

# ANDHRA PRADESH CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES 1991

## **PART -1: GENERAL (RULES 1-3)**

- 1.1 The APCS (CCA) Rules 1991 (G.O.Ms. No. 487 GA(Scr. C)Dept, dt 14.9.92) were published in the A.P. Gazette on 1st July 1992. These rules came into force with effect from 1 October 1992. These rules are intended to be applicable to every Government servant who is a member of the Civil Service of the State, whether permanent or temporary, a Government Servant whose services are temporarily placed at the disposal of the Govt. of India, the Government of another state or a company, corporation or organization owned or controlled by Government, or a local or other authority and a Central Government employee, employee of other state Government and Employee of a Local Government of A.P. who is temporarily working with the State Government. These rules define Disciplinary Authority as one who is competent to impose any of the penalties specified in rule 9 or rule 10.

## **PART-II: CLASSIFICATION (RULES 5-7)**

- 2.1 The Civil services of the state are classified into:
- i) The State service-included in schedule I (Gazetted officers), and
  - ii) The Subordinate services-included in schedule II (Non Gazetted employees).

## **PART-II: SUSPENSION (RULE-8)**

- 3.1 A member of the service may be placed under suspension from service:
- 3.1.1 Where a disciplinary proceedings against him is contemplated or is pending, or
  - 3.1.2 Whether in the opinion of the competent authority, he has engaged himself in activities prejudicial to the interest of the security of the state, or
  - 3.1.3 Where a case against him in respect of any criminal offence is under investigation, inquiry or trial.
- 3.2 The authorities competent to suspend members of state and subordinate services are laid down in rules 12-15.
- 3.3 A Government servant shall be deemed to have been placed under suspension by an order of the authority competent to place him under suspension:

- 3.3.1 With effect from the date of his detention if he is detained in custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours.
- 3.3.2 With effect from the date of his conviction if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not immediately dismissed or removed or compulsorily retired consequent to such conviction.
- 3.4 An order of suspension may at anytime, be modified or revoked by the authority which made the order or by any authority to which that authority is subordinate.
- 3.5 The State Government have prescribed proforma for issuing the orders of suspension in G.O. Ms. No. 411 GA (Ser. C) Dept. dt. 28.7.93 for the guidance of the competent authorities. Similar proforma for continuance under suspension after review, in intervals of six months has been prescribed in Govt., memo No. 904/Ser. C/67-1 GAD dt. 29-5-1967. The checklist prescribed in Govt. Circular Memo No. 561837 Ser-c/99 GAD dated 15-10-99. should be kept in view.
- 3.6 The object of placing an officer under suspension is generally to facilitate easy collection of evidence from witnesses who may hesitate to depose against an officer so long as he is in office, or to prevent an officer from tampering with witnesses or records. In many cases it is not quite necessary to keep the officers under suspension after a certain period.
- 3.7 The circumstances in which a disciplinary authority may consider it appropriate to place a Government servant under suspension as indicated by the Government are detailed below. These are only intended for guidance and shall not be taken as mandatory.
- 3.8 Cases where continuance in office of the Government servant will prejudice the investigation, trial or any inquiry (eg. Apprehended tampering with witness or documents).
- 3.9 Where the continuance in office of the Government servant is likely to seriously subvert discipline in the office in which the public servant is working.
- 3.10 Where the continuance in office of the Government servant will be against the wider public interest other than those covered by (1) and (2) above, such as, there is a public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals particularly corruption.
- 3.11 Where allegations have been made against the Government servant and the preliminary inquiry has revealed that a prima facie case is made out which would justify, his prosecution or his being proceeded against the departmental proceedings and where the proceedings are likely to end in his conviction and/ or dismissal, removal or compulsory retirement from service.

- 3.12 In the first three circumstances, the disciplinary authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a prima facie case has been established.
- 3.13 Certain types of misdemeanor or where suspension may be desirable in the four circumstances mentioned are indicated below:
- 3.14 Any offence or conduct involving moral turpitude.
- 3.15 Corruption, embezzlement or misappropriation of government money, possession of disproportionate assets, misuse of official powers for personal gain.
- 3.16 Serious negligence and dereliction of duty resulting in considerable loss to Government.
- 3.17 Desertion of duty
- 3.18 Refusal or deliberate failure to carry out written orders of superior officers.
- 3.20 In respect of the types of misdemeanor specified in (9) (10) & (11) above, discretion has to be exercised with care.
- 3.21 It should also be considered at an early stage whether sending the officer on leave (if he is willing to take it) will not be suitable step to take. This of course, will not apply in all serious cases where there is good prima facie case.
- 3.22 The authority competent to suspend the Government servant, while issuing the orders of suspension should invariably mention in the said order the subsistence allowance which should be paid to the Government servant concerned. The order of suspension cannot be given with retrospective effect. Every order, notice and the other process made or issued under these rules (Vide rule 42) should take effect only from the date of:
- 3.23 Service of that order on the delinquent by delivering or tendering it in person, if he is on duty.
- 3.24 Communication of that order to the delinquent by registered post to the address given by him, if any or of his usual place of residence.
- 3.25 Publication in the A.P. Gazette, if it cannot be so served or communicated.
- 3.26 Where a Government servant is suspended, he is free to go wherever he likes, but he must leave address with the head of the office, or if he is himself the Head of the office, with his Immediate superior. He must also leave his address with the officer, if any, holding an inquiry into his conduct. He must obey all orders to attend any inquiry into his conduct and if he fails to do so, the inquiry can be held in his absence.

- 3.27 A member of a service who is deemed to have been suspended by an order of the competent authority if he is detained in custody on a criminal charge or otherwise, for a period exceeding forty- eight hours, and if such a Government servant is released on bail, the competent authority may revoke the orders of suspension and admit him to duty or grant him leave during the period, if applied for by him, if the said authority thinks fit to do so having regard to the nature of the charge and other circumstances of the case. The mere fact that the member of the service has been granted bail, does not give him a right to be restored to duty.
- 3.28 When a penalty of dismissal, removal or compulsory retirement imposed on a member of a service who has been placed under suspension is set aside in appeal or review or by a decision of a court of law and further inquiry or action is contemplated shall be deemed to have continued under suspension from the date of the original order of dismissal, removal or compulsory retirement until further orders.
- 4.1 The authorities which are empowered to suspend certain members of state services are specified in rule 13. Where no such specific provision is made the concerned regional authority if any is competent to suspend members holding initial Gazetted Posts. The Head of the Department is competent to suspend members holding second level Gazetted posts. If there is no Regional authority, the Head of the Department can exercise his power in respect of both the initial and second level Gazetted Officers. In the absence of specific provision, the immediate superior Gazetted officer vide 14 (1) (a) or higher authority including appointing authority or any highest authority (including Government) is competent to exercise this power of suspension in respect of subordinate services.
- 4.2 In trap cases, the Government servant should be suspended immediately after the trap basing on the preliminary report of the Anti Corruption Bureau. If there is likely to be any interregnum between the trap and the actual relief of the trapped officer after being placed under suspension, the competent authorities should consider whether the officer could be transferred immediately so that material evidence is not destroyed and the arrangements should be made to relieve trapped officer forth with.
- 4.3 In disproportionate assets cases, the accused officer need not be suspended immediately following the registration of the cases. But he may be transferred to a far off non-local post to avoid likelihood of his tampering with the records and influencing the witness.
- 4.4 If, however, the Anti Corruption Bureau finds during investigation that there is reasonable ground for believing the accused officer has deliberately failed to co-operate with the investigating agency or that he is trying to tamper with the official records or influencing the witnesses or bringing pressure on the investigating officers, it is open to the disciplinary authority to place the

accused officer under suspension, at that stage, based on the recommendation of the Anti Corruption Bureau to that effect.

- 4.5 In cases other than those mentioned above, the disciplinary authority should consider and decide the desirability of placing the accused officer under suspension, if he is not already under suspension as and when charge sheet is filed against him in the court or where after investigation, it is decided to initiate regular departmental action for imposing any of the major penalties and a charge memorandum is served in this regard.
- 4.6 The cases of loss and fraud are usually reported to the police and officials involved who are placed under suspension continue to be under suspension till they surrender or are apprehended by the police and prosecuted, resulting in either the case dragging on for a long time or if and when the absconding officials are apprehended and proceeded against, they are required to be paid the subsistence allowance, if they produce a certificate of non-employment.
- 4.7 In such cases, the disciplinary authorities shall take the following action.
  - 4.7.1 A certificate should be obtained from the local police authorities to the effect that whereabouts of the officials concerned are not known. This certificate should be placed on record in the connected file.
  - 4.7.2 A brief statement of the allegations should be prepared and kept on the file.
  - 4.7.3 The disciplinary authority should himself record on the file the fact that the whereabouts of the officials concerned are not known and that the police authorities have also certified to that effect and, therefore, it is not reasonably practicable to hold the inquiry contemplated under Rule 20. The disciplinary authority can then take recourse to rule 25 where there is provision to dispense with the enquiry. Reasons for not holding inquiry should then be recorded in writing and the disciplinary authority issue orders imposing such penalty, as it deems fit. The allegations and charges have to be briefly discussed in the punishment orders. Normally in such cases, the punishment that could be meted out would be either removal or dismissal from service.
- 4.8 A reference to the report/recommendation made by the higher authority, Anti Corruption Bureau and Vigilance & Enforcement dept. should be avoided in the orders of suspension issued by the competent authority in order to establish that the competent authority has exercised his power independently.
- 4.9 Where the work and conduct of an emergency employee are not satisfactory he should not be placed under suspension pending inquiry as it involves financial loss to Government nor should disciplinary action be initiated against them but he should be discharged from service in terms of his appointment by an innocuous order so far to avoid complication.
- 5.1 Review of the orders of suspension after a period of every six months should be undertaken as specified below:

- 5.1.1 In the case of Gazetted officers, if the suspension order is issued by the Regional authority the first review after six months will be done by him only. The second and subsequent reviews will be done by the Head of the Department at six monthly intervals. When no Regional authority exists and the Head of the department ordered suspension of first and second level Gazetted officers such order shall be reviewed every six months by him only.
- 5.1.2 If the original order of suspension is issued by Government all reviews including first review shall be done as ordered above except that prior approval of the Government to the result of the review shall be obtained when the review leads to reinstatement before reinstatement orders are issued.
- 5.1.3 In respect of third level and above Gazetted categories of officers, the review of order of suspension, at an interval of every six months shall be done by Government only.
- 5.2 In respect of members of the subordinate service the first review of the order of suspension after six months from the date of issue of orders shall be by the appointing authority. The 2nd and subsequent reviews of the order of suspension shall be by the Head of the department at an interval of every six months. Where the appointing authority is Head of the department itself, the review of the order of suspension at an interval of every six months shall be by the Head of the department only. Even if suspension is ordered by the higher authority the review shall be done as ordered above, except that the report on the result of review shall be sent to higher authority for information & record.
- 5.3 It may not be desirable to place an officer under suspension for a long period or indefinitely. Therefore, in all cases where a member of service is placed under suspension, action regarding investigation or inquiry as the case may be, should be undertaken on priority basis with utmost speed at all levels keeping in view the limits fixed for the inquiries at all stages and disciplinary proceedings. should be finalised and orders issued as early as possible. Even in respect of criminal cases filed in the special courts for SPE and ACB cases, efforts should be made by authorities concerned that the trial is completed at the earliest possible period so that the member of service is not continued under suspension for longer period.
- 5.4 However an outer limit of two years has been prescribed from the date of suspension, failing which the Govt. servant may be reinstated without prejudice to the proceedings being pursued. In exceptional cases, especially where there is deliberate delay caused due to non co-operation of the employee concerned suspension beyond two years can be continued.
- 5.5 Payment of subsistence allowance should not be withheld pending review of suspension.

#### **PART-IV: CONTROL (RULES 9-10)**

- 6.1 Control is sought to be achieved by providing for the imposition of the following penalties on Government servants for their acts of negligence and misconduct. These penalties may be imposed on members of the state and subordinate services for good and sufficient reasons.

### **MINOR PENALTIES**

- i) Censure
- ii) Withholding of promotion
- iii) Omitted by G.O. Ms.No.335 GAD dt. 4.8.2005)
- iv) Withholding of increments without cumulative effect.
- v)
  - (a) Suspension (as a specific penalty) where a person has already been suspended under rule 8, to the extent considered necessary.
  - (b) Reduction to a lower stage in the time scale of pay for a period not exceeding three years without cumulative effect and not adversely affecting his pension.

### **MAJOR PENALTIES**

- vi) With holding of increments with cumulative effect
  - vii)
    - (a) Same as provided for in clause (v)
    - (b) reduction to a lower stage in the time scale of pay for a specific period, with further directions as to whether or not the Government Servant will earn increments of pay during the period of such reduction and whether on the expiry of such period. The reduction will or will not have the effect of postponing the future increments at his pay.
    - (c) 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 (By G. O. Ms. No. 373 GAD, Dt. 6.12.2003)
  - viii) Compulsory retirement
  - ix) Removal
  - x) Dismissal
- 6.2 It is misnomer to consider the minor penalty as of little or no significance. According to G.O.Ms. No. 342 GAD (Ser) dt. 4-8-97, any minor penalty debars promotion for a minimum period of one year. Withholding of

increments with cumulative effect bars promotion for twice the period of stoppage.

- 6.3 The penalty of fine vide rule 10 (i) may be imposed only on a member of last grade service and holders of other posts specified in Appendix 1 to the rules.
- 6.4 The penalty of suspension for a period not exceeding 15 days may be imposed on Forest guards, directly recruited members of A.P. Police Subordinate Service, A.P. Special Armed Police service and certain categories of A.P. Fire Subordinate Service, vide rule 10 (ii).
- 6.5 “Censure” is a formal penalty which in the form of reprimand imposed on a person who is guilty of a blame worthy act of omission or negligence.
- 6.6 Removal of a person does not disqualify him from future employment but dismissal shall ordinarily disqualify him from future employment.
- 6.7 In every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing of forbearing to do any official act, is established, the penalty of removal or dismissal shall be imposed.
- 6.8 To improve the tone of administration, the Government have since ordered that in all proved cases of misappropriation, forgery, outraging modesty of women, bribery and moral turpitude penalty of dismissal shall be imposed.

## **AUTHORITIES COMPETENT TO IMPOSE PENALTIES ON GAZETTED OFFICERS**

- 1.1 The authorities which are competent to impose certain penalties on some members of the state service are given in rule 11. In the absence of such specific provision in rule 11, the general rule is that every Head of the Department declared to be the appointing authority may impose on any member of the state service holding an initial or second level gazetted post under his control, any of the penalties specified in clauses i to viii of rule 9 (G.O. Ms.No. 428 GA (Ser.C) Dept., dt. 13.10.99. Government alone have the power to remove or dismiss Gazetted officers. Government being a higher authority to the Head of the department can impose any penalty on Gazetted officers after consultation with the APPSC wherever necessary.

## **COMPETENT AUTHORITIES TO IMPOSE PENALTIES ON SUBORDINATE SERVICES (RULE 14)**

- 7.2 The authorities competent to impose certain penalties on members of some subordinate services (Non-Gazetted) are specified in rule 14 and in appendices, II, III & IV. In the absence of such specific provision the general rule is that the penalties of (i) Censure (ii) Fine (Clause (i) of rule (10) (iii)

withholding of increments (Clauses (i) and (iv) or rule 9) can be imposed on a Government servant by his immediate superior gazetted officer or where the appointing authority for such member is a non gazetted officer, such officer or any higher authority. The officer next above the immediate superior Gazetted officer or appointing authority or any higher officer may impose the penalty.

- 7.3 The appointing authority or any higher authority may impose on a member of the subordinate service the penalties of withholding of promotion for any specific fault or misconduct, suspension to the extent considered necessary, reduction, compulsory retirement, removal and dismissal.
- 7.4 Where in any case a higher authority has imposed or declined to impose a penalty, a lower authority shall have no jurisdiction and where in any case a lower authority has imposed penalty or exonerated a member, it shall not debar a higher authority from exercising his powers. His order shall supersede any order passed by a lower authority (Rule 18).
- 7.5 PERSONS LENT : where the service of a person is lent by one department to another or to Govt. of India the instructions in rules 30 and 31, as amended in G.O. Ms. No. 20 Gl.Adm. (Ser-c) Dept. dt. 20-1-2000 shall be followed.

#### **PART-V: PROCEDURE FOR IMPOSING PENALTIES (RULES 20, 21, 22 & 23) MINOR PENALTIES (RULE 22)**

- 8.1 No order imposing the penalties I to V of rule 9 or 10 shall be passed by the authority competent to impose the penalty except after the member of the service is informed in writing of the imputations of misconduct or misbehavior and the proposal to take action against him and given an opportunity to make representation in the standard form VI or VII prescribed in G. O. Ms. No. 82 GAD (Ser-C) dt. 1-3-96, depending on the gravity of the charge(s). Representation, if any, is taken into consideration and examined. When an inquiry is conducted under Rule 20, there is no need to give further opportunity to the charged officer and a minor penalty may be imposed on the basis of evidence adduced during the inquiry.
- 8.2 The record of proceedings in such cases of minor penalty should contain:
- 8.2.1 A copy of the intimation to the Government servant of the proposal to take action against him.
- 8.2.2 A copy of the statement of imputations of misconduct or misbehaviour delivered to him.
- 8.2.3 His representation, if any.
- 8.2.4 The evidence produced during the inquiry, if any.
- 8.2.5 The advice of the APPSC, if any.

- 8.2.6 The findings on each imputation of misconduct or misbehaviour.
- 8.2.7 The orders on the case together with the reason there for.
- 8.3 A disciplinary authority competent to impose any of the penalties specified in clauses (i) to (v) of rule 9 or in rule 10, may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (vi) to (ix) of rule 9, notwithstanding that such disciplinary authority is not competent to impose any of the latter penalties.

## **MAJOR PENALTIES (RULE 20)**

- 9.1 An elaborate procedure is prescribed in Rule 20 for imposing major penalties. Under Art.311 of the constitution no civil servant can be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges and given a reasonable opportunity of being heard in respect of those charges.
- 9.1.1 Under clause (4) of rule 20, it is the responsibility of the disciplinary authority to under take the work of framing charges and to deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each articles of charge is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person. (The format No.II prescribed should be used).
- 9.1.2 On receipt of the written statement of defence, or if no written statement of defence is submitted by the Government servant, further inquiry needs to be conducted in respect of charges not admitted in the former case and Ex-parte inquiry in the later case.
- 9.1.3 The disciplinary authority shall necessarily appoint an Inquiry Officer when he proposes to conduct detailed inquiry in cases where, in his opinion, the charge if proved, warrants imposition of major penalty, instead of itself taking up the inquiry, unless the appointment of Inquiry Officer becomes impossible in view of the non-availability of the Officer in the Department (Govt. Memo. No. 46733 Gl. Adm. (Ser-C) Dept., dt. 22-10-1999).
- 9.1.4 The government servant may either appear himself in person before the Inquiring authority or may take the assistance of any other Government servant or retired Govt. servant to present the case on his behalf subject to the conditions laid down in clause (8) of rule 20.
- 9.2 The manner in which such an inquiry officer has to conduct the inquiry and submit his report to the competent authority is dealt within rule 20 (23). A format is prescribed for submission of Enquiry Officer's report in Govt. Circular

Memo No. 56183/ Ser-C 799 GAD, Dt. 15-10-1999.

- 10.1 On receipt of inquiry report, disciplinary authority shall first see whether it conforms to the check list prescribed in Govt. Circular Memo No. 209227 Ser-C/99 GAD Dt. 28-9-99, and take action as per rule 21, and instruction in Govt. U.O.Note No. 11107/Ser-C/99 GAD, Dt. 1-3-99.
- 10.1 (a) When it is proposed to award a major penalty he shall furnish a copy of inquiry officers report to the person charged and allow a reasonable time not exceeding one month to submit his further representation, if any, on inquiry officers report, vide rule 21 (4). However if the gravity of the charges held proved warrants only minor Penalty, it may be awarded straightaway.
- 10.2 There is no need to give any opportunity to the charged officer to make a representation against the penalty proposed to be imposed, in view of Art.311 (2) of the Constitution as amended by the 42nd amendment Act 1976 to the Constitution of India.
- 10.3 Where the authority to impose the punishment is the State Government, it is necessary, before passing an order, to consult the A.P. Public Service Commission, in the cases mentioned in Govt. Memo No. 32667/98-99 dt. 3.5.99. With a view to hastening the process of finalization of cases, Government ordered that the department should forward the proposals to the APPSC in complete shape including information on all the items referred to in the check-list appended to Govt. Memo No. 655/Ser.C/99-1 GAD dt. 17.8.90. A copy of the letter of the Public Service Commission containing its advice, may, if applied, be supplied to the accused Government Servant. Where such advice has not been accepted, a brief statement or the reasons for such non-acceptance shall be furnished to the Government servant concerned along with a copy of the case, vide rule 44. As instructed in Govt. U.O. Note No. 43946/Ser-C/2000-3 GAD, Dt. 12-10-2000 consultation with APPSC, is not necessary before a major penalty is imposed on those who are convicted in a Court of Law or Special Courts for Special Police Establishment and ACB Cases.
- 10.4 The final order containing the decision of the authority competent to impose the penalty, should be a self contained speaking order. Even where the order is passed by the Government, the order should set out briefly the relevant facts, findings, advice of the Commission and Government's decision thereon. It should be signed by an officer authorized to sign orders on behalf of the Government. Such an order should be communicated to the accused Government servant and his acknowledgement in token of having received it should be obtained and kept on record.
- 10.5 The following types of cases may merit action for imposing one of the major penalties. These are meant for guidance and not to be treated as yardstick for imposing a major penalty.

- 10.5.1 Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a court of law eg.
- 10.5.2 Possession of Disproportionate assets.
- 10.5.3 Obtaining or attempting to obtain illegal gratification.
- 10.5.4 Misappropriation of Government property, money, stores.
- 10.5.5 Obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate.
- 10.5.6 Falsification of Governments records.
- 10.5.7 Gross irregularity or negligence in the discharge of official duties with a dishonest motive.
- 10.5.8 Misuse of official position or power for personal gain.
- 10.5.9 Disclosure of secret or confidential information even though it does not fall strictly within the scope of Official Secrets Act.
- 10.5.10 False claim on the Government like T.A. claims, reimbursement claims etc.
- 10.5.11 To ensure clean and efficient administration it was directed in G.O.Ms. No.2 Gl.Adm. (Ser-C) Dept., dt. 4-1-1999 that in all proved cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery and outraging the modesty of women, the penalty of dismissal from service shall be imposed, as already mentioned in para 6.8 ante.
- 11.1 The procedure laid down in Rule 20 of the AP Civil Service (CCA) Rules in regard to the imposition of major penalties, need not be followed in certain exceptional cases, as mentioned in rule 25, viz.
  - 11.1.2 Where an authority competent to impose penalty is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.
  - 11.1.3 Where the Governor is satisfied that in the interest of security of the state it is not expedient to give to that person such an opportunity or to hold such inquiry.
  - 11.1.4 Where it is proposed to impose any of the penalties specified, on the basis of the report of the Lokayukta or Upalokayukta, the disciplinary authority shall take action on the basis of the recommendation contained in that report (rule 27).

## **COMMON PROCEEDING (RULE 24)**

- 12.1 According to rule 24 where two or more members of the same service or

different services are concerned in any case, the Government or any other authority competent to impose the penalty of dismissal from service on all such members may make an order directing that disciplinary action against all of them may be taken in a common proceeding. If the authorities competent to impose the penalty of dismissal on such members are different, such authorities not being the Government, an order for holding such inquiry in a common proceeding may be made by the highest of such authorities with the consent of the other authorities competent to impose the said penalty on others.

- 12.2 It is for the highest authority who orders joint inquiry to see that the penalty imposed is proportionate to the seriousness of the charges held proved, keeping in view their degree of culpability/ seriousness of lapses held proved, while imposing the penalty in such cases.
- 12.3 When two or more persons are involved in one case, the magnitude of involvement of all the delinquent officers may not be the same and the degree of culpability may also vary from person to person. As such it may not be possible to impose the same penalty uniformly on all the charged officers, irrespective of the degree of their involvement. If the same penalty is imposed on all such delinquent and maligned officers involved in a case, ignoring their degree of culpability and involvement, such action is liable to be questioned. As such, it may not be legally valid to prescribe any guidelines or yardsticks for imposing penalty in such cases. The competent authority who orders such a joint inquiry should ensure that the members of service involved in disciplinary cases are imposed the penalties keeping in view their degree of culpability/seriousness of lapses/charges held proved.
- 12.4 The disciplinary authority should take a comprehensive view by taking into account the totality of the circumstances and the extent of involvement of each of delinquent officers while inflicting the punishment.

## **ACQUITTAL BY COURTS**

- 13.1 The Supreme Court of India in Corporation of Nagpur Vs Ramachandra (1981) (2Sec714-AIR 1984 SC.626) has made the following observations:
  - 13.1.1 “The other question that remains is if the respondents are acquitted in the criminal cases whether or not, the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the Department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honorably and completely it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away or its discretion in any way fettered. However, as quite some time has elapsed

since the departmental inquiry has started, the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so”.

13.1.2 In the light of the above judgment of the supreme Court of India it is clear that the acquittal of the accused officer by the competent court, is no bar to initiate departmental inquiry against the delinquent officer.

13.1.3 The disciplinary authority may, if it comes to the conclusion that an order imposing a penalty on a Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued pass such an order without waiting for the period of filing an appeal, or if an appeal, has been filed, without waiting for the decision in the first court of appeal. Standard form for such an order is annexed to Government Memo No. 169/Ser.C/77-8 GAD dt. 10.2.78.

13.1.4 Whether, despite the acquittal, the facts and the circumstances of the case are such as to call for a departmental action against the Government servant on the basis of the misconduct on which he was previously convicted, departmental inquiry may be ordered, in standard form No. II annexed to the Government memo.

13.1.5 In case where Government employee is removed or dismissed or reduced in rank after complying with the requirement of article 311 (2) of the Constitution of India or of the provisions of rule 20 of the A.P. Civil Service (Classification, Control and Appeal) Rules, then the order of removal, dismissal or reduction in rank, is not affected by his acquittal in a criminal court, if he is prosecuted in addition to the departmental action taken against him. If however, a Government employee is removed or dismissed or reduced in rank, solely on the ground of conduct which led to his conviction on a criminal charge, without complying with the requirements of the aforesaid article or rule and if his conviction is eventually set aside by the appellate court, or by the High Court, in revision, then the order of removal, dismissal, or reduction in rank, as the case may be cannot stand, and that order will have to be reviewed.

## **UNAUTHORIZED ABSENCE - WILFUL AND PROLONGED ABSENCE FROM DUTY WITHOUT PROPER LEAVE**

14.1 In circular Memo No. 4481/A/128/FR.1/88, Fin& Pig. (Fin. Wing F.R.I) Dept., dt. 7.7.88 Government have issued instructions ordering concerned departmental authorities to initiate disciplinary action against those employees who remained absent from duty without proper leave and pass appropriate

orders on the basis of the disciplinary proceedings by following the procedure laid down in APCS (CCA) Rules. In spite of these instructions the following questions arise for consideration:

- 14.1.1 Whether a member of service who remained absent from duty without proper leave can be permitted to join duty if he gives joining report pending further action to determine or regulate the period of absence by taking disciplinary action or otherwise.
- 14.2 According to FR 18 and rule 5-A of the A.P. Leave Rules, 1993 and the Note-1 there under, no Government servant should be granted leave of any kind for a period exceeding five years and that willful absence from duty not covered by grant of any leave shall be treated as "dies-non" for all purposes viz, increments, leave and pension.
- 14.3 Neither F.R 18 and rule 5-A of the A.P. Leave Rules, can be construed to mean:
  - 14.3.1 That the member of service who remains absent from duty without proper leave can not be permitted to join duty if he gives a joining report, or
  - 14.3.2 That such member of service ceases to be in service by such absence so as to discharge him from service in terms of FR.18.
- 14.4 What therefore follows from this is that if a member of service who remains absent without any leave gives a joining report it should be ensured by the competent authority that he is permitted to join immediately pending initiation of the disciplinary action for unauthorized absence, in case such action has already not been initiated against him and in all such cases the period of unauthorized absence has to be treated as dies-non in accordance with the Note-I under FR 18 and Rule 5-A aforesaid. This treatment of unauthorized absence as dies-non is distinct from disciplinary action taken or to be taken against the employee concerned.
- 14.5 What F.R 18 and rule 5-A of the A.P. Leave Rules mandates is that no member of service shall be granted leave of any kind for continuous period exceeding five years without the specific approval of Government. No inference can be drawn from these rules that disciplinary action against a member of service can not be taken unless he is continuously absent for more than five years without any leave. It is not at all necessary for the authority competent to wait for a period of five years to initiate disciplinary action against the member of service for his absence from duty willfully or unauthorisedly. In all such cases the disciplinary proceedings can be initiated against such member of service who remained absent without any leave straight way by following the procedure laid down in Rule 20 of the APCS (CCA) Rules, 1991 for unauthorized absence without leave which constitutes good and sufficient reasons for initiating disciplinary action under the said rules and such other misconduct as having secured gainful employment

elsewhere during his absence from duty without leave. In all such cases the inquiry officer has to be directed to complete the inquiry within a fixed time say within a period of 2 months. The charges framed against the employee concerned should be communicated by Registered Post with acknowledgement due. If however the employee is not available at the last address given by him the charge memo should be got published in the A.P. Gazette and inquiry should be conducted ex-parte for taking necessary action against him. Even in such cases where an employee reports back to duty, he should be permitted to join duty without prejudice to the action contemplated or pending against him. If employee applies for leave on medical grounds along with the joining report and extends leave on the same grounds beyond three months he should be referred to Medical board for examination and necessary action may be taken against him on the basis of the medical report.

- 14.6 According to the note under Rule 6-A of A.P. Leave Rules read with proviso to FR 73, a temporary Government servant working under emergency provisions, who remains absent from duty after applying for leave or extension of leave to which he is not entitled to under the Rules shall be deemed to have been discharged from duty with effect from the date from which he is not entitled to any leave unless the leave applied for is granted in relaxation of relevant rules. Where such a temporary employee absents himself unauthorisedly or without sufficient justification, action should be taken immediately for discharging him from service invoking this rule, by issuing an innocuous order indicating the provisions under which the employee stands discharged.

## **REQUEST FOR “RESIGNATION” WHILE ABSENT**

- 14.7.1 Resignation by a member of a service, who is placed under suspension from service pending investigation or inquiry into grave charges or who is deemed to have been suspended under rule 8 of the A.P.C.S. (Classification, Control and Appeal) Rules 1991 shall not be accepted during the period of suspension.
- 14.7.2 The consequence of the resignation as laid down in General rule 30 is that not only the service rendered by the member of service in a particular post held by him at the time of resignation but also all his previous service under the Government will stand forfeited. In view of this consequence the regulation of the period of unauthorized absence would be of no consequence and the acceptance of such resignation tendered by the member of service who remained absent from duty without leave need not wait the determination of unauthorized absence.
- 14.8 Where Government servants, while being unauthorisedly absent or where their leave was refused, have sought for voluntary retirement on completion of 20/33 years of qualifying service in accordance with Rules 43 and 44 Revised Pension Rules, 1980, respectively, the competent authorities concerned have

failed to take action to accept them promptly, resulting in unintended benefit to the employees concerned. In case of retirement on completion of 20 years of qualifying service as provided under Rule 43 of Revised Pension Rules 1980, a Government servant who gives a notice in writing of his intention to retire voluntarily shall not retire unless the notice given by him is accepted by the competent authority, provided that the competent authority shall issue an order before the expiry of the notice period accepting or rejecting the notice. In case of voluntary retirement on completion of 33 years of qualifying service as provided under Rule 44 of Revised Pension Rules 1980, the appointing authority has to issue orders permitting the Government servant to retire from service. In normal course, in either case, the voluntary retirement can be accepted/permitted as the case may be pending determination of the period of unauthorized absence. In cases where it is contemplated to take disciplinary action against the employee concerned, it would be appropriate to frame charges against him before he retires from service so that further action may be pursued in accordance with Rule 9 of Revised Pension Rules unless the charges are grave and acceptance of such notice would not be in public interest. As such, acceptance of notice of voluntary retirement need not await the determination of the period of absence, provided the Government servant concerned has rendered 20/33 years of qualifying service. Even in cases where an employee is permitted to retire voluntarily departmental proceedings can be instituted with the sanction of government in respect of a cause of action which arose or an event which took place not more than four years before such institution, in terms of Rule 9 of Revised Pension Rules.

- 14.9 Whenever official continues to remain absent from duty or overstays leave without permission and his whereabouts are not known, or fails to reply to official communications, the disciplinary authority may initiate action under Rule 20 of CCA. Rules. In all such cases, the competent authority should by a registered acknowledgment due letter addressed to the official at his last known address, issue a charge-sheet in the form prescribed for the purpose and call upon the official to submit a written statement of defence within a reasonable period to be specified by that authority. If the letter is received undelivered or if the letter having been delivered, the official does not submit a written statement of defence on or before the specified date or at a subsequent stage does not appear in person before the inquiry officer, or otherwise fails or refuses to comply with the provisions of APCS (CCA) Rules, the inquiring authority may hold an exparte inquiry. The notices of all hearings should be served on the accused or communicated to him unless the first notice says that the inquiry will continue from day to day.

## **PART-VI: APPEALS (RULE 32-39)**

- 15.1 No appeal lies against any order passed by the Governor under clause (iii) of rule 25, any order of an inter locutory nature in and of the final disposal of a disciplinary proceedings and any order passed by an inquiring authority in the

course of an inquiry under rule 20, vide rule 32.

- 15.2 A Government servant may prefer an appeal against the order of suspension made under rule 8, an order imposing any of the penalties specified in rule 9 or rule 10 by the disciplinary authority, or appellate or revising authority, an order enhancing the penalty imposed under rule 9 or rule 10, an order of discharge for a contract appointment exceeding a period of five years and an order reducing or withholding pension, vide rule 33.
- 15.3 An appeal from an order of High Court shall lie to the Governor and from any other authority including Heads of departments shall lie to the Government and an appeal from an order passed by a lower authority shall lie to the Head of department.
- 15.4 No appeal shall be entertained unless it is preferred within 3 months of receipt of the order by the appellant. The appellate authority, if satisfied, may entertain an appeal after expiry of the above period (Rule 35 & 43). Every appeal shall be complete in itself and presented to the appellate authority. A copy thereof shall be sent to the authority, which made the order appealed against who shall offer his comments and furnish relevant records to the appellate authority (Rule 36).
- 15.5 A member of a subordinate service shall be entitled to appeal from an order passed by an authority, imposing on him any of the penalties, to next higher authority vide Rule 34 (1) (iii).
- 15.6 The appellate authority is under obligation to consider (i) Whether the procedure has been complied with and if not whether such noncompliance has resulted in violation of any Constitutional provision or in the failure of justice; (ii) whether the findings are warranted by the evidence on record; and (iii) whether the penalty is adequate, inadequate or severe. He can confirm, enhance or reduce or set aside the penalty or remit the case with any direction he deems fit.
- 15.7 The appellate authority, thus, has power to enhance the penalty in an appeal submitted by the affected employee for relief. While enhancing the penalty, the appellant should be given opportunity to make a representation against such enhancement and in case of enhancement to a major penalty, an inquiry should be conducted if not already held, vide rule 37.
- 15.8 The power of Revision/Review vesting in certain specified authorities under rules 40 & 41 can be exercised broadly, in the same manner as in an appeal. Here the power can be exercised suo moto also. A time limit of six months is laid down for this purpose in clause (iii) of rule 45 (1) unless this time limit is relaxed under rule 43.