

Government of Bihar
General Administration Department

Notification

Patna-15, Date 20.8.2020

No-7/Ashta.-04-10/2018GAD.....7206 / In exercise of the powers conferred by the proviso to Article 309 read with Article 235 of the Constitution of India, the Governor of Bihar, in consultation with the Patna High Court, is pleased to make the following Rules-

BIHAR JUDICIAL SERVICE (CLASSIFICATION, CONTROL & APPEAL) RULES, 2020

PART- I
GENERAL

1. **Short title, extent and commencement.-** (1) These Rules may be called the "Bihar Judicial Service (Classification, Control and Appeal) Rules, 2020".
(2) It shall extend to whole of The State of Bihar.
(3) These Rules shall come into force from the date of its publication in the official Gazette.
2. **Definition.-** For the purposes of these Rules, unless there is anything repugnant in the subject or context:-
 - (a) 'Appointing Authority' in relation to a Government servant means the Governor of Bihar, in consultation with the High Court;
 - (b) 'Bihar Judicial Service' means the Judicial Services cadre;
 - (c) 'Cadre Authority', in relation to a service, has the same meaning as in the Rules regulating that service;
 - (d) 'Commission' means the Bihar Public Service Commission;
 - (e) 'Disciplinary Authority' means the Patna High Court;
 - (f) 'Government' means the Government of Bihar;
 - (g) 'Government servant' means a person who is a member of the Judicial Services Cadre;
 - (h) 'High Court' means the Patna High Court;
 - (i) 'Judicial Service Cadre' means members recruited through Bihar Civil Services (Judicial Branch), Recruitment Rules, 1955, such as Civil Judge (Junior Division) / Civil Judge (Senior Division) and members recruited through Bihar Superior Judicial Services Rules 1951 as District Judge (Entry Level).
 - (j) 'Misconduct' shall mean any conduct which is unbecoming of a government servant and is in violation of conduct Rules in force.
 - (k) 'Probationer' means a person appointed to a service on probation;
 - (l) 'Post' means any existing post under the Judicial services cadre of the State of Bihar and it includes the posts of the members serving on ex-cadre post also;

- (m) 'Standing Committee' means the Committee constituted under the Rules of the High Court at Patna, 1916.

3. These rules shall apply to every member of the Judicial Services Cadre:

Provided if any doubt arises with respect to the provisions of these Rules, the matter shall be referred to the High Court of Judicature at Patna, whose decision thereon shall be final.

PART II CLASSIFICATION.

4. **Classification of Bihar Judicial Services-** The Judicial Officers of the State shall be classified as follows:-

- (i) Civil Judge (Jr. Division)
- (ii) Civil Judge (Sr. Division)
- (iii) District Judge (Entry Level)

PART III APPOINTING AUTHORITY.

5. All appointments including promotion in the Bihar Judicial Services shall be made by the Governor of Bihar in consultation with the High Court:

Provided that the appointments in the cadre of Civil Judge (Sr. Division) shall be made by the High Court by promotion of Civil Judge (Jr. Division).

PART IV SUSPENSION.

6. **Order of suspension.-** (1) The Standing Committee of the High Court, may place a government servant of the Bihar Judicial Service under suspension when:-

- (a) a disciplinary proceeding against the government servant is contemplated or is pending, or
- (b) in the opinion of the authority aforesaid, the government servant has engaged himself or herself in activities prejudicial to the interest of the security of the State, or in public interest, or
- (c) a case against the government servant in respect of any criminal offence is under investigation, inquiry or trial and the competent authority is satisfied that it is expedient to suspend the government servant in public interest.

(2) A government servant shall be deemed to have been placed under suspension by an order of the Standing Committee with effect from the following date:-

- (a) from the date of his or her detention, if he or she is detained in custody, whether on a criminal charge or otherwise for a period exceeding forty-eight hours;
- (b) from the date of his or her conviction, if, in the event of a conviction for an offence he or she is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION- The period of forty-eight hours specified in clause (b) of this sub-rule shall be computed from the date of commencement of the imprisonment after the conviction and for this purpose intermittent periods of imprisonment, if any, shall be taken into account.

- (3) (i) After the custody period under sub-rule (2), the period of deemed suspension shall be deemed to end when the government servant gives his / her joining and the joining is accepted.
- (ii) If a decision is taken to suspend the government servant again under sub-rule (1) (a) or (b) or (c) of this rule, then such action may be taken only after acceptance of joining and by issuing a separate order of suspension.
- (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a government servant under suspension is set aside under these Rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.
- (5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a government servant 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 further inquiry against the government servant to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case, on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.
- (6) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the Standing Committee.
- (b) Where a government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or

otherwise) and any other disciplinary proceeding is commenced against him or her during the continuance of that suspension, the authority, competent to place him or her under suspension, may, for reasons to be recorded by it in writing, direct that the government servant shall continue to be under suspension till the termination of all or any of such proceedings.

- (7) Charge-sheet must be framed and communicated to the government servant within three months from the date of issue of suspension order failing which on expiry of three months, the suspension order shall be revoked unless the authority, which issued the suspension order, passes the order renewing the suspension alongwith reasons to be recorded in writing for the delay in framing of charge-sheet for a further period of four months;

Provided that after the expiry of extended period of four months, the suspension order shall stand revoked if the charge-sheet is not framed.

- 7. Subsistence allowance during suspension.**— (1) A government servant under suspension or deemed to have been placed under suspension shall be entitled to receive a subsistence allowance of an amount equal to the half average pay and in addition, dearness allowance admissible on such half pay;

Provided that where the period of suspension has exceeded twelve months, the authority, who has made such order of suspension, shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of first twelve months as follows:-

- (i) the amount of subsistence allowance may be increased by such a suitable amount, which shall not be exceeding fifty per cent of the subsistence allowance admissible during the period of the first twelve months, if in the opinion of the said authority, the period of suspension has been prolonged, for which, for reasons to be recorded in writing, the government servant is not responsible;
- (ii) the amount of subsistence allowance may be reduced by such a suitable amount which shall not be exceeding fifty per cent of the subsistence allowance admissible during the period of first twelve months, if, in the opinion of the said authority, the period of suspension has been prolonged, for which, for reasons to be recorded in the writing, the government servant is responsible;
- (iii) the rate of dearness allowance will be based on the rates increased or, the reduced amount, as the case may be, of subsistence allowance admissible under sub-clause(i) or sub-clause(ii) of this rule;

Provided further that the government servant shall be entitled to receive subsistence allowance only for such period when he is actually present at the headquarters during the suspension period.

- (2) No government servant shall be entitled to receive payment under sub-rule(1) unless he furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.
- (3) Where suspension is under sub-rule (2) of Rule 6, in that case also the subsistence allowance shall be admissible in accordance with sub-rule (1) above. As a result of deemed suspension due to detention in custody the payment of subsistence allowance may be made to the dependent nominated by the government servant on the basis of his authority. Such subsistence allowance shall be paid by the same establishment where the government servant was posted at the time of detention.
- (4) The Standing Committee shall be the competent authority to grant subsistence allowance and to increase or decrease the same.

8. Treatment of service on reinstatement and admissibility of pay and allowances after suspension.- (1) When a government servant under suspension is reinstated or would have been so reinstated but for his superannuation while under suspension, the Standing Committee shall consider and make specific order regarding the following:-

- (a) the pay and allowances to be paid to the government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be, and
 - (b) whether or not the said period shall be treated as a period spent on duty.
- (2) Notwithstanding anything contained in Rule 7 of these Rules, where a government servant under suspension has died before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as on duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended. While making such payment adjustment shall be made in respect of subsistence allowance and other allowances already paid and the adjustment of government dues or loans.
 - (3) Where the Standing Committee is of the opinion that the suspension was wholly unjustified, the government servant shall, subject to the provisions of sub-rule (8) of this Rule, be paid such full pay and allowances to which he would have been entitled, had he not been suspended. While making such payment adjustment shall be made in respect of subsistence allowance and other allowances already paid;

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the government servant had been delayed due to reasons directly for which the government servant is liable, it may, give the government servant an opportunity to make his or her representation and consider the representation, if any, submitted by him or her. After that it may direct, for reasons to be recorded in writing, that the government servant shall be paid for the period of such delay only such proportion of such pay and allowances as may be determined by it.

- (4) In cases falling under sub-rule (3) of this Rule, the period of suspension shall be treated as a period spent on duty for all purposes.
- (5) In cases other than those falling under sub-rules (2) and (3) of this Rule, the government servant shall subject to the provisions of sub-rules (8) and (9) be paid such proportion of the full pay and allowances to which he would have been entitled had he not been suspended, as the Standing Committee may determine. Such determination by the Standing Committee shall be done after giving notice to the government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within sixty days from the date on which notice aforesaid is served on the government servant.
- (6) Where suspension is revoked pending finalization of the disciplinary proceeding or proceedings in a court, any order passed under sub-rule (1) of this Rule before the conclusion of the proceedings against the government servant, shall be reviewed on its own motion, after the conclusion of the proceedings by the Standing Committee and an order shall be made by the Standing Committee in accordance with the provisions contained in sub-rule(3) or sub-rule(5) of this Rule, as the case may be.
- (7) In a case falling under sub-rule (5) of this Rule, the period of suspension shall not be treated as a period spent on duty, unless the Standing Committee specifically directs that it shall be the period spent for any specified purposes.
- (8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) of this Rule shall be subject to all other conditions under which such allowances are admissible.
- (9) The proportion of the full pay and allowances determined under the proviso to sub-rule(3) or under sub-rule(5) of this Rule shall neither be equal to full pay and allowances nor shall it be less than the subsistence allowance.

9. Treatment of service on reinstatement and admissibility of pay and allowances after dismissal, removal or compulsory retirement is set aside on review.-

- (1) When a government servant, who has been dismissed, removed or compulsorily retired, is reinstated as a result of review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the disciplinary authority shall consider and pass a specific order:-
 - (a) Regarding the pay and allowances to be paid to the government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be; and
 - (b) Whether or not the said period shall be treated as a period spent on duty.

(2) The government servant shall, subject to the provisions of sub-rule (6) this Rule be paid the full pay and allowances to which he / she would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, in cases:-

(i) Where the disciplinary authority is of opinion that the government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, or

(ii) Where the order of dismissal, removal or compulsory retirement from service is set aside on review solely on the ground of non-compliance of the requirement of these Rules and no further inquiry is proposed to be held;

Provided that where the reviewing authority is of the opinion that the termination of the proceedings instituted against the government servant had been delayed due to reasons directly attributable to the government servant, it may, after giving him an opportunity to make his representation and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the government servant shall, subject to the provisions of sub-rule (7) of this Rule, be paid for the period of such delay, only such proportion of such pay and allowances as it may be determined by such authority.

(3) In a case falling under sub-rule (2) of this rule, the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule (2) of this Rule, the government servant shall, subject to the provisions of sub-rule (6) and (7) of this Rule, be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the disciplinary authority may determine. The disciplinary authority shall determine the proportion of such payment after giving notice to the government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within sixty days from the date on which the notice aforesaid is served on the government servant.

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

Provided that if the government servant so represents, such authority may after consideration, direct that the period of absence from duty including the period of

suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the government servant.

- (6) The payment of allowances under sub-rule (2) or sub-rule (4) of this Rule shall be subject to all other conditions under which allowances are admissible.
- (7) The proportion of the full pay and allowances determined under the proviso to sub-rule (2) or under sub-rule (4) of this Rule shall neither be equal to the full pay and allowances nor less than the subsistence allowance and other allowances admissible under Rule 7, as the case may be.
- (8) Any payment made under this Rule to a government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the pay and allowances admissible under this Rule are equal to or less than the amounts earned during such employment elsewhere, nothing shall be paid to the government servant.

10. Treatment of service on reinstatement and admissibility of pay and allowances where dismissal, removal or compulsory retirement is set aside by a court of law.-

- (1) Where the dismissal, removal or compulsory retirement of a government servant is set aside by a court of law and such government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the government servant shall be paid pay and allowances in accordance with the provisions of sub-rule(2) or (3) of this Rule subject to the directions if any, of the court.
- (2) (i) In cases other than those covered by sub-rule(3) of this Rule, the government servant shall be paid such proportion of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, and as the disciplinary authority may determine. The disciplinary authority shall determine the proportion of such payment after giving notice to the government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection, within sixty days from the date on which the notice aforesaid is served on the government servant;

Provided that any payment under this sub-rule to a government servant shall neither be equal to the full pay and allowances nor less than the subsistence allowance and other allowances admissible under Rule 7, as the case may be.

- (ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal,

removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularized in accordance with the provisions contained in sub-rule(5) of Rule 9.

- (3) Where the dismissal, removal or compulsory retirement of a government servant is set aside by a court on the merit of the case, or where the dismissal, removal or compulsory retirement of a government servant is set aside by a court solely on the ground of non-compliance with the requirements of these Rules and no further inquiry is proposed to be held, the period intervening between the date of dismissal, removal or compulsory retirement as the case may be, and the date of reinstatement shall be treated as on duty for all purposes. As a result, the government servant shall be paid full pay and allowances for the period to which he would have been entitled, had he or she not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.
- (4) The payment of allowances under sub-rule (2) or sub-rule (3) of this Rule shall be subject to all other conditions under which such allowances are admissible.
- (5) Any payment made under this rule to a government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him or her through any employment during the period between the dismissal, removal or compulsory retirement and the date of reinstatement. Where the pay and allowances admissible under this Rule are equal to or less than those earned during such employment elsewhere, nothing shall be paid to the government servant.

PART-V

PENALTIES AND DISCIPLINARY AUTHORITIES.

11. **Minor and Major Penalties.-** The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a government servant, namely:-

Minor Penalties.-

- (i) Censure;
- (ii) Withholding of promotion;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iv) Reduction to a lower stage in the time-scale of pay for a period not exceeding three years, without cumulative effect.
- (v) Withholding of increments of pay without cumulative effect.

Major Penalties.-

- (vi) Withholding of increments of pay with cumulative effect.
- (vii) Save as provided for in clause (iv), reduction to a lower stage in 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;
- (viii) 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 or she was reduced, with or without further direction regarding conditions of 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;
- (ix) Compulsory retirement;
- (x) Removal from service which shall not be a disqualification for future employment under the Government;
- (xi) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government:

Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause(x) or clause(xi) shall be imposed:

Provided further that in any exceptional case and for special reasons to be recorded in writing, any other penalty may be imposed.

EXPLANATION (1).-The following shall not amount to a penalty within the meaning of this Rule, namely:-

- (i) *withholding of increments of pay of a government servant for his failure to pass any departmental examination in accordance with the Rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment;*
- (ii) *withholding of promotion of a government servant after consideration of his case to a service, grade or post for which he is eligible, whether he is in a substantive or in officiating capacity;*
- (iii) *non-promotion of a government servant, whether in a substantive or officiating capacity, after consideration of his case, to a service grade or post for promotion to which he is eligible ;*

- (iv) *reversion of a government servant officiating in a higher service, grade, or post to a lower service, grade or post or on any administrative ground unconnected with his conduct;*
- (v) *reversion of a government servant appointed on probation in any other Service, grade or post to his permanent Service, grade or post during or at the end of the period of probation in accordance with the terms and conditions of his appointment or the Rules and orders governing such probation;*
- (vi) *compulsory retirement of a government servant in accordance with the provisions relating to superannuation or retirement under rule 74 of the Bihar Service Code;*
- (vii) *termination of the service-*
 - (a) *of a government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms and conditions of his appointment or the Rules and orders governing such probation; or*
 - (b) *of a government servant, employed under an agreement, in accordance with the terms of such agreement.*

EXPLANATION (2).-*The penalties mentioned in the clauses (i), (ii), (iv), (v), (vi), (vii) and (viii) are explained as follows within the meaning of this rule-*

- (i) **Censure.**- *The Censure shall be entered in the character roll of the year the allegation or omission & commission. The adverse effect of censure on the confirmation and promotion of concerned Government Servant shall be for next three consecutive years after the year of allegation or omission & commission for which he or she is censured. For example, if a Government Servant is censured for the allegation or omission & commission of the year 2002-2003, it shall be entered in the character roll of 2002-2003 and its adverse effect shall be from the year 2003-2004 to 2005-2006.*

Such Government Servant who has been awarded with three censures, shall be deemed to be fit for promotion only if after expiry of the period of adverse effect of last (third) censure, during the next five years his work and conduct of at least three years is extraordinary and has not been awarded any adverse remarks for the period of next five years. For example, if the adverse effect of third censure of a Government servant expires in 2002 and his promotion is due in 2008 or before that, in that case his promotion shall be deemed to be due in 2008, i.e. five years after the expiry of adverse effects of last censure, with the condition that during the five years of 2003 to 2007 his work and conduct of at least three years is extraordinary and during the said five years he has not been awarded any adverse remarks.

- (ii) **Withholding of Promotion.**- *While awarding the penalty of withholding of promotion, it shall be essential to explain in the order of the disciplinary*

authority whether this penalty shall be for a particular period or for the whole service period.

(iii) *Reduction to a lower stage in the time-scale of pay for a period not exceeding three years, without cumulative effect:-* This penalty shall be effective from the date of issue of order. In this penalty the 'stage' means the stage of pay scale. As it is without cumulative effect, therefore after the expiry of the period of penalty the next stage shall be admissible adding the benefit of all the effected stages.

(iv) *Withholding of increments of pay without cumulative effect:-* Such penalty shall be effective from the date of issue of order, i.e. the increments due after the issue of the order shall be withheld. It will be essential to mention clearly the number of annual increments withheld in the order by the disciplinary authority. After the communication of order of penalty the increment shall remain withheld from the due date of next increment. For example, if two increments of a Government Servant are withheld without cumulative effect, it will mean that after the date of communication of order of penalty, from the due date of next increment till one year the first increment and from the second due date till one year the second increment shall remain withheld. As the penalty is without cumulative effect, the salary from the due date of third increment after the withholding of increments shall be paid with increment after adding the stages of both the withheld increments, but the financial benefit of withheld period shall not be admissible.

No promotion shall be considered during the period of operation of this penalty, i.e. for the number of years the increments are withheld. Only after the expiry of the period of penalty, it will be possible to consider on the promotion from the due date.

(v) *Withholding of increments of pay with cumulative effect:-* Such penalty shall be effective from the date of issue of order, i.e. the increments due after the issue of the order shall be withheld. It will be essential to mention clearly the number of annual increments withheld in the order by the disciplinary authority. After the communication of order of penalty the increment shall remain withheld from the due date of next increment. For example, if two increments of a Government Servant are withheld with cumulative effect it will mean that after the date of communication of order of penalty, from the due date of next increment till one year the first increment and from the second due date till one year the second increment shall remain withheld. The cumulative effect shall be for such number of years as is the increments withheld, but as the penalty is with cumulative effect therefore the withheld increments shall remain withheld for the whole service period. Under these circumstances, the salary from the due date of third increment after the withholding of increments shall be paid with increment without adding the stage of both the withheld increments.

No promotion shall be considered during the period of operation of this penalty, i.e. for the number of years the increments are withheld. Only after the expiry of

the period of penalty it will be possible to consider on the promotion form the due date.

- (vi) Reduction to a lower stage in time-scale of pay for a specified period, with further directions 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:- It shall be essential to mention clearly in the order the period of effect of such penalty and also whether annual increment will be earned during such period or not. It shall also be essential to explain whether on the expiry of period of penalty, further increments will be automatically admissible or will remain postponed, and if postponed the period of such postponement.

If the future increments are postponed after expiry of period of such reduction, in that case the promotion will be withheld for such number of years as is the number of years of withholding of increment.

- (vii) 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 or she was reduced, with or without further directions regarding conditions of 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:- It shall be essential to mention clearly in the order concerning this penalty whether its limit of effect shall be permanent or for indefinite period, or not. If the intention is not to make its limit of effect permanent or for indefinite period, in that case it shall be essential to mention the period of such reduction and the conditions of restoration after the completion of period of such reduction in the proposed penalty. Therefore, it shall be desirable for the disciplinary authority to invariably specify the following instructions in the order of penalty:-

- (a) the period of reduction, unless the clear intention is that the reduction should be permanent or for an indefinite period;
- (b) where the period of reduction is specified whether on the expiry of the period the Government Servant is to be promoted automatically to the post from which he was reduced; and
- (c) whether on such re-promotion, the Government Servant will regain his original seniority in the higher service, grade or post or higher time-scale which had been assigned to him prior to the imposition of the penalty.

EXPLANATION (3).-

Warning.- The warning is not a penalty within the meaning of this rule and due to this it has not been placed in any of the category of penalty. But the occasion may come when the disciplinary authority or his sub-ordinate authority may need to criticize a Government Servant due to his carelessness, lack of interest, delay in execution of work etc. Such criticism may be done by warning him orally or in writing, so that the work of the Government Servant may be

improved. It is also possible that after the procedure of disciplinary proceeding for an allegation i.e. after the scrutiny of explanation it is concluded that it will be sufficient to warn the delinquent person instead of censuring him. In that circumstances the 'Warning' awarded should be entered into the character roll. But with the entering into character roll such 'warning' cannot be converted into 'censure'. However such warning has the effect on the merit of the Government Servant or on his being considered for promotion on higher post. Such 'warning' cannot be a 'censure' because while awarding 'warning' he was not considered to be censured. If there is entry of 'two warnings' in the character roll of a Government Servant, the said 'warnings', due to the aforesaid reasons, neither be deemed to be converted into 'censure' nor be equivalent to 'a censure'. But it does not mean that Government Servant may have so many 'warnings' entered into his character roll. The 'warnings' has the effect of adverse remarks. If there is no improvement in the work despite warning, the reporting/reviewing officer is competent to record the remarks accordingly.

If a Government Servant is awarded 'warning' after adopting the prescribed procedure of awarding penalty (i.e. after giving an opportunity to explain his conduct and keeping in view the explanation submitted by him) and which is entered into character roll, in that case it shall have the adverse effect for next one year on the confirmation and promotion of the Government Servant. If five 'warnings' are entered into the character roll of a Government Servant, he shall be deemed to be fit for promotion, if after expiry of the period of adverse effect of the fifth warning, during the next five years his work and conduct of at least three years is extra-ordinary and he has not been awarded any adverse remarks for the period of next five years.

12. Disciplinary Authority.- The High Court may impose any of the penalties specified in Rule 11 on any government servant.

13. Authority to initiate proceedings.- The Standing Committee of Patna High Court is empowered to initiate departmental proceeding against any government servant.

PART-VI

PROCEDURE FOR IMPOSING PENALTIES.

14. Procedure for imposing major penalties.-(1) No order imposing any of the penalties specified in clauses (vi) to (xi) of Rule 11 shall be made without holding an inquiry, as far as may be, in the manner provided in these Rules.

(2) Wherever the disciplinary authority is of the opinion that there are grounds for inquiring about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules, an authority to inquire about the truth thereof.

EXPLANATION- Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) of this Rule to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up:-

- (i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain:-

- (a) a statement of all relevant facts including any admission or confession made by the government servant;

- (b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the government servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour together with list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule(2) of this Rule, an inquiry authority for the purpose it may do so and where all the articles of charges have been admitted by the government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in Rule 15.

- (b) If no written statement of defence is submitted by the government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint, under sub-rule(2) of this Rule an inquiry authority for the purpose, it may do so.

- (c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner, to be known as the "Presenting Officer" to present on his its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records to the inquiring authority:-

- (i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour,
- (ii) a copy of the written statement of defence, if any, submitted by the government servant;
- (iii) a copy of the statement of witnesses, if any, specified in sub-rule(3) of this Rule.
- (iv) evidence proving the delivery of the documents specified to in sub-rule(3) of this Rule to the government servant; and
- (v) a copy of the order appointing the "Presenting Officer".

(7) 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 statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf or within such further time, not exceeding ten days, as may be specified by the inquiring authority.

(8) The government servant may take the assistance of other government servant posted in any office, either at his headquarter or at the place where the inquiry is to be held or a retired government servant, to present the case on his behalf;

Provided that he may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits;

Provided also that the government servant may take the assistance of any other government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing, so permits;

Provided further that the government servant shall not take the assistance of any such other government servant who has three pending disciplinary cases on hand in which he has to give assistance.

(9) If the government servant, who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has to say anything for his defence 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.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the government servant pleads guilty.

(11) The inquiring authority shall, if the government servant fails to appear within the specified time or refuses or omits to plead, requires the Presenting Officer 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 thirty days, after recording an order that the government servant may, for the purpose of preparing his defence:-

- (i) 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 in sub-rule (3) of this Rule;
- (ii) submit a list of witnesses to be examined on his behalf;

NOTE – If the government servant applies in writing for the supply of copies of the statement of witnesses mentioned in the list referred to in sub-rule (3) of this Rule, the inquiring authority shall furnish him with such copies as early as possible.

- (iii) give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list specified in sub-rule(3) of this Rule;

Provided that the government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) 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.

(13) On receipt of the requisition specified in sub-rule (12) of this rule, 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 will be against public interest of 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.

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in his discretion, allow the Presenting Officer to produce evidence not included in the list given to the government servant or may itself call for new evidence or recall and re-examine any witness and in such case the government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, excluding the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice;

Provided that new evidence shall not be permitted or called for or any witness shall not be recalled to supplement the evidence. Such evidence may be called for if there is any inherent lacuna or defect in the evidence, produced originally.

(16) When the case for the disciplinary authority is closed, the government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer.

(17) The evidence on behalf of the government servant shall then be produced. The government servant may examine himself on his own behalf if he so prefers. The witnesses produced by the government servant shall then be examined and they shall be liable to examination, cross-examination and re-examination according to the provisions applicable to the witnesses.

(18) The inquiring authority may, after the government servant closes his case, and shall, if the government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the government servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer and the government servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry *ex-parte*.

(21) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the basis of evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(22) (i) After the conclusion of the inquiry, a record shall be prepared and it shall contain:-

- (a) the articles of charge and the statement of the 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 findings on each article of charge and the reasons thereof.

EXPLANATION.- If in the opinion of the inquiring authority the proceedings of the inquiry may establish any article of charge different from the original articles of the charge, he may record his findings on such article of charge;

Provided that the findings on such article of charge shall not be recorded unless the government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include:-

- (a) the report prepared by it under clause (i) of this sub rule;
- (b) the written statement of defence, if any, submitted by the government servant;

- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the Presenting Officer or the government servant or both during the course of the inquiry; and
- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

15. Action on the inquiry report:-

- (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the Inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14 as far as may be.
- (2) The disciplinary authority, after receipt of the enquiry report as per Rule 14, sub-rule (22) (ii) or as per sub-rule (1) of this Rule, shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.
- (3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2) of this Rule, to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.
- (4) The disciplinary authority shall consider the representation or submission, if any, submitted by the government servant before proceeding further in the manner specified in sub rules (5) and (6) of this Rule.
- (5) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of rule 11 should be imposed on the government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty.
- (6) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (vi) to (xi) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the government servant any opportunity of making representation on the penalty proposed to be imposed.

"Provided that the penalties of dismissal from service, removal from service and compulsory retirement shall take effect after such proposal of the Disciplinary Authority is notified by the Governor of Bihar."

16. Procedure for imposing minor penalties:-

- (1) Subject to the provisions of sub-rule (3) of rule 15, no order imposing on a government servant any of the penalties specified in clauses (i) to (v) of rule 11 shall be made except after:-
 - (a) informing the government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
 - (b) holding an inquiry in the manner laid down in sub-rules (3) to (22) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
 - (c) taking the representation, if any, submitted by the government servant under sub-rule (1) clause (a) of this Rule and the record of inquiry, if any, held under clause (b) into consideration; and
 - (d) recording a finding on each imputation of misconduct or misbehavior.
- (2) The record of the proceedings in such cases shall include-
 - (i) a copy of the intimation to the government servant of the proposal to take action against him;
 - (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
 - (iii) his representation, if any;
 - (iv) the evidence produced during the inquiry;
 - (v) the findings of each imputation of misconduct or misbehaviour; and
 - (vi) the orders on the case together with the reasons therefor.

17. Special procedure in certain cases.-

Notwithstanding anything contained in Rule 14 to 16:-

- (i) where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge; or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by him in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these Rules; or
- (iii) where the Government is satisfied that in the interest of the State, it is not expedient to hold any in the manner provided in these Rules.

— the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i).

18. Communication of Orders.- Orders made by the disciplinary authority shall be communicated to the government servant who shall also be supplied with a copy of its finding on each article of charge, or where the disciplinary authority is not the inquiring authority, a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the inquiring authority.

19. Common Proceedings.- (1) Where two or more government servants are concerned in any case, the government 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.

NOTE:- If the authorities competent to impose the penalty of dismissal on such government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

(2) Any such order shall specify:-

- (i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;
- (ii) the penalties specified in Rule 11, which such disciplinary authority shall be competent to impose;
- (iii) whether the procedure laid down in Rule 14 and Rule 15 or Rule 16 shall be followed in the proceeding.

PART - VII

Appeal / Review

20. Appeal / Review.- (1) No appeal would lie against the order of the penalty passed under Rule 11 however an aggrieved Judicial Officer may prefer a review in the form of memorial before the Governor against any order made by the Disciplinary Authority including an order imposing any of the major penalties or minor penalties under Rule 11, as the case may be.

(2) Such a review shall be preferred within forty five days from the date of communication of the order imposing any such penalties to him.

Provided that the authority competent under these Rules to make any order may for good and sufficient reasons or if sufficient cause is shown, extend the time specified under this Rule and condone the delay.

(3) The Governor on receipt of the memorandum of review from the aggrieved Judicial Officer, shall forward the same to the High Court for its opinion and on receipt of the opinion from the High Court, the Governor shall decide the review in accordance with the opinion duly forwarded by the High Court.

- (4) A review so preferred shall be disposed of preferably within three months from the date of filing of the Memorandum of review to the Governor.

21. Removal of doubts.- (1) In case of any doubt as to the interpretation of any of the provisions of these Rules, the matter shall be referred to the High Court whose decision thereon shall be final.

(2) The provisions of the Bihar Service Code and the Bihar Pension Rules shall mutatis mutandis apply on the Government Servant in such matters for which there is no provision in these Rules.

22. Power to make regulations.- (1) The High court may make regulations to carry out all or any of the purposes of these Rules.

(2) All regulations made under these Rules shall be published in the Official Gazette.

23. Repeal and savings.- (1) All rules corresponding to these rules, orders and resolution, if any, in force immediately before the commencement of these rules are hereby repealed in respect of the matters covered by these rules.

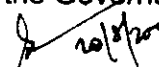
Provided that –

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

(b) any proceeding under the repealed rules, notification or orders pending at the commencement of these rules, shall be continued and disposed of, as far as may be, in accordance with these rules.

(2) A review pending, or preferred, on the commencement of these rules against an order made before the commencement of these rules, shall be disposed of in accordance with Rule 20.

By order of the Governor of Bihar

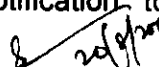

(Ghufuran Ahmad)

Deputy Secretary to the Govt.

Memo no.-7/Ashta.-04-10/2018GAD.....7206...../Patna-15, dated 20.8.2020

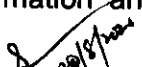
Copies in duplicate along with its C.D. forwarded to Superintendent, Govt. Press, Gulzarbagh, Patna and E-Gazette cell, Finance Department, Bihar, Patna for Publication in Forth coming issue of extra ordinary Gazette.

2. Kindly send 200 (Two Hundred) Copies of this notification to General Administration Department.


Deputy Secretary to the Govt.

Memo no.-7/Ashta.-04-10/2018GAD.....7206...../Patna-15, dated 20.8.2020

Copy forwarded to the Accountant General, Bihar, Patna/Registrar General, High Court, Patna/Principal Secretary, Cabinet secretariat with reference to Cabinet item no.-13 dated 18.08.2020/Secretary, Law Department, Bihar, Patna/ Secretary, Bihar Public Service Commission, Patna/All District & Session Judges/All Departments/ All Head of Departments and I.T. Manager, G.A.D. for information and necessary action.


Deputy Secretary to the Govt.