

GOVERNMENT OF RAJASTHAN
DEPARTMENT OF PERSONNEL & ADMINISTRATIVE REFORMS
(PERSONNEL A-I/ACR)

No.F.13(52)Karmik/ACR/90

Dated the 23rd April, 1990.

C I R C U L A R

Sub:- Compulsory retirement under Rule
244(2) of the Rajasthan Service Rules.

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Attention is invited to the provisions of Rule 244(2) of the Rajasthan Service Rules which invest the Appointing Authority with the absolute right to retire in the public interest any government servant, by giving him 3 months clear notice in writing, or pay and allowances in lieu of such notice after completion of 25 year's qualifying service or attaining the age of 50 years or any date thereafter. The Chief purpose of this Rule is to enable Government to weed out, in the public interest, government servants whose efficiency is found to be impaired or whose integrity is considered doubtful.

2. Government have issued guidelines on the subject from time to time and these were also reiterated in the year 1985. However, it has been observed that sufficient importance has not been given to implementing these guidelines and instructions. It is, therefore, considered necessary to streamline the procedure and clarify the position in regard to the more important aspects on which important rulings have been also given by the Courts. Now, therefore, in supersession of this Deptt. Circular, No. F.13(45)Karmik-ACR/78 dated 13-9-85 on the subject of retirement under Rule 244(2) of the RSR, the revised procedure to be adopted in dealing with cases of compulsory retirement will be as prescribed in the ensuing paragraphs.

3. On the 1st of April every year, each Appointing Authority shall prepare a list to be drawn of persons who would be completing 25 year's qualifying service or attaining the age of 50 years by the 30th June next. Such lists should be drawn up separately for each service, cadre of category of employees under the Appointing Authority concerned. The list should be in the

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form of a statement under the following headings :-

1. S.No.
2. Name of Officer.
3. Department to which belongs.
4. Designation.
5. Date of birth
6. Date of commencement of qualifying service.
7. Date of completion of 25 years' qualifying service.
8. Date of superannuation.
9. Date of attaining 50 years of age.
10. Recommendations of the Internal Screening Committee.

4. Cases of government servants included in the list mentioned above shall first be examined by the Screening Committee internal to the department. The Internal Screening Committee may consist of two officers nominated by the Appointing Authority as a Standing Committee and not as a body set up ad-hoc only at the time when cases are considered for premature retirement. The senior officers nominated to ^{the} Internal Screening Committee should, as far as possible, be such as have knowledge of the working of the department and the performance of officers and staff in general. The main functions of the Internal Screening Committee would be to prepare a comprehensive brief of each employee for consideration by the review Committee which would be finalising their recommendations for compulsory retirement under rule 244(2) of the RSA.

PERUSAL OF ENTIRE SERVICE RECORD :

5. The Internal Screening Committee should prepare a brief on the perusal of the entire service record of a government servant. However, the screening may ordinarily be confined to the preceding five years or to the period in the higher post, in case of promotion within the period of five years, where retirement is sought to be made for ineffectiveness. There is no such stipulation where the government servant is to be retired on grounds of doubtful integrity. The reports regarding integrity and effectiveness in the job should be scrutinised specially by the screening committee.

The term 'service record' is to be construed in the wider sense and the review should not be confined to the consideration of only the annual confidential

remarks recorded in the APAR of the government servant. In certain departments, Government servants deal with files relating to contracts, settlement of claims, making purchases and discharging bills, assessing taxes or excise duties etc. In many cases, doubts might have arisen on the bonafide nature of action taken by an employee but no concrete action was taken, for want of adequate proof in a regular departmental enquiry leading to punishment under the Rajasthan (CCA) Rules. Where the personal file of the officer has details of the nature of doubt concerning his integrity or results of preliminary investigations carried out are available, these should also be considered and placed before the Review Committee. Where details of such cases are on a separate main file, but have not been brought on the personal file of the government servant, the Internal Screening Committee should take care that extracts from such subject-matter file, or the file itself, is also placed before the Review Committee for consideration. This should be done well ahead of the meeting of the Screening Committee or Review Committee so that a total assessment of the performance of the government servant is possible at the appropriate time.

6. The above interpretation draws support from a number of judicial pronouncements. It has also been held that any measure by which the assessment of a superior who has had the opportunity to watch the conduct of the government servant, is also taken into account while deciding premature retirement, is relevant and valid. In *Union of India vs. M.L.Reddy and another* (AIR 1980-SC 563) the Supreme Court has observed as follows :

"It will indeed be difficult, if not impossible, to prove by positive evidence that a particular officer is dishonest, but those who have had the opportunity to watch the performance of the said officer in close quarters are in a position to know the nature and character not only on his performance but also of the reputation that he enjoys." In *R.L. Butali vs. Union of India and another* (1971) 2 S.C.R. 55, the observation was :

"It may well be that in spite of the work of the appellant being satisfactory, as he claimed it was, there may have been other relevant factors, such as the history of the appellant's entire service and confidential reports throughout the period of the service, upon which the appropriate authority may still decide to order appellant's retirement under P.A. 56(j)."

what has been ruled above, in relation to the provisions of F.R. 56 (j), is applicable to cases dealt with in accordance with the provisions of Rule 244(2) of the RSR.

ANNUAL PERFORMANCE APPRAISAL REPORTS:

7. Entries in the APAR dossier of an officer will, of course, form a very important part of the total service record taken into account while reviewing any proposal for compulsory retirement. There might be certain mis-conceptions relating to the procedure to be adopted in this behalf and clarifications may be given as below :

(a) The general impression prevalent that the Screening or Review Committees shall not take into account any remark that has not been communicated to the officer, is not a self-restraint that should invariably hold good in all circumstances. Specifically, non-communication of an adverse entry in regard to the doubtful integrity may not be fatal in certain circumstances.

(b) In a particular case, while an odd adverse remark that may not have been communicated to the officer concerned, could be taken into account as part of the total service record considered by the Screening or Review Committee, it would not, as a matter of course, be appropriate to take into account adverse remarks which have not been communicated to the officer.

(c) Another point to be kept in view is that when the overall assessment is made of the record of a government servant, more than ordinary value should be attached to the confidential remarks pertaining to the years immediately preceding the screening. It is possible that a government servant having a somewhat erratic record in the earlier years of the service might have so greatly improved with the passage of time that it would be appropriate to continue him in service upto the prescribed age of superannuation. Whatever value the confidential remarks may have, those pertaining to the later years immediately preceding the review are of direct relevance and hence of utmost importance .

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(d) To sum up, relevance should not be placed only on the APAR dossier, but the entire service record including personal or other files relating to the officer should be taken into account .

8. No employee should ordinarily be retired on grounds of ineffectiveness if he would be retiring on superannuation within a period of one year. It may be clarified, however, that this instruction is relevant only when an employee is proposed to be retired only on the ground of ineffectiveness, but not in cases where the action is contemplated on the ground of doubtful integrity.

9. The above interpretation draws support from what the Supreme Court have observed in the case Union of India vs. M.E.Reddy and others, in the following words:

"Mr. Krishnamurthy Iyer appearing for Reddy submitted that the order impugned is passed on materials which are non-existent in as much as there are no adverse remarks against Reddy who had a spotless career throughout and if such remarks would have been made in his confidential report, they should have been communicated to him under the rules. This argument, in our opinion, appears to be based on a serious misconception. In the first place, under the various rules on the subject, it is not every adverse entry or remark that has to be communicated to the officer concerned. The superior officer may make certain remarks while assessing the work and conduct of the subordinate officer based on his personal supervision or contact. Some of these remarks may be purely innocuous or may be connected with general reputation of honesty or integrity that a particular officer enjoys."

10. The Supreme Court have also not accepted the plea that a remark of a general nature, without basing it on a specific instance, does not give an adequate opportunity for representation against it and should not, therefore, be taken into account. In the case R.L. Butali vs. Union of India, the Court had observed as follows :

"The contention, therefore, that the adverse remarks did not contain specific instances and were, therefore, contrary to the rules, cannot be sustained. Equally unsustainable is the corollary that because of the omission, the appellant could not make an adequate representation and that, therefore, the confidential reports are vitiated."

ACTION SHOULD BE IN THE PUBLIC INTEREST:

11. The departments must ensure that action under Rule 244(2) of the RSR is a bonafide action taken in the public interest. Any contention that action in this regard is based on arbitrariness or malice or influenced by extraneous or irrelevant considerations is closely enquired into by the Courts and on such a contention being uphold, the order of compulsory retirement is liable to be struck down. It is, therefore, essential that action for compulsory retirement is taken on bonafide considerations and in an appropriate manner. The final order issued to the government servant concerned must specify that action had been taken in the public interest, as the form appended to this circular makes this requirement clear.

12. It is also clarified that compulsory retirement under Rule 244(2) of the RSR should not be used to punish a government servant on grounds of specific acts of misconduct as a short cut. To illustrate this further, where a departmental enquiry has been conducted on an alleged misconduct and the stage has been reached as to the decision by the Competent Authority about the punishment to be imposed, it would not be appropriate to issue instead an order of compulsory retirement under Rule 244(2) of the RSR.

13. At the same time, the intention of the previous paragraph is not that when an officer has reached the stage in service when review under Rule 244(2) of the RSR can be initiated and a specific act of misconduct also comes to notice at that time, action under Rule 244(2) of the RSR cannot be taken. It is well settled that action under Rule 244(2) of the RSR is not a punishment, that there is no stigma attaching to it and that no civil consequences follow. These conclusions apply to an individual case when an order under Rule 244(2) of the RSR is not a cover for what is, in fact, a punishment sought to be imposed. However, where any departmental enquiry has been initiated and the specific allegation or misconduct involving lack of integrity is only one of the facts on the service record of the officer, which has to be considered in toto, the order under Rule 244(2) of the RSR can quite justifiably be passed for the same is appropriate otherwise also. This view draws strength from what has been observed by the Supreme Court in the case of *Tara Singh Vs. State of Rajasthan* (1975).

14. It may also be mentioned that provisions of Rule 244(2) of the RSR correspond to the Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. In the case of State of Uttar Pradesh vs. Chandra Mohan Nigam and others 1978 (1) SLR 12, it was observed by the Court : "We should hasten to add that when integrity of an officer is in question, that will be an exceptional circumstance for which orders may be passed in respect of such a person under rule 16(3), at any time, if other conditions of that rule are fulfilled, apart from the choice of disciplinary action which will also be open to Government."

CONSTITUTION OF STATE REVIEW COMMITTEE :

15. (A) For officers in the State Services or on posts with pay scales whose minimum stage is Rs 4100/- or above, viz., pay-scales No. 24 and above, the Committee shall consist of the following :-

- i) Chairman, Board of Revenue, or an officer of equivalent rank nominated by the Government;
- ii) Secretary of the administrative department; and
- iii) Special Secretary, LOP(I).

(B) For officers in State Services (other than the RAS and RSS) or on posts with pay-scales whose minimum stage is Rs 3450/- or above, excluding those covered vide (A) above, (viz. Pay-Scales Nos. 22 & 23), the Committee shall consist of the Secretary of the administrative department and the Special Secretary, LOP-I.

(C) For officers in State Services (other than the RAS and RSS) or on posts not covered by (A) or (B) above and excluding members of the Subordinate and Ministerial Services, the review committee shall consist of the Secretary of the administrative department or his nominee not below the rank of the Deputy Secretary and the Dy. Secretary, LOP(A-I) -

Note: For the above purpose the Secretary of the administrative department would be the Secretary who controls the services concerned; and in case of isolated posts the Secretary of the Department where that post is located.

(D) For members of the RAS and RSS, the review committees shall consist of one Commissioner and Secretary to the State Government nominated by the Chief Secretary and the Special Secretary (LOP-I).

(E) For Subordinate Services, the review committee shall consist of the Head of Department/Appointing Authority and an officer of the Department not below the rank of Joint Head of Department to be nominated by the Head of Department. Where there is no post of a Joint Head of Department, the Deputy Head of Department may be nominated.

(F) For Ministerial and Class IV Services and posts, the review committees shall consist of Head of Department or his nominee not below the rank of Deputy Head of the Department and the Head of Office concerned.

TIME FRAME :

16. Review Committee should meet as soon as the briefs on the Government servants coming within the scope of rule 244(2) of the RSR have been prepared. In each year this work should commence from 1st July by which time the APARs would have been drawn up. The entire work of the internal screening committee and the review committee should be completed by 31st of October.

17. In cases where the appointing authority is State Government, the lists of officers concerned alongwith their service rolls and service record should be submitted by the Secretary of the administrative department for the approval of the Minister In-charge and the Chief Minister through the Chief Secretary. After approval the orders for compulsory retirement under rule 244(2) of RSR will be issued by the administrative Secretary. In other cases orders should be issued by the appointing authority concerned- in the form annexed to the circular.

18. The Government servant proposed to be retired compulsorily under rule 244(2) is entitled to a notice of three months. There can be two ways of retiring them namely:

- (i) They may be given Bank Draft of the amount equivalent to three months pay and allowances in lieu of notice period along with the order of retirement. This should be adopted when it is considered that the services of such officer should be dispensed with immediately.
- (ii) Where there is no such urgency they may be given three months' notice alongwith retirement orders and after the expiry of three months' notice period they may be relieved immediately. If during the notice period, the Government servant applies for leave the same may be considered for sanction as per rules but it may be ensured that the period of leave sanctioned does not exceed beyond the date of expiry of the notice period.

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19. In its desire to tone up the administration and make it more responsive, the State Government attach great importance to this work and expect that each Administrative Secretary and Head of Department shall monitor and review the progress of work at their level and ensure strict compliance of these instructions.

By Order,

(V.B.L. MATHUR)
CHIEF SECRETARY TO GOVERNMENT.

Copy forwarded to the following for information and necessary action :-

1. The Secretary to Governor/ Chief Minister
2. All Commissioners and Secretaries to Government/ Special Secretaries/Deputy Secretaries to Government.
3. All Private Secretaries to Minister/State Minister and Chief Secretary to Government.
4. All Divisional Commissioners.
5. All Heads of Departments (including Collectors) .to please circulate this to their subordinates Appointing Authorities under their control.
6. All Sections of the Secretariat/Codification Section (A/R) with 7 spare copies.

Copy also forwarded to :

1. The Accountant General, Rajasthan, Jaipur.
2. The Secretary, Rajasthan Legislative Assembly, Jaipur.
3. The Secretary, Rajasthan Public Service Commission, Ajmer.
4. The Secretary, Lokayukta Sachivalaya, Jaipur
5. Registrar, Rajasthan High Court, Jodhpur.
6. Additional Registrar, Rajasthan High Court, Bench, Jaipur.
7. Registrar, Rajasthan Civil Services Appellate Tribunal, Jaipur.

23/4/90
DEPUTY SECRETARY TO GOVERNMENT.

(Circular No.4/90)