

CENTRAL CIVIL SERVICES (TEMPORARY SERVICE) RULES, 1965

The Central Civil Services (Temporary Service) Rules, 1965 have been framed under Proviso to Article 309 and Clause (5) of Article 148 of the Constitution and after consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and Accounts Department to regulate the conditions of service of temporary Govt. servants. These Rules supersede the Central Civil Services (Temporary Service) Rules, 1949. However, most of the instructions and orders incorporated in the brochure containing the Central Civil Services (Temporary Service) Rules, 1949 are still in force exception so far as they are inconsistent with the Central Civil Services (Temporary Service) Rules, 1965. The instructions/orders which are still applicable have, therefore, been given under the relevant rule for information and guidance.

The Central Civil Services (Temporary Service) Rules, 1965 together with the relevant orders issued by Government from time to time are reproduced below.

1. Short, title commencement and application.

- (1) These rules may be called the Central Civil Services (Temporary Service) Rules, 1965.
- (2) They shall come into force with effect from 1st May, 1965.
- (3) Subject to the provisions of sub-rule (4), these rules shall apply to all persons:-
 - (i) who hold a civil post including all civilians paid from the defence services estimates under the Government of India and who are under the rule making control of the President, but who do not hold a lien or a suspended lien on any post under the Government of India or any State Government;
 - (ii) who are employed temporarily in work-charged establishments and who have opted for pensionary benefits.
- (4) Nothing in these rules shall apply to:-
 - (a) railway servants;
 - (b) Government servants not in whole-time employment;
 - (c) Government servants engaged on contracts;
 - (d) Government servants paid out of contingencies;

- (e) persons employed in extra-temporary establishments or in work-charged establishments other than the persons employed temporarily and who have opted for pensionary benefits.
- (f) non-departmental telegraphists and telegraphmen employed in the Posts and Telegraphs Department;
- (g) such other categories of employees as may be specified by the Central Government by notification published in the Official gazette.

2. Definitions.

In these rules, unless the context otherwise requires:-

(a) "appointing authority" means in relation to a specified post, the authority declared as such under the Central Civil Services (Classification, Control and Appeal) Rules, 1965;

(b & c) omitted.

(d) "temporary service" means the service of a temporary Government servant in a temporary post or officiating service in a permanent post under the Government of India.

(e) "Defence Services" means services under the Government of India in the Ministry of Defence and in the Defence Accounts Departments under the control of the Ministry of Finance (Department of Expenditure) (Defence Division) paid out of the Defence Service Estimates and not permanently subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957)."

Government of India's decisions:

(1) (a) Only service rendered in a civil post under the Government of India is treated as temporary service for this purpose.

(b) The term "Government service" includes periods of duty and periods of leave including extraordinary leave.

(c) Prior service rendered in establishments paid from Defence Estimates and service rendered in Railway Department is also counted for quasi-permanency.

(d) "War service" as defined below shall be counted as service for purposes of quasi-permanency:

(i) Service of any kind in a unit or formation liable for service overseas or in any operational area;

(ii) Service in India under military, munitions or stores authorities with a liability to service overseas or in any operational area;

(iii) All other service involving subjection to naval, military or air force law;

(iv) A period of training with a military unit or formation involving liability to serve overseas or in any operational area;

(v) Service in any civil defence organisation specified in this behalf by the Central or the Provincial Government.

(vi) (i) Any service connected with the prosecution of the war which a person is required to undertake by a competent authority under the provisions of any law for the time being in force; and

(ii) Such other service as may hereafter be declared as war service for the purpose of this definition.

(2) Only whole time service of any of the kinds specified above will be recognised as war service.

[Home Department's Press Communiqué dated 14.11.1944 and (MHA OM No. 4/49-TS dated 11.7.1949)]

(3) The temporary employees of the Defence Accounts Departments are governed by these Rules with effect from 1.11.1967 and the Defence Account Department (TS) Rules, 1949 have been repealed.

[Ministry of Finance (Def. Div.) Notification No.0695/AMD-12050-12052 dt. 6.9.1968.]

(4) (i) The temporary employees were allowed to count their previous military or civil service to the extent admissible for purpose of quasi-permanency in the civil posts in which they have been re-employed after retrenchment, provided they refund the gratuity and/or pension or other terminal benefits received by them and

also forgo their claims to future pension, if any, admissible to them in respect of their past civil or military service vide Home Ministry's Memorandum No. 7/121/59-TS dated the 28th December, 1959. The position has since been reconsidered and it has been decided that the benefits admissible under the aforesaid Office Memorandum, will not be allowed to temporary employees who have earned pension in respect to their previous military service for purposes for quasi-permanency. However, if any temporary employee has with a view to claiming benefit of the said Office Memorandum already refunded the pension and foregone his future claim to pension, the money realised should be repaid to him and his pension restored from the date it was stopped.

(ii) The terminal benefit for military service may also be in the form of "disability pension" which contains a "disability element" as compensation for physical disability and a "service element" representing compensation for the enforced termination of career and for impaired employability. It has also been decided that the "service element" in the disability pension is required to be refunded in accordance with Home Ministry's order cited above, for purposes of computing the prior military service to the permissible extent for purposes of quasi-permanency.

[MHA Memo No. F. 41/61/60-Est.(C) dated 16.11.1961]

(5) 'Boy Service' i.e. service rendered by a temporary employee before his attaining the age prescribed in Article 358 or 360 of the Civil Service Regulations, as amended, will be allowed to count for the limited purpose of computing three years for the issue of declaration of quasi-permanency. But for the purpose of gratuity admissible under rule 10, or for the purpose of pension only such service as is rendered after attaining the age of 20/18 years in the case of superior service/inferior service as the case may be, will be taken into account; the emphasis being that this rule does not override the provisions in the Civil Service Regulations.

[MHA OM. No. 79/95/55-TS dated 18.1.1957]

3. When a Government servant shall be deemed to be quasi-permanent

Deleted.

4. Declaration under Rule 3 to specify the post

Deleted.

5. Termination of temporary service.

(1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.

Note:- The following procedure shall be adopted by the appointing authority while serving notice on such Government servant under clause (a).

(i) The notice shall be delivered or tendered to the Government servant in person.

(ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post, acknowledgement due at the address of the Government servant available with the appointing authority.

(iii) If the notice sent by registered post is returned unserved it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.

(2) (a) Where a notice is given by the appointing authority terminating the services of a temporary Government servant, or where the service of any such Government servant is terminated on the expiry of the period of such notice or forthwith the Central Government or any other authority specified by the Central Government in this behalf or a head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, reopen the case and after making such inquiry as it deems fit-

(i) confirm the action taken by the appointing authority;

(ii) withdraw the notice;

(iii) reinstate the Government servant in service; or

(iv) make such other order in the case as it may consider proper.

Provided that except in special circumstances, which should be recorded in writing, no case shall be re-opened under this sub-rule after the expiry of three months-

(i) from the date of notice, in a case where notice is given;

(ii) from the date of termination of service, in a case where no notice is given.

(b) Where a Government servant is reinstated in service under sub-rule (2) the order of reinstatement shall specify-

(i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

(ii) whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

Government of India's decisions:

(1) Rule 5 enables Government to dispense with the services of a temporary employee forthwith but does not provide for the forfeiture to Government of a similar amount when the employee does not give the requisite notice. The practice of obtaining an undertaking from temporary employees regarding forfeiture of pay and allowances should be discontinued where this has not already been done.

[MHA OM No. 78/105/55-TS dt. 22.12.1955, read with Deptt. of Personnel & A.R. Notification . No. 4/2/72-Ests. (C) dt. 22.11.1972.]

(2) When action is taken as under Rule 5 to terminate the services of a temporary employee, the order of termination, which should be passed by the appointing authority, should not mention the reasons for such termination.

[MHA OM No.39/14/56-Estt.(A) dated 22.6.1956.]

(3) (i) Where a Central Government servant, whose services have been terminated on payment of pay and allowances in lieu of a period of notice is able to secure another appointment under the Central Government within that period, the break in service may be condoned by the appointing authority and

service in the new appointment treated as continuous with that in the previous appointment for all purposes including fixation of pay, seniority, leave and gratuity or other retirement benefits; provided that he shall refund to Government the pay and allowances of the former post for the unexpired portion of the notice after his re-employment as well as any gratuity or other termination benefits in respect of his previous service.

(ii) In the case of person who was in quasi-permanent service before discharge, condonation of break will entitle him to count his previous quasi-permanent service for pension in full only if he is declared to be in quasi-permanent service with effect from the date of such re-employment and is confirmed in continuation of such quasi-permanent service. If, however, he is treated as a temporary employee, not in quasi-permanent service, the previous quasi-permanent service will count only to the extent that purely temporary service would so count.

[MHA OM No. 9/1/54-RPS dated 9.10.1956.]

(4) It has been decided in consultation with the Ministry of Finance in cases where a quasi-permanent Government servant who secures alternative employment during the period of notice of termination or terminal leave granted to him, that:

(i) The initial pay of quasi-permanent employee securing alternative employment during terminal leave or period of notice may be fixed with reference to quasi-permanent pay last drawn on the principle of FR 22 (a)(i), FR 22 (a) (ii) or FR 22-C as the case may be; and

(ii) In the case where the alternative employment is in a lower post/grade and the quasi-permanent pay exceeds the minimum pay of such lower post/grade, pay will be limited to the maximum of the scale of the lower post/grade and no personal pay should be allowed over and above such maximum.

Provided the quasi permanent employee refunds pay and allowances of the former post/grade for the unexpired portion of the notice period as well as any gratuity or other terminal benefits in respect of his previous service. Formal sanction in each case shall be accorded by invoking the provisions of FR 27.

[MHA OM No. 7/26/59-TS, dated 6.2.1969.]

(5) (i) The period of one month should commence from the date the notice is served on or tendered to, the Government servant.

(ii) The Government of India have standardised the proforma to be used for termination of services of temporary Government servants under rule 5 of the Central Civil Service (Temporary Service) Rules, 1965. Forms I and II are meant for use in cases where the appointing authority is other than the President of India, whereas Forms III and IV are to be used in cases where the appointing authority is the President of India (see Annexures I to IV).

(iii) Ordinarily when a Government servant is actually in service, there would not be any difficulty in serving the notice on him personally or tendering in the presence of some other officer, if he refuses to accept the same. In the cases where it is apprehended that service is likely to be evaded, e.g. when the officer is on long leave, service should be terminated forthwith with an offer to pay a month's salary in lieu of notice as provided in the Rules.

[MHA OM No. 4/1/65-Ests. (C) dated 30.3.1967]

(6) A question has been raised regarding the treatment to be accorded to a letter of resignation submitted by a temporary Government servant, in the light of the provisions of the Central Civil Services (Temporary Service) Rules, 1965.

The question has been considered in consultation with the Ministry of Law and it is clarified that when a temporary Government servant submits a letter of resignation, a distinction should be drawn between a letter of resignation purporting to be a notice of termination of service and one which is not. This is because a notice of termination of service, given by a temporary Government servant under rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965, is something different from a mere letter of resignation submitted by him without any reference direct or indirect, to the said rule. While the former is an exercise of the right conferred by statutory rules enabling a temporary Government servant to cease performance of his duties automatically on the expiry of the prescribed period of notice, the latter required acceptance by the competent authority in order to become effective.

Therefore, if a temporary Government servant submits a letter of resignation in which he does not refer to rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965 or does not even say that it be treated as a notice of termination of service, the provisions of rule 5 *ibid* will not be attracted. In such a case, the resignation of the temporary Government servant will be dealt with under the provision of Home Ministry's OM No. 39/6/57-Ests. (A) dated the 6th May, 1958 and he can relinquish his post only when the resignation is accepted and he can be relieved of his duties. It will, therefore, be possible in such circumstances to retain

the temporary officer even beyond one month if it takes time to make alternative arrangements. This will not be repugnant to the provisions of the Central Civil Services(Temporary Service) Rules, 1965 in any way, because when a temporary Government servant submits a letter of resignation without invoking the provisions of the said Rules, they will not come into picture.

[MHA OM No. 4/1/65-Ests. (C) dt 25.5.1966]

(7) Consequent on the issue of the Central Civil Services (Temporary Service) Rules, 1965 the various forms prescribed under the Central Civil Services (Temporary Service) Rules, 1949 have been reviewed and it has been decided to have, under the new Rules, the forms contained in Annexures V and VI. These will be in addition to the forms prescribed for termination of service of a temporary Government servant under rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965 vide OM No. 4/1/65-Ests. (C) dated 30.3.1967.

[MHA OM No. 4/2/66-Est. (C) dt 27.8.1966]

(8) Under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the services of a temporary Government servant, who is not in quasi-permanent service, can be terminated at any time by a notice in writing given either by the Government servant who is not in quasi-permanent service to the appointing authority or by the appointing authority to the Government servant. A question has arisen whether this rule should be invoked also in the case of persons appointed on probation, where in the appointment letter a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any) has been provided. The position is that the Central Civil Services (Temporary Service) Rules, 1965, do not specifically exclude probationers or persons on probation as such. However, in view of the specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any), it has been decided, in consultation with the Ministry of Law, that in cases where such a provision has been specifically made in the letter of appointment, it would be desirable to terminate the services of the probationer/person on probation in terms of the letter of appointment and not under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965.

[MHA Memo No. 4/10/66-Ests. (C) dated 26.8.1967]

(9) (i) A question has been raised whether in the case of temporary Government servants whose services are terminated on payment of one month's pay and allowances in lieu of notice under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, earned leave at their credit may be granted as terminal leave

and how the leave salary, therefore, be regulated. It has been clarified that, in cases in which pay in lieu of notice is allowed, the Government servant concerned may be granted terminal leave to the extent due and admissible but the leave salary for such leave should be allowed only for the period of leave excluding that period for which pay and allowances in lieu of notice have been allowed.

(ii) The cases of quasi-permanent Government servants whose services are similarly terminated under Rule 7 of the Central Civil Services (Temporary Service) Rules, 1965 and who are granted terminal leave may also be regulated as above.

[M.F. Memo No. F.5(4)-E.IV(A)/68 dt. 24.8.1968]

6. Termination of temporary service on account of physical unfitness.

Notwithstanding anything contained in rule 5, the services of a temporary Government servant may be terminated at any time without notice on his being declared physically unfit for continuance in service by an authority who would have been competent to declare him as permanently incapacitated for service had his appointment been permanent.

7. Termination of quasi-permanent service.

Deleted.

8. Deleted.

9. Leave, allowances, etc. of a Government servant in quasi-permanent service.

Deleted.

10. Terminal gratuity payable to temporary Government servants.

(1) Subject to the provisions of sub-rule (1-B), a temporary Government servant who retires on superannuation or is discharged from service or is declared invalid for further service shall be eligible for gratuity on the same scale as admissible to a permanent Government servant under the Central Civil Service (Pension) Rules, 1972.

(1-A) In the case of a temporary Government servant who is compulsorily retired from service as a disciplinary measure, the provisions of sub-rule (1) shall apply subject to the modification that the rate of gratuity payable in his case shall not be less than two-thirds of, but in no case exceeding, the rate specified in sub-rule (1).

(1-B) In the case of a temporary Government servant who retires from service on attaining the age of superannuation or on his being declared to be permanently incapacitated for further Government service by the appropriate medical authority, after he has rendered temporary service of not less than 10 years or who has sought voluntary retirement by giving three months' notice in writing on completion of 20 years' service, provisions of sub-rule (1) shall not apply and in accordance with the provisions of the Central Civil Services (Pension) Rules, 1972-

(i) such a Government servant shall be eligible for the grant of superannuation, invalid or retiring pension, as the case may be, and retirement gratuity; and

(ii) in the event of his death after retirement, the members of his family shall be eligible for the grant of family pension.

Death Gratuity:

(2) In the event of death of a temporary Govt. servant while in service, his family shall be eligible for family pension and death gratuity at the same scale and under the same provisions as are applicable to permanent Central Civilian Government servants under the Central Civil Services (Pension) Rules, 1972;

(3) No gratuity shall be admissible under this rule to a Government servant,-

(a) who resigns his post or who is removed or dismissed from service as a disciplinary measure;

(b) who is re-employed after retirement on superannuation or retiring pension.

Provided that a temporary Government servant who resigned from service to take up, with prior permission, an appointment under a Corporation or Company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by Government shall be paid terminal gratuity at the rate prescribed under sub-rule (1) in respect of the service rendered by him under the Government:

Provided further that a temporary Government servant who has been absorbed in a Central autonomous body, with the permission of the parent department, shall have an option to count the service rendered under the Government for the purpose of pension under the autonomous body if it has a pension scheme, instead of drawing the terminal gratuity under the first proviso.

Explanation- For the purpose of this sub-rule -

(i) "Central autonomous body" means a body which is financed wholly or substantially from cess or Central Government grants and includes a Central statutory body or a Central University but does not include a public undertaking falling under the purview of the Bureau of Public Enterprises;

(ii) "financed substantially" means that more than 50% of the expenditure is met by cess or Central Government grants.

(4) Deleted.

(5) Deleted.

(6) For the purpose of this rule,-

(a) gratuity shall be calculated on the basis of pay which the Government servant was drawing immediately before his superannuation, discharge/invalidment/absorption in an autonomous body or on the date of his death and dearness allowance on that pay;

(b) 'pay' shall mean pay as defined in Fundamental Rule 9(21)(a)(i);

(c) period of extraordinary leave, if any, availed of by the Government servant concerned shall be taken into account for computing the completed service on the same basis as it is taken into account for the purpose of the calculation of pension and retirement gratuity/death gratuity under Rule 21 of the Central Civil Services (Pension) Rules, 1972, as amended from time to time; and

(d) An increment earned during the currency of earned leave not exceeding 120 days or during the first 120 days of earned leave exceeding 120 days expiring on the date of retirement, though not actually drawn, shall form part of the pay for purposes of calculating terminal/death gratuity.

(7) The provisions of rule 10 shall apply to Govt. servants appointed on or before the 31st day of December, 2003.

Government of India's decisions:

(1) Employees dying in service are covered by CCS (Pension) Rules, 1972:- In the event of death in harness of temporary/quasi-permanent Government servants their families shall be eligible to family pension and death gratuity on the same scale as admissible to families of permanent Government servants under the CCS (Pension) Rules, 1972.

[G.I, Dept. of Pen. & Pen. Welfare, OM No. 2/4/87-PIC, dated the 14th April, 1987 and takes effect from 1.1.1986.]

(2) For the purpose of drawing gratuity payable under Rule 10 the Head of Office should prepare a statement of the amount admissible to the person concerned and submit this along with the service book to the Accounts Officer, for verification and authorization. The statement should show the detailed calculations as to how the amount has been arrived at. The Accounts Officer should, in turn, verify the statement and issue authority for payment of the gratuity to the Head of Office on the basis of which the amount will be drawn and disbursed by the latter.

The gratuity payable under Rule 10 should be adjusted under the Head "55-Superannuation Allowances and Pensions, etc." The gratuity admissible under the Central Civil Services (Temporary Service) Rules does not attract the provisions of Article 470 Civil Service Regulations.

[G.I. MHA OM No. 78/164/56-TS, dated the 8th July, 1957]

(3) **Half the service paid from contingencies, followed by regular appointment, counts for Terminal gratuity:-** A question has been raised whether half of the service paid out of contingencies may also be allowed to be counted for the purpose of terminal gratuity admissible under the Central Civil Services (Temporary Service) Rules, 1965, where the staff paid from contingencies is subsequently appointed on regular basis.

The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure) and it has been decided that half the service paid from contingencies will be allowed to be counted for the purpose of terminal gratuity as admissible under the Central Civil Services (Temporary Service) Rules, 1965, where the staff paid from contingencies is subsequently appointed on regular basis. This benefit will be subject to the conditions laid down in the Ministry of Finance, OM, dated the 14th May, 1968.

These orders would apply to persons who are in service on the date of issue of this order or are appointed thereafter.

[GI, Dept. of Per. & Trg., OM No. 12011/1/85-Estt. (C), dated the 10th March, 1986]

(4) Temporary employees with 20 years of service can seek voluntary retirement under Rule 48-A of Central Civil Services (Pension) Rules, 1972:- In terms of sub-rule (1) of Rule 48-A of Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the Pension Rules), a Government servant including civilian Government servant in the Defence Services appointed substantively to a civil service or post in a pensionable establishment is eligible to seek retirement from service by giving notice of not less than three months in writing to the appointing authority, after he has completed 20 years' qualifying service. A Government servant who does not hold a lien on a permanent pensionable post is not eligible to seek voluntary retirement even if he has completed 20 years of service. However, the question of grant of pension to Government servants who retired after long years of service without being confirmed in any post was examined consequent to the receipt of numerous representations for these benefits and a Government servants who on his retirement from service on attaining the age of superannuation or on his being declared to be permanently incapacitated for further Government service by the appropriate medical authority after he had rendered temporary service of not less than 20 years was brought within the purview of the Pension Rules and the condition of holding a pensionable post in a substantive capacity was dispensed with in such cases. Such a Government servant is now eligible for the grant of superannuation or invalid pension, DCR Gratuity and family pension in accordance with the provisions of Pension Rules.

The question whether the temporary employees should also be allowed the facility, at present admissible for permanent employees, under Rule 48-A of the Pension Rules, of seeking voluntary retirement after completion of 20 years of service has been examined in consultation with the Ministry of Finance, Department of expenditure and the President is pleased to decide that the benefit of the scheme of voluntary retirement be extended to those temporary Government servants who have completed continuous service of 20 years or more. The various terms and conditions of voluntary retirement applicable to permanent Government servants under the scheme of voluntary retirement on completion of 20 years qualifying service, as laid down in Rule 48-A of the Pension Rules, will also apply in this case.

[G.I., Dept. of Pen. & Pen. Welfare, OM No. 32/1/86-P&PW, dated the 30th September, 1986]

(5) Clarification of term 're-employed pensioners':- In accordance with the provision contained in paragraph 5 (iv) (c) of OM No. F. 17 (1)-E.V (A)/60, dated the 11th July, 1960, re-employed pensioners were debarred from getting terminal/death gratuity. The intention, however, was not to debar all the re-employed pensioners from this benefit. It is, therefore, clarified that the term 're-employed pensioners' used therein refers only to pensioners who retired on superannuation/retiring pension and not to other pensioners.

Re-employed pensioners who were allowed benefits of Contributory Provident Fund in terms of OM No.8(34)-E.III/57, dated the 25th November, 1958, are, however, not eligible for any gratuity in terms of orders, dated the 11th July, 1960.

[G.I., M.F., OM No. 8 (2)-E.V (B)/75, dated the 24th September, 1975]

(6) **Beneficiaries to whom death gratuity is payable:-** A question has arisen whether, in the event of death of a Government servant in quasi-permanent service, gratuity should be paid to his family or, if there is no family to his legal heirs. It has been decided in consultation with the Ministry of Finance, that where a Government servant who has been declared to be quasi-permanent dies before confirmation, the gratuity admissible to him should be paid to his family. If, however, there is no family, no gratuity would be payable.

No nomination is required in the case of a quasi-permanent Government servant. The gratuity admissible to him will, on his death, be payable to his family in the order of preference mentioned below-

1. Elder surviving widow in the case of a male officer.
2. Husband in the case of a female officer.
3. Eldest surviving son.
4. Eldest surviving unmarried daughter.
5. Eldest surviving widow daughter.
6. Eldest surviving adopted son.
7. Eldest surviving unmarried adopted daughter.
8. Eldest surviving widowed adopted daughter.
9. Eldest surviving step-son.
10. Eldest surviving unmarried step- daughter.
11. Eldest surviving widowed step- daughter.

12. Father} including adoptive parents in the case of } individuals whose personal law permits adoption.
13. Mother}
14. Eldest surviving brother below the age of 18 years.
15. Eldest surviving unmarried sister.
16. Eldest surviving widowed sister.
17. Eldest surviving married daughter.
18. Eldest surviving married adopted daughter.
19. Eldest surviving married step- daughter.

The order of preference mentioned in the preceding paragraph shall also apply to the payment of gratuity to the family in the event of the death of a temporary Government servant under Rule 10.

The amount of gratuity payable to a quasi-permanent Government servant or to his family in the event of his death may be determined on the basis of entries made in his service book and drawn without a formal application or audit report just as pay claims in a pay bill form.

[G.I., MHA OM. No. 54/84/51-NGS, dated the 29th July, 1953, No. 55/166/53, TS, dated the 13th September, 1954, No. F.41/14/62-Ests. (C), dated the 17th March, 1962 and No. 4/7/68-Ests. (C), dated the 6th May, 1966.]

(7) Elimination of beneficiaries by will or deed:- Decision No. (6) lays down the order of preference in which gratuity is payable to the family of a deceased quasi-permanent employee. If the person eligible to the gratuity in accordance with that order of preference is totally denied any share in the property of the Government servant under a Will or Deed made by him, such person shall be regarded as ineligible to receive the gratuity which shall then be paid to the next person in the order of preference.

In cases where the Government servant makes any such Will or Deed, he should intimate the fact, in writing, to the Head of Office who should keep a note in the Service Book of the Government servant. In the case of Gazetted Officers, the intimation will, of course, go to the Accounts Officer also. In the absence of such a declaration, the presumption would be that there is no such Will or Deed and the payment of gratuity can be made strictly according to the order of preference given in Decision No. (6) above.

[G.I., MHA OM. No. 78/144/56-TS, dated the 29th August, 1957]

(8) Claim to receive gratuity to remain suspended till conclusion of criminal proceedings in cases where the eligible person is charged with the offence of

murdering/abetting the murder of the Government servant:- A question has been raised whether in the case of a person who is eligible to the gratuity in accordance with the order of preference given in GID (6) above, and is charged with the offence of murdering the Government servant or for abetting the commission of such an offence, his claim to receive his gratuity should remain suspended till the conclusion of the criminal proceedings instituted against him.

The matter has been examined in this Department in consultation with Ministry of Law and the decision taken is as follows:-

(i) If a person who in the event of death of a Government servant while in service, is eligible to receive gratuity in terms of sub-rule (2) of Rule 10 or sub-rule (2) of Rule 11, as the case may be, of Central Civil Services (Temporary Service) Rules, 1965 and is charged with the offence of murdering the said Government servant or for abetting the commission of such an offence, his claim to receive the said Government servant's gratuity shall remain suspended till the conclusion of the criminal proceedings instituted against him.

(ii) If, on the conclusion of the criminal proceedings referred to in sub-para (1), the person concerned-

(a) is convicted for the murder or abetting the murder of Government servant, he shall be debarred from receiving the gratuity and the same shall be payable to the other eligible member of the family, if any, in accordance with the order of preference.

(b) is acquitted of the charge of murdering or abetting the murder of the Government servant, the gratuity shall be payable to him.

[G.I. DP&AR., OM No.12011/3/82-Ests. (C), dated the 14th March, 1983]

(8) Special relaxation for payment of minor's share without guardianship certificate, up to the extent of Rs.5000/- As per Government of India Ministry of Finance OM No. F.24(8)-E.V(A)/59, dated the 20th October, 1959 and the 1st September 1960, the payment of a minor's share of death-cum-retirement gratuity is to be made to the person producing a guardianship certificate when there is no surviving parent or the surviving parent is a Muslim lady. It has been represented that in many cases, the production of guardianship certificate causes great inconvenience and entails delays in the settlement of the claims.

It has been decided in modification of the above decision that payment of death-cum-retirement gratuity to the extent of Rs.5,000 (or the first Rs. 5,000 where the

amount payable exceeds Rs. 5,000) in favour of a minor may be made to his/her guardian, in the absence of a natural guardian, without the production of a formal guardianship certificate but subject to the production of an indemnity bond with suitable sureties to the satisfaction of the sanctioning authority. The balance in excess of Rs. 5,000, if any, would become payable on the production of a certificate of guardianship.

It is essential, however, that there should be adequate prima facie grounds for making payment as in paragraph 2 above, to the person claiming it. Such ground can exist only if he is shown by a sworn declaration to be a de-facto guardian and his bonafide have been ascertained. Even if a guardian has not yet been appointed by the Court, if the minor and his property are in the custody of some person, such person is in law a de-facto guardian. The authorities making the payment should, therefore, require the person who comes forward to claim payment on behalf of the minor, to satisfy them by an affidavit that he is in charge of the property of the minor and is looking after it or that, if the minor has no property other than the gratuity, the minor is in his custody and care. The affidavit so to be produced is in addition to the indemnity bond with suitable sureties.

The indemnity bond which is to be required to be produced by a de facto guardian of minor(s) for payment of death-cum-retirement gratuity to the extent of Rs. 5,000 should be executed in the form appended below.

It has been decided that the stamp duty payable on the indemnity bond will be borne by the Government. The indemnity bond should, therefore, be executed on any durable plain paper.

The indemnity bond should be signed by the obligor and the surety/sureties or their respective attorneys appointed by power(s) of attorney. The indemnity bond on behalf of the President should be accepted by an officer duly authorized under Article 299(1) of the Constitution.

[G.I.,M.F., OM No. 10(3)-E. V(A)/61, dated the 29th June, 1961 and OM No. F. 10(6)-E.V(A)/65, dated the 11th February,1966.]

INDEMNITY BOND

KNOW ALL MEN by these presents that we (a)------(b)-----the widow/son/brother, etc., of (c) deceased, resident of(hereinafter called 'the Obligor') and (d).....son/wife/daughter of resident of..... and son/wife/daughter ofresident ofthe sureties for and on behalf of the Obligor(hereinafter called "the Sureties") are held firmly bound to the President of India(hereinafter called "the Government") in the sum of Rs.....(Rupees.....only) well and truly to be paid to the Government on demand and without a demur for which payment we bind ourselves and our respective heirs, executors, administrators, legal representatives, successors and assigns by these presents.

Signed thisday ofone thousand, nine hundred and

WHEREAS (c)was at the time of his death in the employment of the Government/receiving a pension at the rate of Rs.....(Rupeesonly) per month from the Government.

AND WHEREAS the said (c)died on theday of19..... and there was due to him at the time of his death the sum of Rs..... (Rupees.....only) for and towards share of his minor son/daughter in the death-cum-retirement gratuity.

AND WHEREAS the Obligor claims to be entitled to the said sum as de facto guardian of the minor son/daughter of the said (c)but has not obtained till the date of these presents the certificate of guardianship from any competent Court of Law in respect of the said minor(s).

AND WHEREAS the Obligor has satisfied the (e)..... that he/she is entitled to the aforesaid sum and that it would cause undue delay and hardship if the obligor be required to produce the certificate of guardianship from the competent Court of Law before payment to him of the said sum of Rs.....

AND WHEREAS the Government has no objection to the payment of the said sum to the Obligor but under Government Rules and Orders, it is necessary for the Obligor to first execute a bond with one surety/two sureties to indemnify the Government against all claims to the amount so due as aforesaid to the said (c).....before the said sum can be paid to the Obligor.

AND WHEREAS the Obligor and at his/her request the surety/sureties have agreed to execute the bond in the terms and manner herein after contained.

NOW THE CONDITION OF THIS BOND is such that if after payment has been made to the Obligor, the Obligor and/or the surety/sureties shall in the event of a

claim being made by any other person against the Government with respect to the aforesaid sum of Rs.....refund to the Government the said sum of Rs..... and shall otherwise indemnify and keep the Government harmless and indemnified against and from all liabilities in respect of the aforesaid sum and all costs incurred in consequence of the claim thereto THEN the above written bond or obligation shall be void and of no effect but otherwise it shall remain in full force, effect and virtue.

AND THESE PRESENTS ALSO WITNESS that the liability of the sureties hereunder shall not be impaired or discharged by reason of time being granted by or any forbearance act or omission of the Government whether with or without the knowledge or consent of the surety/sureties in respect of or in relation to the obligations or conditions to be performed or discharged by the Obligor or by any other method or thing whatsoever which under the law relating to sureties, shall but for this provision have the effect of so relating the surety/sureties from such liability nor shall it be necessary for the Government to sue the Obligor before suing the surety/sureties or either of them for the amount due hereunder, and the Government agrees to bear the stamp duty, if any, chargeable on these presents.

IN WITNESS WHERE OF the Obligor and the surety/sureties hereto have set and subscribed their respective hands hereunto on the day, month and year above written.

Signed by the above named `Obligor' in the presence of

1.
2.

Signed by the above named `Surety/Sureties'

1.
2.

Accepted for and on behalf of the President of India by

.....
(Name and designation of the Officer directed or authorized, in pursuance of Article 229 (1) of the Constitution, to accept the bond for and on behalf of the President) in the _____ presence _____ of _____ (Name and designation of witness).

- Note-I:** (a) Full name of the claimant referred to as the `Obligor'.
(b) State relationship of the Obligor to the deceased.
(c) Name of the deceased Government Officer.
(d) Full name or names of the sureties with name or names of the father (s)/husband (s) and place of residence.

(e) Designation of the officer responsible for payment.

Note- II: The Obligor as well as the sureties should have attained majority so that the bond may have legal effect or force.

(9) When the husband declines to accept death gratuity in any capacity:- A case has been reported where on the death of a married woman employee, who left behind minor children, the husband of the deceased had declined to accept the death gratuity in any capacity and also given his consent to pay the same to the real guardian of the deceased's children. i.e. his father-in-law. The widower was having another living wife at the time of the death of the deceased Government servant.

The following points relating to the case were referred to the Government of India by this office. The Ministry of Finance in consultation with the Ministry of Law and Department of Personnel and Administrative Reforms have now issued the clarification below:

S. No.	Points raised for clarification	Clarification issued
1.	In terms of the order of preference mentioned in the list of family members given in Decision No. (9), the husband of a deceased female official gets preference over the surviving children for the receipt of the death gratuity. If the husband declines to accept the gratuity will it pass on to the surviving children of the deceased Government servant in order of next preference?	If the husband declines to accept the gratuity admissible under Rule 11 or even Rule 10, it will pass on to the surviving children of the deceased Government servant in the order of next preference.
2.	If the answer to the point above is that gratuity will pass on to the surviving children on the father declining the benefits, will it be in order to make payment through the father of the deceased female Government servant, who is the guardian of minor children, when the natural guardian, viz., father of the children, is living?	If the father of the children is not looking after them properly and the children are under guardianship of their maternal grandfather, the payments through the latter can be made to them after he is recognized as the legal guardian of the children.

[Auditor-General Letter No. 61/Audit/95-75, dated the 19th January, 1979]

ANNEXURE I

FORM I

Notice of termination of service issued under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965

In pursuance of sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I hereby give notice to Shri/Smt./Kumari.....(name) that his/her services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him/her.

Station (Signature of the appointing authority)

Date:

ACKNOWLEDGEMENT

I hereby acknowledge the receipt on this day of the notice of termination from service.

Place: Signature of the individual

Date: Designation

ANNEXURE II

FORM II

Order of termination of service issued under the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965

In pursuance of the proviso to sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 I hereby terminate forthwith the services of Shri/Smt./Kumari..... (name) and direct that he/she shall be entitled to claim a sum equivalent to the amount of his/her pay and allowances for a period of one month (in lieu of the period of notice) calculated at the same rate at which he/she was drawing them immediately before the date on which this order is served on or, as the case may be, tendered to him/her.

Station: (Signature of the appointing authority)

Date:

ANNEXURE III
FORM III

Notice of termination of service issued under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965 where the appointing authority is the President

In pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the President hereby gives notice to Shri/Smt./Kumari.....(name) that his/her services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him/her.

Station: By order and in the name of the President

Date: (Signature of the authority empowered to authenticate documents in the name of the President).

ACKNOWLEDGEMENT

I hereby acknowledge the receipt on this day of the notice of termination from service.

Place: _____ Signature of the individual

Date: _____ Designation

ANNEXURE IV
FORM IV

Order of termination of service issued under the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 where the appointing authority is the President.

In pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the President hereby terminates forthwith the services of Shri/Smt./Kumari.....(name) and directs that he/she shall be entitled to claim a sum equivalent to the amount of his/her pay and allowances for a period one month (in lieu of the period of notice) calculated at the same rate at which he/she was drawing them immediately before the date on which this order is served on or, as the case may be, tendered to him/her.

Station: _____ By order and in the name of the President

Date: _____ (Signature of the authority empowered to authenticate documents in the name of the President)

ANNEXURE V
FORM V

Order of termination of service issued under proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 during the currency of the notice of termination of services already served on him, where the appointing authority is the President.

In modification of Notice No.....datedof termination of service of Shri/Smt./Kumari.....(name) and in pursuance of the proviso to sub-rule (1) of rule (5) of the Central Civil Services (Temporary Service) Rules, 1965, the President hereby terminates forthwith the services of Shri/Smt./Kumari..... (name) and directs that he/she shall be entitled to claim a sum equivalent to the amount of his/her pay and allowances for the period by which the said notice falls short of one month calculated at the same rates at which he/she was drawing them immediately before the date of this order.

Station: By order and in the name of the President

Date: (Signature of the authority empowered to authenticate documents in the name of the President).

ANNEXURE VI
FORM VI

Order of termination of service issued under proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 during the currency of the notice of termination of services already served on him.

In modification of Notice No.....datedof termination of service of Shri/Smt./Kumari.....(name) and in pursuance of the proviso to sub-rule (1) of rule (5) of the Central Civil Services (Temporary Service) Rules, 1965, I hereby terminate forthwith the services of Shri/Smt./Kumari..... (name) and direct that he/she shall be entitled to claim a sum equivalent to the amount of his/her pay and allowances for the period by which the said notice falls short of one

month calculated at the same rate at which he/she was drawing them immediately before the date of this order.

Station:

Signature of the appointing authority

Date:

ANNEXURE VII

Order of preference of family for payment of gratuity

1. Eldest surviving widow in the case of a male officer.
2. Husband in the case of a female officer.
3. Eldest surviving son.
4. Eldest surviving unmarried daughter.
5. Eldest surviving widowed daughter.
6. Eldest surviving adopted son.
7. Eldest surviving unmarried adopted daughter.
8. Eldest surviving widowed adopted daughter.
9. Eldest surviving step son.
10. Eldest surviving unmarried step daughter.
11. Eldest surviving widowed step daughter.
12. Father } including adoptive parents in the case of } individuals whose personal
law permits adoption.
13. Mother }
14. Eldest surviving brother below the age of 18 years.
15. Eldest surviving unmarried sister.
16. Eldest surviving widowed sister.
17. Eldest surviving married daughter.
18. Eldest surviving married adopted daughter.
19. Eldest surviving married step daughter.

ACTION AGAINST TEMPORARY GOVERNMENT SERVANTS

1. Central Civil Services (Temporary Service) Rules, 1965

The conditions of service of temporary Government servants, are, in certain matters, governed by the Central Civil Services (Temporary Service) Rules, 1965. A copy of the Rules is given in Section A(6) In matters pertaining to disciplinary control, the provisions of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, apply to temporary Government servant also.

2. Termination of services of temporary Government servants by the appointing authority

A(6)

2.1 Under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965, the services of a temporary Government servant, who has not been declared quasi permanent, can be terminated at any time by a month's notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant.

2.2 The services of such a Government servant can also be terminated by the appointing authority forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the rates at which he was drawing them immediately before the termination of his service, or as the case may be, for the period for which such notice falls short of one month.

2.3 If for any reason it is considered that the services of a Government servant, who had already been served with a notice, should be terminated forthwith, the competent authority may do so and, on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay and allowances for the un-expired period of the notice.

2.4 In case of persons appointed on probation, where in the appointment letter a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if

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any) has been specifically made, it would be desirable to terminate the services of the person appointed on probation in terms of the letter of appointment and not under Rule 5 (1) of the Temporary Service Rules.

3. Services may be terminated for any reason.

A(6) 3.1 The right to terminate the services of a temporary Government servant under Rule 5 (1) of the Central Civil Services (Temporary Service) rules, 1965, is a condition of service and can be exercised by the competent authority for any good and sufficient reason at his discretion.

3.2 It has often been contended that termination of services of a temporary Government servant is tantamount to dismissal or removal and, therefore, Article 311 (2) is attracted. In *Pershotam Lal Dhingra's case* (AIR 1958 SC 36) the Supreme Court observed that “..... misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists under the contract or the rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant”. The Court, therefore, held that “If the termination of service is founded on the right flowing from contract or the service rules, then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted.

4. Termination of services for misconduct

As soon as the need for taking action against a temporary Government servant for any reason becomes apparent, the competent authority should, considering the circumstances of each case, decide whether disciplinary proceedings should
A(4) be taken against him under the provisions of the Central Civil Services
A(6) (Classification, Control and Appeal) Rules or whether it would be in the public interest to terminate his services under Rule 5 (1) of the CCS (TS) Rules. In cases where, for example, a minor penalty would be a sufficient punishment, it may be considered appropriate to take disciplinary proceeding against him rather than terminating his services. On the other hand, in a case where gross misconduct has been committed, it may be considered more desirable to take disciplinary action with a view to inflicting the punishment of dismissal or removal than merely to terminate his services which carries no other disability. Termination of services under rule 5 may be resorted to by issuing an order for

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discharge simplicitor without making any imputation in the order against the employee when he is found unsuitable for the job.

5. Authority competent to terminate services.

Under Rule 5 (1) the notice of termination of services is to be given by the authority declared for the time being to be the “appointing authority” in respect of the post held by the temporary Government servant concerned. Even if the authority declared as appointing authority at the time of appointment of a person to a particular post was higher in rank than that specified on the date of issue of the notice, the latter authority will still be competent to issue the notice. Termination of services under Rule 5(1) of the CCS (TS) Rules, as explained in para 3.2 above does not amount to “dismissal” or “removal” from service. The provisions of Article 311 (1), according to which a Government servant cannot be dismissed or removed by an authority lower than that by which he was appointed, are not attracted.

6. Termination of services during the pendency of disciplinary proceedings

6.1 *Termination of service after preliminary enquiry* – the Supreme Court in Champakalal Chaman Lal Shah vs. Union of India (AIR 1964 SC 1854) examined the scope of the preliminary enquiry that could be held before the services of a temporary Government servant are terminated or as probationer is discharged. The Supreme Court observed as follows:-

“Generally, therefore, a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where Government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy Government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already, Government does not usually take action of this kind without any reason. Therefore, when a preliminary enquiry of this nature is held, in the case of a temporary employee or a Government servant holding a higher rank temporarily, it must not be confused with the regular departmental

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enquiry (which usually follows such a preliminary enquiry) when the Government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the Government servant. Therefore, so far as the preliminary enquiry is concerned, there is no question of its being governed by Article 311 (2) for that enquiry is really for the satisfaction of Government to decide whether a punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary Government servant or a servant holding higher rank temporarily to which he has no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a Government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of three major punishments mentioned therein. Such a preliminary enquiry may even be held ex-parte for it is merely for the satisfaction of Government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the Government and it is only when the Government decides to hold a regular departmental enquiry for the purposes of inflicting on the Government servant one of the three major punishments indicated in Article 311 that the Government servant gets the protection of article 311 and all the rights that that protection implies as already indicated above. There must, therefore, be no confusion between the two enquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the Government servant one of the three major punishments indicated in Article 311 that the Government servant is entitled to the protection of that Article. That is why this Court emphasised in Parshotam Lal Dhingra's case and in Shyam Lal vs The State of Uttar Pradesh that the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule is irrelevant."

In this particular case a Memorandum was issued asking Shri Shah why disciplinary action should not be taken against him. But no formal enquiry was held and Shri Shah's service were terminated under Rule 5. The Supreme Court observed:

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“We cannot accept the proposition that once Government issues a memorandum like that issued in this case but later decides not to hold a departmental inquiry for taking punitive action, it can never thereafter proceed to take action against a temporary Government servant in terms of Rule 5, even though it is satisfied otherwise that his conduct and work are unsatisfactory.”

It will thus be open to the competent authority to terminate the services of the temporary Government servant under Rule 5 or discharge the probationer in terms of his letter of appointment after preliminary enquiry.

6.2 Termination of service during pendency of departmental proceedings

A simple termination of service without inquiry, or even after an informal inquiry to satisfy the Government regarding the suitability or otherwise of the Government servant to continue in service, does not attract. Article 311 (2) unless the order of termination contains some aspersions or stigma. But termination after formal departmental inquiry into specific charges of misconduct and finding of guilt amount to dismissal notwithstanding the fact that the final order is couched in innocuous terms like “termination”, “discharge” etc. Such action amounts to circumvention of the protection of Article 311 (2) and a camouflage to conceal the real nature of the action. Thus, if regular disciplinary proceedings are pending against Government servant or he has been informed of the intention to proceed against him departmentally, his services should not be terminated under rule 5 of the CCS (Temporary Service) Rules, 1965.

7. Termination of services of a temporary Government servant being prosecuted in a court of law.

The services of a temporary Government servant against whom prosecution has been launched in a court of law can be terminated during the pendency of criminal case if it is considered expedient or advisable to do so instead of keeping him under suspension till the conclusion of the case. It may, for example, be considered advisable to terminate the services of a temporary Government servant who, if convicted for the offence for which he is being prosecuted, will be unsuitable for further retention in Government service and who

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according to legal advice has no chance of acquittal. In such case, the temporary government servant will not be entitled, for the period of suspension, to anything more than the subsistence allowance already paid to him.

8. Forms

The notice of termination of services under Rule 5 (1) of the CCS (TS) Rules should not give any indication of the reasons or circumstances leading to the termination. To ensure the use of correct terminology, the following forms of notice have been prescribed for use as appropriate in the circumstances of each case:-

1. Forms No. E (14 & 15) to be used in cases in which the temporary Government servant is to be given the prescribed notice of termination of services; form No. E(14) being used in cases in which the President is the appointing authority and form No. E(15) in cases in which the appointing authority is an authority other than the President.

2. Forms No. E (16&17) to be used when it is decided to terminate the services of a temporary Government servant forthwith by paying him a sum equivalent to the amount of his pay and allowances for the period of the notice; form No. E(16) being used in cases in which the President is the appointing authority and form No. E(17) being used in cases in which an authority other than the President is the appointing authority.

3. Forms No. E(18) & (19) to be used when the services of a temporary Government servant are to be terminated during the currency of the notice already served on him by paying him the pay and allowances for the unexpired period of the prescribed notice; form No. E(18) being used in cases in which the appointing authority is the President and form No. E(19) being used in cases in which an authority other than the President is the appointing authority.

B(51) 9. Services of Notice

9.1 The date of issue of notice is not sufficient for calculating the period of notice. The Supreme Court in K.Narasimhiah vs. H.C.Singri Gowdou has observed that “giving” is not equivalent to “sending” and there is no authority or principle for the proposition that as soon as the person with the legal duty to

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give the notice despatches the notices to the address of the person to whom it has to be given, the “giving” is complete. In view of this judgement of the Supreme Court, the period of notice should commence from the date the notice is served on, or tendered to the Government servant.

9.2 When the Government servant concerned is on duty, the notice should be served on him as far as possible personally and his acknowledgement obtained. But if he refuses to accept the same, it may be tendered in the presence of some other officer.

9.3 However, in case in which it is not possible to effect such personal service, e.g., when the Government servant is posted at a place other than the head-^{B(51)}quarters of the appointing authority or when he is on leave, the notice may be sent by registered post, acknowledgement due. If the notice is received back un-served it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the official Gazette. [See Note below Rule 5(1) (a) of the CCS (TS) Rules, 1965]. Alternatively in those cases when it is apprehended that service is likely to be evaded, service should be terminated forthwith with an offer to pay a month’s salary in lieu of notice, as provided in the Rules.

10. Review of cases

10.1 Under Rule 5(2) of the Central Civil Services (Temporary Service) Rules, 1965, the Central Government or any other authority specified by the Central^{B(51)} Government in this behalf may reopen, on its own motion, or otherwise a case where a notice is given by the competent authority terminating the services of a temporary Government servant or where the services or any such Government servants are terminated either on the expiry of the period of such notice or forthwith by payment of pay and allowances and for the period of prescribed notice.

10.2 Except in special circumstances to be recorded in writing, no case under this rule can be reopened after the expiry of three months (i) from the date of notice, in a case where a notice is given; or (ii) from the date of termination of services in a case where no notice is given.

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10.3 The authorities which have been declared by the Central Government as competent to exercise the powers conferred by Rule 5(2) of the CCS (TS) rules, 1965, and the extent of their power have been specified in the Ministry of Home Affairs Notification dated 22.7.1965. B(48)

10.4 In cases where the competent authority decides to act under Rule 5(2), it may, after calling for the records and after making such inquiry as it deems fit,

- a) confirm the action taken by the appointing authority;
- b) withdraw the notice;
- c) reinstate the Government in service; or
- d) make such other order as it may consider proper.

10.5 In cases where the competent authority confirms the action taken by the appointing authority, no further consequences will follow.

10.6 If the competent authority withdraws the notice, the Government servant will continue in service as if no notice was served upon him.

10.7 If the competent authority decides to reinstate the Government servant, the order of reinstatement should specify :-

- i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of service and the date of reinstatement;
- ii) Whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

11. Notice of termination of service by a temporary Government servant

B(54) 11.1 A temporary Government servant can give notice to the appointing authority under Rule 5(1) of the CCS (TS) Rules, 1965 of his intention to terminate his services.

11.2 If a temporary Government servant submits a letter of resignation in which he does not refer to Rules 5(1) of the CCS (TS) Rules or does not even mention that the letter of resignation be treated as a notice of termination of service, the

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provisions of Rule 5(1) *ibid* will not be attracted and the letter of resignation^{B(16)} may be dealt with by the competent authority according to the provision of the^{B(68)} Ministry of Home Affairs O.M. No. 39/6/57-Estt. (A) dated 6.5.1958 read with O.M. No. 39/17/69-Estt. (A) dated 18.6.70, such a temporary Government servant can relinquish his post only when his resignation is accepted and^{B(54)} he is relieved of his duties.

11.3 But if the letter or notice given by the Government servant refers directly or indirectly to rule 5(1) of the CCS (TS) Rules or even if it merely says that it may be treated as a notice of termination of services, such a letter may be treated as a valid notice under Rule 5(1). There is no question of the appointing authority refusing to accept such a notice as the Government servant will automatically cease to be a Government servant on the expiry the notice.

11.4 If the temporary Government servant who gives notice under Rule 5(1) and makes a request that he should be relieved from duties earlier than the expiry of period of notice, it may be examined whether the temporary Government servant concerned can be relieved earlier without detriment to work. If the work does not suffer in any way, such a Government servant may be relieved earlier.

11.5 If a temporary Government servant absents himself from duty without leave after giving notice and before the expiry of the period of notice, the competent authority can take disciplinary action against him, if considered necessary.

11.6 If the temporary Government servant who gives notices of the termination of his service under rule 5(1) of the CCS (TS) Rules, is one against whom disciplinary proceedings are pending, the proceedings will lapse on the expiry of the period of notice unless final orders on the proceedings have been passed before then.

11.7 If the temporary Government servant giving a notice is one who is under suspension, he need be paid only the subsistence allowance for the period of notice. The order placing such a Government servant under suspension will lapse on the expiry of notice of termination.

11.8 If the temporary Government servant who gives notice is one who is alleged to have committed a criminal offence for which it is proposed to pros-

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ecute him, he can be prosecuted even after the termination of services. If the notice is given by a Government servant during the pendency of prosecution against him in a court of law, prosecution will continue even after the termination of service.

Q25) **12. Circulation of names of temporary Government servant whose services have been terminated under Rule 5(1).**

12.1 The names and service particular or even mere names of temporary Government servants whose services are terminated under Rule 5(1) of the CCS (TS) Rules, 1965, even when disciplinary proceedings were contemplated or pending against them, or of those who leave Government service after giving due notice under Rule 5(1) of the CCS (TS) Rules, should not be circulated either directly or through the police. The result of such circulation will, in effect, be to disqualify them from further government service which would be tantamount to imposing a penalty of dismissal or removal under the guise of an innocuous circular and would be struck down by courts as violative or

Q25) Article 16 (1) and Article 311 of the Constitution.

12.2 As safeguard against the re-entry of such persons into Government service, the standard form of verification of character and antecedents which is required to be filled in by every fresh entrant to Government service provides for a column in which information about past service, if any, and the reasons for termination of service, resignation, etc. is to be given. Any suppression of such information by an entrant to Government service will itself be a good and sufficient reason for taking disciplinary action against him.

Source: cvc.nic.in/vigman/chapterviii.pdf (Action against temporary Govt. servant)