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THE JAMMU AND KASHMIR CIVIL SERVICES
(CLASSIFICATION, CONTROL AND APPEAL)
RULES, 1956

1. Issued by the General Department under Order No. 962..C of 1956 dated 14th June, 1956, and published in Government Gazette dated 14th June, 1956 (Extra.)

2. The Kashmir Civil Service Rules (General) were first sanctioned in 1939. These Rules were repealed by the Kashmir Civil Service Rules (General), 1954 sanctioned by Council Order No. 1277-C dated 16-9-1954. And the said Rules of 1954 stand repealed by the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956.

3. Amendments made by

- (i) Government Order No. 62-C of 1957 dated 28-10-1957.
- (ii) Order No. 25-SR/60 dated 21-11-1960.
- (iii) Order No. 3-SR/60 dated 22-2-1961.
- (i v) Order No. 151-C of 1962 dated 6-7-1962.
- (v) SRO-76 of 1962.
- (vi) SRO-31 of 1964.
- (vii-viii) SRO's-51 and 362 of 1966.
- (ix) SRO-160 of 1969.
- (x) SRO-188 of 1974.
- (xi) SRO-616 of 1978.
- (xii) SRO-118 of 1979.
- (xiii) SRO-291 of 1989.
- (xiv) SRO-302 of 1990.

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General department Order No. 962-C of 1956 dated 14th June. 1956. -In exercise of the powers conferred by sub-section (1) of section 3 of the ¹[Jammu and Kashmir Civil Servants (Removal of Doubts and Declaration of Rights) Ordinance, 1956] the Government hereby make the following rules, namely :

1. Short title. -These rules may be called the Jammu and Kashmir Civil Services Control and Appeal) (Classification, Rules, 1956.

2. Definitions. -For the purpose of these rules, unless there is anything repugnant in the subject or context:

(a) 'Cadre' means the sanctioned strength of service, class category or grade (permanent or temporary);

(b) 'Category' means the posts borne on the cadre of a service or class;

(i) the duties of which are of the same character and importance, and

(ii) which are either known by the same designation or the scales of pay for which are the same;

(c) 'Selection Category' means a category declared to be Selection Category;

(d) 'Class' means the posts borne on the cadre of a service between which and the other posts borne on the cadre of the same service; promotions and transfers are not ordinarily admissible;

(e) 'A member of a service' means a person

1. The Ordinance was replaced by Act XIV of 1956.

holding or appointed to a whole-time pensionable post;

- (f) 'Period of probation of a member of a service' means the period of probation prescribed in these rules or by special notification by Government together with
 - (i) the period until the issue of an order under clause (a) of sub-rule (1) of rule 22, declaring the probationer to have satisfactorily completed his period of probation, or
 - (ii) the period until an order discharging the probationer under clause (b) of sub-rule (1) of rule 21, clause (a) or (b) of sub rule (2) of that rule or clause (b), of sub-rule (1) of rule 22 takes effect;
- (g) 'Probationer' in a service means a person appointed to that service who has not been declared to have satisfactorily completed the period of his probation;
- (h) 'Promotion' means the appointment of a member of service or class of a service, in any category or grade to a higher category or grade of such service or class.

Explanation. -The appointment of a member of a service or class of service in any category to hold additional charge of a post included in a higher category in the same service or class or to discharge the current duties thereof does not amount to promotion to the latter category.

¹[(i) ' Recruited direct' -A candidate recruited otherwise than by promotion or by transfer will be treated to be recruited direct]

- (j) 'Recruited by transfer'. -A candidate is made to be recruited by transfer to a service when

1. Clause (i) substituted under Notification 3-SR/60
dated: 20-2-1961

at the time of his first appointment thereto he is either a member or a probationer in an other service;

(k) 'Service' means a group of posts declared by Government to be a service;

(l) A person is said to attain the age of "n" years when "n" years have elapsed since the beginning of the day of his birth.

Illustration. -A person born on 1st August 1900 attains the age of 25 years at midnight of 31st July 1st August, 1925.

¹[3. **Commencement and extent.** -(1) these rules shall come into force on the date they are published in the Government Gazette.

(2) They shall apply to all services and to all persons appointed to any services before, or after the said date except to the extent otherwise expressly provided:

(a) by or under any law or rules for the time being in force ; or

(b) in respect of any member of such service by a contract or agreement subsisting between such member and the Government.

(3) Except as otherwise expressly provided in these rules, in case of a conflict between these rules and anything contained in any previous rules or orders, the provisions of these rules shall prevail.]

(4) Notwithstanding the provisions of rule 3, the Government may by notification published in the Jammu and Kashmir Government Gazette:

(a) exclude wholly or in part from the operation of these rules any ministerial or petty officers or inferior servants or any class of such

1. The Rules were published in government Gazette dated: 14th June, 1956.

officers or servants, to whom the Government shall declare that the rules cannot suitably be applied, and these rules shall thereupon, to the extent of such exclusion, cease to apply accordingly;

- (b) Declare in respect of any person or group of persons that these rules shall not apply in whole or in part to such person or group and these rules shall thereupon, cease to apply accordingly.

5. Any of these rules made under them, may for reasons to be recorded in writing, be relaxed by the Government in individual cases if Government is satisfied that a strict application of the rule would cause hardship to the individual concerned or confer undue benefit on him.

6. - Cadre.-The cadre of each service, class, category or grade shall be determined by the Government by a notification published in the Jammu and Kashmir Government Gazette.

7. If a member of any service, class, category or grade is reduced to a lower service, class, category or grade, he shall be deemed to be a member of the latter and the permanent cadre thereof shall, if there is no vacancy in which he could be absorbed, be deemed to be increased by one so long as such member continue therein and the post held by him in the higher service, class, category or grade remains vacant.

8. All first appointments to any service or class shall be made by the Government or by an authority empowered by the Government in this behalf and where they are made by an authority subordinate to the Government they shall, subject to a general or special order of the government, be made to the lowest category or the lowest grade of a category if it consist of more than one grade.

9. First appointments to a service or class may be made: -

- (a) by promotion from the same or by transfer

from an other service or class, or

(b) by direct recruitment, or

(c) partly by (a) and partly by (b).

10. No member of any service, class or category shall when transferred to another service, class or category receive less pay than that attaching to his relative substantive position in the service, class or category to which he belongs except as a punishment or except with his consent.

11. A vacancy in any service, class, category (not being a vacancy which should be filled by direct recruitment) shall not be filled by the appointment of a person who has not yet commenced his probation in such service or class when a probationer therein is available for such appointment.

12. Probationers recruited by transfer or promotion' shall be discharged, that is, reverted to their original appointments if there are no vacancies to which they could be appointed but such discharge shall be in order of juniority:

Provided that the order of jouniority be departed from for special reasons, the reasons for every such departure being, however, reported without delay to the next higher authority or Government in case the probationers were recruited with the sanction of the Government.

13. Probationers who have been discharged under rule 12 for want of vacancies shall be re-appointed as vacancies not being vacancies which should be filled by direct recruitment arise in the order of their seniority which subsisted before they were discharged:

Provided that the said order may also be departed from for special reasons, the reasons for every such departure being, however, reported without delay to the next higher authority or Government in case the probationers were recruited with the sanction of the Government.

14. ¹[Temporary appointment.-(1) Where it is necessary in the public interest owing to an emergency which has arisen and could not have been foreseen, to fill immediately a vacancy in a post borne, on the cadre of service, class or category and the making of an appointment to such vacancy in accordance with these rules would involve undue delay, excessive expenditure or administrative inconvenience, the appointing authority may appoint a person otherwise than in accordance with these rules temporarily with the prior approval of the Chief Minister to Coordination until a person is appointed. in accordance with these rules but such temporary appointment shall in no case exceed three months on. each occasion and not more than nine months in all.

(2) A person appointed under sub-rule (1) shall be replaced as soon as possible by a member of the service of a candidate qualified and considered fit to held the post under these rules.

(3) A person appointed under sub-rule (1) shall not be regarded as a probationer in such service, class or category or be entitled by reason only of such appointment to any preferential claim to future appointment to such service class or category.]

15. If such person is subsequently appointed to such service, class or category in accordance with these rules, he shall commence his probation therein from the date of such subsequent appointment or from such earlier date as may be determined by the Minister-in-charge.

16. (1) No part-time post shall be created in lieu of a whole-time post borne on the cadre of any service, class or category without the sanction of the Government. A person appointed to any part-time post created in lieu of a whole-time post borne on the cadre of a service, class or category shall not be regarded as a probationer in such service nor shall he be entitled by a reason only of such appointment to any preferential claim to future appointment to such service, class or category.

1. Substituted by SRO-291 dated: 28-7-1989.

(2) Notwithstanding anything contained in these rules, if and when a temporary post is created as an addition to the cadre of any service and the holder thereof is required by Government to possess any special qualifications, knowledge or experience, any person who possesses such qualifications, knowledge or experience and who is considered to be best fitted to discharge the duties of such post may irrespective of other considerations, be appointed to that post. But the Person so appointed shall not by reason only of such appointment, be regarded as a probationer in such service, class or category nor shall he acquire thereby any preferential right to future appointment to such service, class or category.

17. Qualifications.- No person shall be eligible for appointment to any service by direct recruitment, unless-

- (a) he is a hereditary State Subject to be known hereafter as a permanent resident;
- (b) The age of the candidate for appointment to Government service shall be subject to the following maximum and minimum limits as on first day of January of the year in which the competitive examination is held or applications are invited for a vacancy for which direct recruitment is made.

Category.	Minimum age	Maximum age
1. General candidates	18 years	35 years
2. Member's of Scheduled Casts and Scheduled tribes	18 years	38 years
3. Physically handicapped	18 years	37 years
4. Candidates already in Government service		38 years

Provided that the age limits as shown above against each category may be relaxed by the

1. Substituted by SRO-302 dated: 27-9-1990.

Authority in respect of any individual case on the merits of each case:

Provided further that the Government may in respect of any particular service prescribed a different age limit.

This notification shall and shall be deemed to have always come into force with effect from 16-12-1988.)

(c) he satisfies the appointing authority that he is of sound health, active habits and free from any bodily defect or infirmity un-fitting him for such service; and

(d) he satisfies the appointing authority that his character and antecedents are such as to qualify him for such service.

Explanation.-The decision as to whether a person is Qualified under clause (a) of this rule or not shall rest with the Government.

Note.-This rule does not apply to pensioners reemployed under the provisions of the Jammu and Kashmir Civil Service Regulation.

18. Special qualification.-No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he

(a) possesses such qualification and has passed such special tests as may be prescribed in that behalf by the Government, or

(b) possesses such other qualifications as may be considered by the Government to be equivalent to the said special qualifications or special tests.

¹[18-A. No person who has more than one wife

1. Rule 18-A inserted under Notification 25-SR/60 dated: 21-11-1960 (G. G. 5-1-1961).

living or who, having a spouse living, marries in any case in which such marriage is void by reason of its taking place during the life-time of such spouse, shall be eligible for appointment to service. No woman whose marriage is void by reason of the husband having a wife living at the time of such marriage or who has married a person who has wife living at the time of such marriage shall be eligible for appointment to service:

Provided that the Government may, if satisfied that there are special grounds for doing so exempt any person from the operation of this rule.]

¹[19. In making appointments to a service reservation may be made in favour of any backward class which in the opinion of the Government is not adequately represented in the service.]

20. **Probation.**-(1) Except as otherwise provided for by special orders of Government no person shall be eligible for confirmation as member of a service or class until he has been on probation in such service or class continuously or in the aggregate for a period of two years.

(2) No probationer shall, during the period of his probation except for the purposes of instruction or training be employed on duties which are not normally discharged by members of the service in the category to which he belongs.

21. (1) At any time before the expiry of the prescribed period of probation, the appointing authority may

(a) suspend the probation of a probationer and discharge him from the service for want of vacancy; and

(b) at its discretion terminate the probation of a probationer and discharge him from the service.

1. Rule 19 substituted under G.O. No. 62-C of 1957 dated 28-10-1957 (G. G. 31-10-1957.)

(2) (a) if within the prescribed period of probation, a probationer fails to acquire the special qualifications or to pass the special tests, if any, are prescribed, or to acquire such other qualifications as may be considered by Government to be equivalent to the said special qualifications or special tests, the appointing authority shall forthwith by order, discharge him from the service.

(b) If such probationer has appeared with the prescribed period of probation for any such tests or for any examination in connection with the acquisition of any such qualifications, having passed all the other tests and acquired all the other qualifications, and the results of the tests or examinations for which he has so appeared are not known before the expiry of such period he shall continue to be on probation until the publication of the results of the tests or examinations for which he has appeared or the first of them in which he fails to pass, as the case may be. In case the probationer fails to pass any of the tests or examinations for which he has so appeared, the appointing authority shall forthwith by order, discharge him from the service.

(c) Where a probationer has, before he commenced his probation, already acquired any special qualification or passed any special test or has acquired such other qualification as may be considered by Government to be equivalent to the said special qualification or special tests, he shall not be required to acquire such special qualification or to pass such special test again within the period of his probation.

(d) Nothing contained in this sub-rule shall debar the Government from extending the period of probation of a probationer who has failed to acquire the prescribed qualifications or to pass, the prescribed tests or examinations; provided that the period so extended shall in no case exceed two years.

22. (1) (a) If at the end of the prescribed period of probation, the appointing authority considers the probationer to be suitable for membership, it shall as soon as possible, or in cases falling

under clause (b) of sub-rule (2) Of rule 21 as soon as possible after the probationer has passed the tests and examinations for which he has appeared, issue an order declaring the probationer to have satisfactorily completed his period of probation. On the issue of such order, the probationer shall be deemed to have satisfactorily completed his period of probation on the date of the expiry of the prescribed period of probation.

(b) If the appointing authority does not consider the probationer to be suitable for such membership, it shall by order discharge him from the service.

(c) In cases not falling under clause (b) of sub-rule (2) of rule 21, if no order is issued, by the appointing authority under clause (a) or (b) of this sub-rule within ninety days after the expiry of the prescribed period of probation, the probationer shall be deemed to have satisfactorily completed his period of probation on the date of the expiry of the prescribed period of probation.

(d) In cases falling under clause (b) of sub-rule (2) of rule 21, if the candidate has passed the tests and examinations for which he has appeared and no order is issued under clause (a) or (b) of this sub-rule by the appointing authority within ninety days after the expiry of the prescribed period of probation or within thirty days of the publication of the results of such tests and examinations, whichever is later, the probationer shall be deemed to have satisfactorily completed his period of probation on the date of the expiry of the prescribed period of probation.

(2) The authority competent to entertain an appeal under the rules may revise any order discharging a probationer under any of the provision referred to in this rule or sub-rule (1) of rule 21, on an appeal filed within ninety days of the date of receipt of such order by the probationer concerned.

(3) (a) When an order discharging a probationer is set aside on revision under sub-rule (2) and the probationer is restored to the service, the period on

and from the date of discharge to the date of such restoration may be treated as duty by the appointing authority except for purposes of probation. The period of probation undergone by such probationer at the time of his discharge shall, however, count towards the period of probation prescribed by the rule applicable to him.

(b) Such probationer may during the period on and from the date of his discharge to the date of his restoration be paid such pay and allowances not exceeding the pay and allowances to which he would have been entitled if he had not been discharged as the authority passing the order under sub-rule (2) may determine.

23. Appointment of members.-(1) A probationer shall, if a substantive vacancy in the permanent cadre of the category for which he was selected exists, be appointed to the service at the earliest possible opportunity in order of seniority, and if such vacancy existed from a date previous to the issue of the order of appointment, he may be so appointed with retrospective effect from such date or, as the case may be, from such subsequent date from which he was continuously on duty as a member of the service.

(2) Where recruitment to any service shall normally be both by direct recruitment and by transfer or promotion, the provisions of sub-rule (1) shall apply separately as regards;

- (a) vacancies against which persons have recruited direct, and
- (b) other vacancies.

(3) No probationer shall be required to produce a medical certificate of physical fitness before appointment as a member of the service:

Provided that in the case of a probationer who is not a member of any other service, the appointing authority may, if it has reason to believe that the probationer's physical fitness has seriously deteriorated since he satisfied the authority under clause(c)

of rule 17 require him to undergo a fresh medical examination. If on such examination he is found to be physically unfit for the service for which he was selected the appointing authority shall discharge him from the service.

(4) No person shall at the same time be a member of more than one service.

24. Seniority.- (1) The seniority of a person who is subject to these rules has reference to the service, class, category or grade with reference to which the question has arisen. Such seniority shall be determined by the date of his first appointment to such service, class, category or grade as the case may be.

Note 1.-The rule in this clause will not effect the seniority on the date on which these rules come into force of a member of any service, class, category or grade as fixed in accordance with the rules and orders in force before the date on which these rules come into force.

Interpretation.-The words "date of first appointment" occurring in the above rule will mean the date of first substantive appointment, meaning thereby the date of permanent appointment or the date of first appointment on probation on a clear vacancy, confirmation in the latter case being subject to good work and conduct and/or passing of any examination or examinations and / or tests:

Provided that the **inter se** seniority of two or more persons appointed to the same service, class, category or grade simultaneously will, notwithstanding the fact that they may assume the duties of their appointments on different dates by reason of being, posted to different stations, be determined

(a) in the case of those promoted by their relative seniority in the lower service, class, category or grade;

- (b) in the case of those recruited direct except those who do not join their duties when vacancies are offered to them according to the positions attained by and assigned to them in order of merit at the time of competitive examination or on the basis of merit, ability and physical fitness etc., in case no such examination is held for the purpose of making selections;
- (c) as between those promoted and recruited direct by the order in which appointments have to be allocated for promotion and direct recruitment as prescribed by the rules.

Note 2.-Any substantive appointments or permanent promotions made in any department prior to 15th May, 1953, will not be disturbed if otherwise in order unless such appointments or promotions are already the subject of any appeal, review or revision or otherwise pending decision.

(2) A member of a service, class, category or grade, unless he is reduced in seniority as a punishment shall retain seniority in such service or grade as determined by sub-rule (1) notwithstanding any delay in the completion of his probation or his appointment as a member of such service, class, category or grade.

(3) Where a member of any service, class, category or grade reduced to a lower service, class, category or grade he shall be placed at the top of the latter unless the authority ordering such reduction directs that he shall rank in such lower service, class, category or grade next below any specified member thereof.

25. Promotions.-(1) All promotions shall be made by the appointing authority.

(2) Promotions to a service or class or to a selection category or grade in such service or class shall be made on grounds of merit and ability and shall be subject to the passing of tests that Govern-

ment may prescribe in this behalf, seniority being considered only where the merit and ability are approximately equal.

(3) All other promotions shall be made in accordance with seniority and subject to any tests or special qualifications prescribed by Government unless

(a) the promotion of a member has been withheld as a penalty; or

(b) a member is given special promotion for conspicuous merit and ability.

(4) Where it is necessary in the public interest owing to an emergency, which has arisen and could not have been foreseen, to fill immediately a vacancy by promotion from a lower category, and where promotion in accordance with these rules would involve undue delay or expenditure or cause administrative inconvenience, the appointing authority may promote a person otherwise than in accordance with these rules temporarily until a person is promoted in accordance with these rules, but such temporary promotion shall in no case exceed three months on each occasion.

(5) A person promoted under sub-rule (4) shall not be entitled by reason only of such promotion to any preferential claim to future promotion.

26. Members absent from duty.-The absence of a member of a service from duty in such service whether on leave or on foreign service or on deputation or for any other reason and whether his lien on a post borne on the cadre of such service is suspended or not shall not, if he is otherwise fit, render him ineligible on his return

(a) for re-appointment to a substantive or officiating vacancy in the class, category, service or grade in which he may be a probationer or an approved probationer ;

(b) for promotion from a lower to higher category in such service; or

- (c) for appointment to any substantive or officiating vacancy in another service of which he may be an approved candidate as' the case may be in the same manner as if he had not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which he would have enjoyed but for his absence subject to his completing satisfactorily the period of probation on his return.

27. Posting and transfers.- (1) A member of a service or class of a service may be required to serve in any part of the Jammu and Kashmir State in. any post borne on the cadre of such service or class.

- (a) All transfers and postings shall be made by the authority prescribed by Government in this behalf.

28. Pay, allowances, leave, leave allowances, pension and other conditions of service.- (1) All rules, regulations, orders and instructions governing the members of every service, class or category in the matter of their conduct, discipline, pay, allowances, leave, leave allowances, pensions and other conditions of service issued by the Government from time to time and not expressly provided herein, shall, in so far as they are not inconsistent with these rules, continue to be in force until repealed or modified.

(2) Every member of a service shall on being appointed substantively to a post carrying a pay of Rs. 50/- or more per mensem be liable-

- (a) to take out an insurance policy with the State Insurance Fund according to a scale prescribed by Government, the policy being issued on the basis of the certificates as to age and physical fitness accepted by the appointing authority under clauses (b) and (c) of rule 17 without the other formalities required by the State Insurance Fund Rules; and
- (b) to subscribe to the General Provident Fund in accordance with the rule of that Fund.

29. Special provisions by agreements.-(1) When in the opinion of the Government special provisions inconsistent with any of these rules or of any rules made thereunder are required in respect of the conditions of the service, pay and allowances, pension, discipline and conduct with reference to any particular post, or any of them, it shall be open to Government to provide by agreement with the person appointed to such post for any of the matters in respect of which special provisions are required to be made and to the extent to which such provisions are made in the agreement; nothing in these rules or in any rules made thereunder shall apply to any person so appointed in respect of any matter for which provision is made in the agreement:

Provided that in every such agreement it shall further be provided that in respect of any matter in respect of which no provision has been made in the agreement the provisions of these rule or rules made thereunder shall apply.

(2) Any agreement of the nature referred to in sub-rule (1) may provide that the person with whom it is made shall not, save in the circumstances stated in the agreement, be dismissed otherwise than on payment to him of compensation by Government.

30. Punishment.-The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon members of a service, namely

(i) Censure;

(ii) fine not exceeding one month's pay;

¹[(iii) withholding of increments and/or promotion;

(iv) reduction to a lower post and/or a lower time-scale and/or to a lower stage in time-scale;]

1. Clauses (iii) and (iv) substituted by SRO-160 dated: 24-3-1969.

(v) recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;

[(vi) "Premature retirement on proportionate pension other than that specified in rule 226 (2) of Jammu and Kashmir Civil Service Regulations.]

(vii) removal from the service of the State which does not disqualify from future employment;

(viii) dismissal from the service of the State which ordinarily disqualifies from future employment.

Explanation 1.- The termination of employment-

(a) of a person appointed on probation during or at the end of the period of probation in accordance with the terms of the appointment and the rules governing the probationary service; or

(b) of a temporary Government servant appointed otherwise than under contract; or

(c) of a person engaged under a contract, in accordance with: the terms of his contract; or

²[(d) of a Government servant who is retired in accordance with Article 226 (2) of the Jammu and Kashmir Civil Service Regulations, 1956;]

does not amount to removal or dismissal within the meaning of this rule or of rule 33.

Explanation II.- Stopping a Government servant at an efficiency bar in the time scale of his pay on the ground of his unfitness to cross the bar does not amount to withholding of increment or promotion within the meaning of this rule.

1. Inserted vide SRO-188 dated: 29-4-1974.

2. Clause (d) inserted by SRO-176 dated 13-8-1962

31. (1) The appointing authority or any authority to which it is subordinate or any other authority empowered by the Government in this behalf, may place a Government servant under suspension where:

(a) an inquiry into his conduct is contemplated or is pending; or

(b) a complaint against him 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 longer than forty-eight hours shall be deemed to have been suspended by the appointing authority under this rule.

(3) An order of suspension under sub-rule (1) may be revoked at any time by the authority making the order or by any authority to which it is subordinate.

¹[(4) Where a penalty of dismissal or removal 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 or removal and shall remain in force until further orders.

(5) Where a penalty of dismissal or removal 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 the competent 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 or removal 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 order of dismissal or removal

1. Sub-rules (4) and (5) inserted by SRO-31 dated: 31-1-1964.

and shall continue to remain under suspension until further orders.

¹[**Government instructions.**-(i) An officer on suspension is entitled to ask that the matter should be investigated with reasonable diligence and charges should be framed within reasonable period of time and if such steps are omitted then it would imply that the authorities are vested with a total arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration. The suspension order is bad if it is not followed by charge sheet and enquiry within a reasonable time.

It has been observed that on occasions the power under the aforesaid rule is being invoked on unjustifiable grounds or on more suspicion of misconduct before prima facie case has been established.

It may be appreciated that frequent resort to suspensions even at slightest provocation is not only unwarranted but also counter productive. Besides affecting morale in the services it puts avoidable stain on the public exchequer by way of subsistence allowance for non-work done. Public interest should be the guiding factor in deciding whether or not a Government servant should be placed under suspension or whether such action should be taken even while the matter is under investigation and before a prima-facie case has been established. It is, therefore, imperative that the discretion vested in the authorities should be exercised with due care and caution after taking all the factors into account.

For example where continuance in office of a Government servant is considered likely to prejudice, investigation, trial or enquiry or his continuance is considered likely to subvert the discipline in the office in which he works, the purpose can be achieved if he is transferred to some other station or office as the case may be rather than to place him under suspension. Like-wise if such a Government servant would like to proceed on leave that might be

1. Inserted vide SRO-616 dated: 20-9-1978.

due to him and if the authority concerned thinks that such a step would not be in appropriate, there should be no objection to leave being granted instead of suspending him. Similarly, in case where a Government servant has unauthorisedly absented from duty, the proper course is to initiate action against him under article 128 of Jammu and Kashmir Civil Service Regulations and not to place him under suspension.

The following circumstances may, however, be considered appropriate to place a Government servant under suspension:

- (i) where the continuance in office of the Government servant will be against the wider public interests, e.g. if there is public scandals and it is considered necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officer involved in such scandals.

- (ii) where a preliminary enquiry in to allegations made has revealed a prima facie case justifying criminal or departmental proceedings which are likely to lead to his conviction or and dismissal, removal or compulsory retirement from service other than under Article 226 (2) of the Jammu and Kashmir Civil Service regulations.

- (iii) where the public servant is suspected to have engaged himself in activities prejudicial to the interest of the security of the State.

- (iv) serious negligence and dereliction of duty resulting in loss to the Government.

Government Instructions (2).- Competent authorities should endeavor to have charge-sheet filed in Court, in case of prosecution, or served on the Government servant, in case of departmental proceedings within three months from the date of suspension. Cases in which this is not possible such authorities will

report to the next higher authority, explaining the reason for delay.

The cases of Government servants under suspension should be reviewed by the competent authorities periodically to see that steps could be taken to expedite the progress of the court trial/departmental proceedings, so as to reduce the periods of suspension to barest minimum].

¹[32. (1) Subject to the provisions of these rules, Government may impose any of the penalties specified in rule 30 on any member of a service.

(2) Subject to such conditions, if any, as Government may prescribe, it may delegate to any subordinate authority power to impose any of the penalties specified in rule 30:

Provided that the power to impose the penalties specified in clause *(iv), (vii) and (viii) of rule 30 shall not be so delegated in the case of the members of any gazetted service.

Delegation.-Under sub-rule (2) of this rule, Government delegates to the

- (i) the Heads of Departments the power to censure and withhold increments in respect of District Officers and below sub-ordinate to them;
- (ii) Class I Officers the power to censure and withhold increments of officers getting a salary not exceeding Rs. 600/- p. m. ;
- (iii) Class II Officers the power to censure officers getting a salary up to Rs. 500/p. m. ; and
- (iv) the various appointing authorities the power to impose any of the penalties ex-

1. Rule 32 recast by SRO-51 dated: 17-2-1966. *Clause (vi) stands omitted by an earlier order by SRO-176 dated: 13-8-1962.

cept compulsory retirement specified in rule 30 on such members of the services as such appointing authority is competent to appoint.]

33.(1) Without- prejudice to provisions of the Public Servants Inquiries Act, 1977, no order (other than an order based on facts which had led to his conviction in a criminal court or by a court-martial) of dismissal, removal, or reduction in rank ¹[which includes reduction to a lower post and/or lower timescale, - and/or to a lower stage in time-scale] but excludes the reversion to a lower post of a person who is holding a higher post temporarily shall be passed on a person who is a member of a Civil service, or holds a Civil post under the State unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded and adequate opportunity of defending himself. The ground s on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged, together with a statement of tile allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be head in person. If he so desires, or if the authority concerned so directs, an oral inquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry such oral evidence will be heard, as the inquiring officer considers necessary. The person charged shall 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 inquiry may for sufficient reason to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof.

(2) The rule shall not apply where the person concerned has absconded, or where it is for other

1. Words substituted by SRO-160 dated: 2-3-1969.

reasons impracticable to communicate with him, or where in the interest of the security of the State, it is considered not expedient to give to that person an opportunity of showing cause against the action proposed to be taken against him. All or any of the provisions of the rule may for sufficient reasons to be recorded in writing be waived, where there is difficulty in observing exactly the requirements of the rule and those requirements can in the opinion of the inquiring officer be waived without injustice to the person charged.

(3) this shall also not apply where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation, or to dismiss, remove or reduce in rank a temporary government servant, for any specific fault or on account of his unsuitability for the service.

¹(4) the competent authority may inquire into the charges itself or if it considers it necessary so to do, it may appoint an inquiry officer for the purpose.]

34. after the inquiry against a government servant has been completed, and after the authority competent to impose penalty has arrived at provisional conclusions in regard to the penalty to be imposed, the government servant charged shall, if the penalty proposed is dismissal, removal or reduction in rank, be supplied with a copy of the proceedings prepared under rule 33 excluding the recommendations, if any, in regard to punishment, made by the officer conducting the inquiry and asked the show cause by a particular date with affords him reasonable time, why the proposed penalty should not be imposed on him.

35. Without prejudice to the provisions of rule 33, no order imposing the penalty ²[specified in clauses (i), (ii), (iii) and (v)] of rule 30 (other than an order based on facts which have led of his.

1. Sub-rule (4) inserted by SRO-31 dated 31-1-1964

2. Substituted by SRO-176 dated 13-8-1962.

conviction in a criminal court or by a court-martial, or an order superseding him for promotion to a higher post on the ground of his unfitness for that post) on any government servant to whom these rules are applicable shall be passed unless he has been given an adequate opportunity of making any representation that he may desire to make any such representation, if any, has been taken into consideration before the order is passed:

Provided that the requirements of this rule may, for sufficient reasons to be recorded in writing, be waived where there is difficulty in observing them and where they can be waived without injustice to the officer concerned.

36. Appeals.-Every member of a service shall be entitled to appeal, as hereinafter provided, from an order passed by any authority imposing upon him any of the penalties specified in rule 30, provided that no appeal shall lie against the order made by the Government.

37. (1) A member of a gazetted service may appeal to the Minister-in-charge from an original order passed by a subordinate authority to Government from such an order passed by the Minister-incharge.

(2) in the case of member of other services appeals shall lie:

(a) from an original order of punishment of a subordinate officer to the next higher officer;

(b) from an original order of punishment of a Head of Department to the Minister-in-charge;

(c) from an original order of punishment of a Minister-in-charge to Government.

(3) no appeal shall lie from an order passed in under this rule provided that the Government of the authority next higher to the one to which the lies may revise any such order of a subordinate authority in cases of penalties specified in

Clauses (vii) and (viii) of rule 30 if it is satisfied that there has been a substantial miscarriage of justice.

38. (1) Every member of a service shall be entitled to appeal to the authority hereinafter specified against any order passed by an authority subordinate to the said authority which:

- (a) alters to his disadvantage, his conditions of service, pay, allowances or pension as regulated in rules or in a contract of service, or
- (b) Interprets to his disadvantage the provisions of any rules or contract of service whereby his conditions of service, pay, allowances or pension are regulated.

(2) The authority hereinbefore referred to shall be the authority, which made the rule to which the order under appeal relates, or in the case of an appeal relating to a contract of service, the authority which appointed the appellant.

39. In the case of an appeal against an order imposing any penalty specified in rule 30, the appellate authority shall consider

- (a) Whether the facts on which the order based have been established;
- (b) Whether the facts established afford sufficient ground for taking action;
and
- (c) Whether the penalty is excessive, adequate or inadequate, and after such consideration shall pass such order as it thinks proper;

Provided that no penalty shall be enhanced unless an opportunity is given to the person concerned to show cause why such penalty should not be enhanced.

In any case in which the appellate authority enhances the penalty, the appellant shall be entitled to submit a second appeal to the next higher authority. The second appeal will, however, be admissible only

in respect of the additional punishment awarded by the appellate authority.

40. In the case of an appeal against an order, under rule 38, the appellate authority shall pass such order as appears to it just and equitable, having regard to all the circumstances of the case.

41. An authority from whose order an appeal is preferred under these rules shall give effect to any under made by the appellate authority.

42. Every person preferring an appeal shall do so separately and in his own name.

43. Every appeal preferred under these rules shall contain all material statements and arguments relied on by the appellant, shall contain no disrespectful or improper language, and shall be complete in itself. Every such appeal shall be submitted through the Head of the office to which the appellant belongs or belonged and through the authority from whose order the appeal is preferred.

Note:- Advance copies of appeals, review or revision petitions and any such application if submitted should be filed.

44. Every appeal preferred under these rules shall be accompanied by a stamp paper of the value prescribed in the Stamp Act and also by an attested copy of the orders appealed against.

45. Applications for obtaining attested copies of the orders appealed against may be submitted by the appellant concerned direct to the authority, which passed the orders.

46. An appeal may be withheld by an authority not lower than the authority from whose order it is preferred if-

- (a) it is an appeal in a case in which under these rules no appeal lies, or
- (b) it does not comply with the provisions of rule 43, or

- (c) it is not preferred within ninety days (the period spent in obtaining the attested copy of the order appealed against not being accounted for provided the application for the supply of the copy is submitted within the period of 90 days) after the date on which the appellant received information in writing of the order appealed against and no reasonable cause is shown for the delay, or
- (d) it is repetition of a previous appeal and is made to the same appellate authority by which such appeal has been decided, and no new fact or circumstances are adduced which afford grounds for a reconsideration of the case:

Provided that in every case in which an appeal is withheld the appellant shall be informed of the fact and the reasons for it:

Provided further that an appeal withheld on account only of failure to comply with the provisions of rule 43 may be resubmitted at any time within thirty days of the date on which the appellant has been informed of the withholding of the appeal and, if re-submitted in a form which complies with those provisions, shall not be withheld.

47. No appeal shall lie against the withholding of an appeal by a competent authority.

48. Every appeal, which is not withheld under these rules, shall be forwarded within a period not exceeding sixty days to the appellate authority by the authority from whose order the appeal is preferred with an expression of opinion and all the connected papers.

49. A list of appeals withheld under rule 46, with the reasons for withholding them, shall be forwarded quarterly by the withholding authority to the appellate authority together with a list of other appeals not disposed of within the period of sixty days referred to in rule 48.

50. An appellate authority may call for any appeal admissible under these rules which has been withheld by a subordinate authority and may pass such orders thereon as it considers fit.

51. The existing appeal rules for the Police department shall be followed by the department only so far as they are not repugnant to the provisions of these rules.

52. Every appeal, review or revision application submitted under these rules shall be disposed of by the authority to whom it is addressed within a period of three months from the date of receipt and if it is not possible in any particular case to adhere to this time limit a report explaining the reasons for delay shall be submitted to the next higher authority.

53. Notwithstanding anything contained in these rules, the Government may, of its own motion or otherwise, call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules, and-

- (a) Confirm, modify or reverse the order passed by such authority; or
- (b) Direct that a further inquiry be held in the case; or
- (c) Reduce or enhance the penalty imposed by the order; or
- (d) Make such other order in the case as it may deem fit:

Provided that where it is proposed to enhance the penalty imposed by any such order the Government servant concerned shall be given an opportunity of showing cause against the proposed enhancement:

Provided further that the period of limitation for an application for revision on behalf of an aggrieved party shall be thirty days from the date of the communication of the order sought to be revised to the party aggrieved.

54. The procedure prescribed for preferment and withholding of appeals under rules 43, 44 and 46 of these rules shall apply mutatis mutandis to applications for revision.

55. Review petitions:-The authority passing an order may review such order or that of Its predecessor either suo moto or at the instance of the aggrieved party:

Provided that an order passed in review shall not be subject to further review by the same authority:

Provided further that a review petition submitted by an aggrieved party will be admissible only if-

(a) there are some new facts or circumstances warranting a re-consideration of the order, or

(b) there has been a mistake or error apparent on the face of the record, or

(c) for any other sufficient reason.

56 Applications for review may before submission of appeal be preferred to the authority which passed the original order by a person who on account of some mistake or error apparent on the face of record or for any other sufficient reason desires to obtain review of the order passed against him.

57. The period of limitation for an application for review shall be ninety days.

58. An order confirmed in appeal shall not be open to review of the authority whose order is so confirmed.

59. Nothing in these rules shall operate to deprive any person of any right of appeal, which he would have had If these rules had not been made in respect of any orders passed before they come into force. An appeal pending at the time when, or preferred after, these rules come into force shall be deemed to be an appeal under these rules.

Government Order No. 501-C of 1962-dated 6th July, 1962:-In exercise of the powers conferred by proviso to sub-rule 21 (b) rule 17 of Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules

1956, it is ordered that upper age limit for Medical Graduates who are released by the Army Medical Corps after completing Short Service Regular Commission and are available for civil appointment be raised to 35 year.

(Government Gazette dated: 19th July. 1962)