

No. 15(7)/1999-DPE (GM)-GL-98
Government of India
Ministry of Heavy Industries and Public Enterprises
(Department of Public Enterprises)

Public Enterprises Bhawan
Block No. 14, C.G.O. Complex
Lodhi Road, New Delhi-110 003
Dated the 26th November, 2009

OFFICE MEMORANDUM

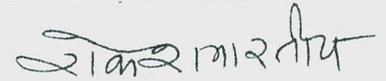
Subject: Amendment in the Model Conduct, Discipline & Appeal Rules of Central Public Sector Enterprises (CPSEs) to enable imposition of penalty on Public sector Employees after their retirement.

The undersigned is directed to refer this Department's O.M of even number dated 16.12.1999 on the subject mentioned above and the circular dated 28.12.2007(copy enclosed) issued by Central Vigilance Commission (CVC) on the subject "Amendment to CDA Rules of PSEs to enable imposition of penalties on Public Sector Employees after their retirement" and to say that as already indicated in DPE's O.M dated 16.12.1999 the disciplinary proceedings instituted during service shall be deemed to be proceeding and be continued and concluded in the same manner as if the employee had continued in the service.

2. CVC has quoted the Supreme Court judgment dated 18.5.2007 in the Case of Shri Ramesh Chandra Sharma Vs Punjab National Bank where the Apex Court has upheld the punishment of dismissal on a retired employee. In the context of Supreme Court decision, the CVC has stressed for a need to incorporate suitable provisions in the CDA Rules to enable the imposition of penalty on delinquent employees on conclusion of such departmental proceedings which were initiated during their service time and have continued beyond the date of their superannuation. The CPSEs may make suitable provisions in their CDA Rules accordingly, if not made already, in the light of CVC's advice.

3. All the administrative Ministries/Departments are requested to issue instructions to the CPSEs under their jurisdiction to incorporate suitable provisions in their respective CDA Rules in this regard.

Encls: As stated



(Rakesh Bhartiya)
Director

All administrative Ministries/ Departments(addressed to Secretaries by name)

Copy to:

1. Chief Executives of all CPSEs.
2. All CVO s of Ministries/Departments/CPSEs
3. DG, SCOPE

Copy also to CVC (Shri K.S.Ramasubban, Secretary, Central Vigilance Commission) w.r.t. their D.O. No.007/BGL/074/216 dated 3.1.2008.

No.007/VGL/074
Government of India
Central Vigilance Commission

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Satarkata Bhavan,
Block A, GPO Complex,
INA, New Delhi-110023
Dated the 28th Dec. 2007

Circular No. 44 /12/07

Subject :-Amendment to CDA Rules of PSUs to enable imposition of penalty on Public Sector Employees after their retirement – reg.

The Commission has been seriously concerned that as Public Sector Undertakings (PSUs) are non-pensionable establishments, there is no possibility of imposing any penalty on such deviant employees after their retirement, who might have committed serious lapses while in service, just before their retirement. The gratuity amount also could not be withheld unless the person had been terminated consequent to disciplinary proceedings and the question of terminating an employee or imposing a penalty retrospectively, after retirement is not legally tenable. There was a situation that even disciplinary proceedings could not be continued against them beyond the retirement.

2. The Commission had earlier advised Public Sector Enterprises to make a provision in their CDA Rules to allow continuation of departmental proceedings after retirement of an employee. (There is a need to incorporate a suitable provision to enable the imposition of penalty on delinquent employees on conclusion of such departmental proceedings continued beyond the date of their superannuation.

3. It is observed that the Public Sector Banks have incorporated a provision in their CDA Rules for deemed continuation of service for this purpose. The said provision reads as under:

“The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF.”

4. The Hon'ble Supreme Court of India has recently upheld the punishment of dismissal on a retired Bank employee on conclusion of departmental proceedings after his retirement, on the basis of the above provision, thus validating its legality. In its judgement dated 18.5.07 in the case of Shri Ramesh Chandra Sharma Vs Punjab National Bank, it has further noted that -

“.....it may be true that the question of imposition of dismissal of the delinquent officer from service when he has already reached the age of superannuation

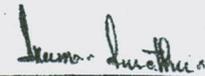
would not ordinarily arise. However, as the consequences of such an order is provided for in the service rule, in our opinion, it would not be correct to contend that imposition of such a punishment would be wholly impermissible in law.”

5. The Supreme Court has further held that –

“The said Regulation clearly envisages continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuation. For the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature should be given full effect.”

“The effect of a legal fiction is well-known. When a legal fiction is created under a statute, it must be given its full effect, as has been observed in East End Dwellings Co. Ltd. v. Finsbury Borough Council 1951 (2) All E.R. 587 as under....”

6. As the legality of the above provision has been upheld by the Supreme Court, all Public Sector Undertakings are advised to amend their CDA Rules in order to incorporate a similar provision. The receipt of this circular may be acknowledged and action taken to amend the CDA Rules along with a copy of the amended rules, may be sent to the Commission by 20.01.2008.



2.9/2/2007 (Vineet Mathur)
Deputy Secretary

To

1. The Secretary, Department of Personnel & Training
2. The Secretary, Department of Public Enterprises
3. The Secretary, Department of Administrative Reforms & Public Grievances
4. All Secretaries to the Ministries/Departments of the Government of India
5. The Chairman, SCOPE
6. All Chief Executives of Public Sector Enterprises
7. All CVOs of Ministers/Departments/PSEs