

## **Bombay Port Trust Employees**

### **(Classification, Control and Appeal)**

#### **REGULATIONS, 1976.**

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G.S.R. 643 --- In exercise of the powers conferred by section 126 read with clause (b) of sub-section (1) of section 24, clause (b) of sub-section (1) of section 25, clause (b) of sub-section (2) of section 25 and clauses (a) and (b) of section 28 of the Major Port Trusts Act, 1963 (38 of 1963), the Central Government hereby makes the following first regulations, namely : -

#### **PART I**

##### **GENERAL**

1. **Short title and commencement** – (1) These regulations may be called the Bombay Port Trust Employees (Classification, Control and Appeal) Regulations, 1976.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions** - In these regulations, unless the context otherwise requires :-

(a) 'Act' means the Major Port Trusts Act, 1963 (38 of 1963);

(b) 'appointing authority' in relation to an employee means the authority prescribed as such by these regulations;

(c) 'Board', 'Chairman', 'Dy. Chairman' and 'Head of Department' have the same meanings as assigned to them respectively in the Act;

(d) 'disciplinary authority' means the authority competent under these regulations to impose on an employee any of the penalties specified in regulation 8;

- (e) 'employee' means an employee of the Board and includes any such person on foreign service or whose services are temporarily placed at the disposal of the Board and also any person in the service of the Central or a State Government or a local or other authority whose services are temporarily placed at the disposal of the Board;
- (f) 'Schedule' means the Schedule annexed to these regulations.

3. **Application** - (1) These regulations shall apply to every employee of the Board, but shall not apply to -

- (a) any person in casual employment;
  - (b) any person subject to discharge from service on less than one month's notice;
  - (c) any person for whom special provision is made, in respect of matters covered by these regulations, by or under any law for the time being in force, in regard to matters covered by such provision.
- (2) Notwithstanding anything contained in sub-regulation (1), the Chairman may by order, and with the prior approval of the Central Government, so far as it concerns an employee, referred to in clause (a) of sub-section (1) of section 24 of the Act, exclude from the operation of all or any of these regulations any employee or class of employees.
- (3) If any doubt arises as to whether these regulations or any of them apply to any person, the matter shall be referred to the Central Government, who shall decide the same.

## PART II

**CLASSIFICATION**

4. **Classification of posts** - All posts under the Board shall for the purposes of these regulations be classified as follows : -
- (a) class I posts, that is to say, posts carrying a pay or a scale of pay, the maximum of which is 1[Rs.7500 or more in the revised pay structure effective from 1.1.1992].
  - (b) class II posts, that is to say, carrying a pay or scale of pay the maximum of which is more than 1[Rs.5690, but less than Rs.7500 in the revised pay structure effective from 1.1.1992].
  - (c) class III posts, that is to say, posts carrying a pay or scale of pay, the maximum of which is more than 2[Rs.3085] but not more than 1[Rs.5690 in the revised pay structure effective from 1.1.1993].
  - (d) class IV posts, that is to say, posts carrying a pay or a scale of pay the maximum of which is 2[Rs.3085 or below in the revised pay structure effective from 1.1.1993].

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- 1. Substituted by TR No.260 of 10.9.1996; GSR No.597(E) dated 31.12.1996.
  - 2. Substituted by TR No.223 of 20.6.1995; GSR No.378(E) dated 22.8.1996.

## PART III

**APPOINTING AUTHORITIES**

5. **Appointing authorities** - (1) All appointments to class I posts (other than the posts covered by clause (a) of sub-section (1) of section 24 of the Act) 1[carrying a pay or scale of pay the maximum of which exceeds Rs.5150] shall be made by the Chairman.
- (2) All appointments to -
- 1[(a) class I posts carrying a pay or scale of pay the maximum of which does not exceed Rs.8475]
- and (b) class II posts
- shall be made by the Deputy Chairman.
- (3) All appointments to class III posts 2[carrying a pay or scale of pay the maximum of which exceeds Rs.4430] in a Department shall be made by the Head of that Department.
- (4) All appointments to class III posts, not covered by sub-regulation (3), and all appointments] to class IV posts in a Department shall be made by the Head of that Department or by such officer(s), not below the rank of Deputy to the Head of that Department, as may from time to time, be nominated by the Head of that Department.
6. **Power of an authority to exercise power of another authority subordinate to it** - The powers to make appointments to posts-exercisable by an authority prescribed by regulation 5 may also be exercised by another authority higher than that authority.

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1. Substituted by TR No.260 of 10.9.1996; GSR No.597(E) dated 31.12.1996.
2. Substituted by TR No.223 of 20.6.1995; GSR No.378(E) dated 22.8.1996.

## PART IV

**SUSPENSION**

7. **Suspension** – (1) An employee may be placed under suspension –
- (a) where, in the opinion of the Chairman, he has engaged himself in activities prejudicial to the interest of the security of the State; or
  - (b) where a disciplinary proceedings against him is contemplated or is pending; or
  - (c) where a case against him in respect of any criminal offence is under investigation or trial.
- (2) The order of suspension shall be made –
- (a) in case of an employee referred to in clause (a) of sub-section (1) of section 24 of the Act, by the Chairman; and
  - (b) in the case of any other employee, by the appointing authority :
- Provided that no such order relating to an employee referred to in clause (a) of sub-section (1) of section 24 shall have effect until it is approved by the Central Government.
- (3) An employee shall be deemed to have been placed under suspension by an order of the Chairman, with the approval of the Central Government, or of the appointing authority; as the case may be;
- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
  - (b) with effect from the date of his conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

**Explanation** : The period of forty-eight hours referred to in clause (b) shall be computed from the commencement of the imprisonment after the conviction and for this purpose intermittent period of imprisonment, if any, shall be taken into account.

(4) Whether a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee under suspension is set aside in appeal or on review under these regulations and the case is remitted for further enquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on consideration of the circumstances of the case, decides to hold a further enquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders

“Provided that no such further enquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case”.

(6) (a) An order of suspension made or deemed to have been made under this regulation shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where an employee is suspended (whether in connection with any disciplinary proceedings or otherwise), and any other disciplinary proceedings is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded in writing, direct that the employee shall continue to be under suspension until the termination of all or any of such proceedings.

<sup>1</sup>(7) An order of suspension made or deemed to have been made under this regulation shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the date of order of suspension, on the recommendation of the Review Committee constituted for the purpose by the Chairman and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

<sup>2</sup>(8) Notwithstanding anything contained in sub-regulation (6), an order of suspension made or deemed to have been made under sub-regulations (1) or (3) of this regulation shall not be valid after a period ninety days

unless it is extended after review, for a further period before the expiry of ninety days”.

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1. *Substituted by TR No. 149 dated 28.12.2004 ; GSR No.347(E) dated 31.5.2005.*
  2. *Inserted by TR No. 149 dated 28.12.2004; GSR No.347(E) dated 31.5.2005.*
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## PART V

**PENALTIES AND DISCIPLINARY AUTHORITIES**

8. **Penalties** - The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee, namely: -

**Minor penalties :**

- (i) Censure;
- (ii) withholding of his promotion;
- (iii) recovering from his pay of the whole or part of any pecuniary loss caused by him to the Board by negligence or breach of orders;
- (iv) withholding of increments of pay.

**Major penalties :**

- (v) reduction to a lower stage in a time-scale of pay for a specified period with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) reduction to a lower time-scale of pay, grade or post which shall ordinarily be a bar to the promotion of the employee to the time-scale of pay, grade or post from which he was reduced with or without further directions regarding conditions of restoration to the time-scale, grade or post from which the employee was reduced and his seniority and pay on such restoration to that time-scale, grade or post;
- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Board;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Board.

**Explanation :** The following shall not amount to a penalty within the meaning of this regulation :

- (i) withholding of increments of an employee for failure to pass a departmental examination in accordance with the regulations or orders governing the post which he holds or the terms of his appointment.
- (ii) stoppage of an employee at the efficiency bar in the time-scale on the ground of his unfitness to cross the bar;
- (iii) non-promotion whether in a substantive or officiating capacity of an employee after consideration of his case to a grade or post, for promotion to which he is eligible;
- (iv) reversion to a lower grade or post of an employee officiating in a higher grade or post on the ground that he is considered, after trial, to be unsuitable for such higher grade or post or on any administrative ground unconnected with his conduct;
- (v) reversion to his permanent grade or post of an employee appointed on probation to another grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the regulations and orders governing probation;
- (vi) replacement of the services of an employee whose services have been borrowed from the Central Government or State Government or an authority under the control of the Central Government or a State Government at the disposal of the authority which lent his service;
- (vii) compulsory retirement of an employee in accordance with the provisions relating to his superannuation or retirement;
- (viii) termination of the services –
  - (a) of an employee appointed on probation during or at the end of the period of probation in accordance with the terms of his appointment or the regulations and orders governing probation;
  - (b) of an employee employed under an agreement in accordance with the terms of such agreement;
  - (c) of a temporary employee in accordance with the orders governing such employees.

9. **Penalty for misconduct committed prior to recruitment** - The penalties specified in regulation 8 may, for good and sufficient reasons, as hereinafter provided, be imposed on an employee appointed through direct recruitment in respect of misconduct committed before his employment if the misconduct was of such a nature as has rational connection with his present employment and renders him unfit or unsuitable for continuing in service.

10. **Disciplinary authorities** - The authorities mentioned in the Schedule shall be competent to impose penalties on the employees as indicated in the said Schedule.

11. **Authority to institute proceedings** - (1) The Chairman may -
- (a) institute disciplinary proceedings against any employee -
  - (b) direct a disciplinary authority to institute disciplinary proceedings against any employee on whom that disciplinary authority is competent to impose under these regulations any of the penalties specified in regulation 8.
- (2) A disciplinary authority competent under these regulations to impose any of the penalties specified in clauses (i) to (iv) of regulation 8 may institute disciplinary proceedings against any employee for the imposition of any of the penalties specified in clauses (v) to (ix) of regulation 8 notwithstanding that such disciplinary authority is not competent under these regulations to impose any of the latter penalties.

## PART VI

**PROCEDURE FOR IMPOSING PENALTIES**

12. **Procedure for imposing major penalties** – (1) No order imposing any of the penalties specified in clauses (v) to (ix) of regulation 8 shall be made except after an inquiry held, as far as may be, in the manner provided in this regulation and regulation 13.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself inquire, or appoint under this regulation an authority to inquire into the truth thereof.

**Explanation** – Where the disciplinary authority itself holds the inquiry, any reference in this regulation to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against an employee under this regulation and regulation 13, the disciplinary authority shall draw up or cause to be drawn up –

- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain –
  - (a) a statement of all relevant facts including any admission or confession made by the employee;
  - (b) a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained.

**NOTE** - **If the employee applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-regulation (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of witnesses on behalf of the disciplinary authority.**

- (4) The disciplinary authority shall deliver or cause to be delivered to the employee a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article is proposed to be sustained and shall require the employee to submit, within such time as it may specify, a written statement of his defence and to state whether he desires to be heard in person.
- (5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers necessary so to do, appoint, under sub-regulation (2), an inquiring authority for the purpose, and when all the articles of charge have been admitted by the employee in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in regulation 13.
- (b) If no written statement of defence is submitted by the employee, the disciplinary authority may itself inquire into the articles of charge or may, if it considers necessary so to do, appoint under sub-regulation (2), an inquiring authority for the purpose.
- (c) Where the disciplinary authority itself inquires into any articles of charge or appoints an inquiry authority for holding an inquiry into such charge, it may by order, appoint any person to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.
- (6) The disciplinary authority shall, when it is not the inquiring authority, forward to the inquiring authority –
- (a) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) a copy of the written statement of defence, if any, submitted by the employee;
- (c) a copy of the statement of witnesses, if any, referred to in sub-regulation (3);
- (d) evidence proving the delivery of the documents referred to in sub-regulation (3) to the employee; and
- (e) a copy of the order appointing the said "Presenting Officer".

- (7) The employee shall appear in person before the inquiring authority on such day and at such time as that authority may, by a notice in writing, specify in this behalf, or within such further time as that authority may allow.
- (8) The employee may take the assistance of any other employee or if the employee is a class III or a class IV employee, of an "office-bearer" as defined in clause (d) of section 2 of the Indian Trade Unions Act, 1926 (16 of 1926), of the union to which he belongs, to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority, is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

**1Note - The employee shall not take assistance of any other employee of the Board who has two pending disciplinary cases on hand in which he has to appear and give assistance.**

- (9) If the employee who has not admitted any of the articles of charge in his written statement of defence, or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the employee thereon.
- (10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the employee pleads guilty.
- (11) The inquiring authority shall, if the employee fails to appear within the specified time or refuses or omits to plead, require the said Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defence –
- (i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-regulation (3);
  - (ii) submit a list of witnesses to be examined on his behalf;

- (iii) give a notice, within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of the Board but not mentioned in the list referred to in sub-regulation (3).

**Note - The employee shall indicate the relevance of the documents required by him to be discovered or produced by the Board.**

- (12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition.

Provided that the inquiring authority may, for reasons to be recorded in writing, refuse to requisition such of the documents, as are in its opinion, not relevant to the case.

- (13) On receipt of the requisition referred to in sub-regulation (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority.

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded in writing that the production of all or any of such documents would be against the Port's interest or the security of the State, it shall inform the inquiring authority accordingly and the inquiring authority, on being so informed, communicate the information to the employee and withdraw the requisition made by it for the production or discovery of such documents.

- (14) (a) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority.
- (b) The witnesses shall be examined by or on behalf of the said Presenting Officer and may be cross-examined by or on behalf of the employee.
- (c) The said Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-

examined, but not on any new matter, without the leave of the inquiring authority.

- (d) The inquiring authority may also put such questions to the witnesses as it thinks fit.
- (15) (a) If it shall appear necessary before the close of the case on behalf of the disciplinary authority the inquiring authority may, in its discretion, allow the said Presenting Officer to produce evidence not included in the list given to the employee or may itself call for new evidence or recall and re-examine any witness and in such a case, the employee shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and such adjournment of the inquiry, as the inquiring authority may consider reasonable.
- (b) The inquiring authority shall give the employee an opportunity of inspecting such documents before they are taken on record.
  - (c) The inquiring authority may also allow the employee to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice.
- Note - New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.**
- (16) (a) When the case for the disciplinary authority is closed, the employee shall be required to state his defence, orally or in writing as he may prefer.
- (b) If the defence is made orally, it shall be recorded and the employee shall be required to sign the record; in either case, a copy of the statement of defence shall be given to the said Presenting Officer, if any, appointed.
- (17) (a) The evidence on behalf of the employee shall then be produced.
- (b) The employee may examine himself in his own behalf, if he so prefers, the witnesses produced by the employee shall then be examined and shall also be liable to cross-examination, re-examination and examination by the inquiring authority,

according to the provisions applicable to the witnesses for the disciplinary authority.

- (18) The inquiring authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.
- (19) The inquiring authority may, after the completion of the production of the evidence hear the said 'Presenting Officer', if any, appointed and the employee, or permit them to file written briefs of their respective cases, if they so desire.
- (20) If the employee to whom a copy of the articles of charge has been delivered does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this regulation, the inquiring authority may hold the inquiry **ex-parte**.
- (21) (a) Where a disciplinary authority, competent to impose any of the penalties specified in clauses (i) to (iv) of regulation 8, but not competent to impose any of the penalties specified in clauses (v) to (ix) of regulation 8, has itself inquired into, or cause to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of regulation 8, should be imposed, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.
- (b) The disciplinary authority to which records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interest of justice, recall the witness and examine, cross-examine and re-examine the witnesses and may impose on the employee such penalty as it may deem fit in accordance with these regulations.
- (22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the

evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself.

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine any such witnesses as hereinbefore provided.

- (23) (i) After conclusion of the inquiry, a report shall be prepared and it shall contain –
- (a) articles of charge and the statement of imputations of misconduct or misbehaviour;
  - (b) the defence of the employee in respect of each article of charge;
  - (c) an assessment of the evidence in respect of each article of charge;
  - (d) the findings on each article of charge and the reasons therefor.

**Explanation :** If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of charge, it may record its findings on such article of charge :

Provided that the findings on such article of charge shall not be recorded unless the employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

- (ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include –
- (a) the report prepared by it under clause (i);
  - (b) the written statement of defence, if any, submitted by the employee;
  - (c) the oral and documentary evidence produced in the course of the inquiry;
  - (d) the written briefs, if any, filed by the said Presenting Officer or the employee or both during the course of the inquiry; and

- (e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.
13. **Action on the inquiry report** - (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 12 as far as may be.
- (2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.
  - (3) If the disciplinary authority, having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of regulation 8 should be imposed on the employee it shall, notwithstanding anything contained in regulation 14 make an order imposing such penalty.
  - (4) (i) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (v) to (ix) of regulation 8 should be imposed on the employee, it shall –
    - (a) furnish to the employee a copy of the report of the inquiry held by it and its findings on each article of charge or where the inquiry has been held by an inquiring authority appointed by it, a copy of the report of such authority and a statement of its findings on each article of charge together with brief reasons for its disagreement, if any, with the findings of the inquiring authority.
    - (b) give the employee a notice stating the penalty proposed to be imposed on him and calling upon him to submit within such period as may be specified therein, or such further time as the disciplinary authority may allow, such representation as he may wish to make on the proposed penalty on the basis of the evidence advanced during the inquiry held under regulation 12.
  - (ii) In every case in which it is necessary to consult the Central Government, the record of the inquiry, together with a copy of the notice given under clause (i) and the representation made in response to such notice, if any, shall be forwarded by

the disciplinary authority along with its recommendations to the Central Government for passing orders.

- (iii) Where it is not necessary to consult the Central Government, the disciplinary authority shall consider the representation, if any, made by the employee in pursuance of the notice given to him under clause (i) and determine what penalty, if any, should be imposed on him and such order as it may deem fit.

14. **Procedure for imposing minor penalties** – (1) Subject to the provisions of sub-regulation (3) of regulation 12 no order imposing any of the penalties specified in clauses (i) to (iv) of regulation 8 shall be passed except after –

- (a) informing in writing the employee of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him an opportunity of making any representation he may wish to make against the proposal.
- (b) holding an inquiry in the manner laid down in sub-regulation (3) to (23) of regulation 12, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the employee under clause (a) and the record of inquiry, if any, held under clause (b) into consideration; and
- (d) recording a finding on each imputation of misconduct or misbehaviour.

(2) The record of the proceedings in such cases shall include –

- (a) a copy of the intimation to the employee of the proposal to take action against him;
- (b) a copy of the statement of imputation of misconduct or misbehaviour delivered to him;
- (c) his representation, if any;
- (d) the evidence produced during the inquiry;
- (e) the findings on each imputation of misconduct or misbehaviour; and
- (f) the orders on the case together with the reasons therefor.

- (3) Notwithstanding the provisions contained in clause (b) of sub-regulation (1), if in a case it is proposed, after considering the representation, if any, submitted by the employee, to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period or if the penalty of withholding of increments is likely to affect adversely the amount of pension payable to the employee, an enquiry shall invariably be held in the manner laid down in sub-regulation (3) to (23) of regulation 12, before making any order imposing on the employee any such penalty.
15. **Communication of orders** - Orders made by the disciplinary authority shall be communicated to the employee who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority, and a copy of its findings on each article of charge, or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement if any, with the findings of the inquiring authority, unless they have already been supplied to him.
16. **Common proceedings** - (1) Where two or more employees are concerned in any case, the Chairman or the authority competent to impose a penalty of dismissal from service on all such employees may make an order that disciplinary action against all of them may be taken in a common proceeding.

**Note :** **If the authorities competent to impose the penalty of dismissal on such employees are different, the order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of others.**

- (2) Subject to the provisions of sub-section (1) of section 25 of the Act and of regulation 10 of these regulations any such order shall specify -
- (i) the authority which may function as the disciplinary authority for the purpose of such common proceedings;
  - (ii) the penalties specified in regulation 8 which such disciplinary authority shall be competent to impose; and

- (iii) whether the procedure prescribed in regulation 12 and 13 or regulation 14 or regulation 19 may be followed in the proceeding.

(17) **Special procedure in certain cases** - Notwithstanding anything contained in regulations 12 to 16 –

- (i) where a penalty is imposed on an employee on the ground of conduct which had led to his conviction on a criminal charge, or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these regulations, or
- (iii) where the Chairman is satisfied that in the interest of the security of the Port it is not expedient to follow such a procedure.

the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit :

Provided that the approval of the Central Government shall be obtained before passing such orders in relation to an employee covered by clause (a) of sub-section (1) of section 24 of the Act.

18. **Provisions regarding employees lent to Central Government, etc.** – (1) When the services of an employee are lent to the Central Government or a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this regulation referred to as “the borrowing authority”), the borrowing authority shall have the powers of the appointing authority for the purpose of conducting a disciplinary proceeding against him :

Provided that the borrowing authority shall forthwith inform the Chairman of the circumstances leading to the order of suspension of such employee or the commencement of the disciplinary proceeding, as the case may be.

- (2) In the light of the findings in the disciplinary proceeding conducted against an employee –
  - (i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of regulation 8 should be imposed on the employee, it may, after

consultation with the Chairman, make such orders on the case as it deems necessary :

Provided that in the event of a difference of opinion between the borrowing authority and the Chairman, the services of an employee shall be replaced at the disposal of the Board.

- (ii) If the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of regulation 8 should be imposed on the employee, it shall replace his services at the disposal of the Board and transmit to the Chairman the proceedings of the inquiry and thereupon, the Chairman may pass such orders as he may deem necessary :

Provided that before passing any such order the Chairman shall comply with the provisions of sub-regulations (3) and (4) of regulation 13 :

Provided further that no such order, so far as it relates to an employee referred to in clause (a) of sub-section (1) of section 24 of the Act shall have effect until it is approved by the Central Government.

**Explanation :** The disciplinary authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority, or after holding such further inquiry as it may deem necessary, as far as may be, in accordance with regulation 12.

**19. Provisions regarding employees borrowed from Central Government, etc. –**

- (1) Where an order of suspension is made or a disciplinary proceeding is taken against an employee whose services have been borrowed from the Central Government or a State Government or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter in these regulations referred to as the “lending authority”) shall forthwith be informed of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceeding, as the case may be.

- (2) In the light of the findings in the disciplinary proceeding taken against the employee –
- (i) if it is decided that any of the penalties specified in clauses (i) to (iv) of regulation 8 should be imposed on him, the disciplinary authority may, subject to the provisions of sub-regulation (3) of regulation 13, after consultation with the lending authority, pass such orders on the case as it deems necessary :

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the employee shall be replaced at the disposal of the lending authority;

- (ii) If the disciplinary authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of regulation 8 should be imposed on the employee, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action as it deems necessary.

## PART VII

**APPEALS**

20. **Orders against which no appeal lies** - Notwithstanding anything contained in this part, no appeal shall lie against –
- (i) any order made by the Central Government;
  - (ii) any order in appeal or any order in review made by the Chairman;
  - (iii) any order passed by an inquiring authority in the course of an inquiry under regulation 12;
  - (iv) any order of an interlocutory nature or of the nature of a step-in-aid or the final disposal of a disciplinary proceeding other than an order of suspension.
21. **Orders against which appeal lies** – Subject to the provisions of regulation 20, an employee may prefer an appeal against all or any of the following orders, namely : -
- (i) an order of suspension made or deemed to have been made under regulation 7;
  - (ii) an order imposing any of the penalties specified in regulation 8 made by the disciplinary authority;
  - (iii) an order which –
    - (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by regulations; or
    - (b) interprets to his disadvantage the provisions of any such regulations :
  - (iv) an order –
    - (a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;
    - (b) reverting him while officiating in a higher grade or post to a lower grade or post otherwise than as a penalty;

- (c) reducing or withholding the pension or denying the maximum pension admissible to him under the regulations;
- (d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;
- (e) determining his pay and allowances –
  - (i) for the period of suspension, or
  - (ii) for the period from the date of his dismissal, removal or compulsory retirement from service or from the date of his reduction to a lower grade, post, time-scale or stage in a time-scale of pay to the date of his re-instatement or restoration to his grade or post, or
- (f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal or compulsory retirement, or reduction to a lower grade, post, time-scale of pay or a stage in a time-scale of pay to the date of his reinstatement or restoration to his grade or post shall be treated as a period spent on duty for any purpose.

**Explanation :** In this regulation –

- (i) the expression “employee” includes a person who has ceased to be in the Board’s service;
- (ii) the expression “pension” includes additional pension, gratuity and any other retirement benefits.

22. **Appellate Authorities** - An employee, including a person who has ceased to be in the Board’s service, may prefer an appeal against –

- (i) an order of suspension, to the authority to which the authority which made or deemed to have made the order is immediately subordinate;
- (ii) an order imposing any of the penalties specified in regulation 8, to the authority specified in this behalf in the Schedule;

- (iii) all or any of the orders specified in clauses (iii) and (iv) of regulation 20, to the authority to which an appeal against an order imposing upon him the penalty of dismissal would lie.

23. **Appellate Authorities in special circumstances** - Notwithstanding anything contained in regulation 22,

- (i) an appeal against an order in common proceeding shall lie to the authority to which the authority functioning as the disciplinary authority is immediately subordinate;
- (ii) where the person who made the order appealed against becomes by virtue of his subsequent appointment as the Chairman, an appeal against such order shall lie to the Central Government and the Central Government in relation to that appeal shall be deemed to be the appellate authority for the purpose of this regulation.

24. **Period of limitation of appeals** - No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of two months from the date on which a copy of the order appealed against is delivered to the appellant :

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

25. **Form and contents of appeals** - (1) Every person preferring an appeal shall do so separately and in his own name.

- (2) (a) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against.
- (b) The appeal shall contain all material statements and arguments on which the appellant relies, shall not contain any dis-respectful or improper language, and shall be complete in itself.
- (3) The authority which made the order appealed against shall, on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay and without waiting for any direction from the appellate authority.

26. **Consideration of appeal** – (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of regulation 7 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties, specified in regulation 8 or enhancing any penalty imposed under the said regulation, the appellate authority shall consider –

- (a) whether the procedure laid down in these regulations has been complied with, and if not whether such non-compliance has resulted in the failure of justice;
- (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- (c) whether the penalty imposed is adequate, inadequate or severe;

and pass orders –

- (i) confirming, enhancing, reducing or setting aside the penalty; or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

Provided that –

- (i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of regulation 8 and an inquiry under regulation 12 has not already been held in the case, the appellate authority shall, subject to the provisions of regulation 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of regulation 12 and thereafter, on a consideration of the proceedings of such inquiry and after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of sub-regulation (4) of regulation 13 of making a representation against the penalty proposed on

the basis of the evidence adduced during such inquiry, make such orders as it may deem fit;

- (ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of regulation 8 and an inquiry under regulation 12 has already been held in the case, appellate authority shall, after giving the appellant a reasonable opportunity, as far as may be in accordance with the provisions of sub-regulation (4) of regulation 13, of making a representation against the penalty proposed on the basis of the evidence adduced during such inquiry, make such orders as it may deem fit; and
- (iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of regulation 12, of making a representation against such enhanced penalty.

- (3) In an appeal against any other order specified in regulation 21, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

27. **Implementation of orders in appeal** - The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

## PART VIII

**REVIEW**

28. **Review** - (1) Notwithstanding anything contained in these regulations –

- (i) the Central Government, or
- (ii) the Chairman

may at any time, either on its or his own motion, or otherwise, call for the records of any inquiry and review any order made under these regulations, or under the regulations or orders or practices repealed by regulation 31, from which an appeal is allowed, but no appeal has been preferred, or from which no appeal is allowed, after consultation with the Central Government, where such consultation is necessary, and may –

- (a) confirm, modify or set aside the order; or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- (d) pass such other orders as it may deem fit :

Provided that no order imposing or enhancing any penalty shall be made by the reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of regulation 8 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in regulation 12 and after giving a reasonable opportunity to the employee concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Central Government, where such consultation is necessary :

Provided further that no power of review shall be exercised by the Chairman unless –

- (i) the authority which made the order in appeal, or
- (ii) the authority to which an appeal would lie, where no appeal has been preferred,

is himself or is subordinate to him.

- (2) No proceeding for review shall be commenced until after –
  - (i) the expiry of the period of limitation for an appeal, or
  - (ii) the disposal of the appeal, where any such appeal has been preferred.
- (3) An application for review shall be dealt with in the same manner as if it were an appeal under these regulations.

## PART IX

**MISCELLANEOUS**

29. **Service of orders and notices** - Every order, notice and other process made or issued under these regulations shall be served in person on the employee concerned or communicated to him by registered post.
30. **Power to relax time-limit and to condone delay** - Save as otherwise expressly provided in these regulations, the authority competent under these regulations to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these regulations for anything required to be done under these regulations or condone any delay.
31. **Repeal** - (1) On the commencement of these regulations, rules 23, 24, 25 and 28 of the Bombay Port Trust Rules and Regulations for Non-Scheduled Staff and Appendix 'E' thereof, in relation to the employee who were governed by the said Rules and Regulations for the Non-Scheduled Staff, immediately before the commencement of these regulations, and the orders or practices in force immediately before the commencement of these regulations in relation to all other employees shall stand repealed :
- Provided that –
- (a) such repeal shall not affect the previous operation of the said Rules and Regulations for Non-Scheduled Staff or the said orders or practices or anything done or any action taken thereunder;
- (b) any proceeding under the said Rules and Regulations for Non-Scheduled Staff or the said orders or practices pending at the commencement of these regulations shall be conducted and disposed of as far as may be, in accordance with the provisions of these regulations.
- (2) An appeal pending or preferred after the commencement of these regulations against an order made before such commencement shall be considered and orders thereon shall be passed in accordance with these regulations.
32. **Removal of doubts** - Where a doubt arises as to the interpretation of any of the provisions of these regulations, the matter shall be referred to the Chairman, who shall decide the same.