

HARYANA GOVERNMENT
GENERAL ADMINISTRATION DEPARTMENT

Notification

The 6th February, 1987

No. G.S.R. 9/Const./Art. 187, 309 and 318/87.—In exercise of the powers conferred by the proviso to article 309 and clause (b) of article 318 read with clause (3) of article 187 of the Constitution of India and all other powers enabling him in this behalf, the Governor of Haryana, in consultation with the Speaker of the Haryana Vidhan Sabha, in so far as such consultation is necessary under the aforesaid provisions, hereby makes the following rules namely—:

1. These rules may be called the Haryana Civil Services (Punishment and Appeal) Rules, 1987.

Short title.

2. In these rules, unless the context otherwise, requires—

Definitions.

(a) "appointing authority" in relation to a Government employee means :—

- (i) the authority empowered to make appointments to the service of which the Government employee is for the time being a member or to the grade of the service in which the Government employee is for the time being included ; or
- (ii) the authority empowered to make appointments to the post which the Government employee for the time being holds ; or
- (iii) the authority which appointed the Government employee to such service, grade or post, as the case may be ; or

- (iv) recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders, to the Central Government or a State Government or to a Company and association or a body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government or to a local authority set up by an Act of Parliament or of the legislature of a State; and
- (v) withholding of increments of pay.

Major Penalties

- (vi) reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government employee 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 of his pay;
- (vii) reduction to a lower scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government employee 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 employee was reduced and his seniority and pay on such restoration to that grade, post or service;
- (viii) compulsory retirement;
- (ix) removal from service which shall not be a disqualification for future employment under the Government;
- (x) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;

Explanation:—The following shall not amount to a penalty within the meaning of this rule, namely:—

- (i) withholding of increments of pay of a Government employee for his failure to pass any departmental examination in accordance with the rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment ;
- (ii) stoppage of a Government employee at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar ;
- (iii) non-promotion of a Government employee, whether in a substantive or officiating capacity, after consideration of his case, to a service, grade or post for promotion to which he is eligible ;
- (iv) reversion of a Government employee officiating in a higher service, grade or post to a lower service, grade or post on the ground that he is considered to be unsuitable for such higher service, grade or post on any administrative ground unconnected with his conduct ;
- (v) reversion of a Government employee appointed on probation to any other service, grade or post to his permanent service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing such probation ;
- (vi) compulsory retirement of a Government employee in accordance with the provisions relating to his superannuation or retirement ;
- (vii) termination of the service—
 - (a) of a Government employee appointed on probation, during or at the end of the period of probation in accordance with the terms of appointment or the rules

and orders governing such probations;
or

- (b) of a temporary Government employee appointed otherwise than under contract, on the expiration of the period of the appointment, or on the abolition of the post or before the due time in accordance with the terms of appointment; or
- (c) of a Government employee employed under an agreement in accordance with the terms of such agreement.

Notes.—(1) Punishing authorities have full discretion to publish in the *Haryana Government Gazette* reasons for dismissal where such publication is considered desirable in the public interest.

- (2) In order to guard against the inadvertent re-employment of persons dismissed from Government service, the authority passing an order of dismissal shall intimate to the Deputy Inspector-General, Police, Haryana; Criminal Investigation Department, Deputy Commissioner, and the Superintendent of Police of the district of which the person concerned is a permanent resident, the name of such a person and any other particulars required for purposes of identification, unless the dismissal has been notified in the *Haryana Government Gazette*. Similarly, if a person happens to be a resident of another State the aforesaid officers of that State should be informed accordingly.

(3) The provisions of this rule shall not be construed to derogate from the provisions of section 36 of the Punjab Courts Act, 1918 the payment of Wages Act, 1936, or any other law authorising the imposing of fines on the ministerial establishment governed by these laws and the authority competent to award the punishment of the fine may do so in addition to the punishments aforesaid.

(4) The discharge of a person appointed to hold a temporary appointment, otherwise than in accordance with the provisions of the Explanation (vii)(b) amounts to removal or dismissal and is, therefore, appealable under these rules.

(5) The distinction between censure, the withholding of promotion and non-selection to a selection post, is of considerable importance. Both censure and the withholding of promotion are appealable under these rules. On the other hand, non-selection for a selection post is not appealable.

If a Government Employee because of an unsatisfactory record and unfavourable confidential reports, is not selected for a selection post and some other Government employee junior to him is selected in preference, this does not amount to the withholding of promotion. If any inquiry is held against a government employee and an order of censure is passed on him, it is open to him to appeal, if he does not appeal or his appeal is rejected, and if subsequently because of the existence of this censure in his record, he is not selected for a selection post, and some other government employee junior to him is selected in preference, this also does not amount to the withholding of promotion. If however, an enquiry is held against a Government employee, and an order is passed that he should not be promoted to a selection post for a definite period or until he has obtained good reports, this order would amount to the infliction of the penalty of withholding promotion. This distinction between non-selection for a selection post and the withholding of a promotion may be summed up as being, that in the former case the government employee in question is considered for selection but some other government employee is preferred on his merits, while in the later case the government employee in question has been declared before hand, as a disciplinary measure, to be ineligible for selection, irrespective of the merits of the other government employees available.

(6) (i) While reduction of seniority as a independent penalty is not provide for in rule 4, and cannot be imposed as such, the loss of seniority as a result of an order of reduction to a lower post of time-salce,

being inherent in the order of reduction cannot be avoided.

(ii) The seniority, or re-promotion of an government employee reduced to a lower post or time scale, should be determined by the date of such repromotion in accordance with the orders issued by the competent authority on the subject of seniority. Such Government employee should not be restored to his original position unless this is specifically laid down at the time of punishment is passed, or revised an appeal.

(7) Unauthorised desertion of his post by a public servant in the face of enemy action, or threat of enemy action clearly amounts to grave misconduct and would, therefore, consistute a good and sufficient reason with in the meaning of rule 4, for removal or dismissal in addition to any penalty provided in the Haryana Essential Services (Maintenance) Act, 1974. Loss of pension would then follow automatically by virtue of the provisions of rule 2.5 of the Punjab Civil Services Rules, Volume II, and it would also be possible to forfeit the Government contribution, if any, to the individuals provident fund.

4A. Suspension.— (1) The appointing authority or any other authority to which it is subordinate or the punishing authority or any other authority empowered in that behalf by the Governor by general or special order, may place a Government employee under suspension—

- (a) Where a disciplinary proceeding against him is contemplated or is pending, or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial ;

Provided that where the order of suspension is made by an authority lower than the appointing authority such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Government employee shall be deemed to have been placed under suspension by an order of the appointing authority :—

- (a) 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 :
- (b) 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 forthwith dismissed or removed or compulsorily retired consequent to such conviction.

*Explanation:—*The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of imprisonment after the conviction and for this purpose, intermitent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government employee under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the punishing authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal removal or compulsory retirement was originally imposed, the Government employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(6) Where a Government employee is suspended or is deemed to have been suspended whether in connection with any disciplinary proceeding or otherwise, and any other disciplinary proceeding is commenced against him during the continuance of that suspension the authority competent to place him under suspension may, for reasons to be recorded by it in writing, direct that the Government employee shall continue to be under suspension until that termination of all or any of such proceedings.

(7) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

Withholding of payment of emoluments of a Government servant suspected of embezzlement.

5. When a Government employee is suspected of being concerned in the embezzlement of Government money, and is placed under suspension, the authority competent to order his dismissal may direct, that unless he furnishes security for the reimbursement of the said money to the satisfaction of his immediate superiors, the payment of any sum due to him by the Government on the date of his suspension, shall be deferred until such time as the said authority passes final orders on the charges framed against him :

Provided that such Government employee shall be entitled to the payment of a subsistence allowance in respect of the period for which the admissible emoluments, if any, are withheld.

Authority to impose punishment

6. Subject to the provisions of clause (1) of Article 311 of the Constitution of India, the authorities competent to impose any of the penalties specified in rule 4 upon the persons to whom these rules apply, shall be such as may be prescribed by the Government in the rules regulating the appointment and conditions of service of such persons.

7. (1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850 ; no order of imposing a major penalty shall be passed against a person to whom these rules are applicable unless he has given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

Inquiry before
imposition of
certain penalties.

(2) The grounds on which it is proposed to take such action shall be reduced to the form of definite charge or charges which shall be communicated in writing to the persons charged together with a statement of allegations on which each charge is based and of any other circumstances which it is proposed to take up into consideration in passing orders on the case and he shall be required within a reasonable time to state in writing whether he admits the truth of all or any, of the charges, what explanation for defence, if any, he has to offer and whether he desires to be heard in person. If the punishing authority is not satisfied with the explanation given by the person charged or there are other reasons to do so, shall direct that an enquiry shall be held at which all evidence shall be heard as to such of the charges as are not admitted. The persons charged shall, subject to the conditions described in sub-rule (3), be entitled to cross examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the Officer conducting the enquiry may for reasons to be recorded in writing, refuse to call any witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds there of provided that

- (a) it shall not be necessary to frame any additional charge when it is proposed to take action in respect of any statement of allegation made by the person charged in the course of his defence ; and
- (b) the provisions of the foregoing sub-rule shall not apply where any major penalty is proposed to be imposed upon a person on the ground of conduct which has led to his conviction on a criminal charge; or where

an authority empowered to dismiss or remove him, or reduce him in rank is satisfied that, for some reasons to be recorded by him in writing, it is not reasonably practicable to give him an opportunity of showing cause against the action proposed to be taken against him, or wherein the interest of the security of the State it is considered not expedient to give to that person such an opportunity.

□ (3) If any question arises whether it is reasonably practicable to give to any person an opportunity to defend himself under sub-rule (2) the decision thereon of the punishing authority shall be final.

(4)(a) Where any person has made a statement on oath, in evidence before any criminal or Civil Court, in any case, in which Government employee charged was party and had full opportunity to cross-examine such person and where it is intended to prove the same facts as deposed to by such person in such statement in any inquiry under the Public Servants (Inquiries) Act, 1850, shall not be necessary to call such person to give oral evidence in corroboration of that statement. The certified copy of the statement previously made by him in any such case may be read as part of the evidence :

Provided that the Officer conducting the inquiry may, in interest of justice order the production of witness in person either for further examination or for further cross-examination by persons charged.

(b) The Government employee charged shall not be allowed, except at discretion of the Enquiry Officer, to be exercised in the interest of justice to call as a witness in his defence any person whose statement has already been recorded and whom he has had opportunity to cross-examine, or whose previous statement has been admitted in the manner herein provided.

(5) Where the punishing authority itself enquires into any charge or charges or appoints an enquiry officer for holding enquiry against a person charged it may, by an order, appoint a Government servant or a legal

practitioner to be known as a "Presenting Officer" to present on its behalf the case, in support of the charge or charges.

The person against whom a charge is being enquired into, shall be allowed to obtain the assistance of a Government employee or a retired Government employee if he so desires, in order to produce his defence before the Enquiry Officer. If the charge or charges are likely to result in the dismissal of the person from the service of the Government, such person may, with the sanction of the Enquiry Officer, be represented by counsel :

Provided that if in any enquiry, Counsel is engaged on behalf of any department of Government, the person against whom the charge or charges are being enquired into, shall also be entitled to engage counsel :

Provided further that the assistance of a particular Government employee will be allowed only if the Enquiry Officer is satisfied that he is of such rank as is appropriate in the circumstances of the case and that he can be spared by the department concerned for that purpose.

Notes.—(1) Charges need not necessarily be framed in relation only to specific incidents or acts of misconduct. When reports received against an officer or a preliminary enquiry show that his general behaviour has been such as to be unfitting to his position, or that he has failed to reach or maintain a reasonable standard of efficiency he may and should be charged accordingly, and a finding on such a charge may be valid ground for the infliction of any authorised punishment, which may be considered suitable in the circumstances of the case. It will still be necessary to communicate the charges of misbehaviour or of inefficiency or of both as the case may be, to the officer concerned but the statement which is to be communicated to the officer in support of the charges need not specify particular acts of misconduct. It will be sufficient in the statement to give the list of the reports on the basis of which misbehaviour or inefficiency is alleged.

(2) This rule shall not apply where it is proposed to order the compulsory retirement from service of any

Government employee subject to the rule-making power of the Government who after the 14th August, 1947 has been in the employment of a Government outside the Union of India for any period and whose retention in the public service of the State of Haryana is in the opinion of the Government prejudicial to national security. In every such case as aforesaid, it shall be sufficient for the Government to inform the person concerned of such opinion, and that in pursuance of that opinion it is proposed to order his compulsory retirement and to pass orders after taking into consideration, his representation, if any.

Any person compulsory retired from service in accordance with the procedure prescribed by this rule will be granted such compensation, pension, gratuity, or Provident Fund benefits as would have been admissible to him had he been discharged from service due to the abolition of his post without any alternative suitable employment being provided, under the rules applicable to his service or post on the date of his retirement.

(6) After the enquiry against a Government employee has been completed, and after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed, the Government employee shall, if the penalty to be imposed is major penalty be supplied with a copy of the report of the enquiring authority and be called upon to show cause within reasonable time, not ordinarily exceeding one month against the particular penalty proposed to be inflicted upon him. Any representation submitted by him in this behalf shall be taken into consideration before final orders are passed :

Provided that if the punishing authority disagrees with any part or whole of the findings, of the enquiring authority, the point or points of such disagreement, together with a brief statement of the ground thereof, shall also be supplied to the Government employee.

Procedure for
imposing minor
penalties.

8. Without prejudice to the provisions of rule 7 no order for imposing a minor penalty shall be passed on a Government employee unless he has been given an adequate opportunity of making any representation

that he may desire to make, and such representation has been taken into consideration :

Provided that this condition shall not apply in a case where an order based on facts has led to his conviction in a criminal court or an order has been passed superseding him for promotion to a higher post on the grounds of his unfitness for that post on account of the existence of unsatisfactory record :

Provided further that the requirements of this rule may, for sufficient reasons to be recorded in writing be waived where it is not practicable to observe them and where they can be waived without injustice to the Government employee concerned.

9. (1) Every person to whom these rules apply, shall be entitled to appeal, as hereinafter provided to such superior authority, as may be prescribed by Government in the rules regulating his conditions of services against an order, not being an order of Government.

Right of appeal.

- (a) imposing upon him any of the penalties specified in rule 4 ;
- (b) discharging him in accordance with the term of his contract, if he has been engaged on a contract for a definite, or for an indefinite period and has rendered under either form of contract continuous service for a period exceeding five years at the time when his services are terminated ;
- (c) reducing or withholding the amount of ordinary or additional pension admissible under the rules governing pension ;
- (d) terminating his appointment, otherwise than upon his reaching the age fixed for superannuation.
- (e) an order which denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement.

(2) If the authorities competent to impose the penalty of dismissal on such Government employees are different, an order for taking disciplinary action in a common proceeding shall be made by the highest of such authorities.

(3) Any order under sub-rule(1) shall specify the authority competent to do so under the relevant service rules, which may function as the punishing authority for the purpose of such common proceeding.

Manner of presentation of appeal or application for revision.

17. Every appeal or application for revision preferred under these rules, shall contain material statements and arguments relied upon by the appellant or applicant, shall contain no disrespectful or improper language, and shall be complete in itself. Every such appeal or application for revision shall be submitted through the Head of the office to which the appellant or applicant belong or belonged.

Withholding of appeals or applications for revision.

18. (1) An appeal or application for revision may be withheld by the Head of the office, if—

- (a) it is an appeal or application for revision in a case in which under these rules, no appeal or application for revision lies ; or
- (b) it does not comply with the provisions of rule 17 ; or
- (c) it is an appeal and is not preferred within forty-five days after the date on which the appellant was informed of the order appealed against, and no reasonable cause is shown for the delay ; or
- (d) it is a repetition of a previous appeal or application for revision and is made to the same appellate or revisionary authority by which such appeal or application for revision has been decided and no new facts or circumstances are adduced which afford ground for a reconsideration of the case :

Provided that in every case in which an appeal or application for revision is withheld, the appellant or applicant shall be informed of the fact and the reasons for it and a copy thereof forwarded to the appellate

authority, if any, together with a copy of the appeal or application for revision so withheld:

Provided further that an appeal or application for revision withheld on account only of failure to comply with the provisions of rule 17 may be re-submitted at any time within one month of the date on which the appellant or applicant has been informed of the withholding of the appeal or application and if re-submitted in a form which complies with those provisions, shall not be withheld.

(2) Any appellant or revisional authority may call for the record of any appeal or application for revision withheld by an authority subordinate to it, which under these rules may be made to it and may pass such order thereon as it considers fit.

19. Nothing in these rules shall be deemed to affect the functions of the Haryana Public Service Commission as specified in Article 320 of the Constitution of India, and as limited by the Haryana Public Service Commission (Limitation of Functions) Regulations, 1973 or other regulations made in that behalf.

Saving of the
functions of the
Haryana Public
Service
Commission.

20. (1) The Punjab Civil Service (Punishment and Appeal) Rules 1952, and any notifications or orders issued in so far as they are inconsistent with these rules, are hereby repealed :

Repeal and Saving.

Provided that—

- (a) such repeal shall not affect the provisions operation of the said rules or any notification or order made or anything done, or any action taken, thereunder ; and
- (b) any proceedings under the said rules, pending at the commencement of these rules, shall be continued and disposed of, as far may be, in accordance with the provisions of these rules as if such proceedings were proceedings under these rules.

(2) Nothing in these rules shall be construed as depriving any person, to whom these rules apply, of any right of appeal which had accrued to him under the rules,

notifications or orders in force before the commencement of these rules.

(3) An appeal pending at the commencement of these rules against an order made before such commencement shall be considered and orders thereon shall be made in accordance with these rules, as if such orders, were made and the appeal was preferred under these rules.

(4) As from the commencement of these rules any appeal or application for revision against any orders made before such commencement shall be preferred or made under these rules, as if such orders were made under these rules :

Provided that nothing in these rules shall be construed as reducing any period of limitation for any appeal or revision provided by any rule in force before the commencement of these rules.

P. P. CAPRIHAN,
Chief Secretary to Government, Haryana.