

Copy of letter No. 10405—4GS-62/30948, dated the 24th September 1962 from Sirdar Gyan Singh Kahlon, I.C.S., Chief Secretary to Government, Punjab, to all Heads of Departments etc.etc.

Subject :—Procedure to be followed in cancelling the erroneous confirmation of Junior Officers.

I am directed to address you on the subject cited above and to say that there may be instances of some competent authorities having issued orders confirming temporary or officiating employees in permanent posts even though the employees concerned were not qualified in all respects for such confirmation under the relevant statutory rules, executive orders or administrative instructions. In all such cases the confirmation so made would have the effect of withholding or postponing confirmation of other employees, who may be otherwise qualified in all respects for confirmation. Government take serious notice of such erroneous orders of confirmation which need to be regularized without delay. It is, however, felt that there being no clear instructions issued on the subject so far, authorities concerned, might be confronted with procedural difficulties in cancelling the orders already passed even though erroneously.

2. After careful consideration of the whole matter it has been decided on the analogy of instructions issued by the Government of India in the Ministry of Home Affairs, that the following procedure should be observed in cancelling the erroneous orders of confirmation :—

(1) An order of confirmation which is clearly contrary to the relevant statutory rules may be cancelled by the competent authority straightaway; for.

Where the order of confirmation was *ab initio* void as it was *ultra vires* of the relevant rules and cancellation of the order would be justified on the ground that there was no valid subsisting order at all and the act of cancellation is a mere formality. The effect of cancellation would be to put the employees concerned in a position of never having been confirmed.

(2) An order of confirmation which is contrary to executive orders or administrative instructions may be cancelled by the competent authority, if such erroneous order of confirmation has operated to the prejudice of some identifiable person who would otherwise have been confirmed if the orders had been correctly applied for.

Where the order of cancellation would be just and equitable as the confirmation of the employee concerned, operates unfairly to the detriment of another employee who would have otherwise been confirmed. Such cancellation will not have the effect of doing any injustice to the employee whose confirmation is cancelled since he was under the executive order or administrative instructions in force not entitled to confirmation.

(3) The question of the applicability of Article 311 of the Constitution of India to such cases is not free from doubt. It is, however, safer to comply with these provisions. In a case of this nature, the provisions of Article 311 can be complied with by coming to a conclusion and then communicating the conclusion and documents etc. to the officer and asking him to show cause why he should not be deconfirmed or the orders of his confirmation should not be cancelled. The competent authority would, if the officer so desires have to hear him and let him place any material he may like before it. The Government of India have also observed that before deconfirming persons in such cases a notice to show cause should be given to them in consonance with the principles of natural justice.

(4) I am to request that the above instructions may please be brought to the notice of all concerned for strict compliance.

(5) The receipt of this letter may please be acknowledged.