

Disciplinary Proceedings

The rules are necessary not only for meeting out proper justice but also for ensuring that a delinquent Government servant is not let unpunished

Kerala Public Services Act, 1968

An Act formulated to regularize the recruitment and conditions of service of persons appointed, to the Public Services and posts in connection with the affairs of the State of Kerala.

KCS (CCA) Rules, 1960 framed by invoking Art.309 of the Constitution.

Fundamentals

Disciplinary enquires are fact finding investigations by administrative authorities to which the standards of criminal trial cannot be imported. The principles of natural justice have to follow as:

1. the person accused should know the nature of accusation made;
2. he should be given reasonable opportunity to state his case;
3. all the acts done and decisions taken must be in good faith

Sections of KCS (CCA) Rules

| | |
|-----------|--------------------------|
| Part I | - General |
| Part II | - Classification |
| Part III | - Appointing Authorities |
| Part IV | - Suspension |
| Part V | - Discipline |
| Part VI | - Appeals |
| Part VII | - Review |
| Part VIII | - Submission of Report |
| Part IX | - Miscellaneous |

General

Appointing authority

The authority which appointed the Government servant to such service, class, category or post

Disciplinary Authority

The authority competent under these rules to impose on him that penalty Services

Classification as a State or Subordinate service as the case

Applicable

Applicable to all Government servants except AIS officer, casual employment persons, coming under rules of special provision, resons temporarily transferred to the service etc.

Classification

State Services

The services coming under this category are included in Schedule I of the rules

Subordinate Services

The services coming under this category are included in Schedule II of the rules

Appointing Authorities

All appointments to State and Subordinate Services shall be made by the Government

Government, by general or special orders and subject to such conditions as specified, delegate to any other Authority the power to make such appointments

Suspension

The appointing authority or any authority to which it is subordinate or any other authority empowered by Government in that behalf may at any time place a Government servant under suspension [Rule-10]

- a) disciplinary proceedings contemplated or pending
- b) case in respect of any criminal offence under investigation
- c) final orders are pending in the disciplinary proceeding

Suspension made by an authority lower to appointing auth.

Government servant detained in custody whether on criminal charges or not for more than 48 hours

Where a penalty of dismissal, removal or compulsory retirement set aside by the court and fresh enquiry ordered, deemed to have been under suspension from the date of removal.

Order of suspension can be revoked by the authority made that order or an authority to which it is subordinate

Subsistence allowance and other allowances admissible under the rules shall be paid. Suspension orders must specify allowances

Discipline

Penalties

| Sl.# | Penalty | Details | |
|------|---|---|-------|
| 1 | Censure | | minor |
| 2 | Fine | | minor |
| 3 | Withholding of increments or promotion temporarily for a specified period | increments shall not be less than 3 months and promotions shall not be less than 6 months, and both shall not be more than three years. If period is not specified then at the minimum. | minor |
| | | Minimum period of permanent barring of increment shall not be less than one year and the maximum period shall not be for more than 3 years. If withholding of increment cannot be given effect, then equivalent monetary value can be deducted from the pay, pension or DCRG. | minor |

| | | | |
|-----|--|--|-------|
| 4 | Recovery from pay | Recovery from pay of the whole or part of any pecuniary loss caused to State/Central Governments or Local Authorities by negligence or breach of orders. | minor |
| 5 | Reduction to lower rank etc. | Reduction to a lower rank in the seniority list or to a lower grade or post or time-scale whether in the same service or in another service, State or Subordinate, or to a lower stage in a time scale. | major |
| | | Reduction to a lower grade or post shall be to the grade or the post immediately lower to the one held by the officer. Reduction in rank and seniority shall be permanent. | |
| v A | Withholding of increments with cumulative effect | If the punishment cannot be given effect, the monetary value equivalent to three times the amount of increments ordered to be withheld will be recovered. Not less than 6 months and not more than 5 years. If period not specified then 6 months. | major |
| 6 | Compulsory retirement | | major |
| 7 | Removal | Removal from Civil Service of the State Government which shall not be a disqualification for future employment unless otherwise directed specifically. | major |
| 8 | Dismissal | Dismissal from the Civil Service of the State Government which shall ordinarily be a disqualification for future employment. | major |
| 9 | Reduction or Pension | The penalty of reduction of pension shall be imposed in such a manner that pension will not be reduced to nothing or to a nominal amount. | major |

Special Penalties

In the case of Kerala Jails Service and Kerala Jails Subordinate Service.

Disciplinary Authorities

In the case of State Service it is the Government; Kerala Civil Judicial service is the High Court, District Judges, Munsiffs or Judicial Magistrates the Governor etc.

Authority to impose penalty when promoted – One competent to award penalty in the promoted post. [Rule-14]

Major Penalties

- ◆ Initiated on the basis of a petition or other information
- ◆ Shall be conducted only under the orders of the disciplinary authority or HOD.
- ◆ Subordinate authorities shall report the matter to the appropriate authority through proper channel

- ◆ Preliminary enquiry shall be conducted to ascertain whether prima facie ground exist for disciplinary action
- ◆ If a subordinate authority could not complete preliminary enquiry within 7 days, a preliminary report shall be sent to the disciplinary authority
- ◆ The statements obtained for preliminary enquiry may be got signed by the persons making the same.
- ◆ Definite charge or charges may be framed and communicated to the Government servant together with statement of allegations (Memo of charges placed as Annexure I)

Framing charges

- ◆ A single offence should not be split into multiple charges
- ◆ Distinct offences should not be merged into one charge
- ◆ Charges should be brief, pointed and couched in clear terms without any vagueness
- ◆ Date of occurrence of the incident and times wherever applicable should always find a place in the charge
- ◆ Charges should flow logically
- ◆ Supported by statement of allegations
- ◆ Two copies of charge memo served and one copy got back with signature. Another copy to the HOD.
- ◆ Charge memo should be signed by the appropriate Disciplinary Authority

Minor Penalties

- ◆ Any subordinate authority on the basis of the information received, if satisfied may result the imposition of minor penalty
- ◆ Frame definite charges with statement of allegations on which the charges are based
- ◆ The charges and statement of allegations shall be forwarded with a report to the Disciplinary authority competent to impose penalty
- ◆ Disciplinary authority consider the matter; can agree to it, modify it or drop it
- ◆ Memo of charge and statement of allegations (Memo of charges for minor penalties placed as Annexure II)

Written statement of defence

- ◆ All the points have been met
- ◆ Necessity to conduct oral enquiry or to give a personal hearing
- ◆ Charges admitted will be taken as proved
- ◆ Enquiry will be necessary for charges not admitted
- ◆ Action will be proceeded if failed to submit written statement within the specified time
- ◆ Extension of time may be considered
- ◆ Entitled to have access to:
 1. the complaint
 2. statements of witnesses

- 3. documentary evidence
- ◆ No right to demand copies of record, but can take extracts

Appointment of Inquiry authority

- ◆ If the disciplinary desires to conduct an enquiry, better to entrust to another officer who is not directly connected with the issue
- ◆ Formally appointed by an order of the appointing authority
- ◆ Copy of the order communicated to accused officer
- ◆ It is better to have a higher authority than the accused officer as the Inquiry authority
- ◆ Appointment of inquiry authority only after receipt of written statement of defence

Documents send to Inquiring authority

Acknowledged copy of the charge memo and statement of allegations

Written statement of defence, if any

All the statements of witnesses and documents

Inquiry authority is competent to modify the charges framed. If so, a further written statement of defence shall be desired within a reasonable time

Inquiry conclusion

Can consider oral evidences, but requires to be made before witnesses

All documentary evidences

Proved – considers its existence

Disproved – believes that it doesn't exist

Not proved – neither proved nor disproved

Retirement or resignation

A government servant against whom departmental proceedings are pending may be permitted to retire on provisional pension

Resignation of a Government servant against whom disciplinary proceedings are pending is permitted. But he is not eligible for further appointments in service.

Where a Government servant under suspension submits a resignation the competent authority should examine the case on merits. Normally it would not be correct to accept resignations from an officer under suspension

Procedure for formal enquiry

- ◆ Necessary only when a major penalty is likely to be imposed
- ◆ Date should be fixed and informed
- ◆ Oral enquiry file should be maintained
- ◆ Signature of Govt. servant and Authority
- ◆ Prosecution Witness shall be serially numbered and examined one by one
- ◆ Facility for cross examination
- ◆ Name and address of the witness to be recorded
- ◆ Statements of PWs kept together in one file

- ❖ Prosecution documents should be marked P1, P2 etc. and kept in separate groups
- ❖ Govt. Servants can produce his own witnesses known as Defence Witness. Similarly defence documents

Report of the Inquiry Authority

- ❖ Introductory paragraph, charges framed, admitted or dropped, charges actually inquired, brief statement of facts and evidence, points for determination, assessment of evidence and findings on each charge
- ❖ List of witnesses and exhibits
- ❖ Depositions of witnesses
- ❖ Daily order sheets
- ❖ Charges in brief
- ❖ Facts in evidence
- ❖ Defence
- ❖ Findings
- ❖ Page numbered and indexed

Disposal of Proceedings

- ❖ Consider the report of enquiry
- ❖ If major penalty furnish a copy of the report to the accused and action proposed against him
- ❖ Consultation with KPSC
- ❖ Pass appropriate order
- ❖ Issue in the name of the accused officer. Give copies of report, statement of findings and copy of the advice of the Commission

Appeals

Submitted individually in the appellant's own name
 Addressed to the prescribed appellate authority
 Sent through proper channel. Copy may be sent direct to the appellate authority
 The authority transmitting an appeal forward the records of the case with remarks

Appeal Conditions

No appeal against a punishment shall be entertained unless it is submitted within a period of two months from the date on which the appellant receives copy of the order.

Withholding of appeals

Consideration and disposal of appeals

No appeal against withholding of appeal

Review and revision

Government or an Appellate authority may review an order passed in the case by a subordinate authority

Government servant may be given opportunity for representation

In case of original order issued by Govt. only one review

Review time, other than Govt. is one month

Other than Govt., no review after one year

Miscellaneous

Where a doubt arises as to the interpretations of any of the provisions of these rules the matter shall be referred to the State Government whose decision thereon shall be final

Memo of Charges

Charge against Shri/Smt.-----, (post) -----, (office, place of appointment etc) -----.

- I. That you, Shri/Smt.----- while holding the post of (post) ----- in (office, place of appointment etc) -----committed the following irregularities:
 - i) Here enter the substance of the offence or offences alleged, specifying where relevant the date or dates, time and place or places concerned.
 - ii)
- II. You are required to show cause why disciplinary action as contemplated under Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 should not be taken against you. You are allowed 15 days from the date of receipt of this communication to submit your written statement of defence. If your written statement is not received within the specified time, the matter will be proceeded with on the presumption that you have no explanation to offer. You are also required to state whether you desire to be heard in person. You may peruse the relevant records mentioned in the statement of allegations and take down extracts from them if so desired, in the presence of the on any day prior to the due date for submission of your written statement of defence on any day which will be fixed in advance at your request.
- III. A statement of allegations on which the above charges are based is hereto attached.

(name of authority)
(designation)

Statement of Allegations

(Here enter the facts containing allegations against the officer)

- IV. The following are some of the witnesses who may be examined in this connection. Others also may be examined if found necessary (here enumerate the names and addresses of the witnesses who are proposed to be examined in support of the charge)

(name of authority)
(designation)

(List of documents relied upon in framing charges)

Memo of Charges

Charge against Shri/Smt.-----, (post) -----, (office, place of appointment etc) -----.

- V. That you, Shri/Smt.----- while holding the post of (post) ----- in (office, place of appointment etc) -----committed the following irregularities:
- i) Here enter the substance of the offence or offences alleged, specifying where relevant the date or dates, time and place or places concerned.
 - ii)
- VI. You are required to show cause, if any, why disciplinary action as contemplated under Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, (and or other rules applicable as may be specified) should not be taken against you. You are allowed 15 days from the date of receipt of this communication to submit your written statement of defence. If no such statement is received within the said period the matter will be proceeded with on the presumption that you have no defence.
- VII. A statement of allegations on which the above charges are based is hereto attached.

(name of authority)
(designation)

Statement of Allegations

(Here enter the facts containing allegations against the officer)

(name of authority)
(designation)

(List of documents relied upon in framing charges)