

Premature retirement of Government Servants under Rule 10(4) of Gujarat Civil Services Rules (Pension), 2002- Procedure and criteria to be followed

Government of Gujarat
General Administration Department
No CRA-1087-805-(P F -1)-G 2
Sachivalaya, Gandhinagar
Dated 29/09/2023

- Read (1) Rule 10(4) of Gujarat Civil Services Rules (Pension), 2002
(2) Government Resolution, G A D No CRA-1087-805-G 2 dated 28/07/1987
(3) Government Circular, G A D No CRA-1096-1034-G 2 dated 11/06/1996
(4) Government Circular, G A D No CRA-1098-CM-28-G 2 dated 20/05/1998
(5) Government Resolution, G A D No CRA-1097-1453-G 2 dated 12/01/1999
(6) Government Circular, G A D No CRA-1097-1453-G 2 dated 12/02/2004
(7) Government Circular, G A D No CRA-102004-UO2905-G 2 dated 31/03/2005
(8) D O P T O M No 25013/03/2019-Estt A-IV dated 28/08/2020

Preamble.

Rule 10 (4) of Gujarat Civil Services Rules (Pension), 2002 empowers the Government to retire a Government servant from Government service, prematurely on his attaining the age of 50 or 55 years as the case may be, if the government is satisfied that it is necessary to do so in the public interest. Various instructions have been issued for the purpose of exercise of the powers conferred by the said Rule. The main instructions contained in the Government Resolution, General Administration Department, dated 28th July, 1987 and the said instructions have subsequently been supplemented/amended by various Government Resolution/Government Circulars as referred above. Further, Government of India vide D O P T O M No 25013/03/2019-Estt A-IV dated 28/08/2020 have reviewed, consolidated and reiterated the guidelines so far issued on the subject of premature retirement which have also been referred. Further, it is clarified that premature retirement of Government Servants under these instructions is not a penalty.

2 The question of issuing a consolidated Government Resolution in lieu of various orders was under active consideration of Government for some time. Accordingly, Government is pleased to direct that while considering cases for premature retirement of Government Servants on their attaining the age of 50 or 55 as the case may be or the retention beyond that age, the instructions contained in Appendix A to this Resolution should be henceforth followed.

3 All previous instructions issued by the General Administration Department in this behalf are hereby superseded.

By order and in the name of the Governor of Gujarat,



(Tejas H Soni)

Joint Secretary to Government,
General Administration Department

To,

- The Secretary to the Governor, the Secretary to the Chief Minister
- The PS to All Ministers and All Ministers of State
- The P A to C S , All Secretaries
- * The Registrar, Gujarat High Court, Ahmedabad
- * The Secretary, Gujarat Leg Secretariat, Gandhinagar
- * The Secretary, Gujarat Public Service Commission, Ahmedabad
- * The Secretary, Gujarat Vigilance Commission, Gandhinagar
- * The Secretary, Gujarat Civil Service Tribunal, Gandhinagar
- The Accountant General, Gujarat, Ahmedabad Rajkot The Resident Audit Officer, Ahmedabad
- The Pay & Accounts Officer, Ahmedabad/Gandhinagar
- All Secretariat Departments (with 15 spare copies)
- All Heads of Departments under Several Departments of the Secretariat
- All Branches in General Administration Department

*By Letter

APPENDIX A.

1. REVIEW: When it should be done?

Sub-Rule (4) of Rule 10 of Gujarat Civil Services (Pension) Rules, 2002 empowers the Government to retire a Government servant from Government service, prematurely on his attaining the age of 50 or 55 years as the case may be, if the government is satisfied that it is necessary to do so in the public interest

2. REVIEW COMMITTEE AND THEIR CONSTITUTION.

Committee constituted for considering the case of any Officer/Employee for getting promotion in that cadre shall be the committee responsible for the Review under this instruction

3. Time Schedule to be followed

The time schedule given in the following table, shall be followed for undertaking the exercise of review of performance of Government servants:-

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

4. Maintenance of Register*

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

5. Broad Criteria to be followed by the Review Committee:

The broad criteria to be followed by the Review Committee while making the recommendations are as follows -

- (i) Government servants whose integrity is doubtful, shall be retired
- (ii) Government servants found to be ineffective shall also be retired. The basic consideration in identifying such Government servants should be their fitness/competence to continue in the post held
- (iii) No Government servant should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case. However, in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of a Government servant, it would be open to review such a case also for premature retirement. The said instruction of not retiring the Government servant within one year on the ground of ineffectiveness except in case of sudden and steep fall in his performance is relevant only when he is

proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity

- (iv) No Government servant should ordinarily be retired on ground of ineffectiveness, if, his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post, has been found satisfactory. There is no such stipulation, however, where the Government servant is to be retired on grounds of doubtful integrity. In case of those Government servants who have been promoted during the last 5 years, the previous entries in the CRs/PARs may be taken into account if he was promoted on the basis of seniority cum fitness, and not on the basis of merit.
- (v) The entire service record of a Government servant should be considered at the time of review. The expression 'service record' refers to all relevant records and therefore, the review should not be confined to the consideration of the CRs/PARs dossier. The personal file of the Government servant may contain valuable material. Similarly, his work and performance could also be assessed by looking into files dealt with by him or in any papers or reports prepared and submitted by him. It would be useful if the Department/Cadre Controlling Authority puts together all the data available about the Government servant and prepares a comprehensive brief for consideration by the Review Committee. Even uncommunicated remarks in the CRs/PARs (Confidential Report/Performance Appraisal Report) may be taken into consideration. Further, any adverse remark made in the CR/PAR of a Government Servant has to be taken into account. If a Government Servant is promoted to a higher post notwithstanding the adverse remark in the CR/PAR, such adverse remarks lose their sting.
- (vi) A Government Servant who is not physically as well as mentally fit for retention in service shall be retired. The physical and mental condition of Government Servant should be known from the CRs/PARs of concerned Government Servant. The competent authority may call for a special report on this point from the officer under whom he was working at that time. It is not necessary to refer the concerned officer for medical examination for this purpose.
However, where the officer may be known or reported to be suffering from any serious disability, infirmity, or disease which makes it desirable to have a medical opinion, the Competent Authority may use its discretion to refer such officer for medical examination.

6. PROCEDURE TO BE FOLLOWED.

- (i) The Committee should form the opinion in a bona fide manner. The rights constitutional or statutory carry with them corollary duty to maintain efficiency, integrity and dedication to public service. Unfortunately, the latter is being overlooked and neglected and the former unduly gets emphasized. The Committee would,

therefore, need to consider the totality of the facts and circumstances appropriate in each case and would form the opinion whether premature retirement of a Government Servant would be in the public interest. The opinion must be based on the material on record, otherwise it would amount to arbitrary or colourable exercise of power.

- (ii) As far as the criteria of doubtful integrity is concerned, the following has to be taken into account as observed by Hon Supreme Court in case of S Ramchandra Raju Vs State of Orissa

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

- (iii) In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the Government and the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the Government and the Review Committee should form the opinion that the Government officer needs to be prematurely retired from service.

- (iv) The Committee concerned comes to a conclusion that the officer should be retired prematurely, the Committee should record fully and clearly the points taken into consideration and reasons for their conclusion. The respective Secretariat Department on receipt of the recommendation of the Committee should obtain the decision of Government in such cases after consulting the General Administration Department in case of Class I and Class II Officers. It is necessary that this process should be completed in each case in about three months' time so that in the event of retirement being finally decided upon, it is possible to serve a Notice on the Government Servant concerned at least three months before the date on which he attains the age as required by the Rules and his retirement thus given effect as soon as possible. However, non-adherence to the time-line due to certain administrative exigencies shall not take away the powers of Appropriate Authority to prematurely retire a Government Servant.

- (v) In case of Government Servant who belongs to Class-III, Appointing Authority has to take decision on the recommendation of the Committee and in case the Committee has recommended to retire such Government Servant prematurely and the Appointing Authority is also agreed with the recommendation of the Committee, in such case, Appointing Authority has to record fully and clearly the points taken into consideration and reasons for their consideration
- (vi) When it is decided to retire a Government Servant immediately, i.e. three months' notice is not to be given, then three months' pay and allowance should be paid to him in lieu of such notice
- (vii) Once it is decided to retain a Government servant in service beyond the age of 50/55 years, it is not necessary to issue formal order to that effect

7. Representation against the Order of Premature Retirement.

- (i) After the issue of the order of premature retirement, the concerned Government Servant may put up representation for orders otherwise, within three weeks from the date of service of such notice/order
- (ii)(a) The representation, if any, made to Government by a gazetted officer of Government (Class-I or Class-II) against the orders (either impending or already issued) of his premature retirement, should be considered by Government and the case has to be submitted through General Administration Department and Chief Secretary of the State. The Government has to consider overall assessment done by the Review Committee and also the service record of the Government Servant in cases of considering representations made by Class-I or Class-II Officers against their premature retirement
- (b) The representation, if any, made to Appointing Authority by a Non-Gazetted officer of Government (Class-III) against the orders (either impending or already issued) of his premature retirement, should be considered by the Committee of the Secretary of the Concerned Administrative Department and the Secretary of the General Administration Department. This committee has to consider overall assessment done by the Review Committee and also the service record of the Government Servant in cases of considering representations made by such Class-III Employee against their premature retirement
- (iii) After receiving such representation Appropriate Authority, as mentioned in para 7(ii)(a) and 7(ii)(b), has to take a necessary decision within 8 weeks from the date of receiving such representation

8 Important Judgments of Supreme Court

- (i) In the judgement in the case of UOI & Col J N Sinha [1571 SCR (1) 791], the Hon'ble Supreme Court had not only upheld the validity of Fundamental Rule 56(j), but also held that no show-cause notice needs to be issued to any Government servant before a notice of retirement is issued to him under the aforesaid provisions. The Apex Court held that-
"Now coming to the express words of Fundamental Rule 56(j), it says that the appropriate authority has the absolute right to retire a government servant if it is of

the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule ' one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona fide forms that opinion, the correctness of that opinion cannot be challenged before courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision "

(ii) In the case of *State of Gujarat vs Umedbnai M Patel*, 2001 (3) SCC 314, Hon'ble Court held that-

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

- (i) Whenever the services of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest
- (ii) Ordinarily, the order of compulsory retirement is not to be treated as a punishment coming under Article 311 of the Constitution
- (iii) For better administration, it is necessary to chop off dead wood, but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer
- (iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order
- (v) Even un-communicated entries in the confidential record can also be taken into consideration
- (vi) The order of compulsory retirement shall not be passed as a short cut to avoid Departmental enquiry when such course is more desirable
- (vii) If the officer was given a promotion despite adverse entries made in the confidential record that is a fact in favour of the officer
- (viii) Compulsory retirement shall not be imposed as a punitive measure

9 The Observations of the Supreme Court with regard to Integrity and conduct unbecoming of a Government Servant

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

"The officer would live by reputation built around him. In an appropriate case, there may not be sufficient evidence to take punitive disciplinary action of removal from service. But his conduct and reputation is such that his continuance in service would be a menace to public service and injurious to public interest. The entire service record or character rolls or confidential reports maintained would furnish the backdrop material for consideration by the Government or the Review Committee or the appropriate authority. On consideration of the totality of the facts and circumstances alone, the Government should form the opinion that the Government officer needs to be

compulsorily retired from service Therefore, the entire record more particularly, the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a Government officer "

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

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

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

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

10. Materials to be placed before the Review Committee:

- (i) Agenda Note containing the brief details of the Government Servants who are being reviewed
- (ii) At least last 10 years of C R s or P A R s and beyond 10 years if demanded by the Review Committee
- (iii) Details of the Inquiry if any (Pending as well as completed)
- (iv) Details of the Punishment if any
- (v) Files on which Government Servant has taken any decision if demanded by the Committee
- (vi) Any other record which committee deem fit and demanded by the committee for taking bona fide decision
