

VISAKHAPATNAM PORT EMPLOYEES' (CLASSIFICATION, CONTROL AND APPEAL) REGULATIONS, 1968

The Board of Trustees of Visakhapatnam Port Trust, hereby publish the following Regulations, made by it in exercise of the powers conferred by Clause (a) of Section 28 of the Major Port Trusts Act, 1963, the same having been published in pursuance of Sub-Section (2) of Section 124 of the said Act and after having been amended and approved by the Central Government as required by Sub-Section (1) of Section 124 thereof namely:

PART 'I' General:

1. Short Title & Commencement:

- (1) These regulations may be called the Visakhapatnam Port Employees' (Classification, Control & Appeal) Regulations, 1968.
- (2) They shall come into force in the date of their publication in the official gazette.

2. DEFINITION: In these regulations, unless the context otherwise required-

- a) 'Act' means the Major Port Trusts Act, 1963 (38 of 1963);
- b) 'appointing authority' in relation to an employee means the authority prescribed as such in the schedule;
- c) 'Board' 'Chairman' and 'Head of Department' have the meanings assigned to them in the Act;
- d) 'Disciplinary Authority' means the authority competent under these regulations to impose on an employee any of the penalties specified in regulation 8;
- e) 'Employee' means an employee of the Board and includes any such person on foreign surving or whose services are temporarily placed at the disposal of the Board and also any person in the service of the Central Government or a State Government or a local or other authority whose services are temporarily placed at the disposal of the Board;
- f) 'Retired employee' means retired employee of the Board.
- g) 'Schedule' means the schedule to these regulations.

3. APPLICATION: (1) These regulations shall apply to every employee of the Board, but shall not apply to-
- a) any person in casual employment;
 - b) any person subject to discharge from service on less than one month's notice; and
 - c) Any person for whom special provision is made, in respect of matters covered by these regulations by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the Board before or after the commencement of these regulations in regard to matters covered by such special provisions.
- (2) Notwithstanding anything contained in sub-regulation (1) the Board may, by order, exclude any class of employees from the operation of all or any of these regulations.
- (3) If any doubt arises as to whether these regulations or any of them apply to any person, the matter shall be referred to the Board for its decision.

PART – II – CLASSIFICATION

4. CLASSIFICATION OF POSTS: (1) All posts under the Board, other than these ordinarily held by persons to whom these regulations, do not as follows.

- a) Class-I Posts shall mean the posts the maximum of the scale of pay of which is Rs.15,100/- and above.
- b) Class-II Posts shall mean the post the maximum of the scale of pay which exceeds Rs.11,975/- but is less than Rs.15,100/-
- c) Class-III Posts shall mean the post of the maximum of the scale of pay which exceeds Rs.7,330/- but not more than Rs.11,975/-
- d) Class-IV Posts carrying the scale of pay the maximum of which is Rs.7,330/-

(Approved by Board, vide Resolution No.26/2001-2002 dt. 30-4-2001 vide Agenda Item No.S/18 of 2001-2002

- (2) Any order, relating to classification of posts in the Port of Visakhapatnam in force immediately before the commencement of these regulations, shall continue in force until altered, rescinded or amended by an order of the Board under Sub-regulation (1).
- (3) Notwithstanding anything contained in Regulation-4, the Board shall reclassify the posts as Class-I, Class-II, Class-III and Class-IV from time to time depending upon the revision of scale of pay of the employees of the board.

PART – III – APPOINTING AUTHORITIES

5. APPOINTMENTS OF CLASS-I POSTS: (1) All appointments to Class-I posts under the Board which are covered by clause (a) of sub-section (1) of Section-24 of the Act, shall be made by the Central Government after consultation with the Chairman.
 - (2) All appointments to Class-I posts under the Board, which are not covered by Clause (a) of Sub-Section (1) of Section-24 of the Act shall be made by the Chairman.
6. APPOINTMENT TO OTHER POSTS: All appointments other than the appointments referred to in regulations 5 shall be made by the authorities specified in this behalf in the schedule.

PART-IV – Suspension

7. SUSPENSION: (1) An employee may be placed under suspension—
 - a) Where a disciplinary proceedings against him is contemplated or is pending; or
 - b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial;
 - c) Where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State.
- (2) The order of suspension shall be made -
 - a) In the case of an employee holding a post referred to in Clause (a) or Sub-section (1) of Section 24 of the Act by the Chairman;
 - b) in any other case by the appointing authority; provided that no such order relating to an employee holding a post referred to in Class (a) of Sub-section (1) of Section 24 of the Act shall have effect until it is approved by the Central Government.

- (3) An employee shall be deemed to have been placed under suspension by an order of appointing authority —
 - a) With effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty eight hours;
 - b) With effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.;

EXPLANATION: The period of 48 hours referred to in Clause (b) of this sub-regulations shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

- (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee under suspension is set aside in appeal or on review under these regulations and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.
- (5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the authority competent to do so from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

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

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

- (b) Where an employee is suspended or is deemed to have been suspended, (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the employee shall continue to be under suspension until the termination of all or any of such proceedings.
- (7) An order of suspension made or deemed to have been made under this regulation shall continue to remain in force until it is modified or revoked by the authority competent to do so.
- (8) "An order of suspension made or deemed to have been made under this Rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the date of order of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time".
- (9) "Notwithstanding anything contained in sub-regulation - 6 & 7, an order of suspension made or deemed to have been made under sub-Regulations 1 to 3 of this Regulations shall not be valid after a period of ninety days, unless it is extended after review, for a further period before the expiry of ninety days".

PART - V - DISCIPLINE

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

MINOR PENALTIES:

- i) Censure
- ii) Withholding of his promotion;
- iii) Recovery from his pay of the whole or part of an pecuniary loss caused by him to the Board by negligence or breach of orders.
- iv) Reduction to lower stage in the time scale of pay by one stage for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension;
- v) withholding of increments of pay;

MAJOR PENALTIES:

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

“Provided that, in every case in which he is charged of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing of forbearing to do any official act is established, the penalty mentioned in Clause (ix) or Clause (x) shall be imposed;

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed.

EXPLANATION:- The following shall not amount to a penalty within the meaning of this regulation;

- i) Withholding of increments of an employee for failure to pass a departmental examination in accordance with the regulations or orders governing the post or the terms of the appointment.

- ii) Stoppage of an employee at the efficiency bar in the time-scale on the ground of his unfitness to cross the bar;
- iii) Non-promotion whether in a substantive or offg. Capacity of an employee, after consideration of his case to a grade or post for promotion to which he is eligible.
- iv) reversion to a lower grade or post of an employee officiating in a higher grade or post on the ground that he is considered, after trial, to be un-suitable for such higher grade or post or on any administrative ground un-connected with his conduct;
- v) reversion to his permanent grade or post of an employee appointed on probation to another grade or post during or at the end of the period of probation in accordance with the terms of his appointment or the regulations and orders governing probation;
- vi) replacement of the services of an employee whose services have been approved from the central Government or a State Government or an authority under the control of the Central Government or a State Government at the disposal of the authority which had lent his service;
- vii) compulsory retirement of an employee in accordance with the provisions relating to his superannuation or retirement;
- viii) termination of the services -
 - a) of an employee appointed on probation during or at the end of the period of probation, in accordance with the terms of his appointment or the regulations and orders governing probation; or
 - b) of an employee, employed under an agreement in accordance with the terms of such agreement;
 - c) of a temporary employee in accordance with the provisions of Visakhapatnam Port Employees' (Temporary Services) Regulation, 1991.

REGULATION-8 (a)

The penalties specified in Regulation-8 may for good and sufficient reasons, as hereinafter provided, be imposed on an employee appointed through direct recruitment in respect of misconduct, committed before his employment if the misconduct

was of such a nature as has rational connection with his present employment and renders him unfit and unsuitable for continuing in service.

9. DISCIPLINARY AUTHORITIES:- The authorities mentioned in the schedule shall be competent to impose the penalties on the employees of different grades and services as indicated in the said schedule.
10. PROCEDURE FOR IMPOSING MAJOR PENALTIES: (1) No order imposing any of the penalties specified in clause (vi) to (x) of regulation-3 shall be made except after an inquiry held, as far as may be, in the manner provided in this regulation and regulation-11.
- (2) "whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any articles of charge and imputations of misconduct or misbehaviour against an employee, it may itself inquire into or appoint under this regulation an Inquiring authority from among the serving employees of the Board/retired employees of the Board and/or serving/retired officers of public sector/undertakings/State Govt. Deptt./Central Govt. Deptts. Where CCS (CCA) rules are in force, to inquire into the truth thereof".
- (3) Where it is proposed to hold an inquiry against the employee under this regulation and regulation 11, the disciplinary authority shall draw up or cause to be drawn up.
- i) The substance of the imputation of misconduct or misbehaviour.
- ii) Into definite and distinct articles of charges..
- a) a statement of all relevant facts including any admission or confession made by the employee;
- b) a list of documents by which, and a list witnesses by whom the articles of charge are proposed to be sustained.
- (4) The disciplinary authority shall deliver or cause to be delivered to the employee a copy of the articles of charge, the statement of the imputations, of misconduct or mis-behaviour and a list of documents and witness by which article of charge is proposed to be sustained and shall require the employee to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

- (5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or if it considers it necessary so to do, appoint under Sub-regulation (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the employee in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in regulation-11.
- (b) If no written statement of defence is submitted by the employee, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary so to do, appoint, under sub-regulation (20), an inquiring authority for the purpose.
- (c) Where the disciplinary authority itself enquires into any articles of charge or appoint an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint any person to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge. -
- (6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority -
- i) A copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
 - ii) A copy of the written statement of defence, if any, submitted by the employee;
 - iii) A copy of the statements of witnesses, if any, referred to in Sub-regulation (3);
 - iv) evidence proving the delivery of the documents referred to in sub-regulation (3) to the employee; and
 - v) a copy of the order appointing the "Presenting Officer".
- (7) The employee shall appear in person before the inquiring authority on such day at such time within ten working days from the date of receipt by the inquiring authority of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time, not exceeding ten days as the inquiring authority may allow.

- (8) The employee may take the assistance of any other employee to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the presenting officer appointed by the disciplinary authority is a Legal Practitioner or, the disciplinary authority having regard to the circumstances of the case, so permits.

NOTE: (1) "In the case of an employee who was in Port Service prior to the 1st October, 1956 he may, with the consent of the disciplinary authority, take the assistance of an official of a Trade Union recognized by the port.

NOTE: (2) The employee shall not take the assistance of any other employee who has three pending disciplinary cases on hand in which he has to give assistance.

- (8) (A): An employee may also take the assistance of a retired employee to present the case on his behalf subject to the following conditions:

(i) If the retired employee is also a legal practitioner, the restrictions on engaging legal practitioner by a delinquent employee to present the case on his behalf contained in Sub-regulation (8), would apply, and

(ii) In the matter of payment of travelling and other expenses to the retired employee assisting an employee in disciplinary proceedings, the retired employee concerned will be deemed to belong to the grade of employees to which he belonged immediately before his retirement for the purpose of these regulations. The expenditure on account of travelling and other expenses will be borne by the board.

(9) If the employee who has not admitted any of the articles of charge in his written statement of defence, or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign and record and obtain the signature of the employee, thereon.

(10) The inquiry authority shall return a finding of guilty in respect of these articles of charge to which the employee pleads guilty.

- (11) The inquiry authority shall, if the employee fails to appear within the specified time or refuses or omits to plead, require the presenting officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days after recording an order that the employee may, for the purpose of preparing his defence -
- (i) inspect within 5 days of the order or within such further time not exceeding 5 days as the inquiry authority may allow, the documents specified in the list referred to in sub-regulation (3);
 - (ii) Submit a list of witnesses to be examined on his behalf.

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

- iii) give a notice within 10 days of the order or within such further time not exceeding 10 days as the inquiring authority may allow, for the discovery or production of any documents which are in possession of the board but not mentioned in the list referred to in sub-regulation (3).

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

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

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

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

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

- (14) (a) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority.
- (b) the witnesses shall be examined by or on behalf of the presenting officer and may be cross-examined by or on behalf of the employee.
- (c) The presenting officer shall be entitled to re-examine the witness on any points on which they have been Cross Examined, but not on any new matter, without the leave of the inquiry authority.
- (d) The inquiry authority may also put such questions to the witnesses as it thinks fit.
- (15) (a) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the presenting officer to produce evidence not included in the list given to the employee or may itself call for new evidence or recall and re-examination any witness and in such case the employee shall be entitled to have, if he demands its, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence exclusive of the day of adjournment and the day to which the inquiry is adjourned.
- (b) The inquiry authority shall give the employee an opportunity of inspecting such documents before they are taken on the record.
- (c) The inquiry authority may also allow the employee to produce any evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice.

NOTE: New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) (a) when the case for the disciplinary authority is enclosed, the employee shall be required to state his defence, orally or in writing as he may prefer;

(b) If the defence is made orally, it shall be recorded and the employee shall be required to sign the record, in either case, a copy of the statement of defence shall be given to the presenting officer if any, appointed.

(17) (a) The evidence on behalf of the employee shall then be produced.

(b) The employee may examine himself in his own behalf if he so prefers. The witnesses produced by the employee shall then be examined and shall be liable to cross examination, re-examination and examination by the inquiry authority according to the provisions applicable to the witnesses for the disciplinary authority.

18. The inquiring authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him.

19. The inquiring authority may, after the completion of the production of evidence, hear the presenting officer, if any, appointed, and the employee, or permit them to file written briefs of their respective cases, if they so desired.

20. If the employee to whom a copy of the articles of charge has been delivered does not submit the written statement of defence on or before the date specified for the purpose of does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this regulation, the inquiry authority may hold the inquiry ex-parte.

21. (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (v) of regulation 8,

(but not competent to impose any of the penalties specified in clause (vi) to (x) of that Regulation 8) has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (vi) to (x) of regulation 8 should be imposed on the employee, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record, or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine cross-examine and re-examine the witness and may impose on the employee such penalty as it may deem fit in accordance with these regulations.

(c) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry cases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which, exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself.

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

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

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

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

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include.

- a) the report prepared by it under clause (i);
- b) the written statement of defence; if any, submitted by the employee;
- c) the oral and documentary evidence produced in the course of the inquiry;
- d) the written briefs, if any, filed by the presenting officer or the employee or both during the course of the inquiry; and
- d) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

11. ACTION ON THE INQUIRY REPORT: (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to inquiring authority for further inquiry and report and the inquiring authority shall there upon proceed to hold the further inquiry according to the provisions of regulation 10 as far as may be.

“(1a) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any held by the disciplinary authority or where the disciplinary authority is not the disciplinary authority, a copy of the report of the disciplinary authority to the employee who shall be required to submit, if he so desires his written representation or submission to the disciplinary authority within 15 days, irrespective of whether the report is favourable or not to the employee”.

“(1b) The disciplinary authority shall consider the representation, if any, submitted by the employee before proceedings further in the manner specified in Sub-regulation (2) to (4)”.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (v) regulation 8 should be imposed on the employee, it shall notwithstanding anything contained in regulation 12 make an order imposing such penalty.

“Provided that in every case where it is necessary to consult the Central Government, the record of the inquiry, shall be forwarded by the disciplinary authority to the Central Government for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the employee”.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the enquiry is of the opinion that any of the penalties specified in clauses (vi) to (x) of Regulation 8 should be imposed on the employee it shall make an order imposing such penalty and it shall not be necessary to give the employee any opportunity of making representation on the penalty proposed to be imposed.

Provided that in every case where it is necessary to consult the Central Government, the record of the inquiry shall be forwarded by the Disciplinary authority to the Central Government for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the employee.

12. PROCEDURE FOR IMPROVING MINOR PENALTIES:

Subject to the provision of Sub-Regulation (3) of Reg. 11.

(1) No order imposing on an employee any of the penalties specified in clause (i) to (v) of regulation 8 shall be made except after —

(a) Informing in writing the employee of the proposal to take action against him and of the imputation of misconduct or misbehaviour on which it is proposed to be taken and giving him an opportunity to make any representation as he may wish to make against the proposal.

- (b) Holding an inquiry in the manner laid down in sub-regulations (3) to (2) of regulation 10, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;
- (c) taking the representation, if any, submitted by the employee under clause () and the record of inquiry, if any,

NOTE: Notwithstanding anything contained clause (b) of sub-regulation (1) if in a case it is proposed after considering the representation, if any, made by the employee under clause (a) of that Sub-regulation to with hold increments of pay and such with holding of increments is likely to affect adversely the amount of pension payable to the employee or to with hold increments I likely to affect adversely the amount of pension payable to the employee or to with hold increments of pay for a period exceeding three years or to with hold increments of pay with cumulative effect for any period, an inquiry shall be hold in the manner laid down in sub-regulation (3) to (23) of Regulation 10, before making any order imposing on the employee any such penalty.

- (d) recording a finding on each imputation of misconduct or misbehaviour; and
 - (e) Consulting the Central Government where such consultation is necessary.
- (2) The record of the proceedings of such cases shall include:-
- (a) A copy of the intimation to the employee of the proposal to take action against him;
 - (b) A copy of the statement of imputations of misconduct or misbehaviour delivered to him;
 - (c) his representation, if any;
 - (d) the evidence produced during the inquiry;
 - (e) the advice of the Central Government, if any;
 - (f) the findings on each imputation of misconduct or misbehaviour and

13. Communication of orders: Orders made by the disciplinary authority shall be communicated to the employees we shall also be supplied with a copy of its finding on each article of charge, or where the disciplinary authority is not the inquiring authority, a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings

of the inquiring authority and also a copy of the advice, if any, given by the commission, and where the disciplinary authority has not accepted the advice of the commission a brief statement of the reasons for such non-acceptance”.

14. COMMON PROCEEDINGS: (1) Where two or more employees are concerned, in any case, the Chairman or the authority competent to impose a penalty of dismissal from service on all such employees may make an order directing that disciplinary action against all of them may be taken in the common proceedings.

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

(1) Subject to the provisions of sub-section (1) of Section-25 of the Act, and of Regulation-9, any such order shall specify -

- i) the authority which may function as the disciplinary authority for the purpose of such common proceedings;
- ii) the penalties specified in Regulation 8 which such disciplinary authority shall be competent to impose and
- iii) whether the procedure prescribed in Regulation 10 and 11 or Regulation 12, or Regulation 17 shall be followed in the proceeding.

15. SPECIAL PROCEEDINGS IN CERTAIN CASES: Notwithstanding anything contained in Regulations 10, 12, and 14.

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

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

“Provided that the employee may be given opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under Clause (i)”

“Provided further that the Central Government shall be consulted where such consultation is necessary, before any orders are made in any case under this Regulation”.

Provided further that the approval of the Central Government shall be obtained before passing such orders in relation to a Head of Department.

16. PROVISIONS REGARDING OFFICERS LENT BY THE BOARD:

(1) Where the services of an employee are lent by the Board to the Central Government or a State Government or an authority should subordinate thereto or to a local or other authority hereinafter in this regulation referred to as “the borrowing authority” the borrowing authority shall have the powers of the appointing authority shall have the powers of the appointing authority for the purpose of placing employee under suspension and of the Disciplinary authority for the purpose of conducting a disciplinary proceeding against him;

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

- 2) In the light of the findings in the disciplinary proceedings conducted against an employee —
- i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (v) of Regulation 8 should be imposed on the employee, it may, after consultation with the Chairman make such orders on the case as it deems necessary;

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

- ii) if the borrowing authority is of the opinion that any of the penalties specified in Clauses (vi) to (x) of Regulation 8 should be imposed on the employee, it shall replace his services at the disposal of the Board and transmit to the

Chairman the proceedings of the inquiry and thereupon the Central Government/Chairman, as the case may be, may pass such orders as it may deem necessary.

Provided that before passing any such orders the disciplinary authority shall comply with the provisions of sub-regulation (3) and (4) of Regulation 11.

EXPLANATION: The disciplinary authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority or after holding such further inquiry as it may deem necessary, as far as may be in accordance with Regulation 10.

11. PROVISIONS REGARDING OFFICERS BORROWED BY THE BOARD:

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

(2) In the light of the findings in the disciplinary proceeding taken against the employee:

i) if it is decided that any of the penalties specified in Clauses (i) of Regulation-8 should be imposed on him, the disciplinary authority may subject to the provisions of sub-regulation (3) of Regulation 11, after consultation with the lending authority, pass such orders on the case as if it deems necessary;

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

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

PART – VI – APPEALS

18. ORDERS MADE BY CENTRAL GOVERNMENT NOT APPEALABLE:

Notwithstanding anything contained in this part no appeal shall lie against –

- i) any order made with approval of the Central Government;
- ii) any order of an interlocutory nature of the nature of a step-in-aid of the final disposal of a disciplinary proceeding, other than an order of suspension;
- iii) any order passed by an inquiring authority in the course of an inquiry under Regulation 10.

19. APPEALS AGAINST ORDERS OF SUSPENSION:

An employee may appeal against an order of suspension to the authority to which the authority which made or is deemed to have made the order is immediately subordinate.

20. APPEALS AGAINST ORDERS IMPOSING PENALTIES:

- (1) The authorities mentioned in the schedule shall be competent to entertain appeals in respect of the penalties indicated in the said schedule.
- (2) Any employee of a Board aggrieved by an order involving his reduction in rank, removal or dismissal may, within the time mentioned in Regulation-22 and in the manner laid down in Regulation-23, prefer an appeal—
 - (a) to the Central Government, where such order is passed by the Chairman;
 - (b) to the Dy. Chairman in any other case, provided that where the person who made the order appealed against becomes, by virtue of his subsequent appointment the appellate authority in respect of such order, an appeal against such order, shall lie to the Central Government and the Central Government in relaxation to that appeal shall be needed to be the appellate authority for the purpose of this regulation.

21. ORDERS AGAINST WHICH APPEAL LIES:

Subject to the provisions of regulations, an employee may prefer an appeal against all or any of the following orders, namely;

- i) an order of suspension made or deemed to have been made under Regulation-7;
- ii) an order imposing any of the penalties specified in Regulation-8, whether made by the disciplinary authority or by any

- appellate or revising authority;
- iii) an order enhancing any penalty, imposed under Regulation 8;
 - iv) An order which -
 - a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service, as regulated by regulations or by agreement; or
 - b) interprets to his disadvantage the provisions of any such regulation or agreement.
 - v) an order —
 - a) stopping him at the efficiency bar in the time scale of pay on the ground of his unfitness to cross the bar;
 - b) reverting him while officiating in a higher service, grade or post, to a lower service, grade or post, otherwise than as a penalty;
 - c) reducing or withholding the pension or denying the maximum pension admissible to him under the Regulations;
 - d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;
 - e) determining his pay and allowances -
 - i) for the period of suspension, or
 - ii) for the period from the date of his dismissal, removal or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time scale or stage in a time scale of pay to the date of his reinstatement or restoration to his service, grade or post, or
 - f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal, compulsory retirement or reduction to a lower service, grade, post, time scale of pay or stage in a time scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.

EXPLANATION: In this regulation

- i) the expression "employee" includes a person who has ceased to be in a Board's service;

- ii) the expression 'pension' includes additional pension gratuity and any other retirement benefit.

22. PERIOD OF LIMITATION FOR APPEALS:

No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of forty five days from the date on which a copy of the order appealed against is delivered to the appellant;

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

23. FORM AND CONTENTS OF APPEALS:

- 1) Every person preferring an appeal shall do so separately and in his own name.
- 2) (a) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against;
(b) The appeal shall contain all material statement and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be completed in itself.
- 3) The authority which made the order appealed against shall on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay and without waiting for any direction from the appellate authority.

24. CONSIDERATION OF APPEAL:

In the case of an appeal against an order of suspension the appellate authority shall consider whether in the light of the provisions of Regulation 7 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

- 2) In the case of an appeal against an order imposing any of the penalties specified in Regulation 8 or enhancing any penalty imposed under the said Regulation, the appellate authority shall consider -
 - a) Where the procedure laid down in these regulations has been complied with, and if not, whether such non-compliance has resulted in the failure of justice;

- b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and
- c) whether the penalty or enhanced penalty imposed is adequate, in adequate or severe:

and pass orders –

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

Provided that –

- i) The Government shall be consulted in all cases where such consultation is necessary;
 - ii) if such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clause (vi) to (x) of Regulation 8 and an inquiry under Regulation 10 has not already been held in the case, the appellate authority shall, subject to the provisions of Regulation 15, itself hold such inquiry or direct that such inquiry be held in accordance with the provision of Regulation 10 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit;
 - iii) “if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clause (v) to (ix) of Regulation – 8 and an enquiry under Regulations – 10 has been held in the case, the appellate authority will make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty”.
 - iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of Regulation-12, of making a representation against such enhance penalty.
- 3) In an appeal against nay other order specified in Regulation 19 to 21, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

25. IMPLEMENTATION OF ORDERS IN APPEAL:

The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

PART-VII
REVISION AND REVIEW

26. **REVISION:**

- (1) Notwithstanding anything contained in these regulations:
 - (i) the Central Government; or
 - (ii) the Chairman, as appellate authority within 6 (six) months of the date of the order proposed to be revised may at any time, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these Regulations or under regulations repealed by Regulation 30, from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Central Government where such consultation is necessary, and may
 - (a) Confirm, modify or not aside the order; or
 - (b) confirm, reduce enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
 - (c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
 - (d) Pass such other orders as it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the employee concerned has been given a reasonable opportunity of making representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clause (vi) to (ix) of Regulation-8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses and if an inquiry under Regulation-10, has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in Regulation-10 subject to the provisions of Regulation-15, and except after consultation with the Central Government where such consultation is necessary.

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

27. REVIEW:

The Central Government/Chairman may, at any time, either on his own motion or otherwise review any order passed under these regulations when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought to his notice.

Provided that no order imposing or enhancing any penalty shall be made by the Central Government/Chairman unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Regulation 8, or to enhance the minor penalty imposed by the order sought to be reviewed to any of the Major penalties and if an inquiry under Regulation 10, has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Regulation 10, subject to the provisions of Regulation 15, and except after consultation with the Central Government where such consultation is necessary.

PART VIII - MISCELLANEOUS

28. SERVICE OF ORDERS & NOTICES:

Every order, notice and other process made or issued under these Regulations shall be served in person of the employee concerned or communicated to him by registered post.

29. POWER TO RELAX TIME LIMIT AND TO CONDONE DELAY:

Save as otherwise expressly provided in these Regulations, the authority competent under these regulations to make any order may, for good and sufficient reasons or if a sufficient cause is shown, extend the time specified in these regulations for anything required to be done under these regulations or condone any delay.

30. SUPPLY OF COPY OF GOVERNMENTS ADVICE:

Whenever the Government is consulted as provided in the Regulations a copy of the advice by the Government and where such advice has not been accepted also brief statement of the reasons for such non acceptance, shall be furnished to the employee concerned along with a copy of the order passed in the case, by the authority making the order.

31. REPEAL:

(1) On the commencement of these regulations, the Visakhapatnam Port Employees; (Classification, Control & Appeal) Regulations 1964 and any notifications or orders made thereunder shall stand repealed.

PROVIDED THAT

- a) Such repeal shall not affect the previous operation of the said regulations, or any notification or order made thereunder of anything done or any action taken thereunder:
 - b) any proceeding under the said regulations pending at the time of commencement of these regulations shall be continued and disposed of as far as may be in accordance with the provisions of these regulations, as if such proceedings were proceedings under the regulations.
- (2) An appeal pending or preferred after commencement of these regulations against an order made before such commencement shall be considered and orders thereon shall be passed, in accordance with these regulations as if such orders were made and the appeals were preferred under these Regulations.

32. REMOVAL OF DOUBTS:

Where a doubt arises as to whether any authority is subordinate or higher than any other authority or as to the interpretation of any of the provisions of these regulations, the matter shall be referred to the Board for its decision.

NOTE

PRINCIPAL REGULATIONS

'SCHEDULE'

S.No.	Description of post	Appointing Authority	Authority competent to impose penalty	Nature of penalty	Appellate Authority
1.	2.	3.	4.	5.	6.
I	Posts covered by clause (a) of sub-section-1 of Section 24 of MPT Act, 1963	Central Government after consultation with the Chairman	Chairman Central Govt.	(i) to (v) Minor Penalties All	Central Govt. Central Govt.
II	Class-I posts, other than those covered by clause (a) of Sub-Section (1) of Section 24 of MPT Act, 1963	Chairman	Deputy Chairman Chairman	(i) to (v) Minor Penalties All	Chairman. Central Govt.
III	Class II	Chairman	Dy. Chairman Chairman	(i) to (v) All	Chairman Central Govt.
IV	Class III	a) Head of Department b) In cases, where there is no Head of the Dept.	Head of Department Deputy Chairman	All All	Deputy Chairman Chairman
V	Class IV	a) Head of Department b) In cases, where there is no Head of the Dept.	Head of Department Deputy Chairman	All All	Deputy Chairman Chairman

(F No.PR-12016/20/2002-PE-I)

R.K. JAIN, Jt. Secy.

Foot Note: The Principal Regulations were published in Rules supplement to Part-II of AP Gazette dt.29-8-68

- (a) Rules supplement of Part-II of AP Gazette - 8-5-69
- (b) Rules supplement of Part-II of AP Gazette - 5-2-70
- (c) Rules supplement of Part-II of AP Gazette - 4-3-71
- (d) Rules supplement of Part-II of AP Gazette - 23-1-75
- (e) Rules supplement of Part-II of AP Gazette Extraordinary' - 1-2-75
- (f) GSR No.1623 - 26-11-77
- (g) GSR No.654 - 21-4-79
- (h) GSR No.1261 (E) - 5-12-86
- (i) GSR No.201 (E) - 3-4-91
- (j) GSR No.659 (E) - 23-8-94
- (k) GSR No.160 (E) - 19-3-97
- (l) GSR No.110 (E) - 15-2-99
- (m) GSR No.132 (E) - 16-2-200