

Kerala Civil Service (C. C. A.) Rules 1960

The Civil Servant and the Fundamental Rights

Part XIV of the Constitution Which is generally taken to provide the 'Magna Charta' of the Civil Servant. It applies only after a citizen has become a 'Civil Servant'. A 'Civil Servant' is a person who holds a 'Civil Post' in the state civil or subordinate services. It includes persons on Foreign Service, local authority and whose services are temporarily placed at the disposal of the Government. The 'civil rights' of the civil servant shall be examined with reference to the seven fundamental freedoms guaranteed for the Indian citizen by article 19 of the constitution. Article 19 of the constitution consists of two parts~ the first part declaring seven freedoms and the second stating the limitation of these freedoms.

Seven freedoms are

- (1) Right to freedom of speech and expression
- (2) To assemble peacefully and without arms
- (3) To form association or union
- (4) To move freely throughout India
- (5) To reside and settle in any part of the territory of India
- (6) To acquire, hold and dispose of property
- (7) To practice any profession or to carry on any occupation trade or business

The part 2 (Article 19(2) to (6)) deals with reasonable restriction on the exercise of the above rights in the interest of sovereignty and integrity of the State.

Article 309

Article 309 empowers the appropriate Legislatures to regulate the recruitment and conditions of service of persons appointed to public services. By virtue of the power vested by this article, various sets of rules have been framed by the Union and the States regulating the conduct of civil servants.

- E.g. (1) The central Civil Services Conduct Rules 1964
(2) The Kerala Government Servants Conduct Rule 1960.

These conduct rules place many restrictions on the activities of the concerned civil servants including their fundamental freedoms enshrined in the constitution.

By these rules a civil servant is prohibited from criticizing Government Radio broadcast or document published in his own name, criticize the policy of Government, which may embarrasses the Government assemble peacefully, form association, freely moving and settling in any part of the country, acquiring or holding property, engaging private trade or employment. The nature of duties of a civil servant necessitates certain restrictions on his normal duties. If a Government servant is allowed to criticize the policies of Government openly, it may land the Government in an embarrassing situation and this warrants restrictions in this respect.

The K.C.S. (C.C.&A) Rules 1960

It deals with the procedure to be followed in imposing penalty to those Government servants who violates the provisions in the Conduct Rules 1960. Article 3 10 deals with the tenure of a Government servant. A person holding a civil post under Government holds office during the pleasure of the President/Governor. But the above power of the Government is not absolute.

Article 311 put certain restriction on the absolute power of the President or Governor for dismissal, removal, degrading of an officer. It says that "No person who is a member of the Civil Service, holding a 'Civil Post' under Government shall be dismissed or removed by an authority subordinate to that of the appointing authority.

Article 311(2) It says that no such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of

the charges against him and give a reasonable opportunity of being heard in respect of those charges.

(i) Informed of the charges It means serving of a charge sheet explaining the reasons of the charges leveled against the C.O. and statement of allegations against each charge

(ii) Reasonable of fortunate of being heard The reasonable opportunity means:-

- (a) An opportunity to deny his guilty and establish his innocence, which he can do only if he is told what the charges leveled against him are and the allegations on which such charges are based.
- (b) An opportunity to defend himself by cross examining the witness produced against him and by examining himself in support of his defiance.
- (c) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him. (In Narayanan Nair V s State of Kerala the Hon. High Court held the view that the burden of proof that a reasonable opportunity was given to a Government servant during the disciplinary proceedings is with the Government).

- (2) Persons in casual employment
- (3) Persons subject to discharge from service without notice
- (4) Appointment by agreement

CLASSIFICATIONS

(I) **State Services:-** It consist of the services included in Schedule I. E.g. Karala Agricultural Service Kerala Engineering Services etc.

- (2) **Subordinate Services:-** It consists of the services included in Schedule II. E.g. Kerala Agricultural Subordinate Service. Kerala Engineering Subordinate Services etc.

Suspension (Rule 10)

- (I) A Government servant may be placed under suspension by an authority competent to do so if such action is considered necessary in the public interest. Suspension of a Government servant can be ordered by the following authorities.
- (i) The appointing authority
 - (II) Any authority to-which the appointing authority is subordinate (i.e. any superior authority)
 - (iii) Any authority empowered by Government for the purpose.

(2) The circumstances under which a suspension order can be ordered

- (a) Where disciplinary proceedings against him are contemplated or are pending or
 - (b) Where a case against him in respect of any criminal offence is under investigation or trail
 - (c) Where final orders are pending in the disciplinary proceedings, if it is considered necessary in public interest .
- (3) (a) The suspension should be resorted to only when it is really justified with reference to the gravity of the offence, the necessity to remove officer from the discharge of his duties immediately and the penalty that is likely to be imposed in case the charge is proved.
- (b) Under Rule 55 Part I K.S.R. an officer under suspension entitled to subsistence allowance

- (c) The suspension of an officer is finalised with the minimum possible delay in any case not more than six months.

Natural Justice

The rule of Natural Justice requires that the C.O. should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross examining the witnesses examined by the other party.

The right to cross examine the witnesses who give evidences against him is a very valuable right. If the above right is denied, it is construed that the Enquiry had not been held in accordance with the rules of natural Justice. If an inquiring officer adopts a procedure which is contrary to the rules of natural Justice, the ultimate decision based on his report of inquiring is liable to be quashed. (Partha V s State of Andhra Pradesh (AIR 1973))

The following is considered as the denial of reasonable opportunity

- (1) The enquiry is made confidential
- (2) The charged officer is examined at the outset of inquiry.
- (3) The Inquiring Officer made leading questions
- (4) The C.O. is not permitted to call his witnesses

Exceptions

- (1) Convicted on a criminal case charged
- (2) Reasons recorded in writing by the authority that the Enquiry is not reasonably practicable
- (3) In the interest of the security of the State, the Governor is satisfied that inquiry is not practicable.

Internretation (Rule 2 of CCA)

(a) **Appoint Authority**:- means the authority empowered to make appointment to the service, class or category .

(b) **Government Servant**:- is a person who is a member of a service, state subordinate or who hold a 'Civil Post' under the Kerala State. It includes persons on foreign service, central or state or local authority whose services are temporarily placed at the disposal of the Government.

Application (Rule 3)

The C.C.A. rules shall apply to all Government servants except.

- (1) Persons belonging to the All India Services
- (2) In order to have a close watch on the progress made with matter of disciplinary proceedings against officers under suspension, heads of Department shall forward to the Government in the Home Department a quarterly-statement before the 10th of the succeeding month in Appendix I.
- (3) The driver of a Government vehicle involved in a fatal accident should be placed under suspension. An immediate departmental inquiring will be conducted into all aspect of the case in order to determine whether there is necessity for taking departmental action apart from the normal police investigation into the case.
- (4) A Government servant who is detained in custody whether on a criminal charge or otherwise for a period exceeding 48 hours shall be deemed to have been suspended w.e.f. the date of detention by an order of the appointing Authority.
- (5) The period of suspension will be regulated under Rule 55 and 56 in Chapter VII in Part I of K.S.R.

(a) Rule 55 deals with the rate of subsistence allowance. It is seen that in

many cases orders placing a Government servant under suspension are issued without any mentioning of subsistence allowance, D.A. and compensatory allowances the officer is entitled during the period of suspension. This causes hardship to the officer. Therefore the order of suspension should specify clearly the subsistence allowance and other allowances to which the officer is entitled. It should not be postponed to be issued on a later date.

- (b) A Government servant against whom a proceedings has been taken for his arrest for debt but who is not actually detained in custody may be placed under suspension under clause 10(a) (1) only if a disciplinary proceeding against him is contemplated.
- (c) A Government servant who is deemed to be under suspension is reinstated without taking disciplinary proceedings against him, his pay and allowances for the period of suspension will be regulated under rule 56 of Part I K.S.R. In the event of his being fully exonerated and the suspension is wholly unjustified the case may be dealt with under Rule 56(2) otherwise it may be dealt with under Rule 56(3).
- (d) If the Government servant has been fully exonerated and the suspension is wholly unjustified, the officer shall be given the full pay to which he would have been entitled had he not been suspended.
- (e) In other cases the Government servant shall be given such proportion of such pay and other allowances as such the competent Authority may prescribe.
- (f) The period of suspension can be treated as eligible leave. In such case the subsistence allowances already drawn may be adjusted in his leave salary.

- (g) A permanent post vacated by the dismissal, should not be filled substantially until the expiry of one year from the date of dismissal.
- (h) If an officer under suspension is dismissed with retrospective effect from the date of suspension, no recovery should be made from the subsistence allowance.
- (i) If a Government servant under suspension is compulsorily retired with retrospective effect from the date of suspension, the pension due to him from the date of retirement may be adjusted in the subsistence allowance already received and balance, if any, should be paid.
- (j) In the case of a Government servant whose suspension has been regularised as duty, and during the period of suspension, he would have been eligible for promotion to a higher post, he will be entitled for the pay and allowances to the higher post with effect from the date on which he assumed charge of that post.
- (k) Leave may not be granted to Government servant under suspension. The suspension order is effective w.e.f. the date of receipt of the order or the date of absence.

Penalties

Rule 11 deals with penalties that may be imposed on a Government servant who has been found guilty in disciplinary proceedings. It must be commensurate with the gravity of the misconduct. Any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the constitution. -

Minor Penalties

- (i) Censure
- (ii) Fine

- (iii) Withholding of increments or promotion
- (iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government-

Major Penalties

- (v) Reduction to a lower rank in the seniority list or to a lower grade or post or time scale or to a lower stage in. time scale
 - (vi) Compulsory retirement
 - (vii) Removal from service
 - (viii) Dismissal from the civil services
 - (ix) Reduction of Pension
- (i) **Censure** The censure is a warning issued to the Government servant which is to be recorded in the service book. It will not affect~ one's seniority.
- (ii) **Fine** (In the case of persons on whom such penalty may be imposed under these rules)
- (iii) **Withholding of increment or promotion (Rule 31 Part I K.S.R.)**
- (1) Rule 31 provide that an increment shall ordinarily be drawn as a matter of course unless it is withheld. It is a minor penalty. It may either be permanent or temporary for a specified period.
 - (2) Temporary period of withholding of increment, shall not be less than 3 months and temporary period of withholding of promotion shall not be less than six months and both shall not be more than three years.
 - (3) Temporary withholding of increments shall mean withholding of increment without cumulative effect and the other is withholding increment with cumulative effect which have future effect of hi.5 pay structure.

- (4) In the case of order of withholding of increments cannot be given effect to the monetary value equivalent to the amount of increments ordered to be withheld will be recovered from the pay of the officers. If the officer retires from service before the recovery could be effected the amount will be recovered from his pension or D.C.R.G. In the case of stoppage of increment with cumulative effect the monetary value equal ant to 3 times the amount of increment ordered to be withheld may be recovered. It will affect the seniority in that grade.
- (iv) Recovery from pay of the whole or part of any pecuniary loss caused to State Government by negligence or breach of orders.

Procedure for imposing of minor penalties (Rule 16)

For imposing any of the minor penalties the disciplinary authority should serve a memo of charges and obtain the written statement of defence. After considering the written statement of defence, the Disciplinary authority may determine the penalty and issue orders imposing the penalty. It is not necessary to conduct formal inquiry.

Major Penalty

- (i) Reduction to a lower rank in the seniority list or grade
- (l) The period of reduction shall not be less than six months and not more than 5 years. If the period is not specified in the order, it shall be deemed as 6 months.
- (2) Reduction to a lower grade or post shall be to the grade or post immediately lower to the post held but not to a post lower than he was initially appointed.
- (3) Reduction of rank to a lower stage in the time scale can be with or without the effect of postponing future increment. But if no mention is made in the order it shall be deemed to be without the effect of postponing future increment.
- (4) An order of reduction to a lower post shall entail loss of seniority.

- (5) He shall be treated in senior most in the lower post or re-promotion Junior most in the higher category .
- (6) If the penalty of reduction of rank or grade is in operative, the money value equalent to the amount of reduction shall be recovered from .the salary.

(vi) **Compulsory retirement**

Compulsory retirement does not loose the tern1inal benefits already earned by him. It does not violate the provisions in Article 16 of the Indian Constitution.

- (vii) **Removal from civil service which** shall not be disqualification for future employment.

- (viii) **Dismissal from the civil service** which shall ordinarily be a disqualification for future employment in Government Service. He is not eligible for pension D.C.R.G. etc.

- (ix) **Reduction of Pension** The reduction of pension shall be imposed in such a manner that pension will not be reduced to nothing or to a nominal amount.

Procedure for imposing of Major Penalties (Rule 15)

Whenever a complaint is received or on consideration of the report of an investigation, the disciplinary Authority or the Appointing Authority or any authority empowered by the competent Authority is satisfied that there is prima facie case for taking action against a Government servant, such authority shall frame definite charges.

Before imposing any of the major penalties, an inquiry strictly in accordance with the provision in Rule 15 should be conducted. The first step is to serve on the accused a memo of charges along with a statement of allegation on which the

charges are based. Charges must be specific, clear and brief enabling the Government servant to defend himself. The memo of charges should also require the Government servant to submit his written statement of defence within the time specified. The accused Government servant should be allowed to pursue the documents mentioned in the memo of charges.

Framing of Charges

(1) **What is a charge?** It is a proven essence of an allegation setting out the nature of an accusation in general terms.

(2) Who can issue a Charge sheet?

- (i) The Government
- (ii) The Appointing Authority
- (iii) The disciplinary authority
- (iv) The Head of Department
- (iv) Any officer empowered by the appointing authority

(3) How to frame charge sheet?

- (i) Charge should be clear and precise and to contain material particulars in clear terms without any vagueness. The date of occurrence of the incident and time where ever applicable should be specified
- (ii) In the language known to the accused
- (iii) There Should be no contradiction
- (iv) No limit to the number of charges
- (v) Correct rule violated should be mentioned
- (vi) Two copies of the finalised charge memo and statements of allegation

will be issued to the Government servant and one copy will be got back with his dated acknowledgement and filed in the inquiry record.

- (vii) A list of documents relied upon in framing the charge and which are available for perusal should be listed out at the end of the Statement of Allegation.

Rule 15 (3) The Inquiry Officer may during the course of inquiry, if it deems necessary amend, alter or modify the charges framed against the accuse and the accused shall be required to submit within reasonable time to file any further written statements

Rule 15 (4) The accused shall for the purpose of preparing his defence be permitted to inspect and take extract from such official records, as he may specify the records not relevant need not be supplied.

Rule 15 (6) The Disciplinary Authority if it is not the Inquiry Authority may nominate any person to present the case in support of the charges before the Inquiry Authority. The Accused Government servant may present his case with the Assistance of any other Government servant approved by the Inquiring Authority. But may not engage a legal practitioner.

Role and function of an inquiring Officer/Present Officer and Defence Assistant

Inquiring Officer	Presenting Officer	Defence Assistant
(1) The Inquiring Officer shall be a full time inquiry officer	(1) He must be a Govt. Servant	(1) Govt. servant
(2) Officers from outside	(2) A retired Govt. servant	(2) A retired officer
(3) Technical person	(3) A legal luminary	(3) A legal luminary approved by the I.O
(4) Professionals	(4) He presents the case	(4) The fee of the D.A.

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| | on behalf of the disciplinary Authority | will be met by the accused Govt. servant |
| (5) A retired person
Departmental Officer/
Legal luminary | (5) The vigilance officer who has investigated the case is not eligible for appointment as P.O | (5) T.A./D.A. will be met by Govt. |
| (6) If the I.O has got some personal basis, can ask for change of I.O | (6) The P.O. has the discretion to call the witness at any time | (6) If the Accused Govt. Servant is not a Defence witness, the I.O can clarify certain points from the accused while going through the document on record |
| (7)The I.O. can call for additional documents | | |

The daily order sheet is signed by the 10. OP and DA -

Preliminary hearing by I.O

- (1) The preliminary hearing is to be conducted after service of charge sheets. The officer to appear before the 10 on receipt of the documents.
- (2) When any of the article of charge is not admitted in the statement of defence or the S/D not submitted. The 10 to ask whether he is guilty or has any defence to make.
- (3) If the accused pleads guilty, the 10 to record and obtain his signature and return his findings of guilt in respect of the charges.
- (4) If the accused fails to appear, Refuses, the 10 to record an order that the C:O for his defence.
 - (i) Inspect listed documents within the 5 days
 - (ii) Submit his list of witness

- (iii) Give list of additional documents with in 10 days and adjourn the case to a later date not exceeding 30 days.

Inspection of documents

- (1) Do not hand over all documents to the accused
- (2) Give inspection the presence of a Senior Officer
- (3) Do not allow ink pot and holder for taking extract

I Regular Hearing (I) Marking of records

- (1) Listed documents should be marked in Ext.P 1, P21 0 1, 02
- (2) List of witnesses to be recorded as PW1 , PW2/ DWI, OW2

II Oral Evidence

- (i) The P.O can choose who can be the first witness or other prosecution witnesses.
- (ii) The purpose of the examination in-chief means to allow the witness to say what he know about the incident.
- (iii) The purpose of the cross examination is to bring out the hidden facts.
 - (1) The intention to impeach the credibility of the witness
 - (2) Testing the veracity of the statement of witness
 - (3) Lending question can be permissible in cross
- (iv) The Question to be asked to the accused by the I.O
 - (1) After regular hearing, the I.O can ask the accused to file a written statement to be recorded.
 - (2) Would you like to own your witness
 - (3) Have you to say anything more

Evaluation of evidence

- I Format of Inquiry
 - (1) Name and Designation of the accused of the time of reporting
 - (2) Office and Department
 - (3) Date of the appointment in Govt. Service
 - (4) Date of the appointment to the present post
 - (5) Details of last three defaults
- II Charge in brief
- III Facts in evidence
- IV Defence A verments
- V Findings

Rule 17

Joint enquiry/common proceedings.

If two or more than two Govt. Servants concerned in any case. The Govt. or the higher authority is the competent authority to order the Joint Inquiry.

Rule 18

Special procedure in certain cases

- (1) Conviction on a criminal charge .
- (2) In the interest of security, it is not reasonably practicable to follow the procedure prescribed in said rule. It is a replica of clause 2 of article 311.

Rule 19 and 20

It relates to the provisions regarding officers lend to other Govts. And Officers borrowed from the Govt. Servants.

Appeal (Rule 20 to 33)

A Govt. Servant who is aggrieved by an order imposing on him any of the penalties may appeal to the immediate superior authority of the authority which imposed the punishment. But there is no appeal against an order passed by the Govt. Appeal should be submitted within two months from the date of receipt of the order. The Govt. have also the power to review any order passed by any authority subordinate to Govt. There is no appeal against an order withholding an appeal.

Action on the Inquiring Officer

- (1) The disciplinary authority has to scrutinize whether the enquiry has been conducted as per the procedure laid down in the Rules.
- (2) Whether the principles of natural justice has been complied or any provision of the constitution has been violated.
- (3) If the Enquiry report has been done after following all the procedures laid down under rules. The disciplinary authority cannot be referred back to the enquiry.
- (4) When the disciplinary authority differs with the finds of the Inquiry Officer, the disciplinary authority has to put his reasons in writing and give his own findings.
- (5) Before taking on the guilt of the employee. a copy of the enquiry report may be furnished to him and a time of 15 days to represent.
- (6) No second show cause notice to the quantum of penalty to be imposed is necessary. (42nd amendments)
- (7) Final orders must be a speaking order
- (8) KPSC has to be consulted if found necessary

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