

BRIDGE AND ROOF COMPANY (INDIA) LTD.

भारत सरकार का एक उद्यम / A Government of India Enterprise

Ref: BANDR/GM(HR)/OFCO/2024-25

25.11.2024

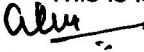
OFFICE ORDER

To
All Employees

Sub: Periodic Review of Employees for strengthening of administration under Fundamental Rule (FR) 56 (j) / (l) and Rule 48 of CCS (Pension) Rules 1972, as per guidelines of Deptt of Public Enterprises, Govt. of India

1. Kind attention is invited to DOPT OM No. 25013/03/2019-Estt.A-IV dated 28/08/2020 on periodic review of Central Government Employees under Fundamental Rule (FR) 56 (j)/ FR 56(l) and Rule 48 of CCS (Pension) Rules, 1972 and in compliance of with DPE OM No. DPE-OM No. DPE –GM-01/0001/2015-GM-GM-FTS-4857 dated 14/09/2020 (copy enclosed as 'Annexure A') which has been endorsed by Bridge and Roof Co.(India) vide this Office Order.
2. Reference is also invited to "Annexure –B" herewith to facilitate the smooth functioning of the process to undertake the exercise of strengthening of administration under FR 56 (J) / FR 56 (l) and Rule 48 of CCS (Pension) Rules 1972 as stated in the above OMs.
3. This Order replaces Rule 30B of CDA Rules of Officers of Bridge and Roof Co. (l) Ltd 2022.

This is issued as per approval of the Competent Authority.


ABHIJIT ROY)
GENERAL MANAGER (HR)

Encl: a/a

- CC: CMD - For kind information
CC: D (F) - For kind information
CC: D (PM) - For kind information
CC: CVO - For kind information.
CC: All EDs/CGMs/GGMs/GMs/DGMs/HODs
CC: All Sites & Offices at Kolkata/Howrah/Delhi/Mumbai/Chennai/Bhubaneswar/Vadodara/ Ranchi/Prayagraj

DPE-GM-01/0001/2015-GM-GM-FTS-4857
Ministry of Heavy Industries and Public Enterprises
Department of Public Enterprises
(GM Division)

Public Enterprises Bhawan
Block-14, CGO Complex, Lodhi Road
New Delhi, Dated: 14.09.2020

Office Memorandum

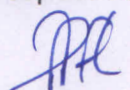
Subject: Periodical review for ensuring probity and efficacy among employees of CPSEs

The undersigned is directed to refer to DPE's OMs No. DPE-GM-01/0001/2015-GM-FTS-4857 dated 14.12.2015 on the subject mentioned above (copy enclosed) wherein all CPSEs, through Administrative Ministries/ Departments, were instructed to incorporate similar provisions as laid down under FR-56(j) in their respective CDA /Service Rules and implement in the spirit of Government instructions issued vide DoPT OM No. 25013/01/2013-Estt.A-IV dated 11.09.2015.

2. DoPT has now reviewed, consolidated and reiterated the guidelines issued so far on the subject vide its OM No. 25013/03/2019-Estt. A-IV dated 28.08.2020 (copy enclosed) in order to bring in better clarity and uniform implementation of the existing instructions.

3. In view of the above, all the concerned Ministries/ Department are requested to advise the CPSEs under their administrative control to take cognizance of the instructions issued by DoPT in above said OM, specifically in para 6 & 7 of the guidelines, and ensure that similar provisions are incorporated in their respective CDA/Service Rules.

Encl.:- as above


(P K Sharma)

Dy. Secretary

Tel.: 011-24363066

Email: pksharma.ship@nic.in

To

Secretaries of Administrative Ministries/Department concerned of CPSEs

Copy to :

CEOs of CPSEs

No.25013/03/2019-Estt.A-IV
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
Establishment A-IV Desk

North Block, New Delhi-1
Dated : 28th August, 2020

OFFICE MEMORANDUM

Subject: - Periodic Review of Central Government Employees for strengthening of administration under Fundamental Rule (FR) 56(j)/(l) and Rule 48 of CCS (Pension) Rules, 1972

Instructions have been issued from time to time for undertaking periodic review of performance of Government servants with a view to ascertain whether the Government servant should be retained in service or retired from service prematurely, in public interest, as per Fundamental provisions/Rule referred in the subject cited above. In order to bring in better clarity to the existing instructions and enable uniform implementation, an effort has been made to review, consolidate and reiterate the guidelines so far issued on the subject at one place.

2. The objective of Fundamental Rule (FR) 56(j)/(l) and Rule 48 of CCS(Pension) Rules, 1972, is to strengthen the administrative machinery by developing responsible and efficient administration at all levels and to achieve efficiency, economy and speed in the disposal of Government functions. It is clarified that premature retirement of Government servants under these rules is not a penalty. It is distinct from 'Compulsory Retirement', which is one of prescribed penalties under CCS (CCA) Rules, 1965.

3. Provisions relating to pre-mature retirement in the Fundamental Rules and CCS (Pension) Rules, 1972

3.1 The Appropriate Authority has the absolute right to retire a Government servant under FR 56(j), FR 56(l) or Rule 48 (1) (b) of CCS (Pension) Rules, 1972 as the case may be, if it is necessary to do so in public interest.

3.2 **FR 56(j)** :- The Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice :-

- (i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;
- (ii) In any other case after he has attained the age of 55 years.

3.3 **FR 56(l)** :- Notwithstanding anything contained in clause (j), the Appropriate Authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire a Government servant in Group C service or post who is not governed by any pension rules, after he has completed thirty years' service by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice.

3.4 **Rule 48 (1) (b) of CCS (Pension) Rules, 1972** :- At any time after a Government servant has completed thirty (30) years' qualifying service, he may be required by the Appointing Authority to retire in the public interest and in the case of such retirement, the Government servant shall be entitled to a retiring pension, provided that the Appointing Authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice.

4. **Time Schedule to be followed** :- The time schedule given in the following table, shall be followed for undertaking the exercise of review of performance of Government servants :-

| Quarter in which review is to be made | Cases of Government servants, in the quarter indicated below to be reviewed |
|--|--|
| January to March | July to September of the same year |
| April to June | October to December of the same year |
| July to September | January to March of the next year |
| October to December | April to June of the next year |

5. **Maintenance of Register** :- A register of the Government servants who are due to attain the age of 50/55 years or to complete 30 years of service, has to be maintained. The register should be scrutinized at the beginning of every quarter by a senior officer in the Ministry / Department / Cadre and the review be undertaken according to the above schedule so as to ensure timely completion of the review for retention/pre-mature retirement of the Government servants.

6. Government may, at any time after a Government servant has attained the age of 50/55 years or completed 30 years of service, as the case may be, retire him pre-maturely in public interest. However, non-adherence to the time-lines as indicated in para 4 above due to certain administrative exigencies shall not take away the powers of Appropriate Authority to pre-maturely retire a Government servant under FR 56(j), 56(l) and Rule 48 of CCS (Pension) Rules, 1972. Therefore, review of a Government servant for the purposes of these Rules can be undertaken even after he has attained the age of 50/55 years in cases covered by FR 56 (j) or after he has completed 30 years of qualifying service under FR 56(l) / Rule 48 of CCS(Pension) Rules, 1972.

7. There is also no bar on the Government to review any such case again where it was decided earlier to retain the officer, but the Appropriate/Appointing Authority is of the opinion that it is expedient to undertake the review again on account of changed circumstances, in public interest. In such cases, the Appropriate Authority is expected to demonstrate visible meticulousness as such Government servants have been found effective on earlier occasion for retention in service.

8. **Composition of Review and Representation Committee** :-

8.1 The concerned Secretary of the Cadre Controlling Authority (CCA) will constitute Review Committees of two members at appropriate level as under :-

(i) **In case of officers holding Group A posts** :-

Review Committee shall be headed by the Secretary of the concerned CCA. Where there are Boards viz CBDT, CBEC, Railway Board,

Postal Board, Telecom Commission etc, the Review Committee shall be headed by the Chairman of such Board.

(ii) **In case of Group B (Gazetted) officers :-**

Additional Secretary/Joint Secretary level officer shall head the Review Committee.

(iii) **In the case of Non-Gazetted employees :-**

(a) An officer of the level of Joint Secretary will head the Committee. However, in case the Appointing Authority is lower in rank than a Joint Secretary, then an officer of the level of Director/Deputy Secretary will be the head.

(b) In the case of Non-Gazetted employees in other than centralised cadres, Head of Department/Head of the Organisation shall decide the composition of the Review Committee.

Chief Vigilance Officer, in case of Gazetted officers, or his representative in case of non-Gazetted officers, will be associated in case of record reflecting adversely on the integrity of any employee.

8.2 The composition of Representation Committee for all Government servants shall consist of :-

- (a) A Secretary to the Government of India to be nominated by the Cabinet Secretary;
- (b) Additional Secretary/Joint Secretary in the Cabinet Secretariat; and
- (c) One member nominated by the CCA.

9. **Constitution of Internal Committee :-** In addition to the above, Secretary of the CCA is also empowered to constitute an Internal Committee comprising of such officer(s) as deemed fit to assist the Review Committee. These Committees will ensure that the service record of the Government servants being reviewed, along

with a summary, bringing out all relevant information, is submitted to the Cadre Authorities at least three months prior to the due date of review.

10. **Broad Criteria to be followed by the Review Committee** :- The broad criteria to be followed by the Review Committee while making the recommendations are as follows:-

- (i) Government servants whose integrity is doubtful, shall be retired.
- (ii) Government servants found to be ineffective shall also be retired. The basic consideration in identifying such Government servants should be their fitness/competence to continue in the post held.
- (iii) No Government servant should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case. However, in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of a Government servant, it would be open to review such a case also for premature retirement. The said instruction of not retiring the Government servant within one year on the ground of ineffectiveness except in case of sudden and steep fall in his performance is relevant only when he is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity.
- (iv) No Government servant should ordinarily be retired on ground of ineffectiveness, if, his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post, has been found satisfactory. There is no such stipulation, however, where the Government servant is to be retired on grounds of doubtful integrity. In case of those Government servants who have been promoted during the last 5 years, the previous entries in the ACRs may be taken into account if he was promoted on the basis of seniority cum fitness, and not on the basis of merit.
- (v) The entire service record of a Government servant should be considered at the time of review. The expression 'service record' refers to all relevant records and therefore, the review should not be confined to the consideration of the ACR/APAR dossier. The personal file of the Government servant may contain valuable material. Similarly, his work and

performance 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/Cadre puts together all the data available about the Government servant and prepares a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the ACRs/APARs may be taken into consideration.

11. Important judgements of Supreme Court

11.1 In the judgement in the case of *UOI & Col. J.N.Sinha [1571 SCR (1) 791]*, the Hon'ble Supreme Court had not only upheld the validity of FR 56(j), but also held that no show-cause notice needs to be issued to any Government servant before a notice of retirement is issued to him under the aforesaid provisions. The Apex Court held that –

"Now coming to the express words of Fundamental Rule 56(j), it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule.' one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision."

11.2 In the case of *State of Gujarat vs Umedbhai M. Patel, 2001 (3) SCC 314*, Hon'ble Court held that –

"The law relating to compulsory retirement has now crystalized into definite principles, which could be broadly summarized thus:

- (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. “

12. The observations of the Supreme Court with regard to Integrity and conduct unbecoming of a Government servant

12.1 As far as integrity is concerned, the following observations of the Hon'ble Supreme Court in the case of S Ramchandra Raju vs State of Orissa {(1994) 3 SCC 424}, while upholding compulsory retirement in the case, may be kept in view :

“The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone; the Government should form the opinion that the Government officer needs to be compulsorily retired from service. Therefore, the entire record more particularly, the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a Government officer.”

12.2 While considering the aspect of integrity of an employee, all material on record, including the actions or decisions taken by the employee which do not appear to be above board, complaints received against him, or suspicious property transactions, for which there may not be sufficient evidence to initiate departmental proceedings, may also be taken into account. The judgement of the Apex Court in the case of *K. Kandaswamy vs Union Of India & Anr*, 1996 AIR 277, 1995 SCC (6) 162 is relevant here. In this case, the apex court upheld the decision of the Government and held that:-

"The rights - constitutional or statutory - carry with them corollary duty to maintain efficiency, integrity and dedication to public service. Unfortunately, the latter is being overlooked and neglected and the former unduly gets emphasised. The appropriate Government or the authority would, therefore, need to consider the totality of the facts and circumstances appropriate in each case and would form the opinion whether compulsory retirement of a Government employee would be in the public interest. The opinion must be based on the material on record; otherwise it would amount to arbitrary or colourable exercise of power."

12.3 Similarly, reports of conduct unbecoming of a Government servant may also form basis for compulsory retirement. As per the judgement of the Hon'ble Supreme Court in *State of U.P. and Others vs Vijay Kumar Jain*, Appeal (civil) 2083 of 2002:

"If conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the government has an absolute right to compulsorily retire such an employee in public interest."

13. **Approval of Appropriate/Appointing Authority :-** The recommendations of Review Committee will be put up for consideration and approval of Appropriate/Appointing Authority in those cases, where it has been recommended to retire the Government servant prematurely.

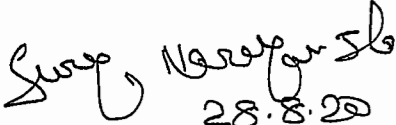
14. **Representation against Premature Retirement :-** After issue of the orders of premature retirement, the concerned Government servant may put up representation for orders otherwise, within three weeks from the date of service of such notice / order and the matter may be placed before Representation Committee

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along with fresh input, if any. The examination of the representation should be completed by the Cadre Authorities within two weeks from the date of receipt of representation. The Representation Committee considering the representation shall make its recommendations within two weeks from the date of receipt of the reference from the Cadre Authorities concerned and the Appropriate/Appointing Authority should pass its orders within two weeks from the date of receipt of the recommendations of Representation Committee.

15. In so far as the provisions which are not covered in this OM, the provisions in the earlier OMs shall continue to be applicable.

16. All Ministries/Departments are requested to follow the contents of this OM strictly and to ensure its wide circulation amongst all concerned.


28.8.20
(Surya Narayan Jha)

Under Secretary to the Government of India

Tel: 23040341

To

The Secretaries of All Ministries/Departments
(as per the standard list)

Copy to:

1. President's Secretariat, New Delhi.
2. Vice-President's Secretariat, New Delhi.
3. The Prime Minister's Office, New Delhi.
4. Cabinet Secretariat, New Delhi.
5. Rajya Sabha Secretariat/ Lok Sabha Secretariat, New Delhi.
6. The Comptroller and Auditor General of India, New Delhi.
7. The Secretary, Union Public Service Commission, New Delhi.
8. The Secretary, Staff Selection Commission, New Delhi.
9. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.

10. National Commission for Scheduled Castes, New Delhi.
11. National Commission for Scheduled Tribes, New Delhi.
12. National Commission for OBCs, New Delhi. 13. Secretary, National Council (3CM), 13, Feroze Shah Road, New Delhi.
14. CVOs of all Ministries/Departments.
15. ADG (M&C), Press Information Bureau, DoP&T
16. NIC, DoPT, North Block, New Delhi (for uploading the same on the website of this Ministry under the Head 'OMs & Orders' → Establishment → Premature Retirement.
17. OL Division :-For Hindi version of the OM at the earliest possible.

BRIDGE AND ROOF CO. (INDIA) LTD.
(A GOVT. OF INDIA ENTERPRISE)

Dated: 28.10.2024

Subject:- Periodical Review of Employees for strengthening of administration under Fundamental Rule (FR) 56(j)/(l) and Rule 48 of CCS (Pension) Rules,1972 as per guideline of Deptt. of Public Enterprises, Govt. of India.

- I. In compliance of the Office Memorandum No DPE-GM-01/0001/2015-GM-GM-FTS-4857 dated 14.09.2020 issued by Department of Public Enterprises (DPE), Govt. of India and Office Memorandum No. 25013/03/2019-Estt.A-IV dated 28.08.2020 issued by DoPT, Govt. of India, Bridge and Roof Co. (l) Limited (hereinafter referred to as 'the Company') hereby implements, "B AND R Policy of Periodical Review for Ensuring Probity & Efficacy amongst Employees' as stated below

Background of OM dated 28.08. 2020 of DoPT, Govt. of India:

Instructions have been issued from time to time for undertaking periodic review of performance of Government servants with a view to ascertain whether the Government servant should be retained in service or retired from service prematurely, in public interest, as per Fundamental provisions/Rule referred in the subject cited above. In order to bring in better clarity to the existing instructions and enable uniform implementation, an effort has been made to review, consolidate and reiterate the guidelines so far issued on the subject at one place.

In view of above background as stated in the OM dated 28.08.2020 issued by DoPT, Govt. of India for implementing Fundamental Rule of FR 56 (j) & 56 (l) and Rule 48(1)(b) of CCS (Pension Rules) 1972., the Company hereby implements the above mentioned policy w.e.f. 28.10.2024 for all employees of the Company as part of their service regulations.

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2. The objective of Fundamental Rule (FR) 56(j)/(l) and Rule 48 of CCS(Pension) Rules, 1972, is to strengthen the administrative machinery by developing responsible and efficient administration at all levels and to achieve efficiency, economy and speed in the disposal of functions of the Company. It is clarified that premature retirement of the employees of the Company under these rules is not a penalty. It is distinct from 'Compulsory Retirement', which is one of prescribed penalties under CCS (CCA) Rules, 1965.

3. Provisions relating to pre-mature retirement in the Fundamental Rules and CCS (Pension) Rules, 1972

3.1 The Appropriate Authority has the absolute right to retire an employee of the Company under FR 56(j), FR 56(l) or Rule 48 (1) (b) of CCS (Pension) Rules, 1972 as the case may be, if it is necessary to do so in public interest.

3.2 **FR 56(j):-** The Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any employee by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice :-

(i) If he is, in Executive category or post in a substantive, quasi- permanent or temporary capacity and had entered service before attaining the age of 35 years, after he has attained the age of 50 years;

(ii) In any other case after he has attained the age of 55 years.

3.3 **FR 56(l) :-** Notwithstanding anything contained in clause (j), the Appropriate Authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire an employee in 'non-executive category' or post who is not governed by any pension rules, after he has completed thirty years' service by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice.

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3.4 Rule 48 (1) (b) of CCS (Pension) Rules, 1972 - At any time after an employee has completed thirty (30) years' qualifying service, he may be required by the Appointing Authority to retire in the public interest and in the case of such retirement, the employee shall be entitled to a retiring pension, provided that the Appointing Authority may also give a notice in writing to an employee at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice.

4. **Time Schedule to be followed** :- The time schedule given in the following table, shall be followed for undertaking the exercise of review of performance of the employees:

| Quarter in which review is to be made | Cases of employees, in the quarter indicated below to be reviewed |
|---------------------------------------|---|
| January to March | July to September of the same year |
| April to June | October to December of the same year |
| July to September | January to March of the next year |
| October to December | April to June of the next year |

5. **Maintenance of Register** :- A register of the employees who are due to attain the age of 50/55 years or to complete 30 years of service, has to be maintained. The register should be scrutinized at the beginning of every quarter by a senior officer in the Company and the review be undertaken according to the above schedule so as to ensure timely completion of the review for retention/pre-mature retirement of the employees.

6. The Company may, at any time after an employee has attained the age of 50/55 years or completed 30 years of service, as the case may be, retire him pre-maturely in public interest. However, non-adherence to the time-lines as indicated in para 4 above due to certain administrative exigencies shall not take away the powers of Appropriate Authority to pre-maturely retire an employee under FR 56(j), 56(l) and Rule 48 of CCS (Pension) Rules, 1972. Therefore, review of an Employee for the purposes of these Rules can be undertaken even after he has attained the age of 50/55 years in cases covered by FR 56 (j) or after he has completed 30 years of qualifying service under

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7. There is also no bar on the Company to review any such case again where it was decided earlier to retain the officer, but the Appropriate/Appointing Authority is of the opinion that it is expedient to undertake the review again on account of changed circumstances, in public interest. In such cases, the Appropriate Authority is expected to demonstrate visible meticulousness as such employees have been found effective on earlier occasion for retention in service.

8. **Composition of Review and Representation Committee : -**

8.1 The Chairman/Appropriate Authority will constitute **Review Committees** of two members at appropriate level as under :-

- (i) In case of employees belonging to "**Executive**" category from **Grade E-0 to E-4**, the Review Committee shall be headed by **Director/ED** and he will be assisted by other Officer /Member of the Committee.
- (ii) In case of employees belonging to '**Executive**' category from Grade **E-5 to E-8**, the Review Committee shall be headed by **Director/ED** and he will be assisted by other Officer /Member of the Committee.
- (iii) In the case of employees belonging to 'non-executive' category, the Review Committee will be constituted by the Chairman/Appropriate Authority.

The Chief Vigilance Officer, in case of employees of '**executive category**', or his representative in case of employees of 'non-executive category', will be associated in case of record reflecting adversely on the integrity of any employee.

8.2 The composition of **Representation Committee** for all Employees shall consist of

- (a) ED to be nominated by the Chairman/Appropriate Authority;
- (b) One Officer belonging to General Manager (GM); and
- (c) One Officer nominated by the Chairman/Appropriate Authority.

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9. **Constitution of Internal Committee** :- In addition to the above, the Chairman/Appropriate Authority may constitute an Internal Committee comprising of such officer(s) as deemed fit to assist the Review Committee. These Committees will ensure that the service record of the employees being reviewed, along-with a summary, bringing out all relevant information, is submitted to the Review Committee at least three months prior to the due date of review.
10. **Broad Criteria to be followed by the Review Committee** '- The broad criteria to be followed by the Review Committee while making the recommendations are as follows:-
- (i) Employees whose integrity is doubtful, shall be retired.
 - (ii) Employees found to be ineffective shall also be retired. The basic consideration in identifying such Employees should be their fitness/competence to continue in the post held.
 - (iii) No employee should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case. However, in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an employee, it would be open to review such a case also for premature retirement. The said instruction of not retiring the employee within one year on the ground of ineffectiveness except in case of sudden and steep fall in his performance is relevant only when he is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity.
 - (iv) No employee should ordinarily be retired on ground of ineffectiveness, if, his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post, has

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been found satisfactory. There is no such stipulation, however, where the employee is to be retired on grounds of doubtful integrity. In case of those employees who have been promoted during the last 5 years, the previous entries in the APARs may be taken into account if he was promoted on the basis of seniority cum fitness, and not on the basis of merit.

- (v) The entire service record of an employee should be considered at the time of review. The expression '**service record**' refers to all relevant records and therefore, the review should not be confined to the consideration of the APAR dossier. The personal file of the employee may contain valuable material. Similarly, his work and performance 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 Internal Committee puts together all the data available about the Employee and prepares a comprehensive brief for consideration by the Review Committee. Even un-communicated remarks in the APARs may be taken into consideration.

11. Important judgments of Supreme Court

11.1 In the judgment in the case of *UOI & Col. J. N. Sinha [1571 SCR (1) 791]*, the Hon'ble Supreme Court had not only upheld the validity of FR 56(j), but also held that no show-cause notice needs to be issued to any Government servant before a notice of retirement is issued to him under the aforesaid provisions. The Apex Court held that —

"Now coming to the express words of Fundamental Rule 56(j), it says that the appropriate authority has the absolute right to retire a government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. that power can be exercised subject to the conditions mentioned in the rule.' one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision."

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Hon'ble Court held that -

"The law relating to compulsory retirement has now crystalized into definite principles, which could be broadly summarized thus:

- (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. "

12. The observations of the Supreme Court with regard to Integrity and conduct unbecoming of a Government servant

12.1 As far as integrity is concerned, the following observations of the Hon'ble Supreme Court in the case of S Ramchandra Raju vs State of Orissa {(1994) 3 SCC 424}, while upholding compulsory retirement in the case, may be kept in view :

"The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public service and injurious to

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public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone; the Government should form the opinion that the Government officer needs to be compulsorily retired from service. Therefore, the entire record more particularly, the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a Government officer."

12.2 While considering the aspect of integrity of an employee, all material on record, including the actions or decisions taken by the employee which do not appear to be above board, complaints received against him, or suspicious property transactions, for which there may not be sufficient evidence to initiate departmental proceedings, may also be taken into account. The judgement of the Apex Court in the case of *K. Kandaswamy vs Union Of India & Anr*, 1996 AIR 277, 1995 SCC (6) 162 is relevant here. In this case, the apex court upheld the decision of the Government and held that:-

"The rights - constitutional or statutory - carry with them corollary duty to maintain efficiency, integrity and dedication to public service. Unfortunately, the latter is being overlooked and neglected and the former unduly gets emphasised. The appropriate Government or the authority would, therefore, need to consider the totality of the facts and circumstances appropriate in each case and would form the opinion whether compulsory retirement of a Government employee would be in the public interest. The opinion must be based on the material on record; otherwise it would amount to arbitrary or colourable exercise of power."

12.3 Similarly, reports of conduct unbecoming of a Government servant may also form basis for compulsory retirement. As per the judgement of the Hon'ble Supreme Court in *Slade of U.P. and Others vs Vyay Kumar Jain*, Appeal (civil) 2083 of 2002:

"If conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the government has an

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absolute right to compulsorily retire such an employee in public interest.”

13. **Approval of Appropriate/Appointing Authority :-** The recommendations of Review Committee will be put up for consideration and approval of Appropriate/Appointing Authority in those cases, where it has been recommended to retire the employee of the Company prematurely.
14. **Representation against Premature Retirement:-** After issue of the orders of premature retirement, the concerned employee may put up representation for orders otherwise, within three weeks from the date of service of such notice / order and the matter may be placed before Representation Committee along with fresh input, if any. The examination of the representation should be completed by the Representation Committee within two weeks from the date of receipt of representation. The Representation Committee considering the representation shall make its recommendations within two weeks from the date of receipt of the reference from the Review Committee concerned and the Appropriate/Appointing Authority should pass its orders within two weeks from the date of receipt of the recommendations of Representation Committee.
15. In so far as the provisions which are not covered in this OM, the provisions in the earlier OMs shall continue to be applicable.
16. Notwithstanding the above, the DoPT OM No.25013/03/2019-Estt.A-IV dated 28/08/2020 will prevail.

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