

FINANCE DEPARTMENT

Audit

NOTIFICATION

No. 2018-F.—16th April 1971.—In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor is pleased hereby to make the following rules, namely:—

RULES

PART I—GENERAL

1. **Short title and commencement.**—(1) These rules may be called the West Bengal Services (Classification, Control and Appeal) Rules, 1971.

(2) They shall come into force on the 1st May 1971.

2. **Application.**—(1) These rules shall apply to all Government servants except—

- (i) persons paid at daily rates;
- (ii) persons against whom action is taken or proposed to be taken under the West Bengal Civil Services (Safeguarding of National Security) Rules, 1949, reproduced in Appendix I in respect of matters covered by the provisions of those rules;
- (iii) members of the All India services;
- (iv) Inspectors of Police and members of the Subordinate Police Force; and
- (v) members of the West Bengal Higher Judicial Service and the West Bengal Civil Service (Judicial),

and they shall also apply to persons for whose appointment and other matters covered by these rules, special provision is made—

- (i) by or under any law for the time being in force, or
- (ii) by an agreement made with them,

in respect of matters not covered by the provisions of such law or agreement.

(2) Notwithstanding anything contained in sub-rule (1), the Governor may, by order, exclude from the operation of all or any of the provisions of these rules any Government servant or class or classes of Government servants.

(3) If any doubt arises as to (a) whether these rules or any of them apply to a Government servant, or (b) whether any person to whom these rules apply belongs to a particular service, the matter shall be referred to Governor whose decision thereon shall be final.

3. **Definitions.**—In these rules, unless the context otherwise requires,—

- (D) "appendix" means an appendix appended to these rules;

- (II) "appointing authority" in relation to a Government servant means—
- (i) the authority empowered to make appointments to the services of which the Government servant is for the time being a member or to the grade of the service in which the Government servant is for the time being included, or
 - (ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or
 - (iii) the authority which appointed the Government servant to such service, grade or post as the case may be, or
 - (iv) where the Government servant having been a permanent member of any other service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that service or to any grade in that service or to that post,
- whichever authority is the highest authority;
- (III) "Commission" means the Public Service Commission, West Bengal;
- (IV) "disciplinary authority" in relation to the imposition of a penalty on a Government servant means the authority competent under these rules to impose on him that penalty;
- (V) "Government" means the Government of the State of West Bengal;
- (VI) "Government servant" means a person who is a member of any of the services specified in rule 4 and includes any such person on foreign service or whose services are temporarily placed at the disposal of the Government of India or any other State Government or a local or other authority and also any person in service of the Government of India or any other State Government or a local or other authority whose services are temporarily placed at the disposal of the Government of West Bengal;
- (VII) "Schedule" means a Schedule appended to those rules; and
- (VIII) "Service or post" means any service or post in connection with the affairs of the State of West Bengal.

PART II—CLASSIFICATION

4. **Classification of Services.**—All the services and posts under the Government shall be classified as follows:—

- (i) West Bengal State Service, Class I.
- (ii) West Bengal State Service, Class II.
- (iii) West Bengal State Service, Class III.
- (iv) West Bengal State Service, Class IV.

5. **Constitution of State Services.**—The West Bengal State Services, Class I, Class II, Class III and Class IV shall consist of the services or posts carrying a pay or a scale of pay as detailed in the Table below:

The Table

Serial No.	Description of services and posts.	Name of the Services.
1.	All gazetted services and posts carrying a pay or a scale of pay with a maximum above Rs. 325.	Class I Service.
2.	All gazetted services and posts carrying a pay or a scale of pay with a maximum of Rs. 325 or below.	Class II Service.
3.	All non-gazetted services and posts not included in Class IV service.	Class III Service.
4.	All non-gazetted posts carrying a pay or a scale of pay with a maximum of Rs. 280 or below.	Class IV Service.

Provided that the Government may, by special order, include any class or classes of Government servants in a service higher than that prescribed above.

Note.—In this rule,—

- (i) the word "pay" has the same meaning as in sub-clause (i) of clause (28) of rule 5 of the West Bengal Service Rules, Part I; and
- (ii) "pay or a scale of pay" refers to the revised scale of pay as promulgated with the West Bengal Services (Revision of Pay and Allowance) Rules, 1970.

Part III—Appointing Authority

6. (1) **Appointments to Class I and Class II Services.**—All appointments to the West Bengal State Services, Class I and Class II, shall be made by the Governor:

Provided that the Governor may, by a general or 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.

(2) **Appointments to Class III and Class IV services.**—All appointments to the West Bengal State Services, Class III and Class IV, specified in the entries in column (1) of Schedule I shall be made by the authorities mentioned in the corresponding entries in column (2) of that schedule.

Note.—A letter of appointment issued to a temporary employee shall specify the period of appointment. It shall also provide that the services of the employee will be liable to termination during that period by service of a notice terminating with the expiry of a period to be specified in the letter of appointment which period shall not ordinarily exceed one month. In cases where it may not be possible to insert such a provision, the appointment shall be made until further notice or orders.

Part IV—Suspension

7. (1) The appointing authority or any authority to which it is subordinate or any authority empowered by the Governor in that behalf may place a Government servant under suspension—

- (a) where a disciplinary proceeding or departmental enquiry against him is contemplated or is pending; or
- (b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
- (c) where a case against him in respect of any criminal offence is under investigation or trial;

Provided that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

(2) A Government servant against whom a proceeding has been commenced on a criminal charge but who is not actually detained in custody (e.g., a person released on bail) may be placed under suspension under clause (c) of sub-rule (1) by an order made by any of the authorities mentioned in that sub-rule. If the criminal charge is related to the official position of the Government servant or involves any moral turpitude on his part, suspension shall be ordered under this sub-rule, unless there are exceptional reasons for not adopting such a course.

(3) A Government servant who is detained in custody for a period exceeding 48 hours under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or otherwise, shall be deemed to have been suspended, by an order of the appointing authority, with effect from the date of his detention and shall remain under suspension until further orders. A Government servant who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending a decision on the disciplinary action to be taken against him.

(4) (1) Where a penalty of dismissal, removal or compulsory retirement from service imposed on a Government servant under suspension or (2) a disciplinary proceeding pending against 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 directions, the order of his suspension shall be deemed to have continued in force—

(a) in the case where the penalty of dismissal, removal or compulsory retirement from service had been imposed, on and from the date of the order imposing such penalty, and

(b) in the case where the disciplinary proceeding was pending, on and from the date of the order placing the Government servant under suspension;

and in either case, the order of suspension shall remain in force until further orders.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed on a Government servant under suspension or a disciplinary proceeding pending against a Government Servant under suspension is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority on a consideration of the circumstances of the case decides to hold a further inquiry against the Government servant on the allegations on which the penalty was originally imposed or the disciplinary proceeding was originally started, the Government servant shall be deemed to have been placed under suspension by the appointing authority or any other authority empowered by the Governor to place a Government servant under suspension, with effect from the date on which the order imposing the penalty or dismissal, removal or compulsory retirement from service was made or where the disciplinary proceeding was pending, from the date on which the Government servant was originally placed under suspension.

An order of the suspension made or deemed to have been made under this sub-rule shall continue in force until it is modified or revoked by the authority competent to do so.

Note 1 (vide the Explanation below Note 1 to rule 9).

Note 2—A Government servant who is placed under suspension or be deemed to be under suspension in the circumstances mentioned in this rule shall, irrespective of the circumstances which lead to or result in the suspension, be entitled to subsistence allowance during the period of suspension, and to pay and allowances, on reinstatement, in respect of the period of suspension, under rules 71 and 72 of the West Bengal Service Rules, Part I, respectively:

Provided that in a case where a Government servant is detained in custody under any law providing for preventive detention, the subsistence allowance admissible under this rule shall be reduced by the amount of allowance if any paid to the detainee under the relevant laws or rules for the time being in force.

Part V—Discipline

8. Penalties.—The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:—

- (i) censure;
- (ii) withholding of increments or promotions;
- (iii) recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;
- (iv) reduction to a lower stage in the time-scale of pay for a specified period with further direction as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;
- (v) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government

servant to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of the restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;

- (vi) compulsory retirement;
- (vii) removal from service which shall not be a disqualification for future employment;
- (viii) dismissal which shall ordinarily be a disqualification for future employment under the Government.

Explanation.—The following shall not amount to a penalty within the meaning of this rule, namely:—

- (i) withholding of increments of a Government servant for failure to pass a departmental examination in accordance with the rules or orders governing the service or post or the terms of his appointment;
- (ii) stoppage of a Government servant at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
- (iii) non-promotion, whether in a substantive or officiating capacity, of a Government servant, after consideration of his case to a service, grade or post for promotion to which he is eligible;
- (iv) reversion to a lower service, grade or post of a Government servant officiating in a higher service, grade or post on the ground that he is considered, after trial, to be unsuitable for such higher service, grade or post or on administrative grounds unconnected with his conduct;
- (v) reversion to his permanent service, grade or post of a Government servant appointed on probation to another service, grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the rules and orders governing the probation;
- (vi) replacement of the service of a person borrowed from the Government of India or any other State Government or a local or other authority at the disposal of the authority which had lent his services;
- (vii) compulsory retirement of a Government servant in accordance with the provisions relating to his superannuation or retirement;
- (viii) termination of services—
 - (a) of a Government servant appointed on probation during or at the end of the period of probation, in accordance with the terms of his appointment or the rules and orders governing such probation, or
 - (b) of a Government servant having no lien or suspended lien on a permanent post under Government on the expiration of the terms of his appointment or where the appointment is for an unspecified period, after a month's notice or after payment of month's salary or wages in lieu of such notice, or
 - (c) of a seasonal employee (e.g., a punkha-puller) at the end of the season for which he is employed, expressly or impliedly, or
 - (d) of a Government servant employed under an agreement in accordance with the terms of such agreement.

Note 1.—If as a result of disciplinary proceedings, any of the penalties specified in this rule is imposed on a Government servant, a record of the same shall invariably be kept in the Confidential Character Roll.

A written warning given without any disciplinary proceedings, admonition or reprimand for offences of occasional and minor nature (such as delays in submitting cases, irregular attendance, etc.) does not amount to the imposition of the penalty of "Censure" and may not go into the Confidential Character Roll.

Note 2.—Failure on the part of a Government servant to intimate to his official superiors the fact of his arrest and the circumstances connected therewith, shall be regarded as suppression of material information and will render him liable to disciplinary action on that ground alone, apart from the action that may be called for on the outcome of the police case against him.

9. **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:

Provided that in a case where two or more Government servants are concerned, the Governor or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding. The order so made shall specify—

- (i) the authority which may function as the disciplinary authority for the purpose of such common proceedings,
- (ii) the penalties in rule 8 which such disciplinary authority shall be competent to impose, and
- (iii) whether the procedure prescribed in rule 10 or rule 11 shall be followed in the proceedings.

Note 1.—In all cases of fraud, embezzlement, or similar offences, the disciplinary authority shall take steps to institute departmental proceedings against all the delinquents and conduct them with strict adherence to the rules up to the point at which prosecution of any of the delinquents begins. At that stage it must be specifically considered whether further conduct of the departmental proceedings against any of the remaining delinquents is practicable, and if so, it shall continue as far as possible (which will not, as a rule, include finding and sentence). If the accused is convicted, the departmental proceedings against him shall be resumed and formally completed either by dismissing or removing the person from Government service or by reducing him in rank on the ground of his conviction. If the accused is not convicted, the departmental proceedings against him should be dropped unless the authority competent to take disciplinary action is of opinion that the facts of the case disclose adequate grounds for taking departmental action against him. In either case the proceedings against the remaining delinquents shall be resumed and completed as soon as possible after the termination of the proceedings in court.

Explanation.—Departmental proceedings shall not as a rule be initiated on the same charges or on charges substantially similar to those of which a Government servant is acquitted in consequence of or by a decision of a court of law. There is, however, no bar to further inquiries being undertaken in cases where it is held by the Court that the safeguards imposed by article 311 of the Constitution of India have not been properly followed and a subsequent inquiry may be made on the same charges or on charges substantially similar to those on which the penalties were originally imposed.

Discharge by the court on the submission of final report by the police does not, however, amount to acquittal and there is no bar to departmental proceedings being initiated after such discharge either on the same charges or on charges substantially similar to those leading to the discharge.

Note 2.—Where a Government servant (other than one to whom rule 12 or rule 13 applies) is transferred from the disciplinary control of one officer (hereinafter in this rule referred to as the first officer) to that of another officer (hereinafter in this rule referred to as the second officer), the first officer after such transfer, ceases to be competent to draw up proceedings against the said Government servant although the proposed charges relate to things done while he was under the disciplinary control of the first officer. In such a case, the second officer shall draw up proceedings at first and then ask the first officer to conduct the enquiry and submit the case to him for orders. One receipt of the report of the enquiry, the second officer may impose the penalty after observing the procedure detailed in rule 10 or otherwise dispose of the proceedings.

10. **Procedure for imposing penalties.**—(1) No order imposing any of the penalties specified in rule 8 shall be made except after an enquiry held in the manner provided in this rule.

(2) The disciplinary authority shall draw up or cause to be drawn up—

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of imputations of misconduct or misbehaviour in support of each article of charge which shall contain—
 - (a) a statement of relevant facts including any admission or confession made by the Government servant,
 - (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(3) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour prepared under clause (ii) of sub-rule (2) and shall require the Government servant to submit to the inquiring authority within such time as may be specified a written statement of his defence and to state whether he desires to be heard in person.

(4) The disciplinary authority shall in all cases for the purpose of enquiry appoint an inquiring authority and forward to it—

- (a) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) a copy of the statement of witness, if any;
- (c) evidence proving the delivery of the documents referred to in sub-rule (2) to the Government servant.

(5) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statements of imputations of misconduct or misbehaviour as the enquiring authority may, by a notice in writing specify in this behalf or within such further time not exceeding ten days, as the inquiring authority may allow.

(6) If the Government servant who has not admitted any of the articles of charge in his written statement of defence appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon. The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government servant pleads guilty. The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead or claims to be tried require the disciplinary authority or his representative to produce the evidence by which he proposes to prove the articles of charge and shall adjourn the case to a later date not exceeding 30 days, after recording an order that the Government servant may for the purpose of preparing his defence—

- (a) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (2);
- (b) submit a list of witnesses to be examined on his behalf;
- (c) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow asking for the discovery or production of any documents which are in the possession of Government but not mentioned in the list mentioned in sub-rule (2).

(7) The inquiring authority shall, on receipt of the notice for the discovery or production of documents forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, **not relevant to the case.**

(8) On receipt of the requisition referred to in sub-rule (7) every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government servant and withdraw the requisition made by it for the production or discovery of such documents.

(9) After the completion of the enquiry, a report shall be prepared and it shall contain—

- (a) the articles of charge and the statement or imputations of misconduct or misbehaviour;
- (b) the defence of the Government servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the finding on each article of charge and the reasons therefor.

(10) The disciplinary authority shall consider the record of the enquiry and record its findings on each charge.

(11) If the disciplinary authority, having regard to its findings on the charges, is of opinion that any of the penalties specified in clauses (i) to (iii) of rule 8 should be imposed, it shall pass appropriate orders on the case:

Provided that in every case in which it is necessary to consult the Commission, the record of the enquiry shall be forwarded by the disciplinary authority to the Commission for advice and such advice taken into consideration before passing the orders.

(12) If the disciplinary authority, having regard to its finding on the charges, is of opinion that any of the penalties specified in clauses (iv) to (viii) of Rule 8 should be imposed or where the Commission recommends, in any of the cases referred to it under sub-rule (11) one or other of the penalties specified in clauses (iv) to (viii) of rule 8 and the disciplinary authority agrees with the views, it shall—

- (a) furnish to the Government servant a copy of the report of the inquiring authority and a statement of its findings together with brief reasons for disagreement, if any, with the findings of the inquiring authority; and
- (b) give him a notice stating the punishment proposed and the grounds therefor and calling upon him to submit within a specified time such representation as he may wish to make on the punishment proposed but only on the basis of the evidence adduced during the inquiry.

(13) In every case in which it is necessary to consult the Commission, the record of the inquiry together with a copy of the notice given under clause (b) of sub-rule (12) and the representation made in response to such notice, if any, shall be forwarded by the disciplinary authority to the Commission for its advice.

(14) On receipt of the advice of the Commission the disciplinary authority shall consider the representation, if any, made by the Government servant as aforesaid, and the advice given by the Commission and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders on the case.

(15) In any case in which it is not necessary to consult the Commission, the disciplinary authority shall consider the representation, if any, made by the Government servant in response to the notice under clause (b) of sub-rule (12) and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders on the case.

(16) Orders passed by the disciplinary authority under sub-rule (9) or sub-rule (10) shall be communicated to the Government servant who shall also be supplied with a copy of the report of the enquiring authority and, a statement of its findings together with brief reasons for disagreement, if any, with the

findings of the enquiring authority, unless they have already been supplied to him, and also a copy of the advice, if any, given by the Commission and, where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

11. **Special procedure in certain cases.**—(1) Nothing in rule 10 shall apply in a case where—

- (i) a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (ii) the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for reasons to be recorded in writing, it is not reasonably practicable to hold such inquiry; or
- (iii) the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(2) If any question arises whether it is reasonably practicable to give any person an opportunity of showing cause under clause (ii) of sub-rule (1) the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

12. **Provisions regarding officers whose services are lent to the Government of India, etc.**—(1) Where the services of a Government servant are lent to the Government of India or any other State Government or to an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as the borrowing authority), the borrowing authority shall have the power of the appointing authority for the purpose of placing the Government servant under suspension and of the disciplinary authority for the purpose of taking disciplinary proceedings against him:

Provided that the borrowing authority shall forthwith inform the authority which lent his services (hereinafter in this rule and in rule 13 referred to as the lending authority) of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceedings, as the case may be.

(2) In the light of the findings in the disciplinary proceedings taken against the Government servant,—

- (i) if the borrowing authority is of opinion that any of the penalties specified in clauses (i), (ii) and (iv) of rule 8 should be imposed on him, it may, in consultation with the lending authority, pass such orders in the case as it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority and the borrowing authority shall transmit to it the proceedings of the inquiry and, thereupon the lending authority may, if it is the disciplinary authority, pass such orders thereon including an order to commence the proceedings de novo as it deems necessary, or if it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass such orders in the case including an order to commence the proceedings de novo as it deems necessary:

Provided further that in passing any such order the disciplinary authority shall comply with the provisions of rule 10.

- (ii) if the borrowing authority is of opinion that any of the penalties specified in clauses (iv) to (viii) of rule 8 should be imposed on him, it shall replace the services of the Government servant at the disposal of the lending authority and transmit to it the proceedings of the inquiry and, thereupon, the lending authority, may, if it is the disciplinary authority, pass such orders thereon including an order to commence the proceeding de novo as it deems necessary, or if it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass such orders in the case including an order to commence the proceedings de novo as it deems necessary:

Provided that in passing any such order the disciplinary authority shall comply with the provisions of rule 10.

Explanation.—The disciplinary authority may make an order under this clause on the record of the inquiry transmitted by the borrowing authority or after holding such further inquiry as it may deem necessary.

The disciplinary proceedings commenced by the borrowing authority shall be taken in accordance with the rules to which the Government servant proceeded against, is subject and in consultation with the Public Service Commission of the State in which the lending authority functions, where such consultation is necessary.

13. Provisions regarding officers borrowed from other Governments.— Subject to the concurrence of the lending authorities the provisions of rule 12 shall apply mutatis mutandis in case of officers borrowed from the Government of India, other State Governments or other lending authorities.

PART VI—APPEALS

14. Appeal against orders imposing suspension.—A Government servant who is suspended or is deemed to have been suspended under rule 7 may prefer an appeal against such suspension to the authority immediately superior to the authority by which he is suspended or is deemed to have been so suspended:

Provided that no appeal shall lie against any such order made by the Governor as the appointing authority.

15. Appeal against orders imposing the penalties specified in rule 8.—(1) A member of the West Bengal State Service, Class I or Class II, may appeal against an order imposing upon him any of the penalties specified in rule 8 to the Governor as persona designata:

Provided that where the appointing authority is subordinate to the Government, the appeal shall lie to the Government.

(2) A member of the West Bengal State Service, Class III or Class IV, may appeal against an order imposing upon him any of the penalties specified in rule 8 to the authorities specified in the corresponding entry in column 5 of Schedule I.

(3) Notwithstanding anything contained in sub-rules (1) and (2), an appeal against an order in a common proceedings held under rule 9 shall lie—

- (a) to the Governor as persona designata, if the disciplinary authority for the purpose of that proceeding is the Government, and
- (b) in other cases to the authority to which the authority functioning as disciplinary authority for the purpose of that proceeding is immediately subordinate.

16. Appeal against other orders.—(1) A Government servant may appeal against an order which—

- (a) denies or varies to his disadvantage his pay, allowance, pension or other conditions of service as regulated by any rules or by agreement, or
- (b) interprets to his disadvantage the provisions of any such rule or agreement,

to the Governor as persona designata, if the order is passed by the Government and to the Government, if the order is passed by any authority subordinate to it.

(2) An appeal against an order—

- (a) stopping a Government servant at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar,
- (b) reverting to a lower service, grade or post, a Government servant officiating in a higher service, grade or post otherwise than as a penalty,
- (c) reducing or withholding the pension of a Government servant or denying to him the maximum pension admissible under the rules, and
- (d) determining the pay and allowances for the period of suspension to be paid to a Government servant on his reinstatement or determining whether or not such period shall be treated as a period spent on duty for any purpose.

shall lie,—

- (i) in the case of an order made in respect of a Government servant on whom the penalty of dismissal from service can be imposed by the Government, to the Governor as persona designata, and

- (ii) in the case of an order made in respect of any other Government servant, to the authority to whom an appeal against an order imposing upon him the penalty of dismissal from service would lie.

Explanation.—In this rule,—

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

17. Period of limitation of appeals.—No appeal under this part shall be entertained unless it is submitted within a period of three months from the date on which the appellant receives a copy of the order appealed against:

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 submitting the appeal in time.

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 addressed to the authority to whom the appeal lies, a copy being simultaneously 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) 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 relevant records to the appellate authority without any avoidable delay and without waiting for any direction from the appellate authority.

19. Consideration of appeals.—(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, the appellate authority shall consider—

- (a) whether the procedure prescribed in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any of the provisions of the Constitution of India or in the failure of justice,
- (b) whether the findings are justified; and
- (c) whether the penalty imposed is excessive, adequate or inadequate,

and after consultation with the Commission, if such consultation is necessary in the case, pass orders—

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

Provided that no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty.

(3) In the case of an appeal against any order specified in rule 16, the appellate authority shall consider all the circumstances of the case and pass such orders as it deems just and equitable.

20. Implementation of orders in appeal.—The authority which made the order appealed against shall give effect to the orders passed by the appellate authority and in doing so, it shall furnish to the Government servant concerned,—

- (a) if the Commission was consulted as provided for in sub-rule (2) of rule 19, a copy of the advice given by the Commission and where such advice has not been accepted, a brief statement of the reasons for such non-acceptance; and
- (b) a copy of the order passed by the appellate authority in the case.

21. **Provision when disciplinary authority, etc., subsequently becomes appellate authority.**—Notwithstanding anything contained in this Part, where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellant authority in respect of the appeal against such order, such persons shall forward the appeal to the authority to which he is immediately subordinate and such authority shall, in relation to that appeal, be deemed to be the appellate authority for the purpose of the rules in this Part.

PART VII—MISCELLANEOUS PROVISIONS

22. **Review.**—(1) Notwithstanding anything contained in these rules the Governor may, either on his own motion or otherwise, call for the records of any case and review any order which is made or is appealable under these rules or the rules repealed by rule 24 and, after consultation with the Commission where such consultation is necessary, may—

- (a) confirm, modify or set aside, the order;
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed;
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as he deems fit :

Provided that no order imposing or enhancing a penalty shall be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such penalty or enhanced penalty.

(2) Orders passed under sub-rule (1) shall be given effect to by the authority which passed the original order and in doing so, it shall furnish to the Government servant concerned—

- (a) if the Commission was consulted as provided for in sub-rule (1), a copy of the advice given by the Commission and where such advice has not been accepted, a brief statement of the reasons for such non-acceptance, and
- (b) a copy of the order passed in the case by the Governor.

Note.—Detailed instructions for submission of petition to higher authorities are given in Appendix II. They do not apply to petitions made by Government servants asking permission to sue the Government in a court of law for redress of grievances arising out of employment or the conditions of service. Whenever any such petition is made either before or after exhausting the normal official channels of redress, the Government servant concerned shall be informed that the permission asked for is not necessary and that if he decides to have recourse to a court of law, he may do so on his own responsibility.

23. **Directions of Government.**—Where under these rules any authority subordinate to Government, not being an appellate authority, has been given power to pass any order, the exercise of that power shall be subject to such directions as the State Government may from time to time issue in this behalf.

24. **Interpretation.**—If any question arises relating to the interpretation of these rules, it shall be referred to the State Government whose decision thereon shall be final.

25. **Repeal and Savings.**—(1) Any rules, orders or notifications concerning matters covered by these rules including—

- (i) those contained in Parts XII and XIII of the Civil Services (Classification, Control and Appeal) rules issued with the Government of India, Home Department Notification No. 9-3-30-Ests., dated the 19th June 1930, and adopted by the State Government for application to the Gazetted services under their rule-making control, and
- (ii) the Bengal Subordinate Services (Discipline and Appeal) Rules, 1936, which were in force immediately before the commencement of these rules and

applicable to Government servants to whom these rules apply, are hereby repealed:

Provided that—

(a) such repeal shall not affect the previous operation of the said rules, notifications and orders or anything done or any action taken thereunder;

(b) any proceedings under the said rules, notifications or orders pending at the commencement of these rules shall be continued and disposed of so far as may be in accordance with the provisions of these rules.

(2) Nothing in these rules shall be construed as depriving any person to whom these rules apply of any right of appeal which had accrued to him under the rules, notifications or orders repealed by sub-rule (1) in respect of any order passed before the commencement of these rules.

(3) An appeal pending at or preferred after the commencement of these rules against an order made before such commencement shall be disposed of in accordance with these rules.

By order of the Governor,

J. L. KUNDU,

Financial Commissioner and Secretary
Finance Department.