

TOPIC FOR PROJECT

**Drawal of disciplinary proceedings under
OCS(CCA)**

**Rules 1962- A deterrent from wrong doing for
Govt. Servants**

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Suspension. - (1) The appointing authority or any authority to which it is subordinate or any authority empowered by the Governor or the appointing authority in that behalf may place a Government servant 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 or trial.

(2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of detention, by an order of the appointing authority and shall remain under suspension until further orders.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant 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 servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and disciplinary 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 servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original orders 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 may, at any time, be revoked by the authority which made or is deemed to have been made the order or by any authority to which that authority is subordinate.

(6) The disciplinary authority, while passing the final order of punishment or of release in the disciplinary proceedings against the Government servant, shall give directions about the treatment of the period of suspension, which is passed not as a measure of substantive punishment but as suspension pending inquiry, and indicate whether the suspension would be a punishment or not.

Nature of penalties. - The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :

- (i) fine;
- (ii) censure;
- [(iii) withholding of increments (without cumulative effect)]
- [(iii-A) withholding of promotion];
- [(iv) recovery from pay of the whole, or part of any pecuniary loss caused to Government, or to a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by Government, or to a local authority set up by an Act of Parliament or of the Legislature of a State, by negligence or breach of orders].
- (v) suspension;
- (vi) reduction to a lower service, grade or post or to a lower time-scale or to a lower stage in a time scale;
- [(vi-A) withholding of increments (without cumulative effect)]
- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment :

Provided that the penalty of fine shall imposed only on [Group-D] Government servants.

Explanation - The following shall not amount to a penalty within the meaning of this rule

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- (a) Withholding of increments of a Government servant for failure to pass a departmental examination in accordance with the rules or orders governing the service or post or the terms of his appointment.
- (b) Stoppage of a Government servant at the efficiency bar in the time scale on the ground of his unfitness to cross the bar.
- (c) Non-promotion, whether in a substantive or officiating capacity, of a Government servant, after consideration of his case, to a service, grade or post for promotion to which he is eligible.
- (d) Reversion to a lower service, grade or post of a Government servant officiating in a higher service grade or post on the ground that he is considered, after trial, to be unsuitable for such higher service, grade or post, or on administrative grounds unconnected with his conduct.

- (e) Reversion to his permanent service, grade or post of a Government servant appointed on probation to another 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 probation.
- (f) Replacement of the services of a Government servant whose services have been borrowed from the Central or State Government or an authority under the control or a State Government at the disposal of the authority which had lent his services.
- (g) Compulsory retirement of a Government servant in accordance with the provision relating to his superannuation or retirement.
- (h) Termination of the services-
 - (i) of a Government servant appointed on probation during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing probation; or
 - (ii) of a temporary Government servant in accordance with the terms of his appointment; or
 - (iii) of a Government servant employed under an agreement in accordance with the terms of such agreement.

Disciplinary authorities. - (1) The Government may impose any of the penalties specified in Rule 13 on any Government servant.

[(2) Without prejudice to the provisions of the Sub-rule (4), any of the penalties specified in Rule 13 may be imposed on a member of a civil service or a person appointed to a civil post by the appointing authority or the authority specified in schedule or by any other authority empowered in this behalf by a general or special order of the Governor.]

(3) Subject to the provisions of Sub-rule (4), the power to impose any of the penalties specified in Rule 13 may also be exercised in the case of a member of a Civil Service, [Group-C] or Civil Service, [Group-D]-

- (a) if he is serving in Department of the Government, by the Secretary to the Government of Orissa in that Department.
- (b) if he is serving in any other office, by the head of that office, except where the head of that office is lower in rank than the authority competent to impose the penalty under Sub-rule (2).

(4) Notwithstanding anything contained in this Rule-

- (a) no penalty specified in Clauses (vi) to (ix) of Rule 13 shall be imposed by any authority lower than the appointing authority;
- (b) where a Government servant, who is a member of a service or is substantially appointed to any Civil Post, is temporarily appointed to any other service or post and the authority which would have been competent under Sub-rule (2) to impose upon him any of the penalties specified in Clauses (vi) to (ix) of Rule 13 had he

not been so appointed to such other service or post is not subordinate to the authority competent to impose any of the said penalties after such appointment, the latter authority shall not impose any such penalty except after consultation with the former authority.

Procedure for imposing penalties. - (1) Without prejudice to the provisions of the Public Servant (Inquiry) Act, 1950, no order imposing on a Government servant any of the penalties specified in Clauses (vi) to (ix) of Rule 13 shall be passed except after an inquiry held as far as may be in the manner hereinafter provided.

(2) The disciplinary authority shall frame definite charges on the basis of the allegations on which the inquiry is to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant and he shall be required to submit, within such time as may be specified by the disciplinary authority, not ordinarily exceeding one month a written statement of his defence and also to state whether he desires to be heard in person.

Explanation - In this Sub-rule and in Sub-rule (3) the expression Disciplinary authority shall include the authority competent under these rules to impose upon the Government servant of the penalties specified in Clauses (i) to (v) of Rule 13.

(3) The Government servant shall, for the purpose of preparing his defence, be supplied with all the records on which the allegations are based. He shall also be permitted to inspect and take extracts from such other official records as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing in the opinion of the disciplinary authority such records are not relevant for the purpose or it is against interest of the public to allow him access thereto.

(4) On receipt of the written statement of defence or if no such statement is received within the time specified, the disciplinary authority may itself enquire into such of the charges as are not admitted or, if it considers it necessary so to do, appoint a board of inquiry or an enquiring officer for the purpose.

[Provided that if, after considering the written statement of defence, the disciplinary authority is of the view that the facts of the case do not justify the award of a major penalty, it shall determine after recording reasons thereof, what other penalty or penalties, if any, as specified in Clauses (i) to (v) of Rule 13 should be imposed and shall after consulting the Commission, where such consultation is necessary, pass appropriate order.]

(5) The disciplinary authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the 'inquiring authority'). The Government servant shall have the right to engage a legal practitioner to present his case if the person nominated by the disciplinary authority, as aforesaid, is a legal practitioner. The inquiring authority may also having regard to the circumstances of the case, permit the Government servant to be represented by a legal practitioner.

(6) The inquiring authority shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The Government servant shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in person. The person presenting the case in support of the charges shall be entitled to cross-examine the

Government servant and the witnesses examined in his defence. If the inquiring authority declines to examine any witness on the ground that his evidence is not relevant or material, it shall record its reason in writing.

(7) At the conclusion of the inquiry the inquiring authority shall prepare a report of the inquiry, recording its findings on each of the charges together with reasons thereof. If, in the opinion of such authority, the proceedings of the inquiry establish charges different from those originally framed, it may record its findings on such charges, provided that the findings on such charges shall not be recorded, unless the Government servant has admitted the facts constituting them or has had an opportunity of defending himself against them. The inquiring authority may recommend the punishment to be inflicted when the charges are establishment on the findings.

(8) The record of inquiry shall include-

- (i) the charges framed against the Government servant and the statement of allegations furnished to him under Sub-rule (2) :
- (ii) his written statement of defence, if any;
- (iii) the oral evidence taken in the course of the inquiry;
- (iv) the documentary evidence considered in the course of the inquiry;
- (v) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry;
- (vi) a report setting out the findings on each charge and the reasons therefor; and
- (vii) the recommendations of the inquiring authority, if any, regarding the punishment to be inflicted.

Procedure for imposing minor penalties. - (1) No order imposing any of the penalties specified in Clauses (i) to (v) of Rule 13 shall be passed except after -

- (a) the Government servant is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make;
- (b) such representation, if any, is taken into consideration by the disciplinary authority; and
- (c) the Commission is consulted in cases where such consultation is necessary.

(2) The record of proceedings in such cases shall include -

- (i) a copy of the intimation to the Government servant of the proposal to take action against him;
- (ii) a copy of the statement of allegations communicated to him.
- (iii) his representation, if any;
- (iv) the advice of the Commission, if any; and
- (v) the orders on the case together with the reasons therefor.

Joint Inquiry. - (1) Where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

(2) Subject to the provisions of Sub-rule (4) of Rule 14 any such order shall specify-

- (i) the authority which may function as the disciplinary authority for the purpose of such common proceedings;
- (ii) the penalties specified in Rule 13 which such disciplinary authority shall be competent to impose ; and
- (iii) whether the procedure prescribed in Rule 15 or Rule 16 may be followed in the proceedings.

Special Procedure in certain cases. - Notwithstanding anything contained in Rules 15, 16, and 17 -

- (i) where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge; or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded in writing by that authority that it is not reasonably practicable to follow the procedure prescribed in the said rules; or
- (iii) where the Governor is satisfied that in the interest of the security of the State it is not expedient to follow such procedure.

the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit :

Provided that the Commission shall be consulted before passing such orders in any case in which consultation is necessary.

Provisions regarding Officers lent to the Union or other State Government, etc. -

(1) Where the services of a Government servant are lent to the Union or another State Government or an authority subordinate thereto or to a local or other authority (hereinafter, in this rule, referred to as the "borrowing authority") the borrowing authority shall have the powers of the appointing authority for the purpose of placing him under suspension in accordance with Rule 12 and of the disciplinary authority for the purpose of taking disciplinary action against him ;

Provided that the borrowing authority shall forthwith inform the authority which lent his services (hereinafter, in this rule, referred to as the 'lending authority') of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceedings, as the case may be ;

Provided further that if the borrowing authority is other than the Union or a State Government, the concurrence of the lending authority shall be taken before such action is taken except that in the event of the Government servant being implicated in a criminal case such action can be taken by such borrowing authority against him in anticipation of such concurrence. In the event of disagreement between the borrowing

and the lending authorities, the services of the Government servant shall be replaced at the disposal of the later.

(2) In the light of the findings in the disciplinary proceedings taken against the Government servant-

- (i) if the borrowing authority is of the opinion that any of the penalties specified in Clauses (i) to (v) of Rule 13 should be imposed on him, it may, in consultation with the lending authority, pass such orders on the case as it deems necessary.

Provided that, in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority.

- (ii) If the borrowing authority is of the opinion that any of the penalties specified in Clauses (vi) to (ix) of Rule 13 should be imposed on him, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry, and, thereupon, the lending authority may, if it is the disciplinary authority, pass such orders thereon as it deems necessary or, if it is not the disciplinary authority submit the case to the disciplinary authority which shall pass such orders on the case as it deems necessary.

Provided that in passing any such order the disciplinary authority shall comply with the provisions of Sub-rules (10) and (11) of Rule 15.

Explanation - The disciplinary authority may make an order under this clause on the record of the inquiry transmitted by the borrowing authority or after holding such further inquiry as it may deem necessary.

Provisions regarding Officers borrowed from Union or other State Government, etc. - (1) Where an order of suspension is made or a disciplinary proceeding is drawn against a Government servant whose services have been borrowed from the Union or any other State Government or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter, in this rule, referred to as the "lending authority") shall forthwith be informed of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceedings, as the case may be:

Provided that in the case of the lending authority being other than the Union or a State Government, action on the basis of the second proviso to Rule 19 shall be taken.

(2) In the light of findings in the disciplinary proceedings drawn against the Government servant -

- (i) if the disciplinary authority is of the opinion that any of the penalties specified in Clauses (i) to (v) of Rule 13 should be imposed on him it may, subject to the provisions of [Sub-rule (10) of Rule 15,] after consultation with the lending authority pass such orders on the case as it deems necessary.

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority the service of the Government servant shall be replaced at the disposal of the lending authority.

(ii) if the disciplinary authority is of the opinion that any of the penalties specified in Clauses (vi) to (ix) of Rule 13 should be imposed on him, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action as it deems necessary.

Appeals

Orders made by Governor not appealable. - Notwithstanding anything contained in this part, no appeal shall lie against any order made by the Governor.

Appeals against orders imposing penalties. - (1) A member of an Orissa Civil Services [Group-C], or an Orissa Civil Service, [Group-D], may appeal against an order imposing upon him any of the penalties specified in Rule 13 to the authority specified in this behalf either in the schedule or by a general or special order or, where no such authority is specified, to the authority to which the authority imposing the penalty is immediately subordinate.

(2) A member of an Orissa Civil Service, [Group-A] or an Orissa Civil Service [Group-B], against whom an order imposing any of the penalties specified in Rule 13 is made by an authority other than the Governor may appeal against such order to the Governor.

(3) Notwithstanding anything contained in Sub-rule (1) and (2), an appeal against an order in a common proceeding held under Rule 17 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate.

Explanation - In this rule the expression 'member of an Orissa Civil Service' includes a person who has ceased to be a member of that service.

Appeal against other orders. - (1) A Government servant may appeal against an order which -

(a) denies or varies to his disadvantage his pay, allowances pension or other conditions of service as regulated by any rules or by agreement; or

(b) interprets to his disadvantage the provision of any such rules or agreement,

to the Governor if the order is passed by the authority which made the rules or agreement, as the case may be, or by any authority to which such authority is subordinate, and to the authority which made rules or agreement, if the order is passed by any other authority.

(2) An appeal against an order -

(a) stripping a Government servant at the Efficiency Bar in the time-scale on the ground of his unfitness to mess to the Bar;

(b) reverting to a lower service grade or a post a Government servant officiating in a higher service, grade or post, otherwise than as a penalty;

(c) reducing or withholding the pension or denying the maximum pension admissible under the rules; and

(d) determining the pay and allowances for the period of suspension to be paid to a Government servant on his reinstatement or determining whether or not such period shall be treated as a period spent on duty for any purpose, shall lie -

(i) in the case of an order made in respect of a Government servant on whom the penalty of dismissal from service can be imposed only by the Governor, to the Governor; and

(ii) in the case of an order made in respect of any other Government servant to the authority to whom an appeal against an order imposing upon him the penalty of dismissal from service would lie.

Explanation - In this rule -

(i) the expression 'Government servant' includes a person who has ceased to be in Government service;

(ii) the expression 'pension' includes additional pension, gratuity and any other retirement benefit.

Period of limitation for Appeals. - No appeals under these rules shall be entertained unless it is submitted within a period of three months from the date on which the appellant receives a copy of the order appealed against :

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time.

Form and Contents of Appeal. - (1) Every person submitting an appeal shall do so separately and in his own name.

(2) The appeal shall be addressed to the authority to whom the appeal lies, shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language and shall be complete in itself.

Submission of Appeals. - Every appeal shall be submitted to the authority which made the order appealed against :

Provided that, if such authority is not the head of the office in which the appellant may be serving or if he is not subordinate to the head of such office, the appeal shall be submitted to the head of such office who shall forward it forthwith to the said authority :
Provided further that a copy of the appeal may be submitted direct to the appellate authority.

Withholding of Appeals. - (1) The authority which made the order appealed against may withhold the appeal if -

(i) it is an appeal against an order from which no appeal lies; or

(ii) it does not comply with any of the provisions of Rule 25; or

(iii) it is not submitted within the period specified in Rule 24 and no reasonable cause is shown for the delay; or

(iv) it is a repetition of an appeal already decided and no new facts or circumstances are adduced :

Provided that an appeal withheld on the ground only that it does not comply with the provisions of Rule 25 shall be returned to the appellant and, if re-submitted within one month thereof after compliance with the said provisions shall not be withheld.

(2) Where an appeal is withheld the appellant shall be informed of the fact and the reasons therefore.

(3) At the commencement of each quarter a list of the appeals withheld by any authority during the previous quarter together with the reasons for withholding them shall be furnished by that authority to the appellate authority.

Transmission of Appeals. - (1) The authority which made the order appealed against shall, without any avoidable delay, transmit to the appellate authority every appeal which is not withheld under Rule 27 together with its comments thereon and the relevant records.

(2) The authority to which the appeal lies may direct transmission to it of any appeal withheld under Rule 27 and thereupon such appeal shall be transmitted to that authority together with the comments of the authority withholding the appeal and the relevant records.

Consideration of Appeals. - (1) In the case of an appeal against an order imposing any of the penalties specified in Rule 13 the appellate authority shall consider -

(a) whether the procedure prescribed in these rules has been complied with and, if not whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate; and, after consultation with the Commission if such consultation is necessary in the case, pass orders -

(i) Setting aside, reducing confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that -

(i) the appellate authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose;

(ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty; and

(iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (vi) to (ix) of Rule 13 and an inquiry under Rule 15 has not already been held in the case the appellate authority shall/subject to the provisions of Rule 18, itself hold such inquiry or direct that such inquiry be held and, thereafter on consideration of the proceedings of such inquiry and after giving the appellant an opportunity of making any

representation which he may wish to make against such penalty, pass such orders as it may deem fit.

(2) In the case of an appeal against any order specified in Rule 23 the appellate authority shall consider all the circumstances of the case and pass such orders as it deems just and equitable.

Implementation of orders in Appeal. - The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

Governor's power to review. - Notwithstanding anything contained in these rules, the Governor may, on his motion or otherwise, after calling for the records of the case, review any order which is made or is appealable under these rules or the rules repealed by Rule 33, and, after consultation with the Commission where such consultation is necessary -

(a) confirm, modify or set aside the order ;

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order ;

(c) remit the case to the authority which made the order or any other authority directing such further action or inquiry as he considers proper in the circumstances of the case; or

(d) pass such other orders as he deems fit;

Provided that -

(i) an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty;

(ii) if the Governor proposes to impose any of the penalties specified in Clauses (vi) to (ix) of Rule 13 in a case where an enquiry under Rule 15 has not been held, he shall, subject to the provisions of Rule 18, direct that such inquiry be held and, thereafter, on consideration of the proceedings of such inquiry and after giving the person concerned an opportunity of making any representation which he may wish to make against such penalty, pass such orders as he may deem fit,

Review of Orders in Disciplinary Cases. - The authority to which an appeal against an order imposing any of the penalties specified in Rule 13 lies may, of its own motion or otherwise, call for the records of the case in a disciplinary proceeding, review any order passed in such a case and, after consultation with the Commission, where such consultation is necessary, pass such orders as it deems fit as if the Government servant had preferred an appeal against such order :

Provided that no action under this rule shall be initiated more than six months after the date of the order to be reviewed.

Repeal and Savings. - (1) The Civil Services (Classification, Control and Appeal) Rules, 1930, and the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935, and any notifications issued and orders made under any such rules to the

extent to which they apply to persons to whom these rules apply and in so far as they relate to classification of Orissa Civil Services specified in the schedule or confer powers to make appointments, impose penalties or entertain appeals are hereby repealed :

Provided that -

(a) such repeal not affect the previous operation of the said rules, notifications and orders or anything done or any action taken thereunder;

(b) any proceedings under the said rules, notifications or orders pending at the commencement of these rules shall be continued and disposed of as far as may be in accordance with the provisions of these rules.

(2) Nothing in these rules shall operate to deprive any person to whom these rules apply of any right of appeal which had accrued to him under the rules, notifications or orders repealed by Sub-rule (1) in respect of any order passed before the commencement of these rules.

(3) An appeal pending at or preferred after the commencement of these rules against an order made before such commencement shall be considered and orders thereon shall be passed in accordance with these rules.

Removal of Doubts. - Where a doubt arises as to who is the head of any office or as to whether any authority is subordinate to or higher than any other authority or as to the interpretation of any of the provisions of these rules, the matter shall be preferred to the Governor whose decision thereon shall be final.