

No. 25013/02/2005-AIS II
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

15
New Delhi, the 28 June, 2012

To

Chief Secretaries to the
Government of All States/Union Territories

Subject: All India Services (Death-cum-Retirement Benefits) Rules, 1958 - Rule 16(3) – Guidelines for intensive review of records.

Sir,

Rule 16(3) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 has been amended on 31.01.2012 which provides as follows:

"The Central Government may, in consultation with the State Government concerned, require a Member of the Service to retire from Service in public interest, after giving such Member at least three month's previous notice in writing or three month's pay and allowances in lieu of such notice, -

- (i) *after the review when such Member completes 15 years of qualifying Service; or*
- (ii) *after the review when such Member completes 25 years of qualifying Service or attains the age of 50 years, as the case may be; or*
- (iii) *if the review referred to in (i) or (ii) above has not been conducted, after the review at any other time as the Central Government deems fit in respect of such Member.*

Explanation: - For the purposes of sub-rule (3), "review" means the review of the entire service record of the Member of the Service regarding suitability or otherwise of such Member for further retention in the Service, to be conducted regularly of each Member of such Service, firstly, after his completion of 15 years of qualifying Service, and secondly, after his completion of 25 years of qualifying Service or on his attaining the age of 50 years, as the case may be, or if the review referred to in clauses (i) or (ii) of this sub-rule has not been conducted in respect of such Member, such review may be conducted at any other time as the Central Government deems fit."

2. The rule, commonly referred to as the rule of premature retirement, is based on sound policy and in order to subserve public interest. Explaining the objects of the rule, the Supreme Court observed in the case of Union of India Vs. M.E. Reddy and another (AIR 1980 SCC : 563) as follows :

(i) *"The object of the Rule is to weed out the deadwood in order to maintain a high standard of efficiency and initiative in the State Services. It is not necessary that a good officer may continue to be efficient for all times to come. It may be that there may be some officers who may possess a better initiative*

and higher standard of efficiency and if given chance the work of the Government might show marked improvement. In such a case compulsory retirement of an officer who fulfils the conditions of Rule 16(3) is undoubtedly in public interest and is not passed by way of punishment."

(ii) *"Compulsory retirement contemplated by the aforesaid rule is designed to infuse the administration with initiative..... so as to meet the expending needs of the nation, which require exploration of "fields and pastures new". Such a retirement involves no stain or stigma nor does it entail any penalty or civil consequences. In fact, the rule merely seeks to strike a just balance between the termination of the completed career of a tired employee and maintenance of top efficiency in the diverse activities of administration."*

3. The Supreme Court has observed in the case of State of Gujarat Vs. Umedbhai M. Patel (Civil Appeal No.1561 of 2001, 3 SCC:320 as follows:

- (i) *Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.*
- (ii) *Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.*
- (iii) *"For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer."*
- (iv) *Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.*
- (v) *Even un-communicated entries in the confidential record can also be taken into consideration.*
- (vi) *The order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable.*
- (vii) *If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.*
- (viii) *Compulsory retirement shall not be imposed as a punitive measure.*

4. These same principles relating to retirement in public interest apply to the revised Rule 16(3) of the AIS (DCRB) Rules, 1958.

5. Members of the All-India Services are appraised periodically before they are allowed to move to the next higher level. Such appraisal takes place when a member is appointed to the Selection Grade or Super Time Scale. An appraisal also takes place when a member is appointed to higher management posts at the level of Additional Secretary or Secretary to the Government of India (or equivalent levels in the State Government). It is essential that such appraisals should be rigorous and any fall in standards should be noticed immediately.

6. A member of the All-India Service who has completed 15 years of qualifying service or has completed 25 years of qualifying service or attained the age of 50 years will, invariably, be found to occupy a senior administrative post. It would not be acceptable to find that such a member has become a mere passenger in the senior level in which he/she is placed. One must always guard against the operation of the 'Peter Principle'.

7. Nevertheless, it is sometimes found that a few members of the All-India Services do tend to become mere passengers in the post or at the level in which a member is placed for the time being. They become either stale or listless; they do not exhibit any creativity or innovativeness; and they do not achieve results. In some other cases, information may be available which casts grave doubt upon the integrity of a member. The form of the Annual Confidential Report/Performance Appraisal Report is designed in order to bring out, as far as possible, these tendencies or traits, which would alert Government to take suitable action under the rules.

8. It is seen that in some cases the overall grade or assessment given on the performance of a member of an All-India Service is "average". To describe a member of an All-India Service as average is not complimentary. While it may not be an adverse remark, it is nevertheless a reflection upon his work or conduct and should be taken to indicate output, which is ordinary and routine. Remarks like "Adequate" and "Satisfactory" over a period of 5-7 years, without mention of any notable achievement, would also indicate that the member has reached a plateau. Similarly, it is found that in some cases, a member of an All-India Service receives a lukewarm or equivocal certificate of integrity. Such an entry would indicate that there is some doubt in the mind of the Reporting/Reviewing authority about the integrity of the member. In all such cases, it would be quite appropriate for the Government to examine the matter thoroughly in order to decide whether action under Rule 16(3) of AIS (DCRB) Rules, 1958 would be warranted.

9. The procedure for review under Rule 16(3) has been laid down in this Department's letter No. 25013/12/86-AIS-II dated 31.7.1987. These stand further modified and enclosed herewith consequent to the revised rule 16(3) in the light of introduction of intensive review at two stages.

10. The State Governments are required to carry out a review in respect of:-

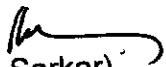
- (i) All officers who have completed 15 years of qualifying service;
- (ii) All officers who have completed 25 years of qualifying service or attained the age of 50 years, whichever is earlier, subject to the following conditions;

*commonly known as 'employee tends to rise to the level of incompetence'.

- a) An officer should have completed minimum 15 years of qualifying service;
- b) In the case of the State Service Officers appointed to an All India Service by promotion or by selection, they should have completed a minimum of 5 years of actual service in the respective All India Service.

11. Additionally, there may be officers who may have completed 16 years or more of qualifying service but their review was not carried out as the rule has been amended recently. Therefore, a review is required to be carried out by the State Governments in respect of the officers who have completed qualifying service of 16-23 years and the recommendations of the respective State Governments may be sent to the Central Government for further necessary action within six months of the issuance of this letter.

12. It is clarified that in the above rule, the officers who will be retired prematurely shall be entitled for pensionary benefits in terms of the relevant provisions of All India Services (DCRB) Rules, 1958.


(Dr. S.K. Sarkar)

Additional Secretary to the Government of India

ANNEXURE TO DEPARTMENT OF PERSONNEL & TRAINING LETTER No.
25013/02/2005-AIS-II DATED 28.06. 2012.

The General Principles and procedure contained in the letter cited above as well as those mentioned below shall inform and guide the exercise of powers under Rule 16(3) of AIS (DCRB) Rules, 1958.

I. MATTERS TO BE KEPT IN MIND WHILE CONSIDERING ENTIRE SERVICE RECORD OF THE OFFICER

1.1 Review of records of officers for **retirement in public interest** under Rule 16(3) of AIS (DCRB) Rules, 1958 may be done, keeping in mind two broad objectives; firstly, to weed out officers of doubtful integrity and secondly, to weed out officers who have outlived their utility and have become inefficient or ineffective.

1.2 In every review, the entire service records should be considered. The expression 'service record' will take in all relevant records and hence the review should not be confined to the consideration of the ACR / PAR dossier. The personal file of the officer may contain valuable material. Similarly, the work and performance of the officer could also be assessed by looking into files dealt with by him or in any papers or reports prepared and submitted by him. It would be useful if the Ministry/Department puts together all the data available about the officers and prepares a comprehensive brief for consideration by the Review Committee. There are a number of judicial pronouncements in support of the view that the total record of the officers should be looked into. In R.L. Butail Vs UOI and Another 1970 (2) SCC 876, the Supreme Court observed:

"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 FR 56(J)."

1.3 This has also been reiterated in the judgement of Supreme Court in the case of State of Gujarat Vs. Umedbhai M. Patel (Civil Appeal No.1561 of 2001, (2001) 3 SCC:320) that:

"For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer."

It has further stated that:- "Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

Even un-communicated entries in the confidential record can also be taken into consideration.

If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer."

1.4 In the revised Performance Appraisal Report system, there is disclosure of the entire report and representation on the same with the mechanism of Referral Boards. Further, there may be an overlap in the system of ACRs and PARs and, therefore, the two may have to be examined simultaneously by the Review Committee.

1.5 In a number of cases, officers take action for concluding contracts, settling claims, assessing taxes or duties payable etc. Doubts may have arisen relating to the bona fide nature of the action taken by the officer but on account of inadequate proof it may not have been possible to initiate action for a regular departmental inquiry, leading finally to a punishment of the nature that may find entry in the ACR/PAR dossier of the officer. But the personal file of the officer may have details of the nature of doubt that arose regarding the integrity of the officer and the result of the preliminary investigation that was carried out and this would constitute vital information.

II. MATTERS TO BE KEPT IN MIND WHILE REVIEWING THE INTEGRITY OF THE OFFICER

2.1 The data available in the various files connected with matters referred to above should be compiled and a comprehensive brief should be placed before the Review Committee for consideration.

2.2 There are a number of judicial pronouncements in support of the instructions above that a total assessment of the performance of the member of the Service can be made. There have also been observations that have approved any measure by which the assessment by superiors, with an opportunity to watch the work and conduct of an officer, is taken into account while deciding about 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 of his performance but also of the reputation that he enjoys."

2.3 Entries in the ACR/PAR dossier relating to integrity should be taken into account by the Review Committee. Even if a particular remark in integrity has not been communicated to the officer, or if the remark is of a general nature, the review committee could take into account the remarks while reviewing any proposal for premature retirement. The Supreme Court, in the case of Union of India Vs. M.E. Reddy observed:

".....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."

2.4 In the case of R.L. Butail Vs UOI and another – 1970 (2) SCC 876, it has been 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 that omission, the appellant could not make an adequate representation and that therefore, the confidential reports are vitiated."

III. THE MATTERS TO BE KEPT IN MIND WHERE DISCIPLINARY INQUIRIES ARE ON GOING

3.1 In a case where on an alleged misconduct a departmental inquiry has been conducted and the stage has been reached for a decision by the competent authority on the punishment to be imposed, it would not be appropriate to issue, instead, an order of premature retirement. However, there may be cases where there is independent material to justify the premature retirement of an officer either on the grounds of inefficiency or lack of integrity; the Review Committees may in such cases formulate its recommendations. Further 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 Rule 16(3) can quite appropriately be passed if the same is otherwise justified. Each case has to be considered and decided on its own merits. In the case of State of Uttar Pradesh Vs Chandra Mohan Nigam and Others (AIS 1977 SC: 2411) it was observed:-

"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 rules are fulfilled, apart from the choice of disciplinary action which will also be open to Government."

3.2 In the case of State of Gujarat Vs. Umedbhai M. Patel (Civil Appeal No.1561 of 2001, (2001) 3 SCC:320), the Supreme Court has observed that:

- (i) *Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest.*
- (ii) *Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution.*
- (iii) *"For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer."*
- (iv) *Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.*
- (v) *Even un-communicated entries in the confidential record can also be taken into consideration.*
- (vi) *The order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable.*
- (vii) *If the officer was given a promotion despite adverse entries made in the confidential record, that is a fact in favour of the officer.*
- (viii) *Compulsory retirement shall not be imposed as a punitive measure.*

3.3 The term used in the judgment is 'Compulsory retirement', which in this context should be construed as 'premature retirement in public interest'. The judgment further states that the order of compulsory retirement may not be passed for extraneous reasons and that the enquiry should be completed within a reasonable time and action based on allegations which have not been proved, avoided. These principles may be kept in mind in cases of retirement in public interest where disciplinary proceedings are pending.

IV. MATTERS TO BE KEPT IN MIND WHILE EVALUATING THE EFFICIENCY AND EFFECTIVENESS OF AN OFFICER

4.1 There need be no hesitation to take action under Rule 16(3) where such action is eminently justified. The Supreme Court has observed that the provisions contribute towards maintenance of the highest efficiency in administration, obviously desirable in the public interest.

4.2 Judicial pronouncements are clear to the effect that premature retirement is not a punishment, that it does not involve a stain or stigma and that it is in the public interest. The higher the level reached by a Government servant, the higher will be the responsibilities entrusted to him and hence higher will be the expectations of Government that these responsibilities are discharged with exemplary competence, efficiency and effectiveness. It is with a view to assessing whether such expectations are being fulfilled that a procedure for reviewing the performance of Government Servants at two levels, firstly, when they have rendered 15 years of qualifying service and again when they have completed 25 years of qualifying service or attained the age of 50 years, has been laid down for the retirement of those Government Servants who do not fulfill this expectation. It is not sufficient if a Government Servant, having reached the present level, performs only in a mediocre way.

4.3 While the entire service record of an officer should be considered at the time of review, greater emphasis will be placed on his performance during the 5 years preceding the review. If an officer had been promoted to a higher post during the said period of 5 years, the service in the higher post shall receive greater emphasis. If, during the aforesaid period of 5 years, there is evidence of deterioration in efficiency and unsatisfactory performance, the Review Committee shall examine the entire service record and arrive at a total picture about the suitability or otherwise of the officer for further retention in Service.

4.4 No officer should ordinarily be retired from service on the ground of ineffectiveness if he would be retiring on superannuation within a period of one year from the date of consideration of his case. This does not, however, apply in a case where the integrity of the officer is in doubt or where there is a sudden and steep fall in the competence, efficiency or effectiveness of the officer.

4.5 In a case in which the physical or mental condition of an officer is such as to make him inefficient, it would be appropriate to consider him for retirement in public interest.

V. PROCEDURE FOR REVIEW

5.1 The State Government shall set up committees for reviewing the records of member of the Service borne on their cadres. The composition of the Review Committees shall be as under: -

For IAS:

Chief Secretary	:Chairman
One officer in the apex scale in the cadre/Joint cadre concerned.	:Member
One officer in the apex scale from outside the cadre/joint cadre and who has not declared such cadre/joint cadre as his Home State.	:Member
One officer in the grade of Principal Secretary in the cadre/Joint cadre concerned representing SC/ST community.	:Member
Principal Secretary / Secretary, Department of Personnel in the cadre/Joint cadre.	:Member Secretary

For IPS:

Chief Secretary	:Chairman
DG Police (Head of the Police Force) in the cadre/Joint cadre concerned.	:Member
One DG Police level officer from outside the cadre/joint cadre and who has not declared such cadre/joint cadre concerned as his Home State.	:Member
One officer in the grade of Principal Secretary in the cadre/Joint cadre concerned representing SC/ST community.	:Member
Principal Secretary / Secretary, Department of Home in the cadre/Joint cadre.	:Member Secretary

For IFS:

Chief Secretary	:Chairman
PCCF (Head of the Forest Force) in the cadre/Joint cadre concerned.	:Member
One PCCF level officer from outside the cadre/joint cadre and who has not declared such cadre/joint cadre as his Home State.	:Member
One officer in the grade of Principal Secretary in the cadre/Joint cadre concerned representing SC/ST community.	:Member
Principal Secretary / Secretary, Department of Forests in the cadre/Joint cadre.	:Member Secretary

NOTE: - For the nomination of member in the Committee from outside the cadre, the Chief Secretary of the State Government for which the Review Committee is proposed to be set up shall write in advance to the Chief Secretary of other cadre (s) for nomination of an officer of the appropriate grade/rank to function as a Member of the Committee. If any State faces any difficulty in this regard, the matter should be referred forthwith to the Central Government.

5.2 The review shall be carried out in respect of:-

- (i) All officers who have completed 15 years of qualifying service;
- (ii) All officers who have completed 25 years of qualifying service or attained the age of 50 years, whichever is earlier, subject to the following conditions;
 - a) An officer should have completed minimum 15 years of qualifying service;
 - b) In the case of the State Service Officers appointed to an All India Service by promotion or by selection, they should have completed a minimum of 5 years of actual service in the respective All India Service.

5.3 The records of the members of the Service who are on deputation to the Centre or to any other Government or on foreign service/assignment are also required to be reviewed by the Review Committee and its recommendations placed before the State Government.

5.4 The recommendation of the State Government along with attested copies of proceedings of the Review Committee shall be forwarded to the Department of Personnel & Training in the case of the Indian Administrative Service, the Ministry of

Home Affairs in the case of the Indian Police Service and the Ministry of Environment, Forests and Wild Life in the case of the Indian Forest Service.

5.5 Where any reference to the deputation of an officer or to disciplinary proceedings is made by the Review Committee or the State Government, necessary details should be furnished to the Central Government.

5.6 Where the State Government have come to the conclusion as a result of the review that a member of the All-India Service should be retired from service in the public interest they should make a proposal accordingly to the Central Government giving full reasons in justification of the proposal. Similarly, where the Central Government are of the opinion that an officer should be retired from service in the public interest, the Central Government shall seek the views of the State Government concerned.

5.7 The Central Government shall observe the following procedure for processing the recommendations made by the State Government:-

- (i) where the State Government have recommended the retention of an officer in service but the cadre controlling authority comes to the conclusion that the officer should be retired from service in the public interest, the case shall be placed before the Appointments Committee of the Cabinet for orders.
- (ii) where the State Government have recommended the retirement of an officer in the public interest, the case shall be placed before the Appointments Committee of the Cabinet (whether or not the cadre controlling authority agrees with the recommendation of the State Government or comes to the conclusion that the officer should be retained in service).

EXPLANATION: The cadre controlling authority means, (a) for the Indian Administrative Service – Ministry of Personnel, P.G. & Pensions (b) for the Indian Police Service – Ministry of Home Affairs and (c) for the Indian Forest Service – the Ministry of Environment and Forests.

5.8 Time Table for Review:- The review should be carried out within six months of the date on which an officer completes 15 years of qualifying service or 25 years of qualifying service or attains the 50 years of age (as the case may be) so that a decision could be taken by the Central Government regarding the suitability, or otherwise, of the officer concerned for further retention in service. However, preparation for the review should begin in advance so that the entire exercise can be completed as per the time schedule.

5.9 In the case of the State Service Officers appointed to an All India Service by promotion or by Selection, the review may be undertaken after they complete at least 5 years' service after their appointment to the All India Service. If such an officer completes 15 years of qualifying service or 25 years of qualifying service or attains 50 years of age, as the case may be, after he has already put in 5 years of service after his promotion/selection, the review will be undertaken in the normal course. In other cases, ordinarily the review shall be undertaken after he has put in 5 years of actual service after appointment to the All India Service.

5.10 In order to ensure that the review is undertaken regularly, it is desirable that the State Government should maintain service-wise registers of the members of the IAS/IPS/IFS borne on their cadre who are due to complete 15/25 years of qualifying service or attain the age of 50 years as the case may be. These registers should be scrutinized periodically and the review undertaken according to the following Schedule and a half-yearly return should be sent to the Central Government.

Half year period during which review is to be made.	Cases of officers who complete 15/25 years of qualifying service or attain the age of 50 years in the half-year period indicated below to be reviewed.
January to June	July to December of the previous year.
July to December	January to July of the same year.

5.11 In case a member of the Service refuses to accept the service of notice of retirement or order of retirement, along with the cheque/cash equivalent of 3 months' pay and allowances it should be ensured that the refusal of the member of the Service is witnessed by two Gazetted officers. The notice of retirement shall be

effective from the forenoon of the date following the date of refusal of the notice by the member of the Service. A copy of the notice/order of retirement may also be sent to the officer under Registered post Acknowledgement due at the last officially known address.

5.12 Delayed Review:- Where the review in accordance with the time schedule indicated above has not been completed for any reason whatsoever, on a member of the Service attaining 50 years of age, such review may be undertaken at any time thereafter.

5.13 In case the review has not been conducted in case of a Member of Service after completion of 15 years of qualifying service or 25 years of qualifying service or on attaining 50 years of age, as the case may be, such a Member of Service can be retired after a review at any other time as the Central Government deems fit. For such cases, the State Government(s) can make a reference to the Central Government with full facts and justifications for conducting such a review. The State Government shall carry out such a review after obtaining the concurrence of the Central Government and send its recommendations to the Central Government.
