

GOVERNMENT OF ASSAM
OFFICE OF THE DIRECTOR OF HIGHER EDUCATION, ASSAM
KAHILIPARA, GUWAHATI-19

No.DHE/PA/4/2017/3

Dated kahilipara the 11th March/2017

C I R C U L A R

Guidelines of Departmental Proceedings.

It has been observed that Departmental Proceedings are dealt with in an irregular manner resulting in Court cases. It is seen that on the recommendation and request of Governing Bodies, Teachers and staff of Colleges have been placed under suspension and the matter left at that stage for months and years resulting in Court cases and at times, embarrassment to Government. It has come to light that after suspension, matters left at that stage without any follow up action and govt. servant had to be reinstated with full pay resulting in loss to the govt. and frustrating the govt. guidelines.

The Departmental action against Government Servant takes a determined path as per rules.

Departmental Action against a Government Servant is governed by **Assam Services (Discipline And Appeal Rules) 1964 as amended. The various Stages of Departmental Proceedings is as follows which must be followed by this office.**

1. As per Rule 15 of the Assam College Employees (Provincialisation) Rules 2010 all employees of Provincialisation Colleges are governed by Assam Services (Discipline & Appeal) Rules 1964.

The Appointing Authority i,e the Director is the Disciplinary Authority.

2. **Preliminary Enquiry:** A preliminary Enquiry is to be caused leading allegation against to commission of an act necessitating departmental action. The Governing Body may recommend to the Director that the particular govt. servant should be proceeded against departmentally. The Governing body should prepare definite charges against the Government servant.

3. **On receipt of report,** the Director will decide as to whether it is in the interest of Public Service to place the govt. servant under suspension or he can be

proceeded with without placing him under suspension. Suspension is not necessary in all the case. Even major penalty can be imposed by the Disciplinary authority on culmination of Enquiry without placing a govt servant under suspension. As such suspension is not *sin-qua –non* of a departmental action.

Suspension is resorted to when the Disciplinary Authority thinks that the continuation of the Govt. servant in his position may lead to tempering with of evidences to be used against the govt. servant. Rule 6 (1)

Service of Show Cause to the Delinquent Govt. Servant: After initiation of Departmental action a Show Cause is to be issued to the Govt. Servant giving precise charges in a prescribed format. The Show cause should be accompanied with a statement of allegation which must state the documents and list of witnesses to be used against the govt. servant. This is a mandatory provision. It is seen in this office that after months of suspension no show cause has been served in proper format to the govt. servant. All government servants are protected under Article 311 of the Constitution of India and a show cause in proper form is necessary to be served. The case of an Asst. Professor in MC College is a glaring example , where he was suspended in 2014 and no show cause issued by this office till date. It came to light only when the govt. servant approached the Honble High Court.

Constitution of Enquiry Committee: The Disciplinary Authority i.e. The Director has to constitute an Enquiry Committee with one officer as Enquiry Officer and another official as Presenting officer. The Enquiry officer shall

- I. Analyse the reply by the Govt. servant
- II. will examine witnesses , record evidence
- III. will furnish the govt. servant copies of documents and allow him to see documents to be used against him.
- IV. will hear the delinquent govt. servant
- V. can summon witnesses on a particular date
- VI. may visit the college

Preparation of Enquiry report

The Enquiry officer will prepare final report Charge to Charge, he will avoid matters not related or part of the Charge framed against him. If additional

charge comes to light, additional charge has to be framed and communicated to govt. servant.

Communication of Report to the delinquent govt. servant :

The Disciplinary Authority i.e. the Director will send a copy of the report of enquiry so received to the delinquent govt. servant. It is mandatory as per amended Rule 9 B. If this report is not sent to the delinquent govt. servant, the entire proceedings are vitiated.

Final order imposing Penalty. The Disciplinary Authority, ie. the Director will impose penalty as detailed under rule 7 of the Rules against the Govt. Servant on the basis of the Report so placed.

Treating suspension period as on duty or not on duty - FR 54 B of FR/SR.

When penalty is imposed , the suspension was not illegal, hence the Disciplinary authority generally treats the suspension period not on duty, in such cases the emoluments that are drawn as subsistence allowances are the legitimate due of the delinquent servant for the period spent on suspension.

If the Enquiry results in acquittal of the govt. servant, the Disciplinary Authority treats the period as on duty and he draws full pay of the period spent on suspension.

Keeping a govt. servant long under suspension is illegal and not visualised by the rules, the Enquiry is to be completed within six months as per the mandate of rule.

Provision of Rules. Rule 6 (2)

A Government servant who is detained in custody, whether on a criminal charge or otherwise for a period exceeding forty- eight hours shall be deemed to have been suspended with effect from the date of such detention, by an order of the Appointing Authority and shall remain under suspension until further orders.

Enquiry. Rule 9 (4)

On receipt of the written statement of defence, or if no such statement is received within the time specified, the Disciplinary Authority may itself inquire into

such of the charges as are not admitted or, if it considers it necessary so to do, appoint for the purpose a Board of Inquiry or an Inquiring officer.

The Disciplinary Authority may nominate person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any other Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose, unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits.

Communication of orders Rule 9(A) :- Orders made by the Disciplinary Authority shall be communicated to the Government servant who shall also be supplied with a copy of the report of the Inquiry, if any, held by the Disciplinary Authority and a copy of its findings on each charge, or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report if the Inquiring Authority together with brief reasons for its disagreement, if any, with the findings of the Inquiring 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.

Sd/-(B.L Sarma, ACS)

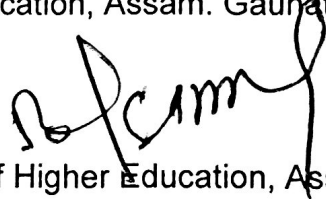
Director of Higher Education, Assam

Dated kahilipara the 11th March/2017

Memo No. DHE/PA/4/2017/3-A

Copy to :-

1. All Officers of this Directorate/ All Dealing Asstt. Of G(B) Branch.
2. All Principal of Govt. & Provincialisation Colleges of Assam.
3. The Sr. FAO of this Directorate.
4. The Sr. Standing Counsel, Higher Education, Assam. Gauhati High Court, Guwahati



Director of Higher Education, Assam
Kahilipara, Guwahati-19.