

CIRCULAR No. 10/10

Article 310 of the Constitution of India deals with the tenure of a Government servant . A person holding a Civil Post under Government holds office during the pleasure of President or Governor as the case may be. But the above power is restricted under Article 311 and it put certain restriction on the absolute power for dismissal, removal, degrading of an officer etc. It says that no person who is a Civil Service holding Civil post under Government shall be dismissed or removed by an authority subordinate to that of the appointing authority. If a person holding a civil post means there exist a relationship of master and servant between State and the person holding the post. Clause (2) of Article 311 says that no such person as aforesaid shall be dismissed , removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

There shall be an enquiry and in that enquiry he should be

- 1) informed of the charges leveled against him.
- 2) Reasonable opportunity of being heard.

Reasonable opportunity means –

1. An opportunity to deny his guilt

2. An opportunity to defend himself by cross examining the witness produced against him and
- 3) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him. On the basis of the above principles the KCS(CC& A) Rules 1960 formulated the procedures to be followed in imposing penalty to those Government servants who violate the provisions of the Conduct rules. Accordingly penalties that may be imposed on a Government servant who has been found guilty in disciplinary proceeding it must be commensurate with the gravity of the misconduct. Any penalty disproportionate to the misconduct it would be the violative of Article 14 of the Constitution.

According to Kerala Civil Services(Classification Control and Appeal) Rules 1960 the disciplinary authority for imposing the punishments mentioned under that Rule, shall be the appointing authority. The Transport Commissioner vide letter No. A1/ 20551/TC/75 dated 7/1/1976 has already been clarified that the authorities which may impose the penalties of censure, fine, withholding of increments on a member of subordinate services shall be his immediate superior officer ie, the Deputy Transport Commissioners, Regional Transport Officers and Motor Vehicle Inspectors in Unit Offices vide rule 13(2) (a). According to Rule 13(2) (b) the disciplinary authority for imposing the punishments mentioned under that Rule , shall be the appointing authority. Hence the appointing authority can exercise the above powers on all non-gazetted staff such as Part Time Sweepers, Peons, Attenders, Drivers, Lower Division Typists and Lower Division Clerks. Hence the powers are hereby conferred to Regional Transport Officer as competent authority for taking disciplinary action.

against the above mentioned categories of Government servants. If the accused officer is aggrieved by the order of the disciplinary authority against an order imposing any of the penalties specified in Rule 11(1) mentioned below an appeal against any order can be filed before the Deputy Transport Commissioner. Review petition of original orders can be made before the Transport Commissioner

- 1) censure
- 2) fine
- 3) withholding of increments or promotion

Procedure for imposing major penalties and minor penalties are embodied in Rule 15&16 respectively.

Whenever a complaint is received or on a consideration of report of an investigation the disciplinary authority is satisfied that there is prima facie case for taking action against a Government servant such authority shall frame a definite charge. Before imposing major penalties an enquiry strictly in accordance with the provisions in Rule 15 should be considered.

It is the duty of the disciplinary authority to scrutinize

- 1) whether the enquiry has been conducted as per the procedure laid down in the rules.
- 2) Whether principles of natural justice has been complied or any provision of the Constitution has been violated.
- 3) If the enquiry report has been done after following the procedures. The disciplinary authority cannot be referred back to the enquiry.
- 4) When the disciplinary authority differs with the finding of the Enquiry Officer, it shall be put his reason in writing and give his own finding.

- 5) Before taking guilt of the employee, a copy of the enquiry report shall be furnished to him and a time of 15 days for his representation .
- 6) Kerala Public Service Commission has to be consulted if necessary.
- 7) The final orders must be a speaking order.

Receipt of this circular should be acknowledged.

[Signature]
Transport Commissioner

To

All Deputy Transport Commissioners

All Regional transport Officers

All Joint Regional Transport Officers

All the Motor Vehicle Inspectors in Unit Offices

Copy to CA to TC/ Sr. DTC & Secretary STA, Sr. AO, Sr. FO, all section

Superintendents/SF