

No.1331-3S-74/26263

From

The Chief Secretary to Government, Haryana.

To

All Heads of Departments,
Commissioner Ambala/Hissar Division
All Deputy Commissioners and all Sub Divisional
officers in Haryana.

The Registrar, Punjab and Haryana
High Court and all Districts and
Sessions Judges in Haryana.

Dated Chandigarh, the 4th November, 1974.

Sub: Efficiency bars-stoppage of efficiency bars under
the provisions of C.S.R.

Sir,

I am directed to invite reference to Haryana Government
circular letter No 5474-3S-73/2078 dated 29th January, 1974, on
the subject noted above and to say that Government have decided to
make the following amendment in the instructions contained in that
communication:-

substituted
vide letter
No. 37/21/
81-S(I) dt.
14.1.82

An employee who has earned an adverse remarks against integrity
or has been awarded any penalty in consequence of any disciplinary
proceeding indicating lack of integrity, during the period of
which the work and conduct is taken into consideration should
not be allowed to cross the efficiency bar, provided that if any
such report or the incident which led to the imposition of any penalty
indicating lack of integrity is older than 10 years, the competent
authorities may take a lenient view of it.

Sd/-
Deputy Secretary Political & Services,
for Chief Secretary to Govt. Haryana,

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Extract from advice dated 6.7.1973 given by the Advocate General Haryana.

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Rules relevant to the questions are set out for convenience of reference.

C.S.R. Volume I Part I

4.7 An increment shall ordinarily be drawn as a matter of course, unless it is withheld. An increment may be withheld from a Government servant by a competent authority if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the

* authority withholding and whether the postponement shall have effect of postponing future increments.

4.8. where an efficiency bar is prescribed in a time scale the increment next above the bar shall not be given to a Govt. servant without the specific sanction of the authority empowered to withhold increments under rule 4.7. or the relevant disciplinary rules applicable to the Government servant or of any other authority whom the Governor may, by general or special order, authorise in this behalf.

Note 3:- The cases of all officers held up at the efficiency bar should be reviewed annually with a view to determine whether the quality of their work has improved and generally whether the defects for which they were stopped at the bar have been remedied to an extent sufficient to warrant the removing of the bar.

Whether a show cause notice is required to be given. Neither Rule 4.8 nor Note 3 thereunder enjoins issue of show cause Notice. Is the obligation to issue one implicit? In other words, can it be spelt out? The answer to it depends upon whether the power conferred requires/ attracts quasi judicial approach or is intrinsically administrative. A bare reading of rule 4.8 alongwith Rule 4.7 leaves no room for controversy that the purpose for which the power to withhold increment next above the efficiency bar has been vested is to conserve efficiency in the service and that

contd....

while exercising it the competent authority will keep view the conduct and work of a civil servant as may be depicted by the confidential reports entered in his case during the years preceding the Efficiency bar. These alone are the governing factors. It seems beyond contest that at the competent authority is made the sole judge to decide by an honest assessment whether or not to release the efficiency bar in a given case.

So viewed and this to my mind, is the only way it can be viewed the power conceded by Rule 4.8 cannot be regarded anything but administrative. It will do violence to the language of the rule if the same were to be characterised as quasi-judicial requiring consequently the issue of a show cause notice prior to taking decision in the matter. The interpretation of the rule in this manner is fully in accord with the well-known judicial tests laid for determining character of power.

May be, that in the process the civil servant against whom an adverse decision is taken suffers civil consequences; but that is an inevitable outcome of the exercise of power conferred and cannot by any means serve as a test for discovering the nature of the power itself. As a result I am of the considered opinion that it is not made necessary for the competent authority to issue show cause notice to the civil servant before taking decision so as to withhold in his case the increment next above the bar.

Power initially administrative continues to be so all along and there is nothing in Note 3 to compel a different interpretation so that it is as much open to the authority to take decision without resort to show cause notice at the stage of annual review.

Situation is, however, different in a case where disciplinary authority, of which rule 4.8 make mention, proceeds to exercise the power thereunder. In such a case the provisions of the Punjab civil services (Punishment and

appeal) Rule, 1952, appendix 24 to C.S.R. Volume 1 Part II will regulate the action. Rule 4(ii) classifies stoppage at an efficiency bar as one of the minor penalties. Rule 8 provides that no order under Rule 4(ii) shall be passed imposing a penalty on a Government servant unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation has been taken into consideration. Rule thus requires the issue of a show cause notice prior to making of an order imposing the penalty in the nature of stoppage of increment at the efficiency bar.

Appart from what has been said above in answer to the question, I wish to point out what appears to me to be indispensable requirements of the Rules under interpretation. In order to ensure fairness and eliminate arbitrariness the authority is under an obligation to record invariably and on each occasion an order fully justifying stoppage of increment and immediately thereafter convey with reasonable precision to the civil servant effected there by the infirmities in his conduct and/or work of which the order takes notice so as to enable him to focus attention and strive to rectify them. In some ^{cases} civil servants are felt by the authority to be unsuited to the service, yet upon the scrutiny of their service records it is not found possible to concretise their inefficiency or deficiency with the result that it becomes too difficult to convey infirmities in their conduct and performance. In such cases in my view the authority will do well not to exercise the power rather than expose itself to all possible criticism at the hands of the Court. I have taken the opportunity of making these observations because of my distressing experience in a few cases which came to my notice. I found that either no speaking order was available on the file and if one was made, it contained no reasons in support of it. I further found upon examination of the service record that there was not tangible material to enable the authority to record an appropriate order.

Relevant portions of Article 320 are reproduced:-

Consultation with Public Service Commission Article 320 (3):- The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted.

(c) On all disciplinary matters affecting a person serving under the Government of India or the Government of a state in a civil capacity, including memorials or petitions relating to such matter ; Provided that the president as respects the all India services & also as respects other services and posts in connection with the affairs of the Union, and the Governor ~~2 ***~~, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any Particular class of case or in any particular circumstances, it shall not be necessary for public Service Commission to be consulted.

In exercise of the power granted by the above reproduced provide regulations called the Punjab Public Service Commission (Limitation of Functions) Regulations, 1955 were framed. There is no Regulation 5(4) (III) to be found therein to which the Legal Remembrander in his Note has referred. May be, that regulations have been re-numbered by an amendment which it has not been possible for me to locate. Regulation 5 as published in the Punjab Government Gazette of 3rd November, 1961 to the extent it is relevant is set out below:-

(5) It shall not be necessary to consult the Commission --

- a) On any original or appellate order, connected with a matter of discipline when such order is proposed to be made by an authority subordinate to the Haryana Government.
- b) On any original order proposed to be made by Haryana Government imposing any of the following penalties:-

- b) (iii) with holding of increments or promotion, including stoppage at an efficiency bar, for not more than one year with non continuing effect.
- c) On any order proposed to be made by the Haryana Government on appeal when the order appealed against is one of-
- c) (iii) withholding of increments or promotion, including stoppage at an efficiency bar, for not more than one year with non continuing effect.

It will appear from the perusal of the above mentioned provisions of law that an order withholding increment including stoppage at an efficiency bar made as a result of the disciplinary proceedings is outside the purview of the Haryana Public Service Commission so that if an authority under Rule 4.8 of the C.S.R. makes an order it will not be necessary to consult the Commission.

Under the constitution, that is Article 320(3)(c) *consultation with the Commission is not necessary only in respect of disciplinary matters. That being the position it is not necessary to consult the Commission on any order providing for stoppage at the efficiency bar made by an authority otherwise than in a disciplinary proceeding. In view of the foregoing it is in my view not necessary to consult the Commission in either of the two cases.