

INDUSTRIAL RELATIONS

INSTRUCTIONS

ON

'STRIKE'

IN

DGQA ESTABLISHMENTS

Prologue

1. Though the use of the term "strike" to describe workmen's instrument of economic coercion in labour management relations is relatively of recent origin, the strategy of withholding labour as an instrument of economic coercion has been known for several centuries. Indeed, prohibition, direct or indirect, or withholding labour as an instrument of economic coercion is not unknown.

2. **No Fundamental Right to Strike.** Article 19(1) (c) of the Constitution declares that : -

All citizens shall have a right... to form associations or unions. This right, however, is not absolute. Clause 4 of Article 19 provides that : -

Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law insofar as it imposes, or prevents the state from making any law imposing, in the interest of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

In All India Bank Employees Association v. National industrial Tribunal, the Supreme Court considered the aforesaid provisions. It, inter alia, ruled that

.... Even a very liberal interpretation of sub-clause (c) of clause (1) of Article 19 cannot lead to the conclusion that the trade unions have a guaranteed right to Strike, either as part of collective bargaining or otherwise.

3. In general, labour's instruments of economic coercion comprise of such workers' action or omission, in furtherance of an industrial dispute which threaten or inflict financial loss on the management. They put management under economic pressure to accept the (industrial dispute) demands of workers.

Likewise, management's instruments of economic coercion comprise of such management's action or omission, in furtherance of an industrial dispute which is resorted to with the objective of inflicting financial loss on the labour so that they would rather accept management's term than suffer irreparable financial loss. Further, in harmony with the view: "no work no payment" the closing of a place of employment or suspension of work or the refusal by an employer to continue to employ any number of persons employed by him is the means adopted to put the requisite economic pressure. In 'State Bank's Staff Union v. State Bank of India, Bombay, 1991 Lab IC 2299 the Madras HC stated that "irrespective of the fact whether the strike is justified/legal or not, the employer would be entitled to deduct wages of employees for the strike period on principle of 'no work no pay'. DOP&T vide its letter No. 33011/1/77-

Estt.9B) dated 25 Apr 1978 also directs that "All ministries must observe the principle of 'No work no Pay' and this should not be circumvented in any way including by grant of leave for the period of a strike".

Action on "Strike"

1. In future, action required to be taken by an officer in charge establishment in cases of threat of strike, strikes, and demonstrations by civilian employees and procedure for submission of reports will be as laid down in the succeeding paragraphs.

Threat of Strike or Strike Notice

2. In the event of a threat or receipt of a strike notice, the OIC unit/establishment will make suitable and adequate arrangements for running essential services and safeguarding machinery and other Government property. Information will also be sent simultaneously by fax followed by speed post to the following : -

- (a) The DGQA
- (b) The Controlling Directorates
- (c) The ADG (Adm)
- (d) The Chief Labour Commissioner (C), New Delhi
- (e) The District Magistrate
- (f) The District Superintendent of Police
- (g) The Regional Labour Commissioner (C)
- (h) The Asstt Labour Commissioner (C) concerned

(i) DGQA/ADM/LW

3. The intimation by fax followed by speed post will be followed up within 24 hours by a detailed report showing the following information : -

(a) The name(s) of the initiator(s) of the notice.

(b) Demands detailed in the notice alongwith comments of the unit concerned.

(c) Brief resume of action taken or proposed to be taken by the Officer-in-Charge establishment including attempts made to prevent the strike. The Concerned Directorate should take all necessary action to avert the strike under intimation to this HQs.

(d) The arrangements made for carrying out essential work in the event of a strike.

3.1 The establishments concerned will telephonically intimate the daily position every morning before 1100 hrs and afternoon 1500 hrs to concerned Directorate/ADGQAs and LWC (Tele : 011-23013327).

4. Thereafter, daily situation reports will be submitted by FAX and speed post letter to the addresses given in Para 2 ante.

5. Directorates will forward their comments to this HQ (DGQA) within three Days of receipt of the first report from the unit.

Actual Strike

6. In the event of actual strike, whether with or without notice, information will be sent simultaneously by FAX to the addresses given in Para 2 above. This will be followed up the same day by a detailed report to be sent by FAX followed by speed post letter giving the following information : -

(a) Date and time of commencement of strike.

(b) Number of workers involved showing : -

(i) No. of personnel on roll (industrial and non-industrial separately)

(ii) No. of employees on leave with kind of leave whether EL, HAPL, CL etc.

(iii) No. of personnel on strike (industrial and non-industrial separately).

(c) Demands of the workers and/or any other causes leading to the strike with comments of unit concerned.

- (d) The arrangements made for carrying out essential work.
 - (e) Brief resume of the action taken or proposed to be taken by the unit including disciplinary action and deduction of pay etc.
 - (f) Attempts made to involve RLC (C), ALC (C) concerned as to amicably settle the problem and take necessary action as deems fit to them.
 - (g) Action taken by RLC (C)/ALC (C) concerned.
7. Thereafter daily reports will be submitted by FAX and speed post showing further developments to the addressees given in Para 2 above till the strike is called off.
8. On termination of a strike, the information as per **Appendix 'A'** will be submitted by the installation concerned to DGQA Headquarters with a copy to the Ministry of Defence/D(JCM) and the Controlling Directorate. The Controlling Directorate will immediately send their comments also.
9. During the actual strike period, the establishments concerned will telephonically intimate the daily position every morning before 1100 A.M. and afternoon before 3'O Clock to concerned Directorates/ADGQAs and this HQ (Tele: 011- 23013327) to brief to ADG(Adm), Spl DGQA and DGQA.

Stay-in/sit-down strikes or demonstrations and other such DISORDERLY CONDUCT

10. In the event of workers indulging in shouting of slogans, staging a demonstration or resorting to tool-down or stay-in-strike or concerted action to abstain from partaking mid-day meals during normal working hours, the following instructions will be observed : -
- (a) The instructions contained in Paras 6 to 9 ante will be complied with.
 - (b) Wearing of badges or arm bands while at work, will not be interfered with unless badges have inscriptions or slogans which may offend against the interest of the security of the state or friendly relations with foreign states or public order or decency or morality or which may amount to contempt of court or defamation or incitement to an offence. The colour of badge or arm band will not be a consideration in any case.
 - (c) Demonstrations, meetings and processions which are orderly and peaceful and are held outside office or installation premises during non-working hours will not be interfered with.

(d) Demonstrations, raising or slogans or other such disorderly conduct will not be permitted within office or installation premises and disciplinary proceedings will be started against those found indulging in such action.

(e) Meetings/demonstrations and so on held in the office premises (including the office compound) without permission of the competent authority would amount to trespass. Therefore, besides action under the disciplinary rules, action can also be taken against the person(s) participating in such meetings/demonstrations under Section 447 read with Section 441 of the Indian Penal Code (Criminal trespass). This is a cognizable offence and the Police can arrest the offenders without warrant. Such cases, wherever necessary, should therefore be reported promptly to the Police. The object should be to prevent disorderly behavior of the employees through persuasion and caution and, if necessary, through prosecutions which would be launched on a report made by the competent authority to the civil police.

(f) If a demonstration/meeting aims at instigation/incitement of the employees to indulge in tactics like 'go slow', 'work-to-rule' and so on, the persons who participate in the meeting/demonstration would be committing an offence under the Essential Services Maintenance Act and can be dealt with accordingly.

(g) In case of stay-in-strike, no steps need be taken beyond marking the workers absent for the period they remain off work provided their conduct remains peaceful and disciplined. If the workers stay behind in the Defence installation after normal working hours, unless asked for or permitted to do so by the administrative authorities, they are liable to disciplinary action and also for forcible eviction under the rules quoted above, if their conduct becomes violent or otherwise calls for intervention by the civil police.

11. If the workers remain absent from duty for participation in political demonstrations, which are in no way connected with an industrial dispute between the management and the workers, their absence will constitute unauthorized absence, making them liable to disciplinary action. The OIC will not close the installation on such occasions even though such closure is desired by the workers.

Encl : (i) Appx 'A' – Format
(ii) Appx 'B' – Tips on 'Strike' and Court Judgements
(iii) Appx 'C' – Some DOP&T, MoD SR/FR/Labour Laws instructions/Informations on 'STRIKE'.

APPENDIX 'A'

1. Name of the Establishment :

2. Total Strength :

<u>IEs</u>	<u>NIs</u>	<u>Officers</u>

3. Total No. of employees who participated in strike :

<u>Industrial</u>	<u>Non-Industrial</u>

4. Name of Unions/Associations who gave call ;

<u>Name</u>	<u>Geneal Secretary</u>	<u>President</u>	<u>Affiliation</u>

5. Total Man Hours Loss :

6. Total Production Loss :

7. Pay deducted on 'No Work No Pay' principle as per DOP&T instructions.

<u>IEs</u>	<u>NIEs</u>

TIPS ON STRIKE & COURT JUDGEMENTS

TIPS ON 'STRIKE'

- There is prohibition on any form of strike including mass casual leave, go-slow etc. which is in violation of CCS (Conduct Rules), 1964. Striking work amounts to misconduct. Even giving letter may also entail disciplinary action.
- The principle of 'No Work No Pay' besides other disciplinary action be adopted.
- Action to be taken on employees participating in the strike in consultation with Department of Personnel and Training (DOP&T), Administrative Ministry, Departments Report on such occasion shall be sent within 15 days only.
- Employees be suitably informed of the consequences and dissuaded from resorting to strike. Attempts be made to encourage the employees to make use of available channels to resolve grievances.
- Not to sanction leave during strike period.
- Not to allow striking employees to enter in office premises.
- Safety/Security measures be taken.
- Suitable contingency plan for carrying out essential functions be made.
- Absenteeism report regarding numbers of striking employees, man days loss, production loss etc. be give immediately.
- Strike should be 'justified' and 'legal' both.
- Demonstrations, display of posters etc. should be as per guidelines.
- Reporting various authorities be done immediately.
- Requests be made to RLC(C)/ALC (C) to intervene, amicably settle or start conciliation.

The above gives illustrative information only. Various concerned DOP&T instructions and concerned Labour Laws, MoD instructions, most of them are enclosed with this as Appx 'C' should invariably be referred for detailed knowledge, execution and implementation.

COURT JUDGEMENTS ON 'STRIKE'

(From 'Digest of Labour Cases' by H.L.Kumar 1990 to Feb 2010, Universal Law Publication)

- **Irrespective of the fact as to whether the strike is legal or illegal, the strikers will be liable to lose their wages.**
Bank of India v.T.S.Kelawala, (1990)4 SCC 744: (1990) 2 LLJ 39⊕1990) 60 FLR 898: (1990) 4 SLR 248: 1990 LLR 313 (SC)
- **Asking employees to give an undertaking to the employer that they will not resort to strike would amount to unfair labour practice on the part of the employer.**
French Motor Car Company Ltd. Workers Union v. French Motor Car Company Ltd., 1990 LLR 366: 1989 LIC 2134 (Gau HC).
- **If the workers will resort to strike which is illegal they will be liable for disciplinary action.**
Bank of India v.T.S.Kelawala, (1990)4 SCC 744: (1990) 2 LLJ 39⊕1990) 60 FLR 898: (1990) 4 SLR 248: 1990 LLR 313 (SC)
- **Right to strike work by the workers is not a fundamental right.**
Audco India Ltd. V.Audco India Employees Union, 1990 LLR 29:1989-II LLJ 2000 (Mad HC)
- **Irrespective of the fact whether the strike is justified/legal or not, the employer would be entitled to deduct wages of employees for the strike period on principle of 'no work no pay'**
State Bank's Staff Union v. State Bank of India, Bombay, 1991 Lab IC 2299 (Mad HC).
- **The prohibition of strike by the Government while referring only a few amongst other demands for adjudication will be without jurisdiction and liable to be set aside.**
State Transport Employees Federation, Orissa v. State of Orissa, 1991 LLR 181 : 1991 (62) FLR 621 : 1991 II LLN 189 (Ori HC).
- **A trade union directing the workers not to attend work on Lok Sabha polling day, the absence of the workers from duty will amount to strike and the employer will be justified in making penal deduction of wages.**
Madras Labour Union, Madras v. Binny Ltd. (B&C) Mills represented by its Manager, Madras, 1991 LLr 264 (Mad HC).
- **A strike notice short by one day will not render the strike as illegal.**
Bombay Gumasta Union v. M.P.Mansuri, 1991 LIC 1376: 1991 LLR 366: 1991 (63) FLR 4 (Bom HC).

- **Deduction of wages for illegal strike period will be on the principle of 'no work no wages'**
T.K.Rajan v. Labour Court, Ernakulam, 1996 LLR 1126 (Ker HC).
- **While initiating disciplinary action for strike, it is not imperative to seek declaration that the strike was illegal.**
Ahmedmiya Ahmadeji v. India Hume Pipe Company, (1997) 77 flr 722: (1997) 2 clr 634: 1997 Ilr 705 (Bom HC).
- **No wages to employees when they resort to illegal strike.**
H.M.T.Ltd. v. H.M.T. Head Office Employees' Association, (1996) 11 SCC 319 : AIR 1997 SC 585 : 1997 LLR 758 (SC).
- **Courts cannot prohibit strike when it is peaceful.**
Patel Oil Mills v. M/s. Relaxo Rubber & Allied Industries Employees Union 1999 LLR 13 (Del HC).
- **Worker have right to strike but they should not obstruct other non-striking workers.**
T.C.M. Ltd. v. District Collector, 1998 LLR 302 (Ker HC).
- **High Court can restrain the striking workers interfering with the free movement of materials.**
Britannia Industries Ltd., Chennai v. Joint Commissioner of Labour, Chennai, 1998 LLR 626 (Mad HC).
- **No wages for strike period even when it is legal but is not justified.**
Panyam Cements and Minerals Industries Ltd., Wire Divn, Bangalore v. Deccan Wire Employees' Association, Bangalore, 1998 LLR 1128 (Karn HC).
- **Strike notice under section 24 of MRTU & PULP Act need not be in Form No. 1.**
Savita Chemicals (Pvt.) Ltd. v. Dyes & Chemicals Workers Union, (1999) 2 SCC 143 : AIR 1999 SC 413: 1999 LIC 578: (1999) 1 LLJ 416: (1999) 1 LLN 637:1999 LLR 188 (SC).
- **Cases of workman who were 'dumb driven cattle' are to be distinguished from those who acted as king-pin for illegal strike.**
Eicher Goodearth Ltd. v. The Presiding Officer, Labour Court, 1999 LLR 156 (Raj HC).
- **Extreme step of strike by workers without availing remedy under section 28 of MRTU & PULP Act would not render the strike invalid unless it falls within the purview of section 25 (1)(i) of the Act.**
Bharat Petroleum Corporation Ltd. v. Mharashtra General Kamgar Union, (1999) 1 SCC 626: AIR 1999 SC 401: (1999) 1 LLN 654: (1999) 1 LLJ 352: 1999 LLR 188 (SC).

- **A strike in support of demand for bonus will be illegal and the strikers will not be entitled to wages.**
 Panyam Cements and Mineral Industries Ltd. v. Deccan Wire Employees' Association, 1999 LLR 346 (Karn HC).
- **Dismissal of a workman for absence during the illegal strike will be unjustified and he will be entitled to reinstatement with 75% back wages.**
 Mararjee Gokuldas Spinning and Weaving Company Ltd. v. Maruti Yeshwanti Narvekar, (1999) 83 FLR 765: 2000 LLR 63 (Bom HC).
- **High Court can restrain the workers/union from resorting to strike in public utility services during pendency of conciliation proceedings.**
 India Oil Corporation v. Oil Sector Officers' Association, 2000 LLR 224 (Del HC).
- **If a worker resorts to strike, he does not abandon his job.**
 Uttar Pradesh Rajya Setu Nigam Snyukt Karamchari Sangh v. Uttar Pradesh State Bridge Corporation, Lucknow, 2000 LLR 151 (All HC).
- **When a union resorts to strike etc. it should courageously own such an action.**
 Peico electronics & Electricals Ltd., Pune v. Philips Employees' Union, Pune, (2000) 2 LLJ 823: (2000) 4 Mah LJ 4 : (2000) 86 FLR 267 : 2000 LLR 827 (Bom HC).
- **Power to prohibit or to declare a strike or lock-out as illegal is not available to the appropriate Government.**
 Andamans timber Industries Ltd. v. Union of India, (2000) 86 FLR 427: (2000) 2 LLJ 345: 2000 LLR 870 (Cal HC).
- **60% back wages will be appropriate relief when the strike was found to be illegal.**
 Life Insurance Corporation of India v. Jyotish Chandra Biswas, (2006) 6 SCC 562: AIR 2000 SC 3666: (2000) 5 SCR 87: 2000 LLR 1278 (SC).
- **No wages will be payable to the striker when the Strike is illegal.**
 Bharat Petroleum Corporation Ltd. v. Workmen Employed in the Refinery Division of Bharat Petroleum Corporation Ltd., (2001) 88 FLR 1 : (2001) 4 LLN 776: 2001 LLR 26 (Bom HC).
- **Cutting of full day's wages will be justified when the bank employees have partially struck the work.**
 Manager, Reserve Bank of India v. V.Raveendran, Secretary, Reserve Bank Employee's Association, 2001 LLR 23 (Ker HC).

- **Workers should approach the adjudication machinery instead of striking the work.**
 Bharat Petroleum Corporation Ltd. v. Workmen Employed in the 'Refinery Division of Bharat Petroleum Corporation Ltd., (2001) 88 FLR 1: (2001) 4 LLN 776: 2001 LLR 26 (Bom HC).
- **Mere Issuance of strike notice will not give a right to the workers to get wages for strike period.**
 N.L.C. Workers Progressive Union, represented by its General Secretary, S.Audagurunathan v. Neyveli Lignite Corporation Ltd., represented by Director (Personnel) Corporate Office, Block-1, Neyveli, 2001 LLR 441 (Mad HC).
- **A strike during pendency of conciliation proceedings will be illegal and no wages will be payable to the strikers.**
 N.I.C Workers Progressive Union, represented by its General Secretary, S.Audagurunathan v. Neyveli Lignite Corporation Ltd., represented by Director (personnel) Corporate Office, Block-1, Neyveli, 2001 LLR 441 (Mad HC).
- **A sympathy strike resorted to by the workers will be illegal.**
 Rja ram Maize Products v. Industrial Court of Madhya Pradesh, 2001 LLR 503 (SC).
- **A strike in a hospital will be per se illegal.**
 Bharatiya Arogya Nidhi Sheth Kantilal C. Parikh Geneal Hospital v. Bombay Labour Union, (2001) 89 FLR 790: (2001) 2 LLN 266 : 2001 LLR 587 (Bom HC).
- **Dismissal of hospital employees for going on and instigating for illegal strike will be justified.**
 Bharatiya Arogya Nidhi Sheth Kantilal C. Parikh Geneal Hospital v. Bombay Labour Union, (2001) 89 FLR 790 : (2001) 2 LLN 266 : 2001 LLR 587 (Bom HC).
- **Dismissal of writ, challenging the prohibition of lock-out by the government, will not enable the trade unions to indulge in strike as long as the dispute is pending for adjudication.**
 Mysore Kirloskar Ltd. v. State of Karnataka, Rep. by its Secretary, Department of Labour, Bangalore, 2004 LLR 637 (Karn HC).
- **Absence from duty by the workman on account of strike cannot be questioned when the strike has been declared illegal.**
 Karnataka State Road Transport Corporation v. Karnataka State Road Transport Corporation Staff and Workes Federation, 2004 LLR 739 (Karn HC).
- **Resorting to strike by officers is not per se forbidden but the Court can impose reasonable restriction.**

Bharat Sanchar Nigam Ltd. v. Sanchar Nigam v. Sanchar Nigam Executives' Association, 2005 LLR 103 (Del HC)

- **When a dispute is mutually settled, the Courts must honour on joint petition by parties.**
Management of Bokaro Steel Plant, Bokaro v. the Presiding Officer, Labour Court Bokaro Steel City, Bokaro, 2006 LLr 365 (Jhar HC).
- **A Conciliation Officer can only mediate to settle the dispute and his functions are neither judicial nor semi judicial.**
Management of Reckitt and Benckiser (India) Ltd. v. United Labour Federation, 2006 LLR 364 (Mad HC)
- **Right to strike work is used in order to have their demands redressed when other avenues have failed hence punishment of compulsory retirement of the employee will be disproportionate.**
Suresh Sakharam Sarankar v. Union of India, 2006 LLr (SN) 540 (Bom HC).
- **In the absence of notice from Conciliation Officer for strike by workman, there will not be pendency of industrial dispute under the Industrial Disputes Act.**
Gujarat Ambuja Cement Pvt. Ltd. v. U.B.Gadhe, 2006 LLr (SN) 544 (Guj HC).
- **A strike is used as a tool not for welfare of workmen but for welfare of a few leaders of trade union.**
Lt. Governor, Government of National Capital Territory of Delhi v. Delhi Flood Control Mazdoor Union, 2006 LLR 1113 (Del HC)
- **Strike should be a last resort for justifiable cause after exhausting all other avenues.**
Ajay Enterprises Ltd. v. Secretary (Labour) Government of National Capital Territory of Delhi, 2007 LLR 86 (Del HC).
- **A Strike cannot be converted into a tool to black-mail or protect the erring employee.**
Ajay Enterprises Ltd. v. Secretary (Labour) Government of National Capital Territory of Delhi, 2007 LLR 86 (Del HC).
- **Employees have no fundamental right to resort to strike.**
Bharat Petroleum Corporation Ltd. v. State, 2007 LLR 1004(SN) (Cal HC)
- **A notice of strike to the employer has to be in the prescribed form. Also a valid strike cannot commence before expiry of six weeks' time and 14 days thereafter.**
Management, Essorpe Mills Ltd. v. Presiding Officer, Labour Court, 2008 LLR 1176 (SC).
- **A strike in hospital is entirely different than in a factory hence must be condemned.**
Bangalore Hospital v. Workman of Bangalore Hospital, 2009 LLR 173 (Karn HC).

UNFAIR LABOUR PRACTICES

- **Even a threat of discharge or dismissal of a workman for joining union may amount to unfair labour practice.**
 Hindustan Lever Ltd. v. Ashok Vishnu Kate, AIR 1996 SC 285: 1995 LIC 2714; (1995) 6 SCC 326: 1995 LLR 953: 1995 (71) FLR 1040 (SC).
- **Repeated breaks in service for few days and re-employ the workman for limited period will amount to unfair labour practice as enumerated by the Fifth Schedule of the Industrial Disputes Act.**
 Kurukshetra Central Coop. Bank Ltd., Kurukshetra through its Managing Director v. State of Haryana through the Secretary Labour and employment Department, Government of Haryana, Chandigarh, 1993 LLR 67: 1993 (66) FLR 299 (P&H HC).
- **Engaging labour through contractor who could be employed directly by an undertaking will be unfair labour practice.**
 Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha, (1995) 5 SCC 27: AIR 1995 SC 1893 (1995) 71 FLR 102: 1995 LLR 552: 1995-II LLJ 790 (SC)
- **Engaging and continuing workers for years together as 'badlies', casuals or temporaries and depriving them of the status and privilege of permanent employees will amount to unfair labour practice.**
 Mahatma Phule Agricultural University and three Ors.v. Nasik Zila Shed Kamgar Union, 1997 LLR 1136 (Bom HC).
- **Non-payment of minimum wages to the employees of a canteen will not be unfair labour practice.**
 Oswal Petrochemicals v. Government of Maharashtra, (1997) 77 FLR 403: 1998 LLR 113 (Bom HC)
- **Government can authorize a private party to file criminal complaint for unfair labour practice.**
 India Hotel Company Ltd., Bombay v. State of Rajasthan, 1998 LLR 832 (Raj HC).
- **Termination of a Research Associate initially appointed on 6 months' probation who continued to serve thereafter will amount to unfair labour practice and will be entitled to reinstatement.**
 Visvesvarya Industrial Research and Development Centre v. Dilip Madhavrao Vaidya, (1998) II LLJ 142: 1998 LLR 80 (Bom HC).
- **Termination of workman without holding of departmental enquiry will constitute unfair labour practice under MRTU and PULP Act.**
 Bank Karam Chari Sangh, Pune v. Cosmos Co-operative Urban Bank Ltd., (1998) 78 FLR 919: (1998) 1 Mah LJ 207: 1998 LIC 1638: 1998 II LLJ 372 (Bom HC).

- **A worker who has not worked for 240 days in a year cannot file a complaint for unfair labour practice.**
 Patel Engineering Works v. Shridhar Babaji Chaukekar, (1999) 82 FLR 580: (1999) 2 Mah LJ 876: 1999 LIC 951: (1999) 4 Bom LR 203: 1999 LLR 885 (Bom HC): 1999 (82) FIR 580.
- **When the total remuneration is more than the minimum wages plus DA, it will not amount to unfair labour practice.**
 Harilal Jechand Doshi Ghatkopar Hindu Sabha Hospital v. Maharashtra General Kamgar Union, 1999 LLR 1159 (Bom HC): 1999-II CLR 799: (1999) 83 FLR 789.
- **Simple discharge of a workman under MRTU & PULP Act also will amount to unfair labour practice.**
 Lokmat Newspapers Pvt. Ltd. v. Shankaraprasad, (1999) 2 SCC 275: AIR 1999 SC 2423: (1999) 4 SCR 248: 1999 LLR 849 (SC): 1999 (3) LLN 538.
- **Insisting the supervisor to work on Sundays even temporarily will amount to unfair labour practices.**
 Mukund Staff and Officers Association v. Mukund Ltd., (1999) 3 LLN 952: 1999 LLR 907 (Bom HC): 1999(82) FLR 648.
- **A complaint pertaining to unfair labour practice cannot be rejected merely that the exact date of appointment was not given.**
 Anant Balu Batwale v. V.LKambale, (1999) 3 LLN 963: (1999) 2 CLR 797: 1999 (83) FLR 804 (Bom HC).
- **Engaging casual and temporary workers for years together and denying permanency will amount to unfair labour practices.**
 Gujrat State Road Transport Corporation v. Workmen of State ttransport Corporation, 2000 LLR 182 (Guj HC)
- **Non-payment of wages to the employees for not working while on duty will not be 'unfair labour practice'.**
 Peico Electronics & Electricals Ltd., Pune v. Philips employees' Union, Pune, (2000) 4 Mah LJ 4P: 2000 LLR 827 (Bom HC).
- **Complaint for unfair labour practice by an employee but who is not a 'workmen' under Industrial Disputes Act will not be tenable.**
 Dhruva Kumar Chagkokoti v. Travel Corporation of India, (2000) 86 FLR 14P: (2000) 3 LLN 864: 2000 LLR 931 (Bom HC).
- **Transfer of employees in violation of a settlement will amount to unfair labour practice.**
 N.R.C Employees Union, Mumbai v. N.R.C Ltd., Mumbai, 2000 LLR 1083 (Bom HC).

- **Non regularization of daily wagers for 15 years will amount to unfair labour practice.**
Zilla Parishad Ahmednagar v. Ramesh Sadashiv Oukre, (2000) 4 LLN 934: (2000) 86 FLR 496: 2000 LLR 1080 (Bom HC).
- **A complaint for unfair labour practice will lie only when the complainant is a 'workman'.**
Vividh Kamgar Sabha v. Kalyani Steels Ltd., (2001) 2 SCC 381: (2001) 1 LLN 782: AIR 2001 SC 1534: 2001 LLR 187 (SC).

DOP&T, MOD, SR/FR, SWAMY'S – CCS (CONDUCT) RULES AND LABOUR LAWS ON STRIKE

File No. 33012/1(s)/2008-Estt (B) (Pt)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

Dated the 12th September, 2008

OFFICE MEMORANDUM

Subject :- Participation in any form of strike/mass casual leave/ boycott of
Etc. by Government servants – CCS (Conduct) Rules –regarding.

The undersigned is directed to say that the instructions issued by the Department of personnel & Training prohibit the Government servants from participating in any form of strike including mass casual leave, go-slow etc. or in any way abet any form of strike which will be in violation of rule 7 of the CCS(Conduct) Rules, 1964. The Supreme Court has also agreed in several judgements that going on a strike is a grave misconduct under the Conduct rules and that misconduct by the Government employees is required to be dealt with in accordance with law. Any employee going on strike in any form would face the consequences which, besides deduction of wages, may also include appropriate disciplinary action.

2. A joint Consultative Machinery (JCM) for Central Government employees is already functioning. This scheme has been introduced with the object of promoting harmonious relations and of securing the greatest measure of cooperation between the Government, in its capacity as employer, and the general body of its employees in matters of common concern, and with the object, further of increasing the efficiency of the public service.

3. Therefore, apart from the fact that any form of strike/mass casual leave/ boycott of work would be in violation of the CCS(Conduct) rule, going on any form of strike will also not be in the interest of the employees. Accordingly, the undersigned is directed to convey that if any employee or an association/group of employees, under any nomenclature, indulge in any form of strike/boycott of work in pursuance of any alleged demands, or send any letter conveying of their intention to organize any such event, in terms of the provisions mentioned in para- 1 above, the salary of such employees for the day/days in question shall not be paid and the details of such employees shall have to be intimated by the concerned office where such an event took place to the

Administrative Ministry/Department concerned, within 15 days of such incident for a decision on how to treat the unauthorized absence occasioned by such an action by the employees. This will be without prejudice to any disciplinary action that may be initiated against such employees. All Ministries/Departments are requested to bring the contents of this O.M. to the notice of all concerned offices under them.

Sd/-x x x

(Suneel K. Arora)

Under Secretary to the Government of India

To

All Ministries/Departments

Ms. Mamta Kundra
Joint Secretary (Establishment)
Tel : (011) 2309 4276

GOVERNMENT OF INDIA
DEPARTMENT OF PERSONNEL & TRAINING
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NORTH BLOCK, NEW DELHI – 110 001

D.O No. 33011/2(s)/2010-Estt (B)

Dated the 25th August, 2010

Dear Sir/Madam,

The Confederation of Central Government employees & Workers has given a notice that the members of affiliates of this Confederation will go on a day's strike on 07th September, 2010 in pursuance of a Charter of Demands.

2. The instructions issued by the Department of personnel & Training prohibit the government servants from participating in any form of strike including mass casual leave, go-slow etc. or in any way abet any form of strike which is in violation of rule 7 of CCS (Conduct) rules, 1964. Besides, in accordance with the proviso to rule 17 (1) of the Fundamental rules, pay and allowances is not admissible to an employee for his absence from duty without any authority. As to the concomitant rights of an Association after it is formed, they cannot be different from the rights which can be claimed by the individual citizens of which the Association is composed. It follows that the right to form an Association does not include any guaranteed right to strike. There is no statutory provision empowering the employees to go on strike. The Supreme Court has also agreed in several judgements that going on a strike is a grave misconduct under the Conduct Rules and that misconduct by the Government employees is required to be dealt with in accordance with law. Any employee going on strike in any form would face the consequences which, besides deduction of wages, may also include appropriate disciplinary action. In this connection, your kind attention is also drawn to this Department's OM No. 33012/1(s)/2008-Estt (B)(pt) dated 12th September, 2008 (copy enclosed).

3. A Joint Consultative Machinery for Central Government employees is already functioning. This scheme has been introduced with the object of promoting harmonious relations and of securing the greatest measure of co-operation between the government, in its capacity as employer, and the general body of its employees in matters of common concern, and with the object, further of increasing the efficiency of the public service. The JCM at the different levels have been discussing issues brought before it for consideration and either reaching amicable settlement or referring the matter to the Board of Arbitration in relation to pay and allowances, weekly hours of work and leave, whenever no amicable settlement could be reached in relation to these items.

4. The Central Government employees under your Ministry/Department may therefore, be suitably informed of the aforesaid instructions under the Conduct Rules and issued by this Department and other regulations upheld by the Hon'ble Supreme Court and dissuaded from resorting to strike in any form. You may also issue instructions not to sanction Casual leave or other kind of leave to the officers and employees if applied for during the period of proposed strike, and ensure that the striking employees are not allowed inside the office premises. For this purpose, Joint Secretary(Admn) may be entrusted with the task of coordinating with security personnel. Suitable contingency plan may also be worked out for carrying out the various functions of the Ministry/Department.

5. In case the employees go on strike, a report indicating the number of employees who took part in the proposed strike may be conveyed to this Department on the evening of that day.

With kind regards,

Yours sincerely,
Sd/- x x x
(Ms.Mamta Kundra)

Shri Raj Kumar Singh,
Secretay,
Department of Defence Production,
South Block,
New Delhi.

T.JACOB
Joint Secretary (E)
Tel : (011) 2309 4276
E-mail tjacob@hub.nic.in

GOVERNMENT OF INDIA
DEPARTMENT OF PERSONNEL & TRAINING
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NORTH BLOCK, NEW DELHI – 110 001

D.O No. 33011/2(s)/2005-Estt (B)

Dated the 9th February, 2006

Dear Sir,

The Central Secretariat Non-Gazetted Employees Union has given notice to join the indefinite strike from 1-3-2006 in pursuance of the strike call given by the Joint Council of Action of the constituent organizations of the National Council of JCM of the Central Government Employees, in support of their charter of demands. The other constituent organizations may also have served the strike notice to the competent authorities.

The instructions issued by the Department of Personnel & Training prohibit the Government servants from participating in any form of strike including mass casual leave, go-slow etc or in any way abet any form of strike which is in violation of the provisions of the CCS(Conduct Rules), 1964. It has been clarified from time to time that employees participating in such movement have to incur loss of wages under the principle of 'No work-No pay' besides being liable to suspension and disciplinary action under the relevant service rules. In this connection, attention is also invited to the provisions contained in this Department's OM No. 33011/1/77-Estt.(B) dated 25.4.1978 and OM No. 41016/1(S)/90-Estt(B) dated 1-5-1991 (copies enclosed). The provisions contained in FR 17(1) and FR 17-A are also relevant regarding the manner in which the period of strike is to be dealt with. The Central Government employees under the Ministry/Department may, therefore, be suitably informed of the aforesaid instructions and dissuaded from resorting to strike in any form. You may also issue instructions not to sanction Casual leave or other kind of leave to the officers and employees if applied for, during the period of proposed strike, and ensure that the striking employees are not allowed inside the

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office premises. For this purpose, the Joint Secretary (Admn) may be entrusted with the task of coordinating with security personnel. Suitable contingency plan may also be worked out for carrying out the various functions of the Ministry/Department.

A report indicating the number of employees who took part in the proposed strike on each day may be conveyed to this Department on the evening of that day.

With regards,

Yours sincerely,

Sd/-xxx
(T.Jacob)

To

The Secretaries,
All Ministries/Departments of the Government of India

No.41016/1(S)/90-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, the 1st May, 1991

OFFICE MEMORANDUM

Subject: Treatment of period of strike by Central Government Employees.

Attention of the Ministry of Finance, etc. is invited to the Department of Personnel & Administrative Reforms O.N.No.33011/1/77-Estt.(B) dated the 25th April, 1978 in which the Ministries/Departments were requested to ensure compliance of the following directions of the Cabinet, namely :-

- (i) All Ministries/Departments must observe the principle of 'no work-no pay' and this should not be circumvented in any way including by grant of leave for the period of a strike; and
- (ii) On all important service matters which are likely to have repercussions on other services (e.g.action taken against Government employees participating in strikes), all Ministries/Departments, including the Ministry of Railways, should, with a view to ensuring the maximum possible uniformity in the general approach, consult the Department of Personnel & A.R.(now Department of Personnel and Training) before taking/announcing any decision so that embarrassment to the Government in dealing with the generality of civil services is avoided.

2. Notwithstanding the above directions, the Department of Personnel & Training has been receiving several references from Central Government offices that in the case of employees who had participated in a strike, the period of absence may be treated as duty or leave instead of applying the principle of 'no work-no pay'. It has also come to notice that in some cases, the Ministries/Departments had taken decisions on important service matters likely to have repercussions on other services without consulting this Department and in contravention of the said directions.

3. The principle of 'no work-no pay', is laid down in proviso to Fundamental Rule 17(1) which provides that any officer who is absent without any authority shall not be entitled to any pay and allowances during the period of such absence. The principle was examined in depth by the Supreme Court and upheld in the Civil Appeal No. 2581 of 1986 – Bank of India vs. T.S.Kelawala & Others (1990 (3)SLJ). Though the issue did not

5. Ministry of Finance etc. are accordingly requested to bring the directions of the Cabinet to the notice of all concerned for strict compliance in future.

Sd/-xxx

(M.S.BALI)

Deputy Secretary to the Government of India

To,

All Ministries/Deptts. Of the Government of India

No. 33011/1/77-Estt.(B)

Government of India/Bharat Sarkar

Ministry of Home Affairs/Grih Mantralaya

Department of Personnel and Administrative Reforms

(Karmik Aur Prashasnik Sudhar Vibhag)

* * *

New Delhi, dated the 25th April, 1978

OFFICE MEMORANDUM

Subject : Payment for the period of strike by Central Government Employees-

While reviewing the action taken against Central Government employees who participated in the strike of May, 1974 recently, the Cabinet had occasion to observe that certain Ministries/Departments had been taking decisions on their own in regard to certain service matters and particularly on the manner in which employees who had participated in strike should be dealt with. The Cabinet has, as result of this review, since directed that : -

(i) All Ministries must observe the principle of 'No work – no Pay' and this should not be circumvented in any way including by grant of leave for the period of a strike, and

(ii) On all important service matters which are likely to have repercussions on other services (e.g. action taken against Government employees participating in strikes), all Ministries/Departments of the Government of India including the Ministry of Railways should with a view to ensuring the maximum possible uniformity in the general approach consult this Department (Department of Personnel & A.R.) before taking/announcing any decision so that embarrassment to the Government in dealing with the generality of Civil services is avoided.

2. Ministry of Finance etc. is requested to bring the above decisions of the Cabinet to all heads of Departments/Offices under its control for strict compliance in future.

3. Hindi version will follow.

Sd/xxx

(N. Rangarajan)

Deputy Secretary to the Govt. of India

To

All Ministries/Departments of the Govt. of India etc.

SWAMY'S – CCS (CONDUCT) RULES

(21) **Joint representation from Government servants to be viewed as subversive of discipline.** - A question was raised whether Government servants could submit joint representations in matters of common interest and if so whether these representations should be entertained by Government. The matter was examined in consultation with the Ministry of Home Affairs and it has been held that making of joint representations by Government servants should be viewed as subversive of discipline and such representations should not, therefore, be entertained. Every Government servant making a representation should do so separately and in his own name.

(G.I., Ministry of W.H.&S, A.V., Circular No. 305, dated the 21st February, 1967.)

(22) **Observance of proper decorum by Government servant during the lunch-break.** - It has been observed that a number of Government employees play cards on lawns outside the office buildings and other open spaces inside the North and South Blocks. These games generally degenerate into gambling and non-Government servants also sometimes participate in such games. The sight of groups of Government servants playing cards around and inside Government offices is not becoming and does not promote discipline and decorum in Government offices.

It has also been noticed that a large number of Government employees continue to move about or play games in the quadrangles and the lawns well beyond the prescribed lunch hour of half an hour. Besides this, the indoor games are continued till very late in the evening, which puts a strain on the security arrangements in Government buildings.

It has, therefore, been decided that :-

- (i) No Government employee should play cards on the lawns and such other places inside and outside office buildings.
- (ii) The game of cards should be confined to the recreation rooms or places approved for such purposes.
- (iii) No indoor games should be played in office buildings after 7.00 p.m. except on special occasions such as tournaments, etc.

Persons found violating these instructions will be liable to disciplinary action.

It will be appreciated if departmental instructions in regard to the above decision are issued by the Ministries/Departments concerned and a copy endorsed to this Ministries for information.

{G.I., M.H.A., D.O. No. 15/45/67-SSO, dated the 11th August, 1967.}

As Ministries/Departments are aware, instructions already exist regarding the need for observance of proper decorum by Government servants during lunch-break. It was inter alia brought out in these instructions that :-

- (i) No Government employee should play cards on the lawns and other places inside or outside office buildings, and
- (ii) The games of cards should be confined only to the recreation rooms or other places approved for such purposes.

It was also stated that persons found violating these instructions would be liable to disciplinary action. Instructions also exist to the effect that the half hour limit for lunch-break must be scrupulously observed not only by the subordinate staff but also by supervisory officers and that periodic, surprise checks should be made to ensure that this limit is not exceeded by any one.

It has, however, been noticed that in spite of these instructions the staff in some offices are found to be playing card games, etc., during lunch-break in the lawns and open places outside the office premises as also on the lawns of the traffic islands and roundabouts located in busy thoroughfares close to the various office premises. They have also been seen loitering around even after the lunch-break time is over. As all these necessarily create an unfavourable impression on the public, the need for strict compliance with the existing instructions is once again reiterated. Strict observance of these instructions is all the more necessary in the context of various dignitaries visiting Delhi on the occasion of CHOGM. The Ministry of Finance, etc., are, therefore, requested to bring these instructions once again to the notice of all concerned for strict compliance.

{G.I., M.H.A., Dept. of Per. & A.R., O.M. No. 11013/20/83-Estt.(A), dated the 21st November, 1983.}

(23) **Acts and conducts which amount to misconduct.** :- The act or conduct of a servant may amount to misconduct :-

- (1) if the act or conduct is prejudicial or likely to be prejudicial to the interests of the master or to the reputation of the master;
- (2) if the act or conduct is inconsistent or incompatible with the due or peaceful discharge of his duty to his master;
- (3) if the act or conduct of a servant makes it unsafe for the employer to retain him in service;
- (4) if the act or conduct of the servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted;
- (5) if the act or conduct of the employee is such that the master cannot rely on the faithfulness of his employee;
- (6) if the act or conduct of the employee is such as to open before him temptations for not discharging his duties properly;

- (7) if the servant is abusive or if he disturbs the peace at the place of his employment;
- (8) if he is insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant;
- (9) if the servant is habitually negligent in respect of the duties for which he is engaged.
- (10) if the neglect of the servant though isolated, tends to cause serious consequences.

The following acts and omissions amount to misconduct : -

- (1) Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.
- (2) Infidelity, unfaithfulness, dishonesty, untrustworthiness, theft and fraud, or dishonesty in connection with the employer's business or property.
- (3) Strike, picketing, gherao – Striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.
- (4) Gross moral misconduct – Acts subversive of discipline – Riotous or disorderly behavior during working hours at the establishment or any act subversive of discipline.
- (5) Riotous and disorderly behavior during and after the factory hours or in business premises.
- (6) Habitual late attendance.
- (7) Negligence or neglect of work or duty amounting to misconduct – Habitual negligence or neglect of work.
- (8) Habitual absence without permission and over-staying leave.
- (9) Conviction by a Criminal Court.

{“Notes on CCS (Conduct) Rules, 1964”, published by G.I., M.H.A., D.P. & A.R. 3rd Edition, 1980.}

(24) **Cases of trivial nature should be eliminated.** :- Rule 3(1) of the Central Civil Services (Conduct) Rules, 1964, provides that a Government servant shall at all times maintain absolute integrity and devotion to duty and do nothing unbecoming of a Government servant. This rule serves the specific purpose of covering acts of misconduct not covered by other specific provisions of the rules. It is, therefore, necessary that Disciplinary Authorities should first satisfy themselves that the alleged acts of misconduct do not attract the provisions of any specific rule before taking recourse to rule 3 (1) *ibid*. Where action is taken under Rule 3(1) particularly on grounds of unbecoming conduct, special care should be taken to eliminate cases of a trivial nature. Supervisory Officers should look into this matter during periodic inspections and ensure that disciplinary proceedings under Rule 3(1) are not initiated on grounds which are unjustified.

{G.I., C.S.(Dept. of Per.), O.M.No. 11013/18/76-Estt.(A), dated the 7th February, 1977, Para. 2.2}

(25) **Guidelines and norms to be observed to prevent sexual harassment of working women** – In the case of Vishaka and others v. State of Rajasthan and others (JT 1977 (7) SC 384), the Hon'ble Supreme Court has laid down guidelines and norms to be observed to prevent sexual harassment of working women.

2. It has been laid down in the judgment above –mentioned that it is the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. For this purpose, sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as : -

- (a) Physical contact and advances;
- (b) a demand or request for sexual favours;
- (c) sexually coloured remarks;
- (d) showing pornography;
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

3. Attention in this connection is invited to Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964, which provides that every Government servant shall at all times do nothing which is unbecoming of a Government servant. Any act of sexual harassment of women employees is definitely unbecoming of a Government servant and amounts to a misconduct. Appropriate disciplinary action should be initiated in such cases against the delinquent Government servant in accordance with the rules.

4. Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the concerned authorities shall initiate appropriate action in accordance with law by making a complaint with the Appropriate Authority.

5. In particular, it should be ensured that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

6. Complaint Mechanism – Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in every organization for redress of the complaint

Government servants to keep away from demonstrations in the vicinity/neighbourhood of Government offices. :- It has been noticed that when some demonstrations organized by

political parties were held in or passed through, the vicinity of Government offices, the Government employees working in those offices came out to witness the demonstration. In this process, the government employees sometimes got mixed up with the demonstrators and it became difficult to segregate the demonstrators from the government employees. In order to avoid such situation in future, Ministry of Finance, etc., are requested to impress upon the employees working under them tht it is desirable on such occasions that they stay inside their offices and keep away from the demonstrators or the crowd near the place of demonstration. {G.I., C.S.9Dept. of per.), O.M.No. 25/6/73-Ests.(A), dated the 9th March, 1973}

Taking active part in holding rallies in support of political parties, etc. - Instances have come to the notice of the Government in which public servants and public utility facilities were used for arranging crowds for rallies and for arranging transport for bringing those crowds involving violations of laws and rules in regard to the use of such transport. In this connection, attention is invited to Rule 5 (1) of the CCS (Conduct)Rules, 1964, which provides that no Government servant shall be a member or otherwise associated with any political party or organization which takes part in politics; nor shall be take part in, subscribe in aid of or assist in any other manner, any political movement or activity. It is also clarified in decision No. (8) that it is advisable for a Government employee not to attend even public meetings and demonstrations organized by a political party or having political aspects. It will not suffice to say that such arrangements were made by the orders of superior officers as the Explanation below sub-rule (2) of Rule 3 of the CCS(Conduct) Rules, 1964, clarifies that nothing in Clause (ii) of the aforesaid sub-rule (2) shall be construed s empowering a Government employee to evade his own responsibilities. It hardly needs to be emphasized that Government servants should not only maintain political neutrality but should also appear to do so. Taking active part in holding rallies in support of any political party, by arranging for crowds and arranging transport for bringing those crowds would, therefore, clearly attract the provisions of the aforesaid rule of the Conduct Rules. Government employees should, therefore desist from engaging in such activities which may be construed a participation in the activities of the political party.

2. Ministry of Finance, etc., are requested to bring contents of this O.M to the notice of all Government servants serving under their control.

{G.I., M.H.A., (Dept. of Per. & A.R), O.M. No. 28034/5/78-Estt.9A), dated the 1st September, 1978}

Permission to join Bharat Sewak Samaj may be granted liberally. : - Ministers are aware that the Bharat Sewak Samaj is a nationwide non-official and non-political organization recently started at the instance of the Planning Commission with the object of enabling individual citizens to contribute, in the form of an organized co-operative effort to the implementation of the National Development Plan.

The Government of India are of the opinion that in view of the non-political and non-sectarian character of the Bharat Sewak Samaj and the nature of work in which it will be engaged, Government servants should if they so wish, be encouraged to join the organization and to participate in its activities, provided this can be done without detriment to the proper

discharge of the normal official duties. Ministries of Finance, etc., are therefore, requested to observe the following instructions in this matter : -

(1) Government servants wishing to join the Bharat Sewak Samaj should obtain prior permission from the appropriate Head of the Office or Department concerned.

(2) Permission should be freely granted, provided, the Head of the Office or Department satisfies himself in each case that participation in the Samaj's activities will not interfere with the due discharge by the Government servant concerned of his official duties. If actual experience in any individual case or class of cases shows that this condition cannot be satisfied, the permission already granted may be revoked.

(3) It should be made clear to all Government servants concerned that permission to participate in the activities of the Bharat Sewak Samaj will not absolve them from the due observance at all times of all the rules and instructions relating to the conduct and behaviour of Government servants, etc.

{G.I., M.H.A., O.M. No. 25/49/52-Ests., dated the 11th October, 1952}

Participation of Government servants in the Indo-Foreign Cultural Organizations to be avoided : - The Government of India have had under consideration the question whether Government servants should be allowed to participate in the activities of Indo-Foreign Cultural organizations such as the German-Indian Association, the Indo-Soviet Cultural Society, etc. The matter

Joining of Associations by Government servants : - No Government servant shall join, or continue to be a member of, an association the objects or activities or which are prejudicial to the interests of the sovereignty and integrity of India, or public order or morality.

GOVERNMENT OF INDIA'S DECISIONS

Display of posters and other notices by Government Servants'Unions/Associations in Government offices. : - Of late, growing tendency has been noticed among Government servants acting individually or through their Unions/Associations, or affixing posters and other notices on the walls, doors, etc., of Government offices and buildings.

In this connection, attention is invited to the Department of Labour and Employment, O.M.No. 18/21/60-LRI, dated the 9th May, 1961, (extract reproduced below) which prescribed the nature of posters that can be displayed by the recognized associations/trade unions on notice boards in the office premises with the permission of the competent authority at the places specified for this purpose. The facility so provided to recognized associations/unions does not confer on individual Government servants or their associations/unions does not confer on individual Government servants or their associations/unions any right to display posters or other notices on the walls, doors, etc., of the office premises.

The Ministry of Finance, etc., are requested to enlist the co-operation of their employees and the recognized staff associations/unions in the matter for ensuring maintenance of neat and tidy appearance of the office buildings and premises. Government servants who affix or display posters/notices or are responsible for the display of such notices in violation of these instructions, would be rendering themselves liable to appropriate action.

{G.I., C.S. (Dept. of Per.), O.M.No. 25/17/71-Ests. (A), dated the 26th August, 1971.}

EXTRACTS FROM MINISTRY OF LABOUR AND EMPLOYMENT O.M.No. 18/21/60-LRI, DATED THE 9TH MAY, 1961

Display of notices by the recognized trade unions/associations in the office premises :

- The facility for display of notices of a non-controversial nature in office premises had been granted to recognized associations/trade unions by some of the Ministries and Departments, in some cases subject to prior approval of notices other than those of specified types. It has been decided that in other Departments/Establishments where such facilities have not been granted hitherto, the associations/unions may be allowed to display notices relating to the following matters : -

- (i) The date, time, place and purpose of a meeting.
- (ii) Statements of accounts of income and expenditure of the Unions/Associations.
- (iii) Announcements regarding holding of elections excluding canvassing therefore and result thereof.
- (iv) Reminders to the membership of the Associations/Unions in a general way about the dues outstanding against them.
- (v) Announcements relating to matters of general interest to the members of Association/Union provided : -
 - (a) they are not in the nature of criticism;
 - (b) they are not subversive of discipline;
 - (c) they do not contain objectionable or offensive language; and
 - (d) they do not contain attacks on individuals, directly or indirectly.

Authority competent to decide whether the objects or activities of an Association attract the provisions of Rule 6. : - In the meeting of the Committee of the National Council (JCM) held on 28th January, 1977, the Staff Side referred to their request that it should be clearly laid down as to how it should be decided whether the objects or activities of an Association attract the provisions of Rule 6 of the CCS(Conduct) rules, 1964, as, without such clarification, it was possible for any competent authority at any level to proceed against an employee for violation of the aforesaid rule, without proper justification. The views of the Staff Side, have been considered carefully by Government. As a comprehensive and exhaustive enumeration of various objects or activities which would attract Rule 6 of the CCS (conduct) Rules, 1964, is not practicable and as the apprehension of the Staff Side was mainly in regard to the possibility of arbitrary action at lower levels, it has decided that action for alleged violation of Rule 6

of CCS (Conduct) Rules, 1964, can be taken by a disciplinary authority only when an authority not below the level of a Head of Department has decided that the objects or activities of the Association concerned are such as would attract Rule 6 ibid. Where the Head of Department is himself in doubt, he shall seek the advice of the Administrative Ministry/Department concerned before action for the alleged violation of rule 6 of CCS (Conduct) Rules, 1964, is initiated.

Ministry of Finance, etc., are requested to bring the above decision to the notice of all concerned serving under their control.

Ministry of Finance, etc., are requested to bring the above decision to the notice of all concerned serving under their control.

{G.I., M.H.A., O.M.No. 11013/2/77-Ests. Dated the 7th June, 1978.}

Demonstration and Strikes

No Government Servant shall : -

- (i) engage himself or participate in any demonstration which is prejudicial to the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or which involves contempt of Court, defamation or incitement to an offence, or
- (ii) resort to or in any way abet any form of strike or coercion or physical duress in connection with any matter pertaining to his service or the service of any other Government servant.

GOVERNMENT OF INDIA'S DECISIONS

1. **Government servants who are office-bearers of Service Associations, not to deal in their official capacity with matters connected with those associations. : -** Reference Home ministry's Office Memorandum No. 24/23/57-Ests. (B), dated the 3rd march, 1959 (not reproduced), on the above subject, a point has been raised whether after the promulgation of the Central Civil Services (Recognition of Service Associations) Rules, 1959, the convention that an officer who may be required to deal in a responsible capacity with representation from a Service Association, should not be an office-bearer or a member of the Executive Committee of that Association would continue to be observed. It has been decided that any Government servant who is an office-bearer or a member of the Executive Committee of a Service Association should not himself deal in his official capacity with any representation or other matters connected with that Association.

(G.I., M.H.A., O.M.Nos. 24/1/60-Ests.9B), dated the 25th January, 1960)

2. **Interpretation of what constitutes a “strike” under the Conduct Rules.** :- Rule 7 9ii) of the Central Civil Services (Conduct) Rules, 1964, provides that no Government servant shall resort to or in any way abet any form of strike in connection with any matter pertaining to his service or the service of any other Government servant. Instances have come to the notice of Government where employees resort to various methods of protests for redress of grievances, some of which are tantamount to strike. References have been received seeking clarification whether certain acts are covered under the definition of ‘strike’ and if so, whether action can be taken against such employees for violation of the Conduct Rules.

It is, therefore, clarified that ‘strike’ means refusal to work or stoppage or slowing down of work by a group of employees acting in combination and includes : -

- (i) Mass abstention from work without permission (which is wrongly described as “mass casual leave”)
- (ii) Refusal to work overtime where such overtime work is necessary in the public interest;
- (iii) Resort to practices or conduct which is likely to result in or results in the cessation or substantial retardation of work in any organization. Such practices would include, what are called, ‘go-slow’, ‘sit-down’, ‘pen-down’, ‘stay-in’, ‘token’, ‘sympathetic’, or any other similar strike; as also absence from work for participation in Bandh or any similar movements.

Government servants who resort to action of the above kind violate Rule 7(ii) of the Central Civil Services (Conduct) Rules, 1964, and disciplinary action can be taken against them. It may be noted that the list of activities which are covered under the definition of strike as enumerated above is only illustrative and not exhaustive. It only clarifies the position in respect of practices which are often resorted to at present.

{G.I., M.H.A., O.M.No. 25/23/66-Ests.(A), dated the 9th December, 1966}

3. **Participation by Central Government servants in “Gherao”.** :- Instances have come to the notice of Government in which employees of certain Central Government Offices staged what is called “Gherao” involving forcible confinement of public servants within office premises by the surrounding their places of duty and have held demonstrations/meetings both within office premises during office hours and also outside the office premises beyond office hours, tending to forcible confinement of public servants within office premises. Such demonstrations/activities are prejudicial to public order and also involve criminal offences like wrongful restraint, wrongful confinement, criminal trespass or incitement to commit offences. They are also subversive of discipline and harmful to the public interest, and participation in them by Government servants amounts to conduct wholly unbecoming of Government servants and would constitute good and sufficient reason within the meaning of rule 11 of the

Central Civil Services (Classification, Control and Appeal) Rules, 1965. It has, therefore, been decided that serious view should be taken of such acts of lawlessness and insubordination on the part of public servants. The Central Government Departments are advised to take action on the following lines in such cases :-

- (i) Disciplinary action should be taken against the prominent participants in the "Gherao" for contravention of rules 3 and 7 of the CCS (Conduct) Rules, 1964. In the charge-sheet to be served in pursuance of such disciplinary action, it should be specified to the extent that the facts justify, that demonstration prejudicial to public order and involving criminal offences, namely, wrongful restraint, wrongful confinement criminal trespass and incitement to such offences, have been held; that such conduct was subversive of discipline and harmful to the public interest; and that the conduct was wholly unbecoming of a Government servant.
- (ii) Absence from work on account of participation in "Gherao" should in all cases be treated as unauthorized absence involving break in service. The absence should not be regularized as leave of any kind.
- (iii) Whenever there is a case of "Gherao", wrongful restraint, wrongful confinement or criminal trespass or of any other cognizable offence, a written report should be made to the Officer-in-charge of the Police Station having jurisdiction, requesting him to register the offence and to take action under the law. The names of the offenders to the extent known, and of responsible witnesses to the offences should be included in the written report. Copies of the report should be endorsed to the Police Commissioner/Superintendent of Police and the Home Secretary to the State Government concerned for necessary action according to law.
- (iv) If notwithstanding the mandatory provisions of the Criminal Procedure Code, Police take no action on such a report, action should be taken promptly to file a complaint before the appropriate Magistrate in respect of the substantive offences under the Indian Penal Code or other laws. In certain circumstances, a petition could be filed before the High Court for issue of the appropriate writ, but this should be done after taking legal advice.

{G.I., M.H.A., O.M. No. 25/(S)/11/67-Ests. (A), dated the 13th April, 1967}

While taking action to file a complaint before the appropriate Magistrate, the assistance of the officer of the Central Bureau of Investigation, if any, available locally, may also be taken in drafting the complaints and deciding the manner, in which evidence should be collected and produced.

(G.I., M.H.A., O.M. No. 25/(S)/11/67-Ests. (A), dated the 15th April, 1967.)

4. Holding of meetings/demonstrations by Government servants within office premises is violative of Rule 7 (i). :- It has been noticed that demonstration are sometimes held by

Government servants in contravention of Rule 79i). The Government of India hereby want to make it clear that holding of meeting/demonstration by any Government servant(s) without permission within his/their office premises is strictly prohibited and any violation of these instructions will be taken serious note of and those concerned will be dealt with suitably under the disciplinary rules by which they are governed.

{G.I., Ministry of W.& H.A.V., No. 366, dated the 10th June, 1969}

INDUSTRIAL DISPUTES ACT, 1947

CHAPTER V

STRIKES AND LOCK-OUTS

22. **Prohibition of strikes and lock-outs.** : - (1) No person employed in a public utility service shall go on strike in breach of contract : -

- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) within fourteen days or giving such notice; or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lockout any of his workmen : -

- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day.

NOTES

The legality of the strike depends on the provisions of Section 22 in the case of a public utility service and the question whether it was provoked or not is immaterial. 1952 LAC 220: 1952 LAC 370.

During pendency of conciliation proceedings between public utility concern and one of its unions, strike by another union of the same concern, held, illegal. Ramnagar Cane & Sugar Co. v. Jatin Chakravarty, AIR 1960 SC 1012: (1961) 1 LLJ 244.

A strike during pendency of a proceedings other than a conciliation proceedings is not illegal. State Bank of India Staff Union v. State Bank of India, (1962) 65 FLR 234 (Mad) (DB).

Lock-out within 7 days of conciliation proceedings, held, not illegal if results as a consequence of illegal strike already started. India General Navigation & Rail-way Co. v. Workmen, AIR 1960 SC 219P (1960) 1 LLJ 13.

23. **General prohibition of strikes and lock-outs. :-** No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out :-

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before⁵³ (a Labour Court, Tribunal or National Tribunal) and two months after the conclusion of such of such proceedings;⁵⁴ ((* * *))

(Subs. by Act 36 of 1956.S.17, for "a Tribunal" (w.e.f. 10-3-1957)

(The word "or" omitted by Act 36 of 1964, S.11 (w.e.f. 19-12-1964)

⁵⁵(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3-A) of Section 10-A; or)

(c) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award.

NOTES

The words of clause (a) and clause (b) of Section 23 cover all strikes and lock-outs irrespective of the subject-matter of the dispute pending before a Tribunal or conciliation officer. *State of Bihar v. Deodhar Jha*, AIR 1958 Pat 51.

During pendency of a reference the employer applied to be discharged from the proceedings on the ground that it did not concern its collieries and thereafter the employer and its workmen took no part in the proceedings. The proceedings before the Industrial Tribunal involve larger public interest. The employer cannot by expressing its desire to withdraw from the proceedings cease to be a party to the proceedings so as to avoid the legal consequences flowing from Section 23(b). *Ballarpur Collieries Co. v. Presiding Officer*, (1972) 2 SCC 27.

In order to be hit by Section 23(c) the strike must be in breach of a contract in respect of a matter covered by the settlement which is in operation at the time of the strike. *Ballarpur Collieries v. Presiding Officer*, (1972) 2 SCC 27.

Section 23 (c) which bans strike and lock-out in respect of matters covered by the award, will apply till the award ceases to be in operation or binding. *South Indian Bank Ltd. v. Chacko*, (1964) 1 LLJ 19.

Assurance of Labour Commissioner that there would be no strike in future does not amount to a term of settlement. *Ballarpur Collieries Co. v. Presiding Officer*, (1972) 2 SCC 27.

24. **Illegal strikes and lock-outs. :-** (1) A strike or a lock-out shall be illegal if :-
- (i) it is commenced or declared in contravention of Section 22 or Section 23; or
 - (ii) it is continued in contravention of an order made under sub-section (3) of Section 10⁵⁶ (or sub-section (4-A) of Section 10-A).
- (2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board,⁵⁷ (an arbitrator, a)⁵⁸ (Labour Court, Tribunal or National Tribunal), the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of Section 10 (or sub-section 94-A) of Section 10-A).
- (3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

NOTES

Legal lock-out does not give a licence to the management to act unreasonably. *Statesman Ltd. v. Workmen*, (1976) 2 SCC 223: 1976 SSC (L&S) 218.

Where a strike is unjustified and is followed by a lock-out which becomes unjustified a case of apportionment of blame arises. *India Marine Service (P) Ltd. v. Workmen*, (1963) 1 LLJ 122. Illegal strike cannot be half legitimate. *Chandramalai Estate v. Workmen*, (1960) 3 SCR 451; (1960) 2 LLJ 243. Mere breach of standing order cannot render strike illegal. *Ballarpur Collieries Co. v. Presiding Officer*, (1972) 2 SCC 27. Section 24(3) applies to lock-out declared as a consequence to illegal strike. Continuation of lock-out even after calling off the strike though un-justified is not illegal. Legality of lock-out arising out of illegal strike cannot be questioned. *India General Navigation and rly Co. Ltd. v. workmen*, AIR 1960 SC 219; (1960) 1 LLJ 13. Strike commenced before actual receipt of conciliation officers' report by the government is illegal. *Workmen v. Industry Colliery*, AIR 1953 SC 88; (1953) 1 LLJ 190. Where any strike is commenced without giving notice as required by Section 22, or within seven days of the conclusion of conciliation proceedings, the strike must be held to be illegal irrespective of whether it was provoked by the employer, and the workmen would not be entitled to any pay for the period of the strike. *Maha Laxmi Cotton Mills Ltd. v. Maha Laxo Cotton Mills Workers' Union*, 4 FJR 248 (LAT). See also 1954 LAC 499; (1952) 2 LLJ 648; 1952 LAC 370. An illegal strike, even if justified, does not entitle the workman to wages. *H.M>T. Ltd. v. H.M.T. Head Office Employees' Assn*, (1960) 11 SCC 319; 1997 SCC (L&S) 228.

Where Government made a reference for adjudication and on the same date issued notice prohibiting continuance of strike under Section 10, continuance of strike thereafter was illegal. *Bharat Airways Ltd., Calcutta v. workmen*, 1953 LC 450 (LAT).

Award of half wages is proper where a legal lock-out is caused by illegal strike during pendency of proceeding. *Statesman Ltd. v. Workmen*, (1976) 2 SCC 223; 1976 SCC (L&S) 218.

Where the lock-out is declared to be illegal, the principle of 'no work no pay' does not apply. *Nellimarla Jute Mills Karmika Sangham v. State of Andhra Pradesh*, 1995 Lab IC 1041 (AP).

A writ petition seeking a direction to a registered company to lift illegal lock-out is maintainable. *Nellimarla Jute Mills Karmika sangham v. State of Andhra Pradeh*. 1995 Lab IC 1041 (AP).

25. **Prohibition of financial aid to illegal strikes and lock-outs.** : - No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

53. Subs. by Act 36 of 1956, S.17, for "a Tribunal" (w.e.f. 10-3-1957)

54. The word "or" omitted by Act 36 of 1964, S.11 w.e.f. 19-12-1964)

55. Ins. By Act 36 of 1964, S.11 (w.e.f. 19-12.1964)

56. Ins. By Act 36 of 1964, S. 12 (w.e.f. 19-12-1964)
57. Ins. By Act 36 of 1964, S. 12 (w.e.f 19-12-1964)
58. Subs. by Act 36 of 1956, S.18, for "or Tribunal" (w.e.f. 10-3-1957).
59. Ins by Act 36 of 1964, S.12 (w.e.f 19-12-1964)

STRIKE, ETC., AND BREAK IN SERVICE UNDER F.R. 17-A

Unauthorised absence – Provision of F.R.

F.R. 17-A lays down as follows :

"Without prejudice to the provisions of rule 27 of the Central Civil Services (Pension) rules, 1972, a period of an unauthorized absence : -

- (i) in the case of employees working in industrial establishments, during a strike which has been declared illegal under the provisions of the Industrial Disputes Act, 1947, or any other law for the time being in force;
- (ii) in the case of other employees as a result of acting in combination or in concerted manner, such as during a strike, without any authority from, or valid reason to the satisfaction of, the competent authority; and
- (iii) in the case of an individual employee, remaining absent unauthorisedly or deserting the post, shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in departmental examinations, for which a minimum period of continuous service is required.

Explanation 1 :- For purposes of this rule, "strike" includes a general, token, sympathetic or any similar strike, and also a participation in a bandh or in similar activities.

Explanation 2 : - In this rule, the term "Competent Authority" means the "Appointing Authority".

Case-law

F.R. 17-A not violative of Articles 14 or 16 of the constitution

So far as the vires of F.R. 17-A is concerned, no arguments were advanced and rightly so as it cannot be said that the same is violative of Articles 14 or 16 of the Constitution of India. F.R. 17-A does not confer arbitrary power on any authority nor

can it be said to be unreasonable or unfair or creates classification which cannot be held to be reasonable. Break in service will not affect the seniority of the employee and it can not also affect the retiral benefits if it is so decided by the competent authority.

(All India RMS & MMS employees Union and others v. Union of India and others, 1992 (3) SLJ (CAT), 139 (Bombay))

Strike – If resorted to by government servants – Effect

Under our Constitution, the right to strike is not a fundamental right. It may be open to a citizen to go on a strike or withhold his labour. But different consideration arises when there is a strike in a private concern, and when a strike is by Government employees. Further, even among Government employees a distinction may have to be made between those who are employed in what are commercial undertakings of Government and those who are employed in the administration. Though a Government servant as citizen may have a right to strike, that would not take away the power of the Government to dismiss a Government servant as a citizen may have a right to strike, that would not take away the power of the Government to dismiss a Government servant for good and sufficient reason as provided in the CCA Rules. It also goes without saying that the administration cannot be run properly, if those who are serving the administration act in an undisciplined manner.

(Meghraj v. State of Rajasthan, AIR 1956 Raj 28)

Whether strike can be resorted to by the Government servants in support of their demands

As a matter of policy, the Government do not treat the Civil servants at par with the Industrial workers in so far as their "right to strike" is concerned. This discrimination between the two categories of employees as regards their right to strike is not a matter for any court to adjudicate upon. If, therefore, strike is totally prohibited in certain services and an embargo is imposed in particular categories of employees, it is fully within the discretion of the Government as an employer framing such rules.

(Rama Rao v. Accountant General, Bombay, AIR (1963) Bom. 121)

Peaceful and orderly demonstration intended to convey to the employer, the feelings of the employees would fall within the freedom guaranteed under clauses (a) and (b) of Article 19(1) of the Constitution. There is no fundamental right to hold meetings, etc., in Government premises. If it is otherwise, there would be bound to be chaos in our offices. The fact that the citizens of the country have freedom of speech, freedom to assemble peacefully and freedom to form an associations does not mean that they can exercise these freedoms at whatever place they may like.

(Railway Board v. Niranjan, AIR 1969 SC 966)

There are different modes of demonstrations, for example, go-slow, sit-in, work-to-rule, absenteeism, etc., and strike is one such mode of demonstration by workers of their rights. The right to demonstrate and, therefore, right to strike is an important weapon in the armoury of workers. This right has been recognized by almost all democratic countries. Though not raised to the high pedestal of a fundamental right, it is recognized as a mode of redress for resolving the grievances of workers. But the right to strike is not absolute under our Industrial Jurisprudence and restrictions have been placed on it.

(B.R. Singh v. Union of India, AIR 1990 SC 1(8))

Reasonable opportunity including the right to be heard in person to be given before invoking the penal provisions of F.R. 17-A

F.R. 17-A provides that a period of an unauthorized absence, in the category of cases mentioned therein, shall be deemed to cause an interruption or break in the service of the employees, unless otherwise decided by the competent authority for certain purposes. An order passed by the P&T authorities in the case of some of their employees, invoking F.R.17-A was struck down by the Lucknow Bench of Allahbad High Court on the ground that issue of such an order without giving reasonable opportunity of representation and being heard in person, if denied to the person concerned, would be against the principle of natural justice. The question of amending F.R.17-A as also rule 28 of the CCS (Pension) Rules and 5 R 200 is under consideration in consultation with the Ministry of Law.

2. The above position is brought to the notice of all Ministries/Departments so that if there are occasions of invoking F.R.17-A, etc., they may keep in mind the procedural requirement that an order under F.R.17-A, etc., should be preceded by extending to the person concerned a reasonable opportunity of representation and being heard in person if so desired by him/her.

(Govt. of India, Dept. of Per. & Trg., O.M.No. 33011/2(S)/84-Est (B), dated the 2nd May, 1985)

“Wishes to be heard in person” – Implications of the expression

Rule 14 (4) of the CCS (CCA) Rules, 1965, specifically provides that in the written statement of defence submitted by the charged employee in reply to the charge-sheet, he has to mention whether or not “he desires to be heard in person.”

The implication of the above expression, more often than not, is misunderstood.

Often, on receipt of the defence statement expressing the “desire to be heard in person”, the disciplinary authority passes order in writing granting permission to the charged employee to appear before him at appointed date and time for “personal hearing”.

The procedure so adopted is incorrect and redundant because the disciplinary authority can neither exonerate nor punish the charged employees on the basis of such “personal hearing” without holding inquiry by him or by an Inquiry Officer appointed by him and without production of evidence in support of the charges and without giving him reasonable opportunity to defend himself.

The correct implication of the expression is that when the charged employees “wishes to be heard in person”, it is to be deemed that he seeks an opportunity to defend himself by cross-examining the witnesses in his defence vide the ruling of the Supreme Court in the cases of *Khem Chand v. Union of India*, AIR 1958 SC 300 and *Union of India v. T.R.Verma*, AIR 1958 SC 882.

Government of India’s clarifications

(1) The “hearing in person “.....is really in the course of the inquiry to follow. Member of the service has the option to say that the inquiry may proceed on the strength of the written statement filed by him and he does not wish to participate in person in the inquiry.

(1.2) It is not necessary to hear the member concerned in person before the inquiry starts. It is sufficient if an opportunity of personal hearing is given to him in the course of the inquiry. If, however, the Government propose to inquire into the charges in such manners as they deem fit, (and not by a Board of Inquiry or an Inquiry Officer) and the member desires to be heard in person, Government will have to appoint an inquiring authority as required by sub-rule (6). In other words, whenever a member desires to be heard in person, a Board of Inquiry or an Inquiry Officer will have to be appointed. Government can inquiry into charges in such manner, as they deem fit, only in cases where the member does not wish to be heard in person.

(Govt. of India., M.H.A. No. 7/7/59-AIS (III), dated the 11th May, 1959.)

Participation in strike – forfeiture of past service- Opportunity of representation should be given

The Committee on Subordinate Legislation of rajya Sabha which examined the provision of Rule 28 of the CCS (Pension) rules, 1972, has recommended that opportunity of representation should be given to the government employee before making entry in the service book regarding forfeiture of past service because of his

participation in strike. While giving evidence before it, the Committee has been assured that the provisions of the above order will be strictly adhered to in each and every case falling within the scope of clause (b) of rule 28 of the CCS (Pension) rules, 1972. These instructions are, therefore brought to the notice of the various Ministries/Departments of the Government of India for careful compliance.

(Govt. of india, Dept of fPer. & Trg., O.M. No. 33011/2 (S)/84-Est. (B), dated the 10th March, 1988).

Permission to appear in departmental examination not allowed only when F.R.17-A disabilities are imposed

1. This is further to clarify that according to the existing instructions where notice has been issued to the concerned officials for imposition of disabilities under provision of R.R.17-A and final order imposing disabilities are yet to be issued, provisional permission may be granted for the concerned officials to appear in the departmental examinations if they are otherwise eligible. The announcement of the result of examination for the concerned officials would, however, depend on whether disabilities under F.R. 17-A are imposed on them or not after due consideration of their response to the notice.

2. However, in cases where disabilities under the provisions of F.R. 17-A have been imposed and appeals submitted by the concerned officials are pending disposal by the competent authority, no permission to appear in departmental examination can be given, unless and until the disabilities are removed by the order on the appeal and they are otherwise found eligible.

(Dept. of Posts, letter No. 137-15/89-SPB II, dated the 10th October, 1989).

No disabilities under F.R. 17-A in regard to efficiency bar, promotion and special pay/allowance

1. It has been reported by the Service Unions that crossing of Efficiency Bar has been denied to officials, who have been issued orders under F.R.17-A. According to these Unions, in many cases promotions have been held up and special allowances and special pay have also been withdrawn.

2. The matter has been examined and it is clarified that as far as crossing of Efficiency Bar is concerned the disabilities under F.R.17-A should not stand in the way of an official if he is otherwise found suitable to cross efficiency bar. Special Pay and special allowances should not be withdrawn merely on the ground that F.R.17-A has been invoked.

3. Interruption of break-in-service under F.R.17-A has the following disabilities : -

Leave Travel Concession; quasi-permanency; and Eligibility for appearing in Departmental examination for which a maximum period of continuous service is required.

4. Promotion of employees can be by way of consideration by DPC and/or qualifying in Departmental Examination. If, in the case of employee, promotion is dependent on passing a qualifying examination, for appearing in which a minimum period of continuous service has been prescribed and in his case F.R.

(Govt. of India, Dept. of Posts, letter No. 137-13/85(SP.B II), dated the 19th August, 1986.)

Guidelines for dealing with representations for condonation of break-in-service

Representations for condonation of breaks and concomitant disabilities were hitherto being considered and decided by Member (A) on behalf of P&T Board. The matter has been examined afresh and it has been decided that henceforward representations for condonation against such break-in-service could be decided by Heads of Circles who have been delegated the powers of Head of Department under SR 2(10). While deciding such representations either in favour or against, the following guidelines may be kept in view : -

- (i) In no case the condonation of break-in-service should be considered as a routine matter. A break-in-service shall not be condoned except on receipt of a formal representation from the employee concerned about the said absence.
- (ii) The absentee in his representation should have expressed unqualified regret with an assurance that he will not be indulging in such conduct in future.
- (iii) After the receipt of such apology, the competent authority may even consider watching the work and conduct of the petitioner for some time before taking its decision on the prayer for condonation.
- (iv) There was indeed a grave provocation from an outside factor for such unauthorized absence.
- (v) The departmental superiors had shown certain callousness or indifference to any genuine complaint brought to their notice by the members of the staff which resulted in such unauthorized absence.

(In cases of doubt the Heads of Circles may consult in confidence some of their counterparts with a view to ensuring certain amount of uniformity in practice.)

- (vi) Non-condonation of break-in-service under F.R.17-A should not be the guiding factor for non-condonation of break-in-service for purposes of pension under rule 27 of the Pension Rules.

Earlier it was pointed out that strike is a strike even if it is for five minutes. Duration is irrelevant. While there is no doubt that strike even for a few minutes is a strike for the purpose of Rule 7 of the CCS (Conduct) Rules, the Heads of Circles need not be rigid in their stand for condonation of break, subject to the fulfillment of the aforesaid conditions, if the duration of absence is short.

The aforesaid guidelines are only indicative in nature and not complete and comprehensive and have been prescribed to provide a broad parameter to enable the Heads of Departments to decide such representations. It is requested that all pending and future representations may be decided by the competent authority on their own merit and in the light of the factors outlined above.

(D.G., P&T's letter No. 14/12/82-Vig III, dated the 23rd April, 1983.)

Unauthorised absence for joining strike – Provisions of the Conduct Rules

Rule 7 of CCS (Conduct) Rules, 1964, lays down as follows : -

"7. Demonstration and Strikes

No Government Servant shall –

- (i) Engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the Security of the State, friendly relations with foreign States, public order, decency or morality, or which involves contempt of Court, defamation or incitement to an offence, or
- (ii) Report to or in any way abet any form of strike or coercion or physical duress in connection with any other matter pertaining to his service or the service or the service of any other Government Servant."

Interpretation of what constitutes a "Strike"

Rule 79(ii) of the CCS (Conduct) Rules, 1964, provides that no Government servant shall resort to or in any way abet any form of strike in connection with any matter pertaining to his service or the service of any other Government servant. Instances have come to the notice of Government where employees resort to various methods of protests for redress of grievances, some of which are tantamount to strike. Reference have been received seeking clarification whether certain acts are covered under the definition of "Strike" and if so, whether action can be taken against such employees for violation of the Conduct Rules.

It is, therefore, clarified that "strike" means refusal to work or stoppage or slowing down of work by a group of employees acting in combination, and includes : -

- (i) Mass absenteeism from work without permission (which is wrongly described as "mass casual leave");
- (ii) Refusal to work overtime when such overtime work is necessary in the public interest;
- (iii) Resort to practices or conduct which is likely to result in or results in the cessation or substantial retardation of work in any organization. Such practices would include, what are called "go-slow", "sit down", "pen down", "stay-in", "token", "sympathetic", or any other similar strike; as also absence from work for participation in a Bandh or any similar movements.

Government servants who resort to action of the above kind violate Rule 7(II) of the CCS (Conduct) Rules, 1964, and disciplinary action can be taken against them. It may be noted that the list of activities which are covered under the definition of "strike" as enumerated above is only illustrative and not exhaustive. It only clarifies the position in respect of practices which are often resorted to at present.

(Govt. of India, M.H.A. O.M. No. 25/23/68-Ests. 9A), dated the 9th December, 1966)

Case-Law

Treating absence from duty for one day as leave without pay and break in service without a show-cause notice is not sustainable

Held : This is an application praying for a direction to quash the order, dated 10.2.1998, issued by the respondent authority whereby it has been directed to treat the absence of the applicants on 28.1.1998 as leave without pay and also break in service.

The impugned order, dated 10.2.1998 speaks that the applicants absented themselves from duty on 28.1.1998 and also participated in the rally at Gorakhpur and, therefore, there was a direction for break in service as also grant of leave without pay for the said day. The applicants assert that they were on duty on 10.2.1998 on refusal of leave.

It is significant to note that in any view of the matter, we get a definite impression that there was no show-cause notice issued to the applicants before passing the impugned order. It goes without saying that the real impute of the impugned order would be that, due to break in service, they would be deemed to have been removed and re-employed, and accordingly, there will be loss of their past services. The applicants would be put to pecuniary loss not only because of treating the relevant date as leave without-salary but also because of fixation of pension and retiral benefits. This would certainly be infringement of the civil right to the applicant and in that view of the matter the impugned order having been passed without an opportunity to show cause was in utter violation of the principle of natural justice. We are of the view that on this score alone the impugned order was not sustainable in law.

This O.A. must succeed and accordingly is allowed. The impugned order, dated 10.2.1998 is quashed and set aside. The respondents would, however, be at liberty to pass an appropriate order in regard to the absence of the applicants on 28.1.1998, under the process of law after giving opportunity to the applicants to defend themselves. This liberty would be availed of by the respondents only when the relevant records positively speak that they abstained from duty assigned on the relevant date and also had actively participated in any unlawful activity at Gorakhpur and otherwise any such exercise would be deemed to be vexatious, more so, when the applicants are on the verge of retirement on superannuation.

(Sheo Parsi Prasad Rai and another v. Union of India and others, O.A. No. 83 of 1999; CAT, Patna Bench; date of judgment 2.2.2001)

Participation in strike which is not illegal, not misconduct

Where an employee has participated in a strike which is not illegal, it is not an unbecoming act on his part nor does it amount to lack of devotion to duty.

(Surya Prasad v. Northern Railway, AIR 1967 All. 457)

“Gherao” – Government’s order

Participation by Central Government servants in “Gherao”- Absence should be treated as unauthorized and should not be regularized as leave.

Instances have come to the notice of Government in which employees of certain Central Government Offices staged what is called “Gherao”, involving forcible confinement of public servants within office premises by surrounding their places of duty and have held demonstrations/meetings both within office premises during office hours and also outside the office premises beyond office hours, tending to forcible confinement of public servants within office premises. Such demonstrations/activities are prejudicial to public order and also involve criminal offences like wrongful restraint, wrongful confinement, criminal trespass or incitement to commit offences. They are also subversive of discipline and harmful to the public interest, and participation in them by Government servants amounts to conduct wholly unbecoming of Government servants and would constitute good and sufficient reason within the meaning of Rule 11 of the CCS (CCA) Rules, 1965. It has, therefore, been decided that a serious view should be taken of such acts of lawlessness and insubordination on the part of public servants.

The Central Government Departments are advised to take action on the following lines in such cases :-

- (i) Disciplinary action should be taken against the prominent participants in the “Gherao” for contravention of rules 3 and 7 of the CCS (Conduct) rules, 1964. In

the charge-sheet to be served in pursuance of such disciplinary action, it should be specified to the extent that the facts justify, that demonstration prejudicial to public order and involving criminal offences, namely, wrongful restraint, wrongful confinement, criminal trespass and incitement to such offences, have been held; that such conduct was subversive of discipline and harmful to the public interest; and that the conduct was wholly unbecoming of a Government servant.

- (ii) Absence from work on account of participation in "Gherao" should in all cases be treated as unauthorized absence involving break in service. The absence should not be regularized as leave of any kind.
- (iii) Whenever there is a case of "Gherao", wrongful restraint, wrongful confinement or criminal trespass or of any other cognizable offence, a written report should be made to the officer-in-charge of the police station having jurisdiction requesting him to register the offence and to take action under the law. The names of the offenders to the extent known, and of responsible witnesses to the offences should be included in the written report. Copies of the report should be endorsed to the Police Commissioner/Superintendent of Police and the Home Secretary to the State Government concerned for necessary action according to law.
- (iv) If, notwithstanding the mandatory provisions of the Criminal Procedure Code, police take, no action on such a report, action should be taken promptly to file a complaint before the appropriate Magistrate in respect of the substantive offences under the Indian Penal Code or other laws. In certain circumstances a petition could be filed before the High Court for issue of the appropriate writ, but this should be done after taking legal advice..

(Govt. of India, M.H.A., O.M. No 25/(S)/11/67-Ests.(A), dated the 13th April, 1967)

Case-Law

Unions can hold Dharna in a peaceful manner so as not to affect the rights of the employer

This is a suit brought by the plaintiff seeking decree of permanent injunction against the defendants restraining them from holding any demonstration, dharna within a radius of 500

meters from the boundary walls and entrances of the Restaurant at Connaught Place, known as "Kwality restaurant" situated at 7, Regal Building, Connaught Place, New Delhi. Further injunction is sought restraining the defendants from holding demonstration at the residence of the Managing Partner, Mr. Sunil Lamba at N-23, Panchasheel Part, New Delhi.

2. Facts giving rise to the filing of the present suit are as under :-

3. Defendant No. 1 to 5 are the workers of the plaintiff as also the office-bearers of the Union affiliated to Hotel Mazdoor Union and defendant No. 6 and 7 are stated to be the President and General Secretary of that Union.

4. It is averred in the plaint that defendant No. 6 gave charter of demands, dated 15th April, 2000 to the plaintiff seeking various financial demands including special increment to the workmen with employment of ten years, enhancement of leave travel concessions, demand of house rent allowance, etc.

5. The plaintiff held meeting with the office-bearers on 25th August, 2001 where it was explained to the defendants that the demands were highly exorbitant and unreasonable and, therefore, defendant No. 6 and 7 were advised to reconsider their proposal, management being not in a capacity to bear any more financial load.

6. Defendants, without paying any heed to the request of the plaintiff, insisted on the approval of the proposal to which the plaintiff showed their inability on which the defendants No. 6 and 7 and other persons present in the meeting threatening that unless the demands raised by the defendants were accepted immediately, the workmen of the plaintiff would resort to agitation, dharna, picketing and demonstrations in front of the restaurant of the plaintiff.

7. Defendant No. 6 wrote a letter to the plaintiff on 27th August, 2001 giving an ultimatum that the defendants had decided to go on agitation with effect from 12th September, 2001.

8. Immediately thereafter, the workmen led by defendants No. 1 to 5 started holding demonstration at the plaintiff-Restaurant with effect from 3.8.2001 onwards raising derogatory and offensive slogans as a result of which, the business in the Restaurant was adversely affected. It is further stated in the plaint that workmen have been holding demonstrations and indulging in other illegal activities disrupting the operations and blocking the ingress and egress to and from the restaurant despite repeated advice of the management. It is further stated in the plaint that defendants No. 6 and 7 being led by other members are openly instigating the workmen of the plaintiff to resort to stoppage of work and also directing workmen of the plaintiff to hold regular demonstration, dharna in front of the plaintiff's restaurant. They are also being instigated to resort to picketing and not to allow the patrons to the restaurant.

According to the plaintiff open threats have been issued that if any employee acted against the mandate issued by the Union, he would be physically beaten up.

9. It is further stated in the plaint that restaurant of the plaintiff is highly reputed and speciality restaurant which have frequently very large number of foreigners besides diplomats and other high dignitaries. If the defendants are allowed to hold demonstrations and indulge in other illegal activities and stopping the ingress and egress to and from the restaurant, it would not only adversely affect the business but also adversely affect the reputation of the restaurant which the plaintiff has been able to build over the years.

10. Decree for permanent injunction is thus sought in this regard.

11. Summons of the suit were sent to the defendants. They appeared through their counsel and stated that though there was a memorandum of settlement which had been arrived at between the plaintiff and defendants yet the management of the plaintiff was not talking to the defendants. This court directed both plaintiff and the defendants to sit together and to sort out the matter on the basis of memorandum of settlement, dated 7th August, 1997. The matter was thus posted for hearing on 28th February, 2002. On the said date, learned counsel for the defendants submitted that the defendants proposed to file some undertaking for the consideration of the court. Matter again stood adjourned to 23rd April, 2003. No undertaking was, however, filed for quite some time and, therefore, the Court finally ordered the defendants to file written statement. Since no written statement was filed despite opportunity afforded to the defendants, nor did any one appeared on behalf of the defendants on 30th September, 2002 as such defendants were proceeded ex parte. However, during the continuation of the proceedings, the defendants filed undertaking which find place on record. No written statement was filed by them.

12. True, the right to freedom of speech and expression is guaranteed under the Constitution of India but the same is subject to reasonable restrictions as enshrined under Article 19 of the Constitution. The Trade Union or their office bearers can resort to demonstration/dharna but in peaceful manner and not in the manner as alleged by the plaintiff in their plaint. Legitimate rights of the Unions can be preserved by permitting them to hold demonstration at a reasonable distance from the premises of the plaintiff or the residence of their managing partners as plaintiff to have a right granted under the Constitution to carry on their trade which right is being threatened by the defendants by sending various letters to the plaintiff putting them in fear of carrying on their business legitimately.

13. Similar question came up before Hon'ble Mr. Justice J.D.Kapoor where too the plaintiff received a letter from defendant No. 1, Union threatening a massive demonstration before the plaintiff Bank situated at Parliament Street. While relying on another judgment rendered by Hon'ble Mr. Justice Anil Dev Sing, reported in 1991 ILR

792, Justice J.D.Kappor held that “what was relevant as to the right to freedom of speech and expression for the purposes of holding demonstration and what was the nature and extent of right to hold demonstration and whether such right was an absolute right in terms of Article 19 of the Constitution of India, it was held that the legitimate right of the Unions could be preserved and protected only by allowing them to hold demonstration at a distance of 50 or 100 meters from the premises of the defendants”.

14. Similar judgment is also reported in Apex decision Vo.7, 2001, Delhi, where too while placing reliance on the judgment reported in AIR 1982 SC 1302, it was held that the defendants be restrained from holding demonstration, dharnas within a distance of 100 meters from the office premises of the Director subject to the condition that they would choose a time when no classes are held in the vicinity nor would create such situation that may vitiate the atmosphere of the educational institutions. In the instant case also, the defendants threatened the plaintiff to hold demonstration/dharna in front of the restaurant of the plaintiff. Although, they have a right to redress the grievances by such means but they cannot prevent the plaintiff or their customers from gaining entry to the Respondent and if it is allowed to be done, it shall also violate the right of the plaintiff to carry on their business smoothly.

15. Having perused the affidavit filed by the plaintiff by way of evidence and also having gone through the undertakings given by the defendants and also taking into consideration that no written statement was filed by the defendants, the suit of the plaintiff deserves to be decreed, defendants being ex parte.

16. The plaintiff has been able to establish their case by filing various documents including undertakes and the affidavit whereas there is no contest from the side of the defendant.

17. Consequently decree for permanent injunction is passed in favour of the plaintiff and against the defendants restraining the defendants, their agents, their officers, their members, or anybody acting for and on their behalf, from holding any demonstration, dharna, etc., within a radius of 200 meters from the boundary walls and entrances of the Restaurnt at Connaught Place, New Delhi, and at the residence of the Managing Director, Mr sunil Lamba at N-23, Panchasheel park, New Delhi, and further restraining them from instigating and abetting other employees for holding demonstrations, shouting slogans using loudspeakers and microphones resorting to gherao and picketing and from interfering in any manner, whatsoever, in the ingress and egress of the officers, employees staff members, patrons, guests, raw material, vehicle, etc. to and from the plaintiff Restaurant.

(Kwality Restaurant v. Jagdish & Ors., Delhi High Court, 2004 (2) SLJ).

Railway Board's order

Sanction of leave applied for participation in demonstration

If an application for casual leave is presented by a Railway servant specifically for the purpose of participation in a demonstration, it is open to the competent authority to refuse casual leave for this purpose. If in spite of refusal, an employee absents himself from duty, he can be treated to have been unauthorisedly absent, with all the attendant consequences of unauthorized absence.

(Rly. Board's No. E(G) 79, I-10, dated 19th June, 1980.)

Treatment of period of absence for participation in a strike

The principle of "No Work No Pay" should not be circumvented in any way including by grant of leave to a Railway servant for the period of absence caused due to participation in a strike.

(Rly. Board's No. E (LR) 1177 STI, dated 15th July, 1978)

Special Casual Leave to employees who could not attend office on account of Bandh, Curfew, failure of transport, etc. – Government of India's instructions

The absence of Central Government employees on a day or days of a bandh may fall under the following categories :-

- (i) Where a Government servant had applied or applies for leave for the day or days of the bandh for genuine reasons, e.g., medical grounds, of which the competent authority is satisfied;
- (ii) Where the competent authority is satisfied that the absence of individual concerned was entirely due to reasons beyond his control, e.g., due to failure of transport or disturbances or picketing or imposition of curfew, etc.
- (iii) Unauthorized absence, e.g., where conditions mentioned in (i) or (ii) above are not satisfied.

As regards the first category, leave of the kind due and admissible, including Casual Leave may be granted to the Government servants concerned.

As regards the second category, if the competent authority is satisfied that the absence was due to failure of transport facilities, Special Casual Leave may be granted to such government servants who had to come from a distance of more than 3 miles to their place of duty. If the absence was due to picketing

or disturbances or curfew, then too Special Casual Leave may be granted to regularize the absence, without insisting on the condition that the distance between their place of duty and their residence should be more than 3 miles. Special Casual leave, in either of the cases mentioned above may be granted with the concurrence of the Ministry/Department concerned.

2. As regards the third category mentioned above, under the proviso to F.R. 17(1), an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence. Unauthorised, absence of this kind, apart from resulting in loss of pay and allowances for the period of such absence, would also constitute a break in service entailing forfeiture of past service for all purposes, unless the break itself is condoned and treated as dies non. If the break is condoned and treated as dies non by the competent authority, the service rendered prior to the break will be counted for all purposes, but the period of the break itself will not count for any purpose.

3. There might, however, be a case in which a number of Government employees acting in combination or in a concerted manner may absent themselves from duty for a part of a day only. The provisions of Ministry of Home Affairs O.M. No. 60/17/64-Ests.(A), dated the 4th August, 1965, shall not apply to such a case. Their absence even for a part of a day in the above circumstances shall be deemed to be unauthorized absence for a whole day and action may be taken in regard to the unauthorised absence as outlined in Para.2 above.

(Govt. of India, Cabinet Secretariat (Dept. of Personnel) O.M.No. 27/6/71-Estt. (B), Dated the 1st November, 1971)

Case-Law

Penalty can be imposed for unauthorized absence on bundh day

Where the Government issued a circular impressing on all Government servants to attend offices as usual on the threatened bandh day, the petitioners abstained from work and applied for leave on that day and the leave was refused. It was held that the disciplinary authority can proceed against the petitioners for imposition of any penalty for unauthorized absence in accordance with the law.

(1979 (1) SLR 775 Cal.)

Refusal to work overtime amounts to strike resulting in deemed break in service under F.R.17-A.

The respondents have contended that under rule 9 of Overtime rules every employee is a wholetime Government servant at the disposal of the Government and the administration has a right to require any employee to work on a holiday or at any time beyond or outside normal working hours and it is not open to an employee to refuse such work. Under Rule 7 (ii) of the CCS (Conduct) Rules, a Government servant is prohibited from resorting to or abetting any form of strike or coercion in connection with any matter pertaining to his service. The Government have long time back ruled on clarification sought on the work "Strike" in the above rule and it includes under item (ii) refusal to work overtime where such overtime is necessary in the public interest. It is true that a Government servant is said to be a whole time servant of the government and for overtime work a government servant is entitled to get extra remuneration. In view of the service rules an employee cannot refuse to do overtime work. Non-giving of reply or non-doing of overtime obviously will amount to refusal to do such a work and will amount to misconduct as the same tantamount to striking of work when the same is needed. Definition of F.r. 17-A is illustrative and not exhaustive. The same includes any type of strike mentioned therein. Striking of work when it is needed would also amount to strike.

The contention of the applicants is that someone was on leave or all of them were physically present during the working hours and as such they are entitled to salary for the day and their refusal to do work thereafter cannot be visited with any non-payment of wages or recovery cannot hold good. If the rules enjoined duty upon him to do overtime work for which a payment is made, refusal to do the work without any just or reasonable cause would certainly amount to strike within the meaning of service rules in or in any case would amount to unauthorized absence and the same would attract F.R.17-A.

F.R.17-A provides that if there is unauthorized absence or desertion from the post, the same shall be deemed to cause interruption or break in service of the employees, unless otherwise decided by the competent authority for certain purposes. F.R.17-A by a legal fiction makes break in service, for that no order of the Head of the Department is needed as it is automatic by legal fiction. The same can be pointed out by the subordinate authority. But the competent authority can condone the same or hold the same not to be break in service, even if the matter is not referred to him for condoning and for taking contrary view.

(All India RMS and MMS Employees Union and others v. Union of India and others, 1992 (3) SLJ (CAT), 139 (Bombay)).

Government of India's instruction

Punishment for non-performance of overtime duty only in rare and exceptional cases

In periodical meeting of Secretary (Posts) with Federation of National Postal Organisation and its affiliated unions held on 4th January, 2006 one of the agenda items for discussion was "imposing of statutory punishment for non-performance of overtime duty". The Staff Side contended that on one hand, payment of Overtime Allowance to the officials was being delayed badly and on the other hand, the officials who expressed their inability to perform overtime were being imposed statutory punishments. The matter was discussed in the meeting as a result of which Secretary (Post) and Chairman desired suitable instruction to be issued to all concerned stressing on the point that imposing of statutory punishments. The matter was discussed in the meeting as a result of which Secretary (Post) and Chairman desired suitable instruction to be issued to all concerned stressing on the point that imposing of statutory punishment for non-performance of overtime duty should be resorted to in rare and exceptional circumstances.

(Govt. of India, Dept. of Posts letter No. 2-4/2005 SK (1), dated the 16th June, 2006)

Case-Law

Participation in strike sufficient ground for attracting penal action

In the instant case before us, since the applicants have themselves conceded that they were absent from duty in response to a call of strike given by a recognized union, the factum of their absence from duty and their participation in the strike did not need proof. The other points are only points of law. We, therefore, find that even in accordance with the ruling of the Jammu and Kashmir High Court in Mansaram v. General Manager, Telecommunication, J.K.Circle (1980 (3) SLR 520) it will be a procedural infirmity if the disciplinary authority did not exercise his mind to decide whether an enquiry is necessary or not, the alleged omission on the part of the disciplinary authority and would not be a fatal flaw in the disciplinary proceedings. As regards violation of rule 7 (ii) of the CCS (Conduct) rules is concerned that rule reads as follows : -

"resort to or in any way abet any form of strike or coercion or physical duress in connection with any matter pertaining to his service or the service of any other Government servant."

We have no doubt that by responding to a call of strike and bringing the postal services which is an essential public service to a grinding halt, the applicant had violated Rule 7 (ii) of the Conduct Rules. The mandate of Rule 3 (i) (ii) to the effect that every Government servant shall at all times maintain devotion to duty has also been palpably breached by the aforesaid conduct of the applicant. In Kameshwar Prasad v. State of Bihar (AIR 1962 SC 1166) the Constitution Bench of the Supreme Court observed as follows : "We would, therefore, allow the appeal in part and grant the appellants a declaration that Rule 4-A in the form in which it now stands prohibiting any form of

demonstration is violative of appellants' rights under Article 19 91) (a) and (b) and should, therefore, be struck down. It is only necessary to add that the rule in so far as it prohibits a strike cannot be struck down since there is no fundamental right to resort to a strike. As the appellants have succeeded in art only, there will be no order as to cost in the appeal."

Thus, the contention of the applicant that they were exercising their fundamental right while resorting to the strike cannot be sustained. Even though their participation in the strike might be peaceful, the fact that they refrained from discharging their public duty as employees of the postal Services Department would be a sufficient ground for attracting the penalty imposed on them.

(K. Sukumara Pillai v. Union of India, 1990 (13) ATC 341 (Ernaklam))

Persons taking leading part in the demonstration do not deserve reinstatement

When during strike an assemblage of a boisterous crowd had gathered in the head office compound and violent speeches were made by the leaders of the strike, obviously with the intention to make the work of the bank impossible and when the attitude of the crowd was violent then the four persons who took leading part in the demonstration do not deserve reinstatement.

(Punjab National Bank Ltd. v. employees' Federation, AIR 1960 SC 160; (1959) 2 LLJ 666.)

An instance of erroneous application of F.R 17-A

Facts : When the applicant was working as UDC under the third Respondent, he received a Memo, dated 15.6.1992. The Memo. Showed that on 11.6.1992 when the applicant was working in his seat he was asked to give a certain file as per the order of his superior officer. The applicant refused to give the file. This was accordingly reported to the concerned superior officer who directed the Assistant to report the matter to the Section Officer for further action. The Memo. Also stated that the applicant was sitting idle in his chair without doing anything on that day. The Memo further proceeded to state that the above action of the applicant amounted to insubordination and was liable to be treated as dies non. He was also informed that if he repeated such misconduct, appropriate disciplinary action would be taken against him. A copy of this Memo. Was also ordered to be kept in the memorandum of the service of the applicant. It was further stated that if the applicant wanted to make a representation he might do so within ten days.

Accordingly, the applicant made his representation on 25.6.1992. The Respondents thereafter issued the impugned order, dated 29.7.1992 stating that in terms of F.R.17-A. and rule 62 of P&T Manual, Vol. III., 11.6.1992 would be treated as

dies non in respect of applicant. Aggrieved by this, the applicant came forward with the present application for setting aside the impugned order, dated 29.7.1992.

Held : The learned Counsel for the applicant rightly contends that before issuing the above said order the Respondents ought to have issued a notice to him asking him to explain why such an action would not be taken against him. He also drew our attention to O.M., dated 20/23.5.1985, which states that before invoking F.R.17-A, it should be preceded by extending to the person concerned a reasonable opportunity of representation. As the applicant was not given any notice prior to the above mentioned memo., dated 29.7.1992 are liable to be quashed.

The learned Counsel for the Applicant rightly contends that in the Memo., dated 15.6.1992, the respondents clearly informed the applicant that his refusal to give the file will amount to gross indiscipline and is liable to be treated as no-duty(dies non). He was also given warning that if he repeats the same, further disciplinary action will be taken. Hence, the order, dated 15.6.1992, itself was a final order against the applicant. The order, dated 29.7.1992, clearly shows that the applicant was given another punishment of dies nos not only for refusing to give the file but also for refusing to do the work in the budget file on the very same day. Hence, it amounts to double punishment and is liable to be set aside.

A perusal of F.r.17-A clearly shows that the applicant's case, if at all, can fall only in F.r.17-A (iii). It only speaks of the individual employee remaining absent unauthorisedly or deserting the post. In this case the applicant was present in the office on the entire day and he did not desert the post. The other two clauses of F.r.17-A deal with unauthorized absence during strike periods. We are unable to agree with the contention that the present case of the applicant falls under F.R.17-A(iii). In fact, the order, dated 29.7.1992, does not state under which clause the applicant was found unauthorisedly absent on 11.6.1992. As the applicant's case did not fall under any of the provisions under F.R.17-A, the above said orders were passed without any jurisdiction.

It is not the case of the respondents that the applicant refused to perform the duties assigned to him. On the other hand, the applicant has specifically stated in his reply that he had performed all the duties assigned to him on that particular date. The main charge against the applicant was that he refused to give the file, when asked by the Assistant to be given to the superior officer. This cannot come under F.R.17-A or under rule 62 of P&T Manual, Vol.III. thus, the impugned orders were passed without any jurisdiction. Hence the orders, dated 11.6.1992 and 29.7.1992 are hereby quashed.

(C.V.Ranga Venkatesh v. Union of India and others, O.A.No. 939 of 1992; CAT, Madras Bench, dated of judgment 27.12.1993)