

मध्य प्रदेश शासन
सामान्य प्रशासन विभाग
ज्ञापन

क्रमांक 1396 /495-एक(3) शोपाल, दिनांक 4 मई, 1970
प्रति

शासन के सर्व विभाग,
अध्यक्ष, राजस्व मंडल, मध्य प्रदेश
सर्व सहायीय आयुक्त,
सर्व विभागाध्यक्ष,
सर्व कलेक्टर,
मध्य प्रदेश ।

विषय :-

किसी शासकीय कर्मचारी को दण्ड स्वरूप निम्न पद पर प्रत्यावर्तित होने के बाद उच्च पद पर पुनः पदोन्नत होने पर उसकी वरिष्ठता स्थिर करना ।

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किसी शासकीय कर्मचारी को दण्ड स्वरूप निम्न पद पर प्रत्यावर्तित होने के बाद जब उसे उसी उच्च पद पर पदोन्नत किया जाता है तो उसकी उच्च पद पर वरिष्ठता किस प्रकार स्थिर की जावेगी, इस विषय में भारत सरकार गृह मंत्रालय द्वारा निम्नलिखित प्रत्येक कार्यालय-ज्ञापन में जो अनुदेश जारी किये गये हैं, उसकी प्रतिलिपि संलग्न है :-

- (1) कार्यालय ज्ञापन क्रमांक 9/13/62-स्थापना (घ)
दिनांक 10-10-1962
- (2) कार्यालय ज्ञापन क्रमांक 9/30/63-स्थापना (घ)
दिनांक 7-2-1964

राज्य शासन ने निर्णय लिया है कि भारत सरकार के उपर्युक्त अनुदेश राज्य सरकार के कर्मचारियों को भी लागू किये जाय ।

मध्य प्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार

नागेन्द्र मोहन व्यास
(नागेन्द्र मोहन व्यास)
अवर सचिव
मध्य प्रदेश शासन

No.9/13/62-Estt.(D)
Government of India
Ministry of Home Affairs.

New Delhi-11, the 10th Oct.1963.

OFFICE MEMORANDUM

Sub:- 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 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 Memoranda 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 repromotion, the seniority of such a Govt. servant should be determined by the date of repromotion. In all such cases, the person loses his original seniority, in the higher service grade or post in entirety. On repromotion the seniority of such a Government 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-Estts. dated 18th March, 1941 (copy enclosed), amongst other things prescribes 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 repromotion of an officer reduced to a lower post or time-scale should be determined by the date of such repromotion. 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 repromotion, 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 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 Government 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 Govt. servant may, unless the terms of the order of punishment provided otherwise, be fixed in the higher service, grade of 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 increment, the seniority of the Govt. servant on re-promotion may, unless the terms of the order of punishment provided 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 re-promotion, 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 further increments, the Govt. servant, on re-promotion will regain his seniority as it existed before his reduction.

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 officers under the Ministry of Finance etc.

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

Sd/- LM Nadkarni
Joint Secretary to the
Government of India.

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No.9/41/Ests.
Government of India
Home Department.

From

D.C. Das, Esquire, I.C.S.,
Under Secretary to the Govt. of India.

To

All Chief Commissioners,

New Delhi, the 18th Mar.1941.

Sir,

I am directed to say that in connection with a question which recently arose as to how the imposition of the penalty of reduction to a lower post or time-scale specified in rule 49(iii) of the Civil Services (Classification, Control and Appeal) Rules or in rule 3(iii) of the rules published with the Home Department notification No.9-19/30-Ests, dated the 27th February, 1932, would affect the seniority etc. of the punished Govt. servant on repromotion to the original post or time-scale, the Government of India have decided as follows :-

(1) While reduction of seniority as an independent penalty not provided for in the rules, 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;

(2) The seniority on repromotion of an officer reduced to a lower post or time-scale should be determined by the date of such repromotion. 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;

(3) An officer in respect of whom the penalty preferred to was imposed will on repromotion count previous service in the higher grade under Fundamental Rule 22 unless the order of punishment or the order passed on appeal directs otherwise; and

(4) An order debarring an officer from counting his past service in the grade from which he is reduced, if and when reappointed to it, amounts to an order of reduction to a stage of that grade lower than that admissible under Fundamental Rule 22, and does not, therefore, fall outside the scope of rule 49 (iii) of the Classification Rules or rule 3(iii) of the rules published with the Home Department notification referred to above.

2/ I am to request that the above decision may be noted for information and guidance.

I have honour to be,

Sir,

Yours most obedient servant

Sd/-

Under Secretary to the Govt. of India.

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Copy of Office Memorandum No.9/30/63-Estt(D)
dated the 7th Feb. 1964 issued from Govt. of India
Ministry of Home Affairs, addressed to all Ministers
of the Government of India etc. etc.

Sub:- 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 expiry 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, on the subject noted above, and to say
that in the second part of paragraph 4 of that Office Memo-
randum, it has been stated that the competent authority at
the time of imposing a penalty of reduction to a lower ser-
vice, 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-promo-
tion 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.

2/ 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 pun-
ishment 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 redu-
ction has been specified, the Govt. 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).

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 Govt.
servant for re-promotion or restoration to his original
position will be considered only after the 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