

U.T. Administration of Daman & Diu,  
Department of Personnel & Administrative Reforms,  
Secretariat, Moti Daman

No. 6/75/2017-PER/1293

Dated : 16 / 06 /2017

**C I R C U L A R**

**Subject : Review of Mechanism to ensure probity among Govt. Servants – regarding.**

It is to inform the Circular issued by this department vide Circular No. 6/75/2017-PER/1216 dated 08/06/2017 along with the proforma on the subject cited above, it is observed that the department has not followed the instructions issued by the DoPT vide O.M. No. 25013/01/2013-Estt.A-IV dated 11<sup>th</sup> September, 2015 as well as the provision FR 56(j) / FR 56(l) or Rule 48 of CCS (Pension) Rules, 1972 and the information has not been furnished as per the above instructions.

The provision in the FR 56 (j) / FR 56 (l) are as under:

(j) Notwithstanding anything contained in this rule, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice :

(i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years;

(l) Notwithstanding anything contained in Clause (j), the Appropriate Authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire a Government servant in Class III service or post who is not governed by any pension rules, after he has completed thirty years' service by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice.

The DoPT has issued the instruction to review the probity amongs the Government Servant as follows :

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- (iii) "For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer."
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
- (v) Even un-communicated entries in the confidential record can also be taken into consideration.
- (vi) The order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable.
- (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
- (viii) Compulsory retirement shall not be imposed as a punitive measure.

In every review, the entire service records should be considered. The expression service record will take in all relevant records and hence the review should not be confined to the consideration of the ACR / APAR dossier. The personal file of the officer may contain valuable material. Similarly, the work and performance of the officer could also be assessed by looking into files dealt with by him or in any papers or reports prepared and submitted by him. It would be useful if the Ministry/Department puts together all the data available about the officers and prepares a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the ACRs/APARs may be taken into consideration.

In the case of those officers who have been promoted during last five years, the previous entries in the ACRs may be taken into account if the officer was promoted on the basis of seniority cum fitness, and not on the basis of merit.



The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be menace to public service and injurious to public interest.

Further, the instructions issued by the Supreme Court is also inserted in the DoPT, OM No. 25013/01/2013-Estt.A-IV dated 11<sup>th</sup> September, 2015 and the Proforma attached with the Circular dated 08/06/2017, the department has to examined the probity of the employees under their control.

In this connection, once again all the Head of Offices, Daman & Diu are requested to submit the information of Common cadre posts such as Superintendent/Head Clerk/Assistant/UDC/LDC/ Sr. Steno/Jr. Steno/ Driver etc., whose conduct are covered with above instructions and actually required to be review under provision provided in the FR 56(j) / FR 56(l) or Rule 48 of CCS (Pension) Rules, 1972 to this department **by 23/06/2017 without fail** and Common Cadre Group 'C' (MTS), such as Daftry/Peon/Watchman/Sweeper etc., may be furnished to the Collector, Daman being cadre controlling authority.

If, there is no such cases is arise, the department / offices, may furnish a certificate to the effect that there is no such employees actually required to be review under provision provided in the FR 56(j) / FR 56(l) or Rule 48 of CCS (Pension) Rules, 1972.

  
( Kishore J. Bamanian )  
Joint Secretary (Pers.)

To,  
All the Heads of Office in Daman and Diu District.

Copy to :-

1. The P.A. to Advisor to Administrator, Secretariat, Daman.
2. The All Secretary, Secretariat, UT of Daman & Diu and DNH.
3. The Collector, Daman for information and necessary action.
4. The SIO, NIC, Secretariat, Daman.

C/24 C/19 C/4

No.25013/01 /2013-Estt.A-IV  
Government of India  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training  
Establishment A-IV Desk  
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North Block, New Delhi  
Dated 11<sup>th</sup> September, 2015

OFFICE MEMORANDUM

Subject: Strengthening of administration-Periodical review under FR 56(j) and Rule 48 of CCS (Pension) Rules, 1972

The undersigned is directed to refer to this Department's OM No. 25013/1/2013-Estt(A) dated 21/03/2014 on the periodical review under Fundamental Rule 56 or Rule 48 of CCS (Pension) Rules.

2. Various instructions issued on the subject deal with compulsory retirement under the above mentioned provisions. The Supreme Court has observed in *State of Gujarat Vs. Umedbhai M. Patel*, 2001 (3) SCC 314 as follows:

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.
- (iii) "For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer."
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.
- (v) Even un-communicated entries in the confidential record can also be taken into consideration.
- (vi) The order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable.
- (vii) If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.
- (viii) Compulsory retirement shall not be imposed as a punitive measure.

3. In every review, the entire service records should be considered. The expression 'service record' will take in all relevant records and hence the review should not be confined to the consideration of the ACR / APAR dossier. The personal file of the officer may contain valuable material. Similarly, the work and performance of the officer could also be assessed by looking into files dealt with by him or in any papers or reports prepared and submitted by him. It would be useful if the Ministry/Department puts together all the data available about the officers and prepares a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the ACRs/APARs may be taken into consideration.

4. In the case of those officers who have been promoted during the last five years, the previous entries in the ACRs may be taken into account if the officer was promoted on the basis of seniority cum fitness, and not on the basis of merit.



5. As far as integrity is considered, the following observations of the Hon'ble Supreme Court may, while upholding compulsory retirement in a case, may be kept in view:

The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public service and injurious to public interest.

*S. Ramachandra Raju vs. State of Orissa*

[(1994) 3 SCC 424]

Thus while considering integrity of an employee, actions or decisions taken by the employee which do not appear to be above board, complaints received against him, or suspicious property transactions, for which there may not be sufficient evidence to initiate departmental proceedings, may be taken into account. Judgement of the Apex Court in the case of Shri K. Kandaswamy, I.P.S. (TN:1966) in *K. Kandaswamy vs Union Of India & Anr*, 1996 AIR 277, 1995 SCC (6) 162 is relevant here. There were persistent reports of Shri Kandaswamy acquiring large assets and of his getting money from his subordinates. He also indulged in property transactions which gave rise to suspicion about his bonafides. The Hon'ble Supreme Court upheld his compulsory retirement under provisions of the relevant Rules.

6. Similarly, reports of conduct unbecoming of a Government servant may also form basis for compulsory retirement. As per the Hon'ble Supreme Court in *State Of U.P. And Others vs Vijay Kumar Jain*, Appeal (civil) 2083 of 2002:

If conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the government has an absolute right to compulsorily retire such an employee in public interest.

7. Many changes in the nomenclature and in the areas of responsibility of various departments/Ministries have taken place. In order to simplify and speed up the procedure of review, a need is felt to reconstitute the Review Committees. In partial modification of the OM 25013/15/86-Estt (A) dated 27/06/1986, it has been decided that the Secretaries of the Cadre Controlling Authorities will constitute Review Committees consisting of two Members at appropriate level. The Review Committees in the case of various levels of employees will be as under:

(A) In case of officers holding Group A posts:

(a) In r/o ACC appointees:

Review Committee may be headed by the Secretary of the concerned Ministry/Department as Cadre Controlling Authority.

(b) In r/o Non-ACC appointees:

(i) Where there are Boards viz CBDT, CBEC, Railway Board, Postal Board, Telecom Commission, etc. the Review Committee may be headed by the Chairman of such Board.

- (ii) Where no such Boards/Commissions exist, the Review Committee may be headed by Secretary of the Ministry/Department.

(B) In case of Group B (Gazetted) officers:

Additional Secretary/Joint Secretary level officer will head the Review Committee.

(C) In the case of Non-Gazetted employees:

- (i) An officer of the level of Joint Secretary will head the Committee. However in case the Appointing Authority is lower in rank than a Joint Secretary, then an officer of the level of Director/Deputy Secretary will be the head.
- (ii) In the case of Non-Gazetted employees in other than centralised cadres, Head of Department/Head of the Organisation shall decide the composition of the Review Committee.

8. CVO in the case of gazetted officers, or his representative in the case of non-gazetted officers, will be associated in case of record reflecting adversely on the integrity of any employee.

9. In addition to the above, the Secretary of the Ministry/Department is also empowered to constitute internal committees to assist the Review Committees in reviewing the cases. These Committees will ensure that the service record of the employees being reviewed, alongwith a summary bringing out all relevant information, is submitted to the Cadre Authorities at least three months before the due date of review.

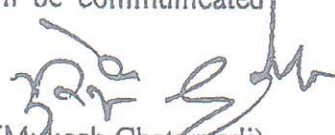
10. The procedure as prescribed from time to time has been consolidated and enclosed as Appendix to the OM issued by this Department on 21/03/2014. As per these instructions the cases of Government servant covered by FR 56(j), FR 56(l), or Rule 48(1) (b) of CCS (Pension) Rules, 1972 should be reviewed six months before he/she attains the age of 50/55 years, in cases covered by FR 56(j) and on completion of 30 years of qualifying service under FR 56(l)/Rule 48 of CCS (Pension) Rules, 1972 as per the following calendar:

Sl No	Quarter in which review is to be made	Cases of employees who will be attaining the age of 50/55 years or will be completing 30 years of service or 30 years of service qualifying for pension, as the case may be, in the quarter.
1	January to March	July to September of the same year
2	April to June	October to December of the same year
3	July to September	January to March of the next year
4	October to December	April to June of the next year



11. All Ministries/Departments are requested to follow the above instructions and periodically review the cases of Government servants as required under FR 56(j)/FR56(I)/Rule 48(1)(b) of CCS (Pension) Rules, 1972.

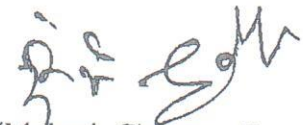
12. Instructions on composition of the Representation Committees will be communicated separately.

  
(Mukesh Chaturvedi)  
Director (Establishment)  
Tel: 23093176

To  
The Secretaries of All Ministries/Departments  
(as per the standard list)

Copy to:

1. President's Secretariat, New Delhi.
2. Vice-President's Secretariat, New Delhi.
3. The Prime Minister's Office, New Delhi.
4. Cabinet Secretariat, New Delhi.
5. Rajya Sabha Secretariat/Lok Sabha Secretariat, New Delhi.
6. The Comptroller and Auditor General of India, New Delhi.
7. The Secretary, Union Public Service Commission, New Delhi.
8. The Secretary, Staff Selection Commission, New Delhi.
9. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
10. National Commission for Scheduled Castes, New Delhi.
11. National Commission for Scheduled Tribes, New Delhi.
12. National Commission for OBCs, New Delhi.
13. Secretary, National Council (JCM), 13, Feroze Shah Road, New Delhi.
14. CVOs of all Ministries/Departments.
15. ADG (M&C), Press Information Bureau, DoP&T
- ✓ 16. NIC, Department of Personnel & Training, North Block, New Delhi (for uploading the same on the website of this Ministry under the Head OMs & Orders → Establishment → Premature Retirement.
17. Hindi Section, DoP&T

  
(Mukesh Chaturvedi)  
Director (Establishment)  
Tel: 23093176