

No. 11012/7/91-Estt.(A)

Government of India
Ministry of Personnel, P.G. & Pensions
(Department of Personnel and Training)

...

New Delhi, the 19-5-93

OFFICE MEMORANDUM

Subject: Action against Government servants to be taken if they are later found ineligible or unqualified for their initial recruitment

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Attention of the Ministries/ Departments is invited to Ministry of Home Affairs OM No. 39/1/67-Ests.(A) dated 21.2.1967 wherein it was clarified that departmental action can be taken against Government servant in respect of misconduct committed before his employment. Attention is also invited to the Ministry of Home Affairs OM No.5/1/63-Estt.(D) dated 30.4.1965 wherein Ministires/Departments were requested to make use of the provision of 'warning' inserted in the Attestation Form for taking action against Government servant furnishing false information at the time of appointment.

2. A question has now arisen as to whether a Government servant can be discharged from service where it is discovered later that the Government servant was not qualified or eligible for his initial recruitment in service. The Supreme Court in its judgement in the District Collector, Vizianagram vs. M. Tripura Sundari Devi (1990 (4) SLR 237) went into this issue and observed as under:-

" It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint a person with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice."

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The matter has been examined in consultation with the Ministry of Law and Justice and it has now been decided that wherever it is found that a Government servant, who was not qualified or eligible in terms of the recruitment rules etc, for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Govt. servant, he should be discharged or his services should be terminated. If he has become a permanent Govt. servant, an inquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed.

3. Such discharge, termination, removal or dismissal from service would, however, be without prejudice to the right of the Government to prosecute such Government servants.

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

5. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders issue in consultation with the comptroller and Auditor General of India .

V. Natarajan

(V. NATARAJAN)

DEPUTY SECRETARY TO THE GOVT. OF INDIA.

TO

1. All Ministries/ Depts.

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2. Chief Secretaries of all States and Union Territories.
3. Comptroller and Auditor General of India, New Delhi.
4. Supreme Court of India, New Delhi.
5. UPSC, New Delhi.
6. CVC, New Delhi.
7. Lok Sabha Secretariat/Rajya Sabha Secretariat.
8. President's Secretariat/Vice President's Sectt.
9. Commissioner of Linguistic Minorities, Allahabad.
10. Election Commission, New Delhi.
11. All zonal Councils.
12. CAT, Principal Bench, Faridkot, House, New Delhi.
13. All attached and subordinate offices of the Ministry of Personnel Public Grievances and Pensions and Ministry of Home Affairs.
14. All Sections of the Ministry of Personnel, Public Grievances and Pensions and Ministry of Home Affairs.

V. Natarajan
(V. NATARAJAN)

DEPUTY SECRETARY TO THE GOVT. OF INDIA.