

Kolkata

The



सत्यमेव जयते

Gazette

Extraordinary
Published by Authority

ASADHA 211

THURSDAY, JULY 12, 2007

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PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury etc.

Government of West Bengal
Judicial Department

NOTIFICATION

No. 326-JL. dated 22nd June, 2007.- In exercise of the power conferred by the proviso to article 309 of the Constitution of India and in suppression of all earlier notifications on the subject-matter, the Governor, in consultation with the High Court at Calcutta under article 235, read with article 233, of the Constitution, is pleased hereby to make the following rules, namely :-

Rules

Part I

General

1. Short title, commencement and application.- (1) These rules may be called the West Bengal Judicial Service (Classification, Control and Appeal) Rules, 2007.

(2) They shall come into force on the date of their publication in the *Official Gazette*.

(3) They shall apply to the members of the West Bengal Judicial Service including erstwhile members of the West Bengal Civil Service (Judicial) and the West Bengal Higher Judicial Service.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

- (a) "Appellate authority" means the Governor of the State of West Bengal;
- (b) "Confidential report" means the confidential report referred to in rule 3;
- (c) "Disciplinary authority" means the authority competent under these rules to impose penalty on a Judicial Officer;
- (d) "Government" means the Government of West Bengal;
- (e) "Governor" means the Governor of the State of West Bengal;
- (f) "High Court" means the High Court of Calcutta;
- (g) "Judicial Officer" means an officer who is a member of the West Bengal Judicial Service including erstwhile members of the West Bengal Civil Service (Judicial) and members of the West Bengal Higher Judicial Service; and
- (h) "Reviewing authority" means the authority which has suspended a Judicial Officer.

(2) Words and expressions used and not defined in these rules but defined in the West Bengal Service Rules, Part I and Part II, or in the West Bengal Judicial (Conditions of Service) Rules, 2004, shall have the same meanings as respectively assigned to them in those rules.

Part II

Confidential Report

3. Confidential report.-(1) A confidential report assessing the performances, character, conduct and qualities of every Judicial Officer shall be written for each financial year or calendar year, as may be specified by the High Court, ordinarily within two months of the closing of the said year.

(2) Where a Judicial Officer is on deputation of a foreign organisation, the confidential report in respect of the said Judicial Officer may be written for the entire period of his tenure with the said organisation even in case where the period of such tenure exceeds one year.

4. Communication of adverse remarks.-(1) The question of whether a particular remark recorded in the confidential report of a Judicial Officer is adverse, shall be decided by the Chief Justice or the Acting Chief Justice, as the case may be.

(2) Where the confidential report of a Judicial Officer contains an adverse remark, it shall be communicated to him in writing together with a substance of the confidential report within two months of the receipt of the same and certificate to this effect shall be recorded in the confidential report.

5. Representation against adverse remarks.- A Judicial Officer may represent to the Chief Justice or the Acting Chief Justice, as the case may be, against the remarks communicated to him under rule 4 within two months from the date of its receipt by him:

Provided that the High Court may entertain a representation after two months of the expiry of the said period if it is satisfied that the Judicial Officer had sufficient cause for not submitting the representation in time.

6. Consideration of representation against adverse remarks.-(1) The Chief Justice or the Acting Chief Justice, as the case may be, on receipt of the representation made under rule 5 by a Judicial Officer, shall send a copy of the same to the Officer, who has made such adverse remarks against such officer in his annual confidential report, to justify the said remarks in the light of the representation within one month from the date of its receipt by him.

(2) The Chief Justice or the Acting Chief Justice, as the case may be, shall consider the representation and reply of the officer who passed the adverse remarks and pass such order preferably within two months of the date of submission of the representation -

- (a) rejecting the representation, or toning down the remarks; or
 - (b) expunging the remarks.
- (3) In case no reply is received from the officer, who passed the adverse remarks within the specified period, the Chief Justice or the Acting Chief Justice, as the case may be, shall pass necessary order on merit.

Note.— The authorities competent to write confidential report and the authority competent to consider representation against adverse remarks are such as may be specified by the High Court from time to time. The Chief Justice or the Acting Chief Justice, as the case may be, may nominate anyone or more Judges of the High Court to exercise any power conferred upon him under rule 4, rule 5 and rule 6 of these rules respectively, in respect of one or other class of Judicial Officer.

7. Communication of order.- The order so passed on the representation shall be communicated to the concerned Judicial Officer in writing.

Part III*Suspension*

8. **Suspension of Judicial Officer.**-(1) The High Court may place a Judicial Officer under suspension,-
- where a disciplinary proceeding or departmental enquiry against him is contemplated or is pending; or
 - where in the opinion of the High Court, he has engaged himself in activities prejudicial to the interest or the security of the State; or
 - where a case against him in respect of any criminal offence is under investigation, inquiry or trial;

Provided that if the criminal charge is related to the official position of the Judicial Officer or involves any moral turpitude on his part, suspension of such Judicial Officer shall be ordered under this sub-rule, unless there are exceptional reasons for not adopting such a course.

(2) A Judicial Officer who is detained in custody for a period exceeding 48 hours on a criminal charge or otherwise, shall be deemed to have been suspended, by an order of the High Court, with effect from the date of his detention and shall remain under suspension until further order.

(3) A Judicial Officer who is undergoing a sentence of imprisonment shall be dealt with in the same manner as stated in sub-rule (2) pending a decision on the disciplinary action to be taken against him.

9. **Continuation of suspension.**-(1) In case of suspension under clause (a) of sub-rule (1) of rule 8, where -

- a penalty of dismissal, removal or compulsory retirement from service is imposed on a Judicial Officer under suspension; or
- disciplinary proceeding pending against the Judicial Officer under suspension, is set aside on review or otherwise under these rules and the case is remitted for further inquiry or action or with any direction,

the order of his suspension shall be deemed to be in force till the final order is passed in the disciplinary proceedings as originally initiated or on remand or otherwise.

(2) In case of suspension under clause (b) of sub-rule (1) of rule 8, the order of suspension shall be deemed to be in force for a period not exceeding three months at a time but subject to extension by the High Court from time to time either before or after expiry of the said period of three months.

(3) In case of suspension under clause (c) of sub-rule (1) of rule 8, the order of suspension shall be deemed to be in force until modified or revoked by the High Court.

(4) An order of suspension made or deemed to have been made under sub-rule (2) of rule 8 shall be deemed to be in force until varied, modified or revoked by the High Court.

Note. - A Judicial Officer who is placed under suspension or be deemed to be under suspension in the circumstances mentioned in this rule, shall, irrespective of the circumstances which led to or resulted in the suspension, be entitled to subsistence grant during the period of suspension, and to pay and allowances, on reinstatement, in respect of the period of suspension, in accordance with the provisions of rules 71 and 72 of the West Bengal Service Rules, Part I, respectively:

Provided that where a Judicial Officer is detained in custody under any law providing for preventive detention, the subsistence grant admissible under this rule shall be reduced by the amount of allowance, if any, paid to the detainee under the relevant laws for the time being in force.

Part IV*Discipline*

10. **Penalties.**- The following penalties may, for good and sufficient reasons, be imposed on a Judicial

Officer :-

(a) Minor penalties :

- (i) censure;
- (ii) withholding of increment of pay or promotion;
- (iii) recovery from pay of the whole or part of any pecuniary loss caused to the State and/or properties in the custody or under the control of the Court concerned by negligence or breach of rules or orders provided that the loss or damage is quantified and charged for.

(b) Major penalties:

- (i) reduction to a lower stage in the time scale of pay for a specified period with further direction as to whether or not the Judicial Officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;
- (ii) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Judicial Officer to the time scale of pay, grade, post or service from which he was reduced, with or without further direction regarding conditions of the restoration to the grade or post or service from which the Judicial Officer was reduced and his seniority and pay on such restoration to that grade, post or service;
- (iii) compulsory retirement;
- (iv) removal from service which shall not be a disqualification for future employment;
- (v) dismissal from service which shall ordinarily be a disqualification for future employment;

Explanation. - The following shall not amount to penalty within the meaning of this rule, namely:-

- (a) non-promotion, whether in a substantive or officiating capacity, of a Judicial Officer after consideration of his case to a service, grade or post for promotion to which he is eligible;
- (b) non-selection for a selection grade post or carrying pay above the basic time scale of pay after consideration of his case;
- (c) reversion to a lower service, grade or post of a Judicial Officer officiating in a higher service, grade or post on the ground that he is considered, to be unsuitable for such higher service, grade or post or on administrative grounds unconnected with his conduct;
- (d) compulsory retirement of a Judicial Officer in accordance with the provisions relating to his superannuation or retirement;
- (e) termination of service of a Judicial Officer appointed on probation during or at the end of his probation in accordance with the terms of his appointment or the rules or orders governing such probation.

Note 1.—If as a result of disciplinary proceedings, any of the penalties specified in this rule is imposed on a Judicial Officer, a record of the same shall invariably be kept in his service book.

Note 2.—A written warning given without any disciplinary proceedings, admonition or reprimand for lapses of occasional and minor nature (such as delays in submitting returns, delivering judgments, irregular attendance) shall not amount to imposition of penalty of “Censure”.

Note 3.—Failure on the part of a Judicial Officer to intimate to his official superior the fact of his arrest and the circumstances connected therewith, shall be regarded as suppression of material information and shall render him liable to disciplinary action on that ground alone, apart from the action that may be called for on the outcome of the criminal case against him.

11. Procedure for imposing major penalties.- (1) No order imposing any of the penalties specified in

items (i) to (v) of clause (b) of rule 10, shall be made except after an enquiry held, as far as may be, in the manner provided in this rule.

(2) The Disciplinary authority shall draw up or cause to be drawn up -

- (a) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (b) a statement of imputations of misconduct or misbehaviour in support of each articles of charge which shall contain -
 - (i) a statement of relevant facts including any admission or confession made by the Judicial Officer;
 - (ii) a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be substantiated.

(3) The Disciplinary authority shall deliver or cause to be delivered to the Judicial Officer a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour prepared under clause (b) of sub-rule (2) and shall require the Judicial Officer to submit to the disciplinary authority within 30 (thirty) days a written statement of his defence and to state whether he desires to be heard in person.

(4) Where the Judicial Officer submits a written statement of his defence and the Disciplinary authority, having regard to the articles of charge and the written statement of defence thereto, is of the opinion that -

- (a) any of the penalties specified in items (i) to (iii) of clause (a) of rule 10 shall be imposed, it may pass appropriate orders in the case;
- (b) in any other penalties specified in rule 10, the Disciplinary authority shall appoint an Enquiring Officer, not being below the rank of a District Judge or an Additional District Judge for the purpose of holding an enquiry into the charges and forward to it—
 - (i) a copy of the articles of charge and the statement of imputations or misbehaviour;
 - (ii) a copy of the written statement of defence;
 - (iii) copies of the statement of witnesses, if any.

Note 1.— No Judicial Officer equal in rank shall be appointed as Enquiring Officer for holding enquiry against a Judicial Officer:

Provided that in case of holding an enquiry against a District Judge where the Enquiring Officer may be of the same rank, such an Enquiring Officer shall be senior to him:

Provided further that in case a suitable senior officer to be appointed as Enquiring Officer for holding an enquiry against a District Judge in the opinion of the High Court is not available, the High Court may appoint an officer as the Enquiring Officer who shall be above the rank of the District Judge.

Note 2.— If the Enquiring Officer retires from service or is transferred from the station where he was posted at the time of his appointment as such or is otherwise unable to perform the duties as Enquiring Officer, another officer may be appointed in his place by the Disciplinary authority, who may be permitted to proceed with the enquiry from the stage at which the same has been left by the transferred Enquiring Officer or retired Enquiring Officer, as the case may be, or to hold the enquiry *de novo*.

(5) Where an enquiry against a Judicial Officer is directed, the concerned Judicial Officer shall appear in person before the Enquiring Officer of such day and at such time as he may, in writing, specify in this behalf or within such further time as the Enquiring Officer may allow.

(6) The Disciplinary authority may appoint any Judicial Officer to present on its behalf the case in support of the articles of charge. The Judicial Officer against whom enquiry is being held may take the assistance of any other Judicial Officer to present the case on his behalf but he shall not engage a legal practitioner for the purpose, without the specific permission, in writing, of the Disciplinary authority.

(7) If the Judicial Officer who has admitted any of the articles of charge in his written statement of defence submitted to the Enquiring Officer, the enquiry shall be proceeded only in respect of those articles of charge which have not been admitted by the concerned Judicial Officer.

(8) The Enquiring Officer shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for production of the documents by such date as may be specified in such requisition:

Provided that the Enquiring Officer may, for reasons to be recorded by it in writing, refuse to requisition such of the document as are in its opinion not relevant to the case.

(9) On receipt of the requisition referred to in sub-rule (8), every authority having the custody or possession of requisitioned documents shall produce the same before the Enquiring Officer:

Provided that if the authority having custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the Enquiring Officer accordingly and the Enquiring Officer shall, on being so informed, communicate the information to the Judicial Officer and the Disciplinary authority and subject to the decision of such Disciplinary authority, withdraw the requisition made by it for the production or discovery of such documents.

(10) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by, or on behalf of, the Disciplinary authority. The witnesses shall be examined on behalf of the said authority by the presenting officer, where appointed, and may be cross-examined by or on behalf of the Judicial Officer. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the Enquiring Officer. The Enquiring Officer may put such question to the witnesses as it thinks fit.

(11) Before the close of the prosecution case, the Enquiring Officer may, if it appears necessary in the interest of justice, allow the Presenting Officer to produce evidence not included in the list given to the Judicial Officer or may itself call for new evidence or recall and re-examine any witness and, in such case, the Judicial Officer shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The Enquiring Officer shall give to the Judicial Officer an opportunity of inspecting such documents before they are tendered in evidence. The Enquiring Officer may also allow the Judicial Officer to produce new evidence at the appropriate stage, if it is of opinion that the production of such evidence is necessary in the interest of justice.

(12) When the case of the Disciplinary authority is closed, the Judicial Officer shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Judicial Officer shall be required to sign the record. In either of the cases, a copy of the statement of defence shall be given to the Presenting Officer, if any.

(13) The evidence on behalf of the Judicial Officer shall be produced, the witnesses produced by the Judicial Officer shall then be examined and shall be liable to cross-examination and re-examination. They may also be examined by the Enquiring Officer according to the provisions applicable to the witnesses for the Disciplinary authority. The Judicial Officer may examine himself as a witness in his defence.

(14) The Enquiring Officer may, after the Judicial Officer closes his case, and shall, if the Judicial Officer has not examined himself, generally question him for the purpose of enabling the Judicial Officer, to explain any circumstance appearing in the evidence against him.

(15) The Enquiring Officer may, after the completion of the production of evidence, hear the Presenting Officer, if any, and the Judicial Officer, or permit them to file written arguments in support of their respective cases, if they so desire.

(16) If the Judicial Officer, to whom a copy of the articles of charge has been delivered, does not submit

the written statement of defence on or before the date specified for the purpose or does not appear in person before the Enquiring Officer or otherwise fails or refuses to comply with the provisions of these rules or any order made by the Disciplinary authority or the Enquiring Officer thereunder, the enquiry may be held *ex parte* against the said Judicial Officer.

(17) Whenever an Enquiring Officer, after having heard and recorded the whole or any part of the evidence in an enquiry, causes to exercise jurisdiction therein and is succeeded by another Enquiring Officer which has, and which exercises, such jurisdiction, the Enquiring Officer so succeeding may consider the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding Enquiring Officer is of the opinion that further examination of any of the witnesses whose evidence had already been recorded is necessary in the interest of justice, he may re-call any such witness for further examination as hereinbefore provided.

(18) A report shall, thereafter, be prepared by the Enquiring Officer and such report shall include ---

- (a) the articles of charge and the statement of imputations of misconduct or misbehaviour;
- (b) the defence of the Judicial Officer in respect of each articles of charge;
- (c) an assessment of the evidence in respect of each articles of charge;
- (d) the finding of each articles of charge and the reasons therefor.

(19) The Disciplinary authority on receipt of the report from the Enquiring Officer, shall forward a copy of such report to the Judicial Officer intimating the punishment proposed for making representation within 30 (thirty) days from the date of receipt, on the findings of the said report:

Provided that in case the Disciplinary authority does not agree with the findings of the Enquiring Officer, it may record separately the reasons and those reasons shall be communicated to the Judicial Officer along with the report of the Enquiring Officer or otherwise, for filing representation within 30 (thirty) days from the date of the show cause notice.

(20) Upon consideration of the representation, if any, the Disciplinary authority holds the Judicial Officer guilty of one or more of the articles of charge, -

- (a) it may impose any of the penalties specified in items (i) and (ii) under clause (b) of rule 10 and shall pass appropriate order; or
- (b) it may impose any of the penalties specified in items (iii) to (v) under clause (b) of rule 10 and shall forward the case record along with its recommendation to the Governor for passing appropriate order.

12. Procedure for imposing minor penalties. - (1) No order imposing penalties specified in item (i) to item (iii) under clause (a) of rule 10 shall be passed unless-

- (a) the Judicial Officer is informed, in writing, of the proposal to take action against him and of the allegations on which it is proposed to be taken and given an opportunity to make any representation, he may wish to make;
- (b) such representation, if any, is taken into consideration by the Disciplinary authority.

(2) The record of proceedings in such cases shall include -

- (i) a copy of the intimation to the Judicial Officer of the proposal to take action against him,
- (ii) a copy of the statement of allegations communicated to him,
- (iii) a copy of his representation, if any,
- (iv) orders on the case together with reasons therefor.

13. Joint enquiry. - Where two or more Judicial Officers are concerned in any case, the Disciplinary authority may direct that disciplinary action against all of them may be taken in a common proceeding.