

No. Per(AP.B)B(18)-1/2006  
Government of Himachal Pradesh  
Department of Personnel  
Appointment-II

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Dated Shimla-171 002, 15<sup>th</sup> February, 2019

From

Addl. Chief Secretary (Personnel) to the  
Government of Himachal Pradesh

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All the Heads of Departments in H.P.
3. All the Divisional Commissioner in H.P.
4. All the Deputy Commissioner in H.P.

Subject:

Strengthening of Administrative-Review of cases of Govt. servants attaining the age of 50/55 years or completing 30 years of service under the H.P. Civil Services (Premature Retirement) Rules, 1976. Guidelines relating to action where integrity of the Government servant is doubtful.

Sir/Madam,

I am directed to invite your attention to this Departments letter of even number dated 16/18-11-1985 vide which instructions were issued to assess the suitability of Government servants for further retention in service beyond the age of 50/55 years or completion of 30 years of service and to weed out those whose integrity is doubtful.

2. The Hon'ble High Court of Himachal Pradesh in CWPII No. 111 of 2017 has issued directions to the Government to evolve a Policy mechanism to ensure that where integrity of the officer/official is under doubt, he should not be given sensitive or administrative posting and also to explore the possibility of invoking its power to retire the Government employees/officers/officials pre-maturily in public interest wherever they have become deadwood or liability on account of their doubtful integrity.

3. Hence, the aforesaid instructions are re-iterated and be adhered to strictly by all concerned in order to ensure compliance of Hon'ble Court orders.

Yours faithfully,



(Om Prakash Bhandari)  
Deputy Secretary (Personnel) to the  
Government of Himachal Pradesh  
Tel No. 0177-2626097

Copy of H.P. Government Department of Personnel O.M. No. PER(AP-II)B(2)-16/75 dated 16/18-11-1985 addressed to all Secretaries, Heads of Departments etc.,

(Referred to in para 24.4)

Subject: Strengthening of Administration-Review of cases of Govt. servants attaining the age of 50/55 years or completing 30 years of service under the H.P. Civil Services (Premature Retirement) Rules, 1976. Guidelines relating to action where integrity of the Government servant is doubtful.

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The undersigned is directed to say that instructions were issued with regard to premature retirement of Government servants with a view to strengthening of Administration vide letter No. 4-2/67-DP(Apptt-II) dated the 19th September, 1975. According to the instructions the Appointing Authorities were required to assess the suitability of Government servants for further retention in service beyond the age of 50/55 years or on completion of 30 years of service and to weed out those whose integrity is doubtful. Further guidelines were also issued to locate others who are ineffective and have outlived their utility to continue on the posts they are holding. But doubts in this behalf are still being raised by the departments. Therefore, the matter has further been examined and it has been felt to

issue further instructions to supplement those conveyed earlier on the following lines.

Persual of entire service record

2. The entire service record of an officer should be considered at the time of review. Consideration has ordinarily to be confined to the preceding 5 years or to the period in the higher post, in case of promotion within the period of 5 years, only where retirement is sought to be made on grounds of ineffectiveness. There is no such stipulation, however, where the employee is to be retired on grounds of doubtful integrity.

3. The term "service record" is all-embrasive and review should not hence be confined to the consideration of only the annual confidential remarks recorded on the officers. In the case of a number of Departments, officers take action for concluding contracts, settling claims assessing taxes or duties payable etc., Doubts may have arisen relating to the bonafide nature of action taken by the officer, but on account of inadequate proof, it may not have been possible to initiate action for regular departmental inquiry, leading finally to a punishment of the nature that may find entry in the C.R. dossier of the officer. But the personal file of the officer may have details of nature of doubt that arose regarding the integrity of the officer and the result of the preliminary investigation that was carried out. Matters found on the personal file of the officer can and should also, therefore, be placed before the Review Committee and not only the C.R. dossier of the officer.

4. It is likely that each allegation that comes to the notice against the integrity of the officer may have been handled on a separate file and that details thereof may not be available on the personal file of the officer, which is confined only to establishment matters, like increments, promotions, leave, P.F. advances etc., In such a situation, well ahead of the meeting of the Review Committee, the Department will have to compile together all the data available in the separate files and prepare a comprehensive brief for consideration of the Review Committee.

5. There are a number of judicial pronouncements in support of the instructions above that a total assessment of the performance of the Government servant can be made. There have also been observations that assessment by the superiors, with the opportunity to watch the work and conduct of the an officer, is taken into account while deciding premature retirement.. In Union of India vs. M.E. Reddy and another (AIR 1980-SC 563) the Supreme Court observed:-

"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. Butail Vs. Union of India and other (1971)2 S.C.R. 55 the observation was:

"It may well be that inspite 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 the FR 56 (j)".

6. For preparing a comprehensive brief on each officer, for being placed before the Review Committee, the departments may consider the setting up of an internal Screening Committee to assist the Reviewing Committee consisting to the extent possible of those Senior Officers who have had occasion to know about the work and conduct of the officer proposed to be reviewed. Such Screening Committees may be constituted for each different rank or each different functional area, as may be necessary or convenient. These may be set up as a standing arrangement and a Screening Committee is not to be constituted as a separate adhoc measure, only at the time when the case of a particular officer is taken up for consideration of premature retirement.

#### Annual confidential Remarks

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7. Entries in the C.R. dossier of an officer will of course form a very important part of total service record taken into consideration while reviewing any proposal for premature retirement. There are, however, certain misconceptions relating to the procedure to be adopted in this behalf, and clarifications are being given below, again based on judicial pronouncements.

8. The general impression prevalent that the Review Committee 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. Non-communication of an adverse entry in regard to the doubtful integrity may not be fatal in certain circumstances. The Supreme Court observed in the case Union of India Vs. M.E. Reddy and another, already referred to in para 5 above:-

"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 the remarks may be purely innocuous or may be connected with general reputation of honesty or integrity that a particular officer enjoys".

9. However, even though Reddy's case was referred to in the case of Brij Behari Lal Vs. High Court of Madhya Pradesh (AIR 1981-SC-594), the Supreme Court, taking into account the fact that certain adverse remarks had not been communicated, held the order under the FR 56 (j) as invalid. The position that emerges, therefore, is that, 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 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.

The Supreme Court has also not accepted the contention that a remark of 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. Butail Vs. Union of India, already referred to in para 5 above, it has been observed:-

"The contention, therefore, that the adverse remarks did 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."

10. Another point to be kept in view is that when an 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 review. It is possible that a Government servant having a somewhat erratic record in the early years of service may have so greatly improved with the passage of time that it would be appropriate to continue him in service

up to prescribed age of superannuation. Whatever value the confidential remarks of earlier years may possess, those pertaining to the later years immediately preceding the review are of direct relevance and hence of utmost importance. This view has been expounded in the case of Brij Behari Vs. High Court of Madhya Pradesh, referred to above and has been followed in J.D. Srivastva Vs. State of Madhya Pradesh (AIR 1984 SC 630).

11. The Department of Personnel is aware of the general tendency noticed among reporting/reviewing officers to desist from expressing their suspicions against the integrity of an officer reported upon, while recording annual confidential remarks. In any case, reliance should not be placed only on the C.R. dossier, but the entire service record including personal or other files relating to the officer should be taken into account when premature retirement is under consideration, as already explained in paras 3 to 6 above.

Action should be in the public interest

12. The principles of natural justice do not get attracted in the context of the specific provisions in the H.P. Civil Services (Premature Retirement) Rules, 1976. This means that no opportunity to show cause against the proposed action of premature retirement is to be given to the officer concerned. The order issued to the officer has to specify that action has been taken in the public interest as the form appended to the letter No: 4-2/67-DP (Apptt-II) dated 19th September, 1975, makes requirement abundantly clear. Action taken should in fact, be bonafide and in the public interest based upon relevant grounds and not be arbitrary or actuated by malafides. Any contention that the action has been influenced by extraneous or irrelevant considerations, arbitrariness or malice will be closely inquired into by the Courts, and if the contention is upheld the order of premature retirement is liable to be struck down. It is, therefore, absolutely essential that Departments should ensure that action for premature retirement is taken in an appropriate manner.

13. No employee should ordinarily be retired on grounds of ineffectiveness, if he would be retiring on superannuation within a period of one year. It is clarified that this instruction is relevant only when an employee is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity. The damage to public interest could be marginal if an old employee, in the last year of his service, is found ineffective, but the damage may be incalculable if he is found corrupt and demands or obtains illegal gratification during the said period for the tasks he is duty bound to perform.

14. Premature retirement should not be used to retire a Govt. servant on grounds of specific acts of misconduct, as a short cut to initiating formal disciplinary proceedings. It is clarified that the intention is not that when an officer has reached the stage in service when review under the Premature Retirement Rules can be initiated and, at that time, a specific act of misconduct also comes to notice, action under the Premature Retirement Rules cannot be taken. It is well settled that premature retirement under Premature Retirement Rules is not a punishment, that there is no stigma and that no civil consequences follow. These conclusions will apply to an individual case only when an order under Premature Retirement Rules is not a cover for what is, in fact, a punishment sought to be imposed. Hence illustratively where on an alleged misconduct a departmental inquiry has been conducted and the stage has been reached as to the decision by the competent authority of the punishment to be imposed, it would not be appropriate to issue, instead, an order of premature retirement under Premature Retirement Rules. But where no departmental inquiry has been initiated and the specific allegation of misconduct involving lack of integrity is only one fact on the service record of the officer, which has to be considered in toto, an order under Premature Retirement Rules can quite appropriately be passed if the same is otherwise justified. Each case has to be considered and decided on its own merits. Rule 16 (3) of All India Services (Death-cum-Retirement) Rules, 1976 corresponds to FR 56(j) and H.P. Civil Services (Premature Retirement) Rules, 1976 and in the case of State of Uttar Pradesh Vs. Chandra Mohan Nigam and others 1978 (1) SLR 12 it was observed:-

"We should hasten to add that when integrity of an officer is in question, what will be an exceptional circumstance for which order 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."

15. It is hoped that with these supplementary instructions Departments will now take effective action under Premature Retirement Rules against officers whose integrity is doubtful.

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Annexure 24.6

H.P. Govt. Department of Personnel letter No. PER (AP-II) B(18)-1/81 dated 19-9-1987 addressed to all Secretaries, Heads of the Departments etc.

[Referred to in para 24.4. (h) ]