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H. No. 2299,
Sector 44-C,
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Dated: 27.3.2019

To,

1. Chief Secretary, Government of Punjab, Punjab Civil Secretariat, Chandigarh.
2. Chief Secretary, Government of Haryana, Haryana Civil Secretariat, Chandigarh.

Demand:- Demand for deleting the obsolete and draconian provision of "Deemed Suspension" under the Punishment and Appeal Rules.

By E-mail/Speed Post

Dear Sirs,

Please accept the following demand notice on my behalf:-

1. That the Central Civil Services are governed by CCS (CCA) Rules, 1965 on the matter of disciplinary action, or for that matter, for purpose of placing Central Government employees under suspension in certain circumstances. It may be pertinent to state that the various rules for taking disciplinary action and placing the State Government's employees under suspension, have been borrowed for the CCS (CCA) Rules, 1965. However, the instant Demand Notice is confined only to the issue of "deemed suspension", under the relevant rules, (to which a detailed reference is being made in the succeeding paragraphs of the instant Demand Notice). However, it may be pertinent to refer to and reproduce the provisions contained in Rule 10 (2) (a) of the CCS (CCA) Rules, which provides for deemed suspension of the Government servants on arrest.

The said provision is reproduced hereunder for the sake of ready reference at your level:-

“10. (2) A Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority –
(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;”

2. That in the State of Punjab, the aforesaid provision of CCS (CCA) Rules, 1965 has been borrowed, and incorporated in Rule 4 (2) (a) of Punjab Civil Services (Punishment and Appeal) Rules, 1970, which lays down as under:-

“4. (2) A Government employee shall be deemed to have been placed under suspension by an order of appointing authority –
(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;”

3. That similarly in the State of Haryana, the aforesaid provision of CCS (CCA) Rules, 1965 has been borrowed and incorporated in the shape of Rule 4 (A) (2) (a) of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, which is to the following effect:-

“4. (2) A Government employee shall be deemed to have been placed under suspension by an order of appointing authority –
(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;”

4. That with the aforesaid background, it may be submitted that aforesaid provisions of rules providing for “deemed suspension” is not only a legacy of our colonial past, but the said provisions is too draconian to remain on the statute book. It is violative of the provisions

contained in Article 14 of the Constitution of India, being too arbitrary and harsh, and also violates article 21 of the Constitution, as it takes away the right to livelihood for trivial reasons. In this regard, it may be pertinent to state that the aforesaid provisions does not leave any discretion with the Appointing Authority not placing the concerned Government servant, who had been detained in custody for a period of 48 hours or more, under suspension. Such a Government servant may be detained in custody for more than 48 hours for a trivial offence, at the instance of a private person, and for that reason alone, he is to be deemed to under suspension from the date of being taken into custody. He has to remain under suspension until the order of deemed suspension is modified or revoked by the authority competent to do so. Thus, a Government servant, who is placed under deemed suspension, may continue under suspension for several months, for trivial offence, and as and when he is discharged or acquitted of such an offence, he does not get any salary and allowances for the period of suspension, for the reason that his suspension was at the instance of a private person and for some private dispute, and not at the instance of the department. Thus, he suffers serious prejudice firstly, by remaining under deemed suspension for several months, and secondly, by being deprived of the right to get salary and allowances for such period of suspension, and thirdly, he suffers the stigma of suspension for no fault of his. He gets suspended automatically, even if the offence alleged against him does not have any bearing on discharge of official duties by him.

5. That on the other hand, under certain other provisions of the rules, the Punishing Authority or Appointing Authority has the discretion to place a Government servant under suspension in case some criminal proceeding against him is under investigation, inquiry or trial. Thus, a Government servant whose conduct for allegedly committed criminal offence is under investigation, escapes being suspended, even in the face of

very serious charges, involving moral turpitude, if he is not arrested by the investigating agency, but in other trivial matter, if he is arrested, he is deemed to be under suspension from the date of arrest.

6. That in large number of cases, where the Government employees are arrested, they are induced to conceal the factum of their arrest from the Appointing Authority . Such Government servants under such circumstances, submit their application for leave on false grounds so that they may avert “deemed suspension”. That is for the reason that the aforesaid provisions are so draconian, that Government servant, in order to avoid being placed under deemed suspension, makes a false statement in his leave application, and if detected, he is liable to be proceeded against by way of departmental action also.

7. That another negative aspect of the aforesaid draconian provision of service rules is that after the revocation of order of deemed suspension, when the Departmental Disciplinary/Appointing Authority has to decide about treatment to be given to the period of deemed suspension, it is often observed by the authority that the dispute/litigation faced by the Government servant, for which he was placed under deemed suspension, being at the instance of a private party, the Government/Department cannot be burdened with the salary and allowances for the period for which Government servant did not work/dischage his duties, because of being under deemed suspension. Thus, a situation arises that Appointing/Disciplinary Authority firstly, being shackled by these draconian rules, places the Government servant under deemed suspension, for unjustified reasons and thereafter, takes the benefit of its own wrong, by disentitling/depriving the Government servant of his right to get salary and allowances for the period for which he was forced to remain away office/department.

8. That in view of above, the aforesaid draconian provisions of “deemed suspension” in the Service Rules of Punjab and Haryana Governments deserve to be deleted from the statute book, since there is ample power available with the Appointing Authority to place such an Government servant under suspension when where a serious case is pending against him in respect of any criminal offence under investigation, inquiry or trial. Those provisions can be used by the Appointing Authority in a judicial manner, by taking into consideration the facts and circumstances of the each case and the seriousness of the offence for which the conduct of the Government servant is being investigated or inquired into, or is under trial. In such a situation, the Appointing Authority has to act with due application of mind, whereas under the provision for deemed suspension, the Appointing Authority has no discretion, and has to keep a closed mind and is bound to place the concerned Government servant under “deemed suspension”, simply because he was arrested and detained and kept in police/judicial custody for a period of 48 hours or more. In case the aforesaid draconian and unconstitutional provision of Service Rules pertaining to “deemed suspension” are deleted from the statute book, that would result into reduction/minimization of litigation on this issue.

I would therefore, call upon you to consider deleting the aforesaid provisions of law, which, as I have submitted in the preceding paragraphs of the instant Demand Notice, are the legacy of colonial rule, and those are too draconian to remain on the statute book, in view of the provisions of Article 14/21 of the Constitution of India.

In case no positive response is heard from you, within a period of 2 months from the date of receipt of this notice by you, in that event, I shall be left with no other alternative except to file appropriate proceedings in the Hon’ble High Court of Punjab and Haryana at Chandigarh, by way of Public Interest Litigation (PIL) or otherwise, for redressal of aforesaid legitimate grievance, in public interest.

Meanwhile, please acknowledge receipt of this demand notice.

Thanking you.

Yours sincerely,

(H. C. ARORA)
ADVOCATE