make a positive report about integrity, he should leave the column blank and submit a secret report if he has reasons to doubt the integrity of the officer on whom he is reporting stating the reasons for his suspicions. The Government or the Heads of Department who receive such secret reports should take suitable steps to find out the correctness or otherwise of the report.

3. Government have accepted both the recommendations. Suitable provision has been made in the revised Conduct Rules to the effect that every Government servant holding a supervisory post shall take all possible steps to ensure integrity and devotion to duty of all Government servants serving under his control and authority. The following instructions are

issued for observance in cases where because of unconfirmed suspicious integrity cannot be immediately certified:-

- (i) Supervisory officers should maintain a confidential diary in which instances which create suspicion about the integrity of a subordinate should be noted from time to time and action to verify the truth of such suspicions should be taken expeditiously by making a confidential enquiries departmentally or by referring the matter to the Special Police Establishment. At the time of recording the annual confidential report, this diary should be consulted and the material in it utilised for filling the column about integrity; if the column is not filled on account of the unconfirmed nature of the suspicions, further action should be taken in accordance with the following sub- paragraphs.
- (ii) The column pertaining to integrity in the character roll should be left blank and a separate secret note about the doubts and suspicions regarding the officer's integrity should be recorded simultaneously and followed up.
- (iii) A copy of the secret note should be sent together with the character roll to the next superior officer who should ensure that the follow-up action is taken with due expedition.
- (iv) If, as a result of the follow-up action, an officer is exonerated, his integrity should be certified and an entry made in the character roll. If suspicions regarding his integrity are confirmed, this fact can also be recorded and duly communicated to the officer concerned.
- (v) There are occasions when a reporting officer cannot, in fairness to himself and to the officer reported upon, either certify integrity or make an adverse entry, or even be in possession of any information which would enable him to make a secret report to the Head of the Department. Such instances can occur when an officer is serving in a remote station and the reporting officer has not had occasion to watch his work closely, or when an officer has worked under the reporting officer only for a brief period or has been on long leave, etc. In all such cases, the reporting officer should make an entry in the integrity column to the effect that he has not watched the officer's work for sufficient time to be able to make any definite remark or that he has heard nothing against the officer's integrity as the case may be. This would be a factual statement to which there can be no objection. But it is necessary that a superior officer should make every effort to form a definite judgment about the integrity of those working under him, as early as possible, so that he may be able to made a positive statement.
- (vi) There may be cases in which after a secret report/note has been recorded expressing suspicion about an officer's integrity, the inquiries that follow do not disclose sufficient material to remove the suspicion or to confirm it. In such

a case the officer's conduct should be watched for further period, and, in the meantime, he should, as far as practicable, be kept away from positions in which there are opportunities for indulging in corrupt practices. How such officer should be dealt with in the following matters will require particular consideration:-

(a) Grant of extension/re-employment:

This is a course of action Government adopts solely in the public interest and it is not a normal expectation in service. Therefore, Government would be fully justified in refusing to consider extension in service or re-employment of officers about whose integrity there is any doubt whatever.

(b) Compulsory retirement:

The age of superannuation being 58 years, an officer has the normal expectation to continue upto that age unless there is something positive against his integrity. It would, no doubt, not be proper to retire a Government servant compulsorily at an earlier age merely on the basis of a suspicion, but if there is a provision for a fair and objective appraisal of an officer's total record of service at a sufficiently high level, there should be no objection to the record of any suspicion about an officer's integrity also being considered.

(c) Promotion

The fact that inquiries are under way on the secret report/note should not affect an officer's chances of promotion unless the source of information, etc. or the result of inquiries made upto that stage is such that departmental proceedings or a criminal prosecution is likely to be started shortly against the officer. If the inquiries reveal sufficient cause for departmental proceedings, these can be undertaken even at a later date; if departmental proceedings are not feasible though the integrity of the officer is found to be unsatisfactory, he can be reverted from an officiating appointment on grounds of unsuitability.

(d) Confirmation:

Confirmation stands on a different footing as compared to promotion. The confirmation of an officer against whom a departmental inquiry or even a confidential inquiry with regard to his integrity is going on, should be withheld, until the enquiry against him is completed, and if he is exonerated he should be confirmed and given his due place in the seniority list. But confirmation should only be denied if something specific has been proved against an officer's integrity and not on mere suspicion which may sometimes still remain after the inquiries have been completed.

4. The Ministry of Finance, etc. are requested to bring these instructions to the notice of all the appropriate authorities concerned under their control for compliance.

5. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions are issued with the concurrence of the Comptroller and Auditor General.

Sd/-

(R.M. SHROFF)

Deputy Secretary to the Government of India

.....

R.K.