

## CHAPTER VIII DISMISSAL, REMOVAL AND SUSPENSION

F.R. 52. The pay and allowances of Government servant who is dismissed or removed from service Cease from the date of such dismissal or removal.

F.R. 53. (1) A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely :—

(i) in the case of a Commissioned Officer of the Indian Medical Department or a Warrant Officer in Civil employ who is liable to revert to Military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment;

(ii) in the case of any other Government servant—

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary : Provided that where the period of suspension exceeds three months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows :

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 percent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant;

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not

exceeding 50 percent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

(b) Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation :

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under sub-rule (3) or sub-rule (4) of Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.

## ORDERS/INSTRUCTIONS

1. Review of subsistence allowance :—The suspended officer would continue to draw subsistence allowance at the rate of his leave salary on half average pay until the competent authority passed an order under F.R. 53/(1)(ii)(a).

In view of the fact that any failure on the part of the competent authority to pass an order as soon as the suspended officer has been under suspension for six (now three) months can either involve serious hardship to the officer concerned or involve unnecessary expenditure to Government, Ministries are requested to issue instructions to all authorities under them having powers to suspend Government servants under them with a view to ensure that action is initiated in all such cases in sufficient time so that the requisite order can take effect as soon as the suspended officer has completed six (now three) months under suspension.

(G. I., M.F., O.M. No. F. 19(4)-E. IV/55. dated the 17th June, 1958.)

(1-A) It is obligatory under F.R. 53 that in sufficient time before the expiry of the first six (now three) months of suspension, the competent authority should review each case in which the period of suspension is likely to exceed six (now three) months, and even if it comes to the conclusion that the rate is not to be altered having regard to all the circumstances of the case, specific orders to that effect are to be passed placing on record the circumstances under which the decision had to be taken.

(G. I., M.F., O. M. No. F. 15 (16)-E.IV/58, dated the 16th February, 1959.)

(1-B) Though the proviso to F.R. 54 (1)(ii)(a) does not specifically provide for a second or subsequent review, there is no objection to such review(s) being made by the competent authority. Such authority shall be competent to pass orders to increase or decrease the rate of subsistence allowance upto fifty per cent of the amount of subsistence allowance initially granted, according to the circumstances of each case. A second or subsequent review can be made at any time at the discretion of the competent authority.

It is permissible to reduce the amount of subsistence allowance once increased on the basis of the first review upto fifty percent of the amount

of the subsistence allowance initially granted if the period of suspension has been prolonged for reasons directly attributable to the Government servant, i.e., by his adopting dilatory tactics.

Similarly, in a case where the amount of subsistence allowance has been reduced after the first review, the same can be increased upto fifty percent of the amount initially granted, if the period of suspension has been prolonged for reasons not directly attributable to the Government servant and the Government servant has given up dilatory tactics.

(G. I., M.F., O.M. No. F. (1)-E.IV(A)/66, dated the 30th June, 1966.)

(1-C) It has been decided that a review of the subsistence allowance would be made at the end of three months from the date of suspension instead of the present practice of varying the subsistence allowance after 6 months. This would also give an opportunity to the concerned authority to review not merely the subsistence allowance but also the substantive question of suspension.

(G. I., MHA, Deptt. of Personnel & A.R. O.M. No 16012/1/79-LU dated the 23rd August, 1979.)

## 2. Subsistence allowance—Timely payment:—

(i) In the case of Ghandhyam Das Srivastava Vs. State of Madhya Pradesh (AIR 1973 SC 1183), the Supreme Court had observed that where a Government servant under suspension pleaded his inability to attend the enquiry on account of financial stringency caused by the non-payment of subsistence allowance to him, the proceedings conducted against him *ex parte* would be in violation of the provisions of Article 311(2) of the Constitution as the person concerned did not receive a reasonable opportunity of defending himself in the disciplinary proceedings.

(ii) In the light of the judgement mentioned above, it may be impressed on all authorities concerned that they should make timely payment of subsistence allowance to Government servants who are placed under suspension so that they may not be put to financial difficulties. It may be noted that, by its very nature, subsistence allowance is meant for the subsistence of a suspended Government servant and his family during the period he is not allowed to perform any duty and thereby earn a salary. Keeping this in view, all concerned authorities should take prompt steps to ensure that after a Government servant is placed under suspension, he received subsistence allowance without delay.

(iii) The judgement of the Supreme Court referred to in para 1 above indicates that in that case, the disciplinary authority proceeded with the enquiry *ex parte* notwithstanding the fact that the Government servant concerned had specifically pleaded his inability to attend the enquiry on account of financial difficulties caused by non-payment of subsistence allowance. The Court had held that holding the enquiry *ex parte* under such circumstances would be violative of Article 311(2) of the Constitution on account of denial of reasonable opportunity of defence. This point may also be kept in view by all authorities concerned before involving the provisions of Rule 14(20) of the CCS(CCA) Rules, 1965.

(Department of Personnel & A.R. O.M. No. 11012/10/76-Ests. (A) dated 6th October, 1976.)

(2-A)(i) The Staff Side of the Committee of the National Council (JCM) set up to review CCS (CCA) Rules, 1965 has pointed out that in spite of clear instructions, a large number of Government servants who are under suspension are not being paid the subsistence allowance regularly.

(ii) As mentioned in the above O.M., Supreme Court have held that if a government servant under suspension pleads his inability to attend the disciplinary proceedings on account of non payment of subsistence allowance, the enquiry conducted against him, *ex parte*, could be construed as denial of reasonable opportunity of defending himself. It may, therefore, once again be impressed upon all authorities concerned that after a Government servant is placed under suspension, prompt steps should be taken to ensure that immediate action is taken under F.R. 53, for payment of subsistence allowance and the Government servant concerned receives payment of subsistence allowance without delay and regularly subject to the fulfilment of the condition laid down in F.R. 53. In cases where recourse to *ex parte* proceedings becomes necessary, it should be checked up and confirmed that the government servant's inability to attend the enquiry is not because of non-payment of subsistence allowance.

(Deptt. of Personnel & A.R. O.M. No. 11012/17/85 Ests. (A) dated 28th October, 1985.)

### 3. Recoveries from subsistence allowance :—

(1) At present there is no provision in any rules or orders issued by the Government of India for

the recovery of Government dues from the subsistence allowance granted to a Government servant under suspension. The question of making such recoveries from the subsistence allowance has accordingly been under consideration for some time past. The permissible deduction fall under the two categories :—

- (a) Compulsory deductions.
- (b) Optional deductions.

(2) It has been decided that the recovery of the following deductions which fall under category (a) above, should be enforced from the subsistence allowance :—

- (i) Income-tax (provided the employee's yearly income calculated with reference to subsistence allowance is taxable).
- (ii) House rent and allied charges, i.e., electricity, water, furniture, etc.
- (iii) Repayment of loans and advances taken from Government at such rates as the head of the department deems it right to fix.
- (iv) Contribution under Central Government Health Scheme.
- (v) Contribution towards Central Government Employees Insurance Scheme, 1977.
- (vi) Subscription to the Central Government Employees' Group Insurance Scheme, 1980.

(3) The deductions falling under category (b), which should not be made except with the Government servant's written consent, are as under :—

- (a) Premia due on Postal Life Assurance Policies.
- (b) Amounts due to Co-operative Stores and Co-operative Credit Societies.
- (c) Refund of advances taken from General Provident Fund.

(4) It has further been decided that the deductions of the following nature should not be made from the subsistence allowance

- (i) Subscription to a General Provident Fund.
- (ii) Amounts due on Court attachments.
- (iii) Recovery of loss to Government for which a Government servant is responsible.

(5) As regards the recovery of over-payments, the competent administrative authority will exercise discretion to decide whether the recovery should be held wholly in abeyance or it should be effected at a rate not exceeding one-third of the subsistence allowance only, i.e., excluding dearness allowance and other compensatory allowances.

(G. I., M.F., O.M. No. F. 15(5)-E. IV/57, dated the 8th September, 1959 and 20th November, 1961.)

F.R. 54. (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7) be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of sus-

pension, preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified, in the notice.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose :

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

NOTE :—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

- (a) extraordinary leave in excess of three months in the case of temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(6) The payment of allowances under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 53.

(8) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

F.R. 54-A. (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

(2)(i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount

(not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgement of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of Rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory

retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

F.R. 54-B. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

- (a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and
- (b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended :

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In case other than those falling under sub-rules (2) and (3) the Government servant shall subject to the provisions of sub-rules (8) and (9) be paid such amount not being the whole of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or the court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5) as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

NOTE.—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of :—

- (a) extraordinary leave in excess of three months in the case of temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant,

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under Rule 53.