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PART – I – Orders and Notification by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL
FINANCE DEPARTMENT
Audit Branch

NOTIFICATION

No. 1440 – F. –20th February, 2008. – In exercise of the power conferred by the proviso to Article 309 of the Constitution of India, the Governor is pleased hereby to make the following amendments to the West Bengal Services (Classification, Control and Appeal) Rules, 1971 as subsequently amended (hereinafter referred to as the said rules):-

Amendments

In the said rules-

(1) for the words “Government Servant”, wherever they occur, substitute the words “Government Employee”;

(2) In PART II

(a) for rule 4, substitute the following rule:-

“4. Classifications of Services –(1) All the services and posts under the Government shall be classified as follows:-

- (i) West Bengal State Service, Group-A;
- (ii) West Bengal State Service, Group-B;
- (iii) West Bengal State Service, Group-C;
- (iv) West Bengal State Service, Group-D.

(2) If a service consists of more than one grade, different grades of such service may be included in different groups”;

(b) for rule 5 substitute the following rule:-

“5. Constitution of State Services and Classification thereof or posts held by Government employees,-

The West Bengal State Services, Group A, Group B, Group C, Group D shall consist of the services or grades or posts carrying a pay or a scale of pay as detailed in the Table below:-

The Table

Sl.	Description of services and posts	Classification of posts and services
1.	All services and posts carrying a pay or a scale of pay with the maximum above Rs.10175/-	Group A
2.	All services and posts carrying a pay or a scale of pay with the maximum of Rs.10175/- or below but above Rs.7050/-	Group B
3.	All services and posts carrying a pay or a scale of pay with the maximum of Rs.7050/- or below but above Rs.4400/-	Group C
4.	All services and posts carrying a pay or a scale of pay with the maximum of Rs.4400/-	Group D

Provided that the Government may, by special order, include any class or classes of Government employee in a service higher than that prescribed in the above Table and may, by order issued from time to time, change the maximum of the above pay or scale of pay for the purpose of classification of services and posts;

Provided further that the classification of an employee shall not undergo any change on the ground of eventual movement to higher scale of pay owing to operation of the Career Advancement Scheme or any other non-functional elevation.

Explanation - For the purpose of this rule, -

- (a) the word 'pay' has the same meaning as in sub-clause (i) of clause (28) of rule 5 of the West Bengal Services Rules, Part I; and
- (b) the expression 'scale of pay' includes the revised scale of pay mentioned in the West Bengal Services (Revision of Pay and Allowance) Rules, 1998 or any subsequent rules to be made in this regard.

(3) in Part III, for rule 6, substitute the following rules:-

“ 6. Appointment of Group A services and posts. – All appointments to the West Bengal State Services and posts belonging to Group A, shall be made by the Governor:

Provided that the Governor any, by a general or a special order and subject to such conditions as he may specify in the order , delegate to any authority subordinate to him the power to make such appointments.

6A. Appointments to other services and posts. – All appointments to the West Bengal State Services and posts belonging to Group B, Group C and Group D, shall be made –

- (a) by the authority specified in that behalf by a general or a special order of the Governor ;
or
- (b) where no such order has been made, by the authorities specified in this behalf in the Schedule.”

- (4) In PART V, in rule 9, for the words and figures “Disciplinary Authorities. – Subject to the provisions of rules 10 to 13, any of the penalties specified in rule 8 may be imposed on -
- (i) a member of the West Bengal State Service, Class I or Class II, by the Governor : and
 - (ii) a member of the West Bengal State Service, Class III or Class IV, by the authorities specified in corresponding entries in column 3 of Schedule I :”.

Substitute the following words, figures, letters and brackets : -

“Disciplinary Authorities - (1) The Governor may impose any of the penalties mentioned in rule 8 on any Government employee.

(2) Without prejudice to the provisions of sub-rule (1), any of the penalties specified in rule 8 may be imposed on -

- (a) a member of the West Bengal State Service, Group A, by the Governor, or by any other authority empowered in this behalf by a general or special order of the Governor ; and
- (b) a member of the West Bengal State Service, Group B, Group C or Group D, by the respective appointing authorities or any other authorities specified in the Schedule, where applicable :”;

(5) in PART VI, -

(a) for the rule 14, substitute the following rule :

“14. Orders against which no appeal lies. – Notwithstanding anything contained in this part, no appeal shall lie against –

- (i) any order made by the Governor ;
- (ii) any order of an interlocutory nature or of the nature of a step-in-aid or the final disposal of a disciplinary proceeding, other than an order of suspension;
- (iii) any order passed by an inquiring authority in the course of an inquiry under rule 10.”

(b) for rule 15, substitute the following rule :-

“15. Orders against which appeal lies. – Subject to the provisions of rule 14, a Government employee may prefer an appeal against all or any of the following orders, namely:-

- (i) an order of suspension made or deemed to have been made under rule 7 ;
- (ii) an order imposing any of the penalties specified in rule 8 whether made by the disciplinary authority or by any appellate or revising authority ;
- (iii) an order enhancing any penalty, imposed under rule 8;
- (iv) an order which -

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

(b) interprets to his disadvantage the provisions of any such rule or agreement

- (v) an order -
 - (a) reverting him while officiating a higher service, grade or post, to a lower service, grade or post, otherwise than as a penalty;
 - (b) reducing or withholding the pension or denying the maximum pension admissible to him under the rules ;
 - (c) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;
 - (d) determining his pay and allowances –
 - (i) for the period of suspension, or
 - (ii) for the period from the date of his dismissal, removal or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post; or
 - (e) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time-scale of pay or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.

Explanation. – In this rule,-

- (i) the expression ‘Government employee’ includes a person who has ceased to be in Government service;
- (ii) the expression ‘pension’ includes additional pension, gratuity and any other retirement benefit”.

(c) for rule 16, substitute the following rule :-

“16.Appellate Authority.- (1) A Government employee including a person who has ceases to be in Government service, may prefer an appeal against all or any of the orders specified in rule 15 to the authority specified in this behalf either in the Schedule or by a general or special order of the Governor or, where no such authority is specified –

- (a) where such Government employee is or has been a member of the West Bengal State Service, Group A,-to the Governor, where the order appealed against is made by any other authority;
- (b) where such Government employee is or has been a member of the State Service, Group B, Group C or Group D, to the authority to which the authority making the order appealed against is immediately subordinate.

(2) Notwithstanding anything contained in sub-rule (1),-

- (a) an appeal against an order in a common proceeding held under proviso to sub-rule (2) of rule 9, shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of the proceeding is immediately subordinate :

Provided that where such authority is subordinate to the Governor in respect of a Government employee for whom Governor is the Appellate Authority in terms of sub-clause (ii) of clause (a) of sub-rule (1), the appeal shall lie to the Governor;

- (b) where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the Appellate Authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.”;

(d) for rule 17, substitute the following rule :-

“ 17. Period of limitation of appeals, - No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant :

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

(e) for rule 18, substitute the following rule :-

“18. Form and contents of appeal. – (1) Every person preferring an appeal shall do so separately and in his own name.

- (2) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be complete in itself.
- (3) The authority which made the order appealed against shall, on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the Appellate Authority without any avoidable delay, and without waiting for any directions from the Appellate Authority.”;

(f) for rule 19, substitute the following rule :-

“19 Consideration of appeal, - (1) In the case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of rule 7 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

- (2) In the case of an appeal against an order imposing any of the penalties specified in rule 8 or enhancing any penalty imposed under the said rule, the Appellate Authority shall consider -
- (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders –

- (i) confirming, enhancing, reducing or setting aside the penalty; or
- (ii) remitting the case of the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that –

- (a) the Commission shall be consulted in all cases where such consultation is necessary;
- (b) if such enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in clauses (iv) to (viii) of rule 8 and an inquiry under rule 10 has not already been held in the case, the appellate Authority shall, subject to the provisions of rule 11, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 10 and thereafter on a consideration of proceedings of such inquiry, make such orders as it may deem fit;
- (c) if the enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in clauses (iv) to (viii) of rule 8 and an enquiry under rule 10 has been held in the case, the Appellate Authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and
- (d) on order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions rule 10 of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in rule 15, the Appellate Authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable”.

(g) for rule 20, substitute the following rule:-

(h) Omit rule 21 ;

(6) In PART VII,-

(a) for rule 22, substitute the following rule :--

“22, Revision. (1) Notwithstanding anything contained in these rules,--

- (i) the Governor, or
- (ii) the head of a department directly under the State Government in the case of a Government employee serving in a department or office (not being the Secretariat), under the control of such head of a department, or
- (iii) the appellate authority, within six months or the date of the order proposed to be revised, or
- (iv) any other authority specified in this behalf by the Governor, by a general or special order, in such general or special order,

may, at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may –

- (a) confirm, modify or set aside the order, or
- (b) confirm, reduce enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit;

Provided that no order imposing or enhancing any penalty shall be made by any revisional authority unless the Government employee concerned has been given a reasonable opportunity of making representation against the penalty proposed, and where it is proposed to impose any of the penalties specified in clauses (iv) to (viii) of rule 8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses and if an inquiry under rule 10 has not already been held in the case, no such penalty shall be imposed except after an inquiry in the manner laid down in rule 10, subject to the provisions of rule 11, and except after consultation with the Commission where such consultation is necessary:

Provided further that no power of revision shall be exercised by the head of department unless –

- (i) the authority which made the order in appeal, or
 - (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.
- (2) No proceeding for revision shall be commenced until after -
- (a) the expiry of the period of limitation of an appeal; or
 - (b) the disposal of the appeal, where any such appeal has been preferred.
- (3) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.”;
- (b) for rule 23, substitute the following rule :-

“23. Review. - The governor may, at any time, either on his own motion or otherwise, review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought to his notice:

Provided that no order imposing or enhancing any penalty shall be made by the Governor unless the Government employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose or enhance any of the penalties specified in the rule 8 sought to be reviewed to any of other penalties and if an inquiry under rule 10 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in rule 10 subject to the provisions of rule 11 and except after consultation with the Commission where such consultation is necessary.”

2. This notification shall come into force with effect from the 20th February, 2008.

By order of the Governor,

SAMAR GHOSH,
Pr. Secy. to the Govt. of West Bengal