

1958B
107
91
87
Government of Orissa,
General Administration Department.

No. SC/3-2/92. 41,121 /Gen.,Dt. 30/11/92

To

All Departments of Government
All Heads of Department.
All Collectors.

Sub:- Imposition of Major Penalty on Government servant dispensing with the enquiry as prescribed in the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962.

The undersigned is directed to say that procedure for imposition of any of the Major penalties as specified in Rule-13(VI) to (IX) of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 on Government servants by the disciplinary authority has been prescribed under Rule-15 of the same Rules and in the normal circumstances, before a Major penalty is imposed, an enquiry has to be conducted invariably.

2. It has come to the notice of Government that in some cases the disciplinary authorities had imposed the major penalty of dismissal from service on Government servants following the proviso (b) to Article 311(2) of the Constitution of India and thereby dispensing with the enquiry as provided in Rule-15 of the said rules though there are no such compelling reasons to dispense with the enquiry. The aggrieved Government servants had filed writ petitions against the dismissal orders under Article 226 of the Constitution of India and obtained orders of the Administrative Tribunal quashing the dismissal orders and for their reinstatement in service from the date of their dismissal and for payment of back wages on account of dismissal. This verdict of the Court compelled the Government to pay for the periods they had not really worked.

3. It is therefore clarified that the extraordinary power conferred on the disciplinary authority under proviso (b) to Article-311(2) of the Constitution to impose major

(P.T.O)

penalties on Government servants by dispensing with the procedure laid down in Rule-15 of the O.C.S.(Classification, Control and Appeal) Rules, 1962 has to be exercised with proper care and caution as such action of the disciplinary authority is subject to judicial review. Two essential conditions have to be satisfied to dispense with the enquiry. They are that the offences committed would lead to dismissal, removal, compulsory retirement or reduction in rank of the employee, and it is not reasonably practicable to hold such enquiry. Each time the above said extraordinary power is exercised, legal consultation at the proper level should invariably be made to ensure that such orders will be maintainable in the eye of law.

4. It is further requested that the suitable instructions to the subordinate officers under your control are to be issued accordingly explaining the above provisions of law. It may be impressed on them that while resorting to action under Rule-18 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962 it should be clearly recorded that it is not reasonably practicable to follow the procedure prescribed in the said Rule.

T. K. Das
Special Secretary to Government.

Memo No. U1, 122 /Gen., Dt. 30.11.92 ^{28/11/92}
Copy to O.E.I & C.A.III Branches of G.A. Department for information and necessary action.

[Signature]
Deputy Secretary to Government.

MJ.