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**BROCHURE
ON
CONSULTATION WITH THE U.P.S.C.**

Vol. I

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CORRIGENDUM

<u>REFERENCE</u>	<u>FOR</u>	<u>READ</u>
Page 24 - 2nd line in para 63(1)	making of any disciplinary case	making of any order in any disciplinary case
Page 26 - 4th line in para 65(b)	is the pensioner is convinced	if the pensioner is convicted

PREFACE

The functions of the Union Public Service Commission are laid down in Article 320 of the Constitution of India. Apart from the matters on which the Constitution prescribes consultation with the Commission, there are certain other matters too which, by convention, require consultation with them. The procedure for consultation with the Commission in regard to all these matters is laid down in a large number of orders and instructions issued from time to time, particularly during the last two decades or so. The need for a brochure, which describes briefly the matters on which the Commission are required to be consulted by Government and the procedure to be adopted for such consultation has been felt for some time. This brochure, which is in the nature of a digest of the more important orders and instructions on the subject, together with the relevant provisions of the Constitution and the Union Public Service Commission (Exemption from Consultation) Regulations 1958, is intended to meet that need. The brochure comprises two parts, volume I containing the digest and volume II the Annexures. The brochure is intended to serve as a handy guide and should not be quoted as an authority.

RAJENDRA LAL

Secretary,

Union Public Service Commission

BROCHURE ON CONSULTATION WITH THE U.P.S.C.

I. General

1. The Union Public Service Commission are a statutory body constituted under Article 315 of the Constitution. Their functions fall broadly under two categories, namely, (i) the provisions of the Constitution and the Acts, Rules and Regulations made thereunder, and (ii) the conventions and special orders issued by Government. This Brochure describes briefly the functions of the Commission, the types of cases in which they are required to be consulted and the procedure to be adopted for consultation on different matters.

II. Statutory Functions of the Commission

2. The Statutory functions of the Commission are laid down in Article 320 of the Constitution, a copy of which is contained in the extracts from the Constitution appended at Annexure I. Under the proviso to clause (3) of that Article, the President has framed the Union Public Service Commission (Exemption from Consultation) Regulations 1958 specifying the matters in which either generally, or in any particular class of cases or in any particular circumstances, it shall not be necessary for the Commission to be consulted. A copy of these Regulations as amended up-to-date is appended at Annexure II.

3. The functions of the Commission as laid down in the said Article 320 relate to the following matters:—

- (1) To conduct examinations for appointment to the services of the Union.
- (2) If so requested by any two or more States, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
- (3) The Commission shall be consulted:
 - (a) on all matters relating to methods of recruitment to civil services and for civil posts;

- (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
- (c) on all disciplinary matters affecting a person serving under the Government of India in a civil capacity, including memorials or petitions relating to such matters;
- (d) on any claim for re-imbusement out of the Consolidated Fund of India by or in respect of a person who is serving/ has served under the Government of India in a civil capacity, of any cost incurred in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty;
- (e) on any claims for the award of a pension in respect of injuries sustained by a person while serving under the Govt. of India in a civil capacity, and on any question as to the amount of any such award; and
- (f) on any other matter, which the President may refer to the Commission.

Consultation with the Commission on the above matters is obligatory except to the extent specified in the U.P.S.C. (Exemption from Consultation) Regulations 1958, *as amended from time to time*.

4. The Commission are not required to be consulted (cf. Article 320(4) of the Constitution) as respects the manner in which any provision for the reservation of appointments or posts in favour of Backward Classes, referred to in clause (4) of Article 16 may be made, or as respects the manner in which effect may be given to the provisions of Article 335 relating to the claims of the members of the Scheduled Castes and the Scheduled Tribes in the making of appointments to Services and posts in connection with the affairs of the Union.

5. Under Article 321 of the Constitution an Act made by Parliament may provide for the exercise of additional functions by the Union Public Service Commission as respects the Services of the Union and the Services of any local authority or other body corporate constituted by law or of any public institution. The functions of the Commission have been extended to certain categories of posts under the Employees' State Insurance Corporation, the Delhi Municipal Corporation and the Employees' Provident Fund Organisation under the relevant Acts made by Parliament in pursuance of the provisions of Article 321, namely, the Employees' State Insurance Act 1948, the Delhi Municipal Corporation Act 1957 and the Employees' Provident Fund Act 1952 respectively. Relevant extracts from these Acts may be seen at Annexure III.

6. The Statutory functions of the Commission also extend to the following:—

- (i) Matters in which the Commission are required to be consulted under the provisions of rules and regulations made under the All India Services Act, 1951, and

- (ii) Matters in which the Commission are required to be consulted in accordance with any rules made by the President under the authority conferred on him by the Proviso to Art. 309 of the Constitution.

The matters at (i) and (ii) above have not been described in detail in this pamphlet and a reference may be made to the relevant rules and regulations for guidance.

III. Functions of the Commission established by Convention or by Special Orders of the Government.

7. The Commission are required to be consulted by convention or by special orders in the following matters:

- (1) Proposals for amending the U.P.S.C. (Exemption from Consultation) Regulations.
[Home Dept. No. 33/46-Ests(R) dated 17-6-46.]
- (2) Proposals for upgrading a Class III post or downgrading a Class II post, recruitment to which was made without consulting the Commission.
[MHA O.M. No. 18/45/51-Ests. dated 29-9-51.]
- (3) Association of the Chairman or a Member of the Commission with the Departmental Promotion Committees constituted for considering promotions by selection to and within Class I Services/posts and to certain Class II Services/posts or for considering confirmation of officers (whether direct recruits or promotees) in Services and posts, recruitment to which falls within the purview of the Commission except in the case of confirmation of officers in Class II Services/posts recruitment to which is made entirely by promotion from the lower grade in accordance with the recruitment rules and the Commission are not associated with the D.P.Cs. for promotion to such Services/posts.
[H.D. O.M. No. 33/46-Ests(R) dated 17-6-46 & MHA OM No. 1/9/58-RPS dated 16-5-59 & Nos. 1/14/63-Ests(D) dated 23-11-63 and 20-1-64]
- (4) Recognition of educational qualifications for purposes of employment under Government.
[MHA O.M No. 32/10/49-Ests. dated 24-6-49.]
- (5) Cases in which the Central Government propose to take action against an officer of the All India Services under any of the

provisions of Rules 3, 6, 7 and 20 of the All India Services (Death-Cum-Retirement Benefits) Rules.

[MHA letters No. 1/4/55-AIS III dated 24-8-58, No. 12/13/60-AIS(II) dated 28-11-60 & No. 29/20/63-AIS(II) dated 5-8-65.]

- (6) Where the President proposes to pass an order, original or appellate, or in exercise of his powers of review, granting a pension less than the full invalid pension to an officer compulsorily retired under the provisions of Art. 353 AA of the Civil Service Regulations.

[MHA O.M. No. 18/8/62-Ests(B) dated 26-8-64.]

- (7) Where it is proposed to compulsorily retire an officer under Art. 353 A or under Note 1 to Article 465-A of the Civil Service Regulations.

[MHA O.M. No. 18/18/48-Ests. dated 20-8-49.]

- (8) Where the President proposes to pass an order, whether original or appellate, awarding a pension including a special additional pension less than the maximum admissible under the rules in exercise of the powers conferred by Art. 470(b) or 475 of the Civil Service Regulations or under Rule 2534 or 2540 of the Railway Establishment Code Vol. II

[Home Deptt. O.M. No. F. 195/37-Ests, dated 20-9-37 & MHA O.M. No. 18/18/48-Ests, dated 20-8-49.]

- (9) Where the President proposes to make a reduction in the Special Contribution to the Provident Fund of a Railway Officer on his retirement under Rule 1314(4) of the Railway Establishment Code Vol. I.

[Rly. Dept. No. E. 40 Pu.29(2) dated 17-9-40.]

- (10) Assisting the Ministry of Defence by holding examinations for recruitment to some of the Defence Services.

- (11) Association of the Chairman or a Member of the U.P.S.C. with the Special Recruitment Board for making selections for the Scientists' Pool.

[Govt. of India, Ministry of Home Affairs Resolution No. 8/4/57-MP dated 14-10-1958.]

Apart from the specific matters referred to above or any other matter for which a provision for consultation with the Commission has been made in the relevant rules and regulations made in consultation with the Commission, no reference should be made to the Commission by any Ministry/Department without first obtaining the concurrence of the Department of Personnel and in cases involving financial considerations also of the Ministry of Finance.

8. The following paras describe briefly the procedure for consultation with the Commission on different matters. The authority for the matter contained in this Brochure will be found in the relevant references quoted thereunder.

PROCEDURE FOR CONSULTATION WITH THE COMMISSION

IV. General

9. It should first be examined whether on any matter under consideration consultation with the Commission is necessary or not in terms of statutory requirements, or by convention or in accordance with any extant orders.

[MHA. O.M. No. 18/18/48-Ests. dated 20-8-49.]

10. All references on matters where consultation with the Commission is obligatory should be made to the Commission by the administrative Ministry/Department concerned in the form of a self-contained official letter, with which all relevant papers or copies of papers should be forwarded. U.O. reference should not be made to the Commission. Heads of Attached and Subordinate offices, to whom powers to make appointments are delegated, may correspond with the Commission on matters relating to recruitment/promotion to the posts for which they are the appointing authorities.

[MHA O.M. No. 18/18/48-Ests dated 20-8-49, MHA O.M. No. F. 18/1/59-Ests(B) dated 24-2-59.]

11. The Commission have the right to call for any information which may be required by them in the discharge of their functions.

[Home Deptt. No. 33/46-Ests(R) dated 17-6-46]

12. In all matters where consultation with the Commission is necessary, an officer of the Ministry not below the rank of a Deputy Secretary should in the first instance discuss the matter personally with the Secretary of the Commission or his nominee. In case of recruitment to posts requiring technical or specialised qualifications, the technical experts of the Ministries could also with advantage participate in such discussions.

[MHA O.M. No. 18/20/54-Ests(B) dated 8-9-54, MHA. D.O. No. F. 31(7)-E.O./55 dated 12-3-55, MHA O.M. No. 18/2/63-Ests(B) dated 18-1-63.]

V. Appointments which may be made without consulting the Commission—Clarifications and Safeguards.

13. It is not necessary to consult the Commission in respect of the matters mentioned in sub clauses (a) and (b) of clause 3 of Article 320 of the Constitution in the case of the services and posts specified in the Schedule to the U.P.S.C. (Exemption from Consultation) Regulations.

14. According to Regulation 3 *ibid*, save as otherwise expressly provided in the rules governing recruitment to Civil Services and Civil posts concerned, it is not necessary to consult the Commission in regard to the selection for appointment:

- (a) to a post included in an All India Service, of an officer who is already a member of an All India Service;
- (b) to a post included in a Central Service Class I, of any officer in the Armed Forces of the Union or any officer who is already a member of an All India Service or a Central Service Class I;
- (c) to a Central Service Class II, or to a post included in a Central Service Class II, of any officer who is already a member of a Central Service Class II, or Central Service Class III, or of any officer in the Armed Forces of the Union; and
- (d) to a tenure post included in a Central Service Class I, or a Central Service Class II, of an officer of a State Service.

In regulation 3 referred to above—

- (i) the terms 'Central Service Class I', 'Central Service Class II' and 'Central Service Class III' include the corresponding Railway Services and Defence Services (Civilian);
- (ii) the term 'officer' includes a person holding a permanent or quasi-permanent appointment, but does not include a person in temporary employment;
- (iii) the term 'State Service' means Service in a State, appointments to which are made by the Governor;
- (iv) the term 'tenure post' means a post, whether permanent or temporary, which has been classified as a tenure post in consultation with the Commission.

15. Appointments to Civil posts and Services can be made without consultation with the Commission in terms of Regulation 3 cited above, only if (a) the method of recruitment to such posts and Services has been settled in consultation with the Commission and (b) the method of recruitment thus settled provides for appointments of the types covered by this Regulation without consultation with the U.P.S.C. If the method of recruitment to a post or Service has not been determined in consultation with the Commission, the provisions of regulation 3 are not applicable.

[MHA. No. 18/10/58-Ests(B) dated 9-1-59.]

16. According to Regulation 4 of the U.P.S.C. (Exemption from Consultation) Regulations, it is not necessary to consult the Commission in regard to the selection for a temporary or officiating appointment to a post if—

- (a) the person appointed is not likely to hold the post for a period of more than one year; and
- (b) it is necessary in the public interest to make the appointment immediately and a reference to the Commission will cause undue delay.

Provided that—

- (i) such appointment shall be reported to the Commission as soon as it is made;
- (ii) if the appointment continues beyond a period of six months, a fresh estimate as to the period for which the person appointed is likely to hold the post shall be made and reported to the Commission; and
- (iii) if such estimate indicates that the person appointed is likely to hold the post for a period of more than one year from the date of initial appointment, the Commission shall immediately be consulted in regard to filling of the post.

17. If it is known initially that the person appointed to a post is likely to hold the post for more than one year, it would be irregular to make the initial appointment without consulting the Commission. Regulation 4 is intended to facilitate *short term* appointments, without the delays which may be involved in recruitment through the Commission by open advertisement. So the recruitment should be entrusted to the Commission if in any such case it is proposed to make a selection for a short-term appointment after open advertisement, since the process of advertisement and selection by a Ministry/Department cannot be expected to take less time than advertisement and selection by the Commission. Even in respect of short term vacancies for periods of less than one year, appointing authorities should find out before making actual appointments whether the Commission have any candidates in reserve considered suitable for the post and if such candidates are recommended by the Commission, they should be appointed in preference to others

[MHA. No. 18/18/48-Ests. dated 20-8-49.]

18. Unless any newly created posts are covered by the existing recruitment rules or instructions framed in consultation with the Commission, the Commission should be consulted as to the method by which such posts are to be filled. In the absence of recruitment rules laying down definite mode(s) of recruitment for a post, the normal procedure should be to fill the post by competitive selection through the Commission. In a case where, for some unavoidable reason, delay is anticipated in finalising the recruitment rules for a post, recruitment for that post should be entrusted to the Commission as soon as the post is sanctioned and it is decided to fill it.

[Home Deptt. O.M. No. 12(6)/46-Ests. dated 16-8-46 & MHA O.M. No. 23/27/68-Ests.(B), dated 26-12-68.]

The posts which fall within the purview of the Commission should be filled regularly in the very first instance and *ad hoc* appointments made only in exceptional or unavoidable circumstances. In the case of vacancies arising due to retirement of officers it should be possible for the Ministries/Departments to anticipate such vacancies well in advance of the date of retirement of officer and to fill the vacancy in accordance with the relevant recruitment rules for the posts, and in consultation with the U.P.S.C. where such consultation is necessary under the Regulations, or to entrust recruitment for the post to the Commission where direct recruitment is the only mode of recruitment prescribed for the post. If the procedure outlined above is followed by the Ministries/Departments, it will

not be necessary to continue *ad hoc* arrangements/re-employments in posts under Regulation 4(1). Similarly, in the case of vacancies arising due to promotion or transfer of officers to other posts, action to fill the vacancies in accordance with the Recruitment Rules and in consultation with the Commission, where necessary, should be initiated by the Ministries/Departments immediately after the vacancies arise. In cases where *ad hoc* appointments, pending filling up of the posts on a regular basis, are unavoidable, the conditions laid down under Regulation 4(1) should be strictly complied with by the appropriate authority. All proposals to be referred to the Commission for *ad hoc* appointments should invariably be accompanied by full particulars in the *pro forma* prescribed for the purpose as at Annexure V.

[M.H.A. O.M. No. 23/27/68-Ests.(B) dated 26-12-68.]

19. Even while making *ad hoc* appointments, pending regular appointments through the Commission, the Ministries/Departments should as far as possible adhere to the qualifications etc. prescribed for the post in the relevant Recruitment Rules, so that cases do not arise where persons thus appointed cannot even be considered for being called for interview by the Commission on the ground that they do not possess the requisite qualifications and experience.

[Ministry of Home Affairs O.M. No. 4/7/68-Estt.D dated 10-4-1969.]

20. The question whether consultation with the Commission in making appointments or recruitment is necessary or not depends in many cases on the classification of a post. It is, therefore, necessary to classify every post as soon as it is created. It should be noted that the mere fact that a post has not been formally classified is in itself not sufficient authority to dispense with consultation with the U.P.S.C. in making appointment thereto. In such a case the classification of the post may be assumed, by comparison with any similar posts which have already been classified and the question, whether consultation with the Commission is necessary, decided on that basis.

[MHA. O.M. No. 18/18/48-Ests dated 20-8-49.]

21. A convention has been established that the Commission should be consulted on all proposals for upgrading a Class-III post or down-grading a Class-II post, to which recruitment has already been made without consulting the Commission. When the Commission are addressed for their concurrence for upgrading a Class-III post to Class-II, reference should simultaneously be made to them for the assessment of the suitability of the incumbent(s) of the Class-III post(s) for appointment to the upgraded Class-II post(s) and such reference should be accompanied by the seniority list(s) and up-to-date Character Roll(s) of the incumbent(s) of the Class-III post(s) to enable the Commission to tender their advice.

22. The Ministries/Departments of the Government are required to furnish the Commission with monthly returns of all appointments made by them to Class-I and Class-II Central Services and posts. The returns are to be submitted to the Commission in the form at Annexure IV by the 20th of every month in respect of such appointments made in the preceding month. The attached and subordinate offices are required to send their

returns to the Ministry concerned in the first week of every month to enable the latter to send a consolidated return to the Commission by the due date. If there are no such appointments in a particular month, a 'NIL' report should be sent for that month by the prescribed date to the Commission.

[Home Deptt. O.M. No. 12/9/46-Ests. dated 24-7-46, MHA. O.M. No. 23/27/68-Ests(B), dated 26-12-68.]

23. A list of all appointments made from time to time in the Ministry/Department (including attached and subordinate offices) without reference to the Commission should be kept in the Coordinating Section of the Ministry/Department concerned on the basis of the returns sent to the Commission and this list should be reviewed by an officer *not lower in rank than that of a Joint Secretary* by the 25th of every month and action taken immediately thereafter to consult the U.P.S.C. wherever it is necessary to do so under the rules. Each Ministry/Department should undertake a review of all appointments made under Regulation 4(1) of the U.P.S.C. (Exemption from Consultation) Regulations 1958, immediately after three months from the date of appointment, complete the review within a period of six months from the date of appointment and make a reference to the Commission under the proviso to the said Regulations if the appointment continues or is likely to continue beyond a period of six months.

[MHA. O.M. No. 23/27/68-Ests.(B), dated 26-12-68.]

24. Cases of delayed references to the Commission regarding temporary appointments and appointments which are irregular *ab initio* should be properly investigated and responsibility for the lapses determined, so that action can be taken against the persons responsible for disregarding statutory requirements. In cases where doubts arise whether any appointments/promotions require consultation with the Commission, the Department of Personnel should be consulted for advice.

[MHA. O.M. No. F. 23/24/63-Ests(B) dated 10-4-64.]

VI. Recruitment Rules

25. Under the provision of Art. 320(3) (a) & (b) of the Constitution, the Commission are required to be consulted on all matters relating to the methods of recruitment to civil services and to civil posts and on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another. The methods of recruitment and principles of appointments, promotions and transfers as decided in consultation with the Commission are known as the 'Recruitment Rules'. Such rules are notified in the Gazette under the authority vested in the President by the proviso to Article 309 of the Constitution

26. It is not necessary to consult the Commission in framing the recruitment rules for the services and posts specified in the Schedule to the U.P.S.C. (Exemption from Consultation) Regulations. For all other posts and services including those to which appointments may be made without consulting the Commission under the provisions of Regulation 3, Recruitment Rules should be framed in consultation with the Commission.

[MHA. O.M. No. 18/10/58-Ests.B. dated 9-1-59.]

27. Recruitment Rules may be framed for individual categories of posts separately or for groups of posts constituted into services or cadres. In the case of individual categories of posts or hierarchy of posts, self-contained proposals for the framing of Recruitment Rules should be sent to the Commission, together with the draft Recruitment Rules in the *pro forma* at Annexure VI and the detailed particulars in the *pro forma* at Annexure VII. Framing of Recruitment Rules for any category of posts generally involves examination of the recruitment rules, if any, framed for the posts which are proposed to be included in the field of promotion/transfer/deputation and for the higher posts in the hierarchy. While making proposals for the Recruitment Rules, information in this regard should invariably be given to the Commission. If Recruitment Rules have not been framed for such posts and the higher posts, a descriptive account of the methods and principles actually followed in filling such posts may be furnished to the Commission.

28. With a view to reducing the time taken in the finalisation of recruitment rules for Services/posts, the following procedure is to be followed by the administrative Ministries/Departments:

- (a) As soon as a decision is taken to create a new Service/post, action should be taken immediately by the Administrative Ministry/Department concerned to frame a draft of the recruitment rules therefor and to refer the same to the Department of Personnel for clearance in the *pro formae* at Annexures VI and VII.
- (b) After obtaining clearance from the Department of Personnel, the Administrative Ministry/Department should discuss the proposals with the Commission's Secretariat and then refer the draft rules (Annexure VI) immediately to the Commission along with the information as in the *pro forma* prescribed (Annexure VII).

Ordinarily, the draft Recruitment Rules, when referred by the Administrative Ministries/Departments to the Department of Personnel, will be returned by the latter with their comments *within a month* from the date of reference to them, or if special circumstances of a case require more time for scrutiny/discussion, the Administrative Ministries/Departments will be requested to discuss the case. Otherwise, after the period of one month, that Ministry/Department can presume the

concurrence of the Department of Personnel and proceed further as stated above.

- (c) Where the procedure for consultation with the Commission has been correctly followed and the information necessary for the consideration of such proposals has been fully given, it would ordinarily be possible for the Commission to convey their advice within four or five weeks. If the Commission's advice on the draft recruitment rules is not received within this period, the representative of the Administrative Ministry/Department should discuss the matter personally with the officer concerned in the Commission.
- (d) The procedure described above applies also to the proposals for amending the approved recruitment rules. Such proposals should be sent to the Commission along with the information as in the *pro forma* prescribed (Annexure VIII).

[MHA. O.M. No. 20/3/67-Ests.(D) dated 11-8-1967.]

29. Recruitment Rules for services/posts, as approved by the Commission are required to be notified in the Gazette by Ministries/Departments within 4 weeks from the date of the Commission's letter of approval.

[MHA. O.M. No. 2/61/69-Estt.(D), dated 13-8-69.]

VII. Direct Recruitment

A. General

30. Direct Recruitment is conducted by the Commission by two methods—(a) by Competitive Examination, (b) by Selection through interview. Recruitment by competitive examination may comprise written examination, with or without Personality Test/*Viva Voce*/Mechanical Aptitude Test/Stenography Test/Evaluation of Record of Service. Recruitment by selection through interview may in certain cases include a practical test.

B. Direct Recruitment by Competitive Examination

31. The Commission conduct competitive examinations for the purpose of recruiting candidates to the various All India and Central Civil Services and posts. The examinations are held by the Commission

in accordance with the rules notified by the Government of India in the Ministry concerned. The examination rules are based on the provisions contained in the statutory Service Rules/Recruitment Rules notified by Government in respect of the concerned Services/posts, or the provisions contained in the relevant Service Schemes, etc. Under a special arrangement with the Ministry of Defence, the Commission also conduct certain examinations for the Defence Services. The names and brief particulars of the open competitive examinations conducted by the Commission are given in the "Hand book of Examinations conducted by the U.P.S.C.", published by the Commission.

32. The conduct of a large number of examinations during each calendar year necessitates advance planning and very detailed programming. An annual programme of examinations to be held during a year is drawn up by the Commission in advance, with due regard to all relevant considerations. These include the need for ensuring a certain periodicity of the examinations, the dates of commencement of the training programmes for the selected candidates (wherever these are organised), the availability of accommodation for holding the examinations at the various centres all over India, and other commitments of the Commission which have increased considerably over the years.

It is, therefore, necessary for the various administrative authorities recruiting candidates through the Commission's examinations to plan their manpower requirements in advance and to intimate these to the Commission well in time to enable them to take all necessary steps to hold the concerned examinations.

33. It is the responsibility of the Government in the Ministry concerned to prepare draft rules for the examinations but in the larger public interest to avoid delay, the Commission may themselves prepare the necessary drafts and refer them to Government for their comments. The Ministries/Departments to whom the draft rules are referred do not always send their comments in time; and sometimes while sending their comments, they also make proposals involving changes in the conditions of eligibility of candidates, etc. at a late stage. As these matters require careful examination, such cases naturally tend to upset the schedule of the examination, with repercussions on the schedule of other examinations. It is, therefore, essential that the draft rules/comments on the draft rules for the examination should be referred to the Commission for their advice in time; it also follows that proposals, if any, for making changes in the conditions of eligibility etc. in respect of any particular examination, should be referred to the Commission for their consideration well in time. Before doing so, such proposals should invariably be discussed with the Commission's Secretariat with a view to ascertaining whether it would be feasible to consider those proposals for the examination concerned, without delaying the scheduled date for the notification of the rules.

34. It is essential that in the matter of all recruitments, and particularly those through competitive examinations, the appointing authorities should plan their man-power needs well in advance of their actual requirements, with due regard to all relevant considerations, including

inter alia the period of training of the recruits before they become available for actual posting. The following instructions are to be observed by all the Ministries/Departments in this behalf so far as recruitment through competitive examinations held by the Commission is concerned.

- (a) The Ministries/Departments making recruitment through competitive examinations held by the Commission should assess carefully the number of vacancies required to be filled during a particular recruitment year, with due regard to all relevant considerations, including the vacancies likely to occur as a result of retirements, promotions etc. and to report these to the Commission in time for being notified by them in their Notice for the information of prospective candidates so that, as far as possible, the necessity of taking more or less candidates than originally notified does not arise.
- (b) Any vacancies arising thereafter but before the results of the examination are announced by the Commission should be intimated forthwith to the Commission. In other words, firm requirements are required to be reported to the Commission well before the results are announced.
- (c) Once the results are published, additional persons should not normally be taken till the next examination, nor should vacancies reported before the declaration of the results be ordinarily withdrawn after the results have been declared. If, however, some of the candidates recommended/allotted for appointment against the specific number of vacancies reported in respect of a particular examination do not become available for one reason or another, the Commission may be approached within a reasonable time with request for replacements from reserves, if available. When replacements may not be available, the vacancies that remain unfilled should be reported to the Commission for being filled through the next examination.

[MHA. O.M. No. 23/11/67-Estt.B, dated 14-7-1967.]

C. Direct Recruitment by Selection

35. When direct recruitment by the method of recruitment by selection is proposed to be made, a requisition in the prescribed form U.P.S.C. 33 (Annexure IX) should be placed with the Commission by the appointing authority. On the basis of such requisitions, the Commission start their process to make selections for the posts.

[U.P.S.C. letter No. F.6/2(2)/70-R(C&P) dated 19-4-71.]

Whenever the Ministries/Departments etc. anticipate that their activities in a particular field have been expanding and that the personnel requirements therefor are likely to be heavy, they should plan their personnel requirements carefully in order to avoid sporadic heavy requirements.

[MHA. O.M 23/38/68-Estt(B) dated 13-3-69.]

36. At the time of placing requisitions with the Commission, the requisitioning authorities should satisfy themselves *inter alia* on the following points:—

(a) If recruitment rules for the posts in question were framed in consultation with the Commission—

(i) A requisition should be placed on the Commission only if direct recruitment, otherwise than through a Competitive Examination, is prescribed as a method of recruitment for the posts; if a percentage of vacancies are to be filled by this method, the vacancies in question should fall in the relevant quota.

(ii) If direct recruitment is prescribed as a residuary method of recruitment, a requisition should be placed if the prior methods of recruitment prescribed in the rules, like deputation, promotion etc., have been tried and have failed.

(iii) The age limits, qualifications etc. proposed in the requisition should be in accordance with those laid down in the prescribed recruitment rules.

(b) If recruitment rules for the posts have not been framed in consultation with the Commission or if the recruitment is proposed to be made in a manner which departs in any respect from the provisions prescribed in the recruitment rules, a requisition should be placed with the Commission after an officer of the Ministry, not below the rank of a Deputy Secretary, has discussed the proposals personally with the Secretary of the Commission or his nominee.

[M.H.A. O.M. No. 18/20/54-Ests(B) dated 8-9-54, MHA. D.O. No. 31(7)-E.O./55 dated 12-3-55; M.H.A. O.M. No. 18/2/63-Estt(B), dated 18-1-63; MHA. D.O. No. 24/15/65-M.P. dated 28-10-65; UPSC Circular letter No. 2/58/65-RA dated 17-10-66; MHA O.M. No. 23/37/68-Estt(B) dated 23-10-68.]

(c) The orders of Government issued in connection with reservation of posts for certain Communities (or for certain categories of persons) should be carefully borne in mind and requisitions should clearly indicate whether any of the posts are reserved, and if so, for whom they are reserved, and whether the posts may be treated as unreserved in case the Commission are unable to find suitable persons of the Communities (or categories) for whom the posts are reserved.

(d) The requisitions for recruitment should be carefully drafted by Ministries/Departments, so that they are completely free from ambiguity, particularly regarding qualifications for the post.

[MHA. O.M. No. 23/37/68-Estt.(B) dated 23-10-68.]

- (e) Any additional requirements should be intimated to the Commission in the prescribed requisition (*Pro forma 'UPSC. 33'*)—inviting a reference to the earlier requisition on the subject, if any.

[MHA O.M. No. 23/101/68-Ests(B) dated 21-3-69.]

- (f) All Ministries/Departments/Public Sector Undertakings etc. should take decision expeditiously in regard to the forwarding to the Commission or withholding of applications submitted by persons working under them in response to Union Public Service Commission's advertisements well before the prescribed closing date, and in any case, where it is decided to forward them, it should be ensured that the applications reach the Commission's Office not later than 15 days after the closing date prescribed for receipt of applications. The Indian Missions abroad will give timely and adequate publicity to the Commission's advertisements in order to ensure that applications from interested candidates are received in India before the prescribed closing date for receipt of applications from overseas candidates.

[U.P.S.C. Circular letter No. F. 2/80/66-RA dated 10-8-66; MHA's O.M. No. 8/1/68-Ests (C) dated 25-10-68; M/E.A. Circular letter No. XPP/3022(44)/68 dated 16-9-68 M/E.A. Circular letter No. XPP/3022/44/68 dated 10-6-69.]

37. The Ministries/Departments should watch carefully the progress of cases in respect of which requisitions have been sent to the Commission and to intimate to them, well in advance, the factors, if any, which may necessitate cancellation of requisitions. In all cases of cancellation of requisitions, the Ministries/Departments should communicate to the Union Public Service Commission, in detail, the reasons for the cancellation, indicating at the same time as to why the attendant circumstances could not be foreseen at earlier stages. All relevant factors should be fully considered before requisitions are actually forwarded to the Commission and, thereafter requests for cancellation of recruitment should be confined to extremely rare cases where such a course is considered absolutely inescapable.

[MHA O.M. No. 21/23/62-Estt(B) dated 4-10-62; MHA O.M. No. 23/40/68-Estt(B), dated 7-11-68; MHA O.M. No. 21/1/70-Estt(B), dated 31-3-70.]

38. Temporary or officiating appointments to posts can be made without consultation with the Commission, if the provisions of Regulation 4 are satisfied. In cases where the posts, *though sanctioned for a short period*, are desired to be filled on the basis of open advertisement, the advertisement should be issued by the Commission and appointments made on their recommendation.

[MHA O.M. No. 18/7/47 dated 3-3-48.]

39. If a post has been advertised by the Commission on a definite scale of pay and if that scale undergoes a revision before the selected candidate has been offered the appointment, the fact of revision of the

time scale should be notified to the Commission to enable them to consider whether the post should be readvertised in order to secure a better qualified candidate or whether the selection already made by them would suffice. Further action should be taken in accordance with the advice of the Commission.

[MHA O.M. No. 18/5/49-Ests, dated 22-4-49.]

40. Ministries/Departments should, save in exceptional circumstances, depute only one representative, of the appropriate rank, to be present at the interviews to be conducted by the Union Public Service Commission in connection with the requisitions sent to them for recruitment. The Ministry/Department concerned may decide whether the representative should be an officer from the Secretariat of the Ministry/Department, a technical officer or some other duly qualified officer. The officer to be deputed for the purpose should not be below the rank of a Deputy Secretary; and he is expected to be well acquainted with the requirements of the post for which recruitment is to be made.

[MHA O.M. No. 23/54/68-Ests(B) dated 28-9-68.]

41. An important point which may be noted while making appointments of persons recommended by the Commission on the result of either their examination or direct selection is that departmental candidates who are considered eligible for the age concessions that may be admissible to them, will not be eligible for appointment if, after submitting the applications, they resign from service either before or after selection. Cases of such candidates should be brought to the notice of the Commission, where necessary.

[MHA O.M. No. 20/26/60-Estt(D) dated 17-5-61 and No. 20/26/60-Estt(D) dated 15-11-60.]

42. *Delayed offers of Appointment*—The Estimates Committees of the Parliament have, from time to time, adversely commented on the increased number of cases of delayed offers of appointment made to candidates recommended by the U.P.S.C. for appointment. The discussions on the Annual Reports of the Commission in the Parliament have also highlighted this aspect. In order to avoid inconvenience to candidates as also embarrassment to the Administration, the Ministries/Departments etc. are required to ensure that the offers of appointment are sent to the recommended candidates within three to four months of the receipt of the Commission's recommendations. Special watch needs to be kept in respect of those cases where the offers are not sent within the above specified period. In addition to the fortnightly review of such cases by the Head of Department or Joint Secretary concerned, a quarterly review statement is required to be submitted by the Head of Department and Joint Secretary concerned to the Secretary to the Department/Ministry in the prescribed proforma by 10th of the following month.

[MHA's O.M. No. 21/23/62-Ests(B) dated 4-10-62; MHA's O.M. No. 23/2/65-Ests(B) dated 11-2-65; MHA's O.M. No. 30/12/66-Ests(B) dated 15-9-66; MHA's O.M. No. 23/97/68-Ests(B) dated 26-2-69.]

The Department of Personnel will also review such cases after every six months on the basis of the particulars required to be furnished to them by the Ministries/Departments in the prescribed *pro forma*.

D. Follow-up of candidates recruited through the Commission

43. The Union Public Service Commission analyse the performance of the candidates selected by them through their Examinations and Selections, in order to ascertain how far their selection of candidates for the posts in question has been successful. For this purpose, assessment reports on the quality of work of persons recruited through the Commission are required to be prepared and sent to the Commission in the prescribed proforma vide copy at Annexure X for the first five years in case of persons recruited through examinations and for the first two years in case of persons recruited through direct selection.

The Assessment Reports should be prepared in the prescribed form and finally reviewed by the competent authority i.e. by an authority not lower than the appointing authority, and should be forwarded to the Commission regularly, without fail.

[M.H.A. O.M. Nos. 21/7/57-Ests(B) dated 30-10-57 and dated 14-12-57; MHA. O.M. No. 23/62/68-Est(B) dated 15-3-69 and No. 4/8/67-AIS (IV) dated 4-6-69; Deptt. of Personnel O.M. Nos. 23/12/71-Ests(B) dated 27-4-71 and 16/3/69-AIS(III) dated 15-9-71.]

VIII. Promotions

44. Under special orders issued by the Government extending the functions of the Commission, it is provided that Departmental Promotion Committees should be set up in each department to consider selection of officers for promotion to various selection posts and that:

- (i) the Commission should be invited to depute one of their Members to sit on all D.P.Cs, dealing with promotion to and within any Central Service Class I, and

[Home Deptt. ref. No. 33/46-Ests(R) dated 17-6-46.]

- (ii) in Central Civil Services Class II, association of UPSC is not necessary although Ministries may enquire of the Commission whether they can depute a Member.

[MHA O.M. No. 1/16/68-Estt(D) dated 30-8-69.]

45. Where a Member of the Commission is associated with and participates in any sitting of a D.P.C., he should be the President or Chairman for that sitting.

[MHA O.M. No. 17-4-48-Ests dated 4-11-50.]

46. Where promotions are made on the basis of seniority subject to the rejection of the unfit, the promotion should be referred to the Departmental Promotion Committee. But, a Member of the Commission need not be associated with the D.P.Cs. for assessing the suitability of officers (i) for promotion to such non-selection posts (ii) for retention in service beyond the age of 55 years.

[MHA O.M. No. 1/9/58-RPS dated 16-5-59; MHA O.M. No. 1/16/68-Estt(D) dated 30-8-69]

47. Proposals for convening a D.P.C. should be referred to the Commission only if the vacancies under consideration can be filled by promotion in accordance with the approved Recruitment Rules. In the absence of approved Recruitment Rules such proposals should be referred to the Commission only after it is decided in consultation with the Commission that the vacancies in question may be filled by promotion. When a proposal is made to the Commission to nominate a Member for presiding over a proposed D.P.C., the essential material required for consideration by the D.P.C. should be sent to the Commission along with the proposal as in the proforma at Annexure XI, duly filled in.

[U.P.S.C. No. F1/58/59-O&M dated 28-6-60; MHA O.M.No. 1/16/68-Estt(D)dated 30-8-69.]

48. The Commission should be given at least one month's notice, as far as possible, to nominate their representative on the D.P.C. The confidential reports and other papers required in connection with the meeting of the D.P.C. should be forwarded to the Commission well in advance of the meeting. Particular attention is necessary in regard to the following requirements:

- (i) The Commission should be furnished with a duly authenticated Seniority List (containing full particulars) of all officers eligible for consideration, including those who would be superseded, or are on Deputation or Foreign Service etc., with the certificate that no eligible officer has been left out.
- (ii) Complete and up-to-date confidential reports should be made available to the D.P.C. The reports should be written in accordance with the instructions issued by Government from time to time, and should contain sufficient matter to assist the Commission/D.P.C. in assessing an officer's suitability.
- (iii) Integrity certificates in respect of officers who are to be considered for promotion should invariably be furnished to the Commission.

[U.P.S.C. No. F.8/76/51/-S dated 26-6-51; MHA No. 18/19/52-Ests. dated 6-5-52; MHA O.M. No. 1/16/68-Estt.D dated 30-8-69; MHA O.M. No. 1/18/66-Estt.D. dated 18-4-67.]

49. The recommendations made by the Departmental Promotion Committees before they are implemented should be referred to the Commission for approval, if

- (a) consultation with the Commission is obligatory under the U.P.S.C. (Exemption from Consultation) Regulations; or

- (b) the Member of the Commission who presides over the D.P.C. specifically desires that the Commission be consulted.

50. A select list drawn up by a D.P.C. should normally be operative only for one year. In any case the select list will cease to be in force on the expiration of a period of one year and six months or when a fresh list is prepared, whichever is earlier

[MHA O.M. No. 1/25/65-Estt(D) dated 11-10-66.]

51. Recommendations made by the Departmental Promotion Committees on which the Commission is represented are treated as the recommendations of the Commission for purposes of the convention regarding the acceptance of the Commission's advice (*vide* para 73 below).

IX. Confirmation

52. Under special orders issued by the Government, the Commission are required to be associated in all cases when Departmental Promotion Committees are assembled for purposes of confirmation of officers, whether direct recruits or promotees, in services and posts recruitment to which falls within their purview. Under Regulation 3, appointments to Class II Posts by promotion of officers holding Class II or Class III posts in a permanent or quasi-permanent capacity are exempted from the purview of the Commission. So it is not necessary to associate the Commission with D.P.Cs. which consider cases of confirmation of officers in Class II posts which are filled entirely by promotion of such officers. In the case of Class II posts filled by other officers i.e. those in temporary employment, it would be necessary to consult the Commission for their confirmation in Class II posts. It is also not necessary to associate the Commission with the D.P.C. to consider confirmation of officers appointed to non-selection posts.

[MHA O.M. No. 1/9/58 RPS dated 16-5-59; MHA O.M. No. F.1/14/63-Estt(D) dated 23-11-63 & dated 20-1-64.]

53. In cases in which the Commission are required to be associated with the D.P.Cs. for confirmation, a reference should be made to the Commission requesting that the Chairman or a Member of the Commission may be associated with the D.P.Cs. Proposals for confirmation of officers to be considered by the D.P.Cs. should be referred to the Commission with all the essential information and the proforma at Annexure XII, duly filled.

[Enclosure to UPSC letter No. F.8/7/69-AII dated 26-8-69.]

54. The recommendations made by the D.P.Cs. should be referred to the Commission unless such reference is not necessary under the Regulations. If a person to be confirmed in a post was recruited to that post

by the Commission, the following instructions are to be followed in referring his case of onfirmation to the Commission:

- (i) If an officer is recruited through the Commission for appointment to a post which has been advertised as being permanent or likely to become permanent, he could be confirmed therein without a fresh advertisement. If there are no other officers in the grade eligible for confirmation, the recommendation of the D.P.C. may be implemented without further reference to the Commission.
- (ii) Where an officer is initially recruited through the Commission for a post which was advertised as being purely temporary or as likely to last for a stated period and later, on the post becoming permanent, it is proposed to confirm him therein, a reference should be made to the Commission who would decide in each case whether the officer recommended by the Commission may be confirmed.
- (iii) For purposes of confirmation, an officer engaged on contract through the Commission should be treated like the officer in (i) above if he was engaged for an indefinite period, and like the one in (ii) above if he was engaged for a definite or stated period.

[MHA OM. No. 18/64/49-Estt. dated 13-1-1951.]

X. Appointment on Transfer/Deputation/Short Term Contract

55. The Commission have to be consulted in all cases of appointments (to posts falling within the Commission's purview), where recruitment rules have not been framed. Where recruitment rules have been framed and they provide for appointment by transfer/deputation of a Central/State Government servant, or an officer of Public Undertakings, Universities etc. on short term contract, a reference to the Commission will not be necessary if such appointment by transfer/deputation/short term contract is covered by the Union Public Service Commission (Exemption from Consultation) Regulations, 1958. In all cases of non-Government servants, a reference to the Commission is necessary.

For making selection of an officer for appointment on transfer/deputation/short term contract, the post should be widely circulated and the field of selection prescribed in the recruitment rules fully explored for the purpose. While making a reference to the Commission for their approval to the selection, particulars of age, qualification and service and complete and up-to-date character rolls of the officers considered should be forwarded to them.

Purely short term temporary vacancies lasting for a period not exceeding 3 years arising out of deputation of officers to other Departments etc. should not be brought on to the Recruitment Roster for the purpose of determining whether they should be filled by the method of direct recruitment or other methods according to the quotas prescribed in the Recruitment Rules. Such short term vacancies may be filled on *ad hoc* basis in consultation with the Commission, unless such consultation is not obligatory under Regulation 4(1) of the U.P.S.C. (Exemption from Consultation) Regulations, by any method provided in the Recruitment Rules other than direct recruitment.

[MHA O.M. No. 2/4/67-Estt(D) dated 8-6-1967.]

XI. Reimbursement of Legal Expenses

56. In accordance with Article 320(3)(d) of the Constitution, the Commission are required to be consulted on any claim by or in respect of a person who is serving or has served under the Government of India in a civil capacity, that any cost incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty, should be paid out of the Consolidated Fund of India.

The question whether a case falls under Article 320(3)(d) of the Constitution so as to require consultation with the Commission may at times be difficult to determine. It may be stated generally that consultation with the Commission is obligatory in a case where a reasonable connection exists between the act of the Government servant and the discharge of his official duties; the act should bear such relation to his official duties that the Government servant could lay a reasonable but not a pretended or a fanciful claim that he did it in the course of the performance of his duties. In this respect, the appropriate authority for taking decisions in each case is the administrative Ministry of the Government of India concerned (or the C.A.G. in respect of the personnel of the Indian Audit and Accounts Department) who will consult the Finance and Law Ministries, where necessary.

In cases in which consultation with the Commission is not obligatory, it will be open to Government to seek the Commission's advice, if considered necessary.

[MHA O.M. No. F.45/5/53-Ests.(A) dated 8-1-1959.]

57. References to the Commission on cases involving reimbursement of legal expenses should give a full statement of the case and should be accompanied by:

- (i) A certified copy of the judgement.
- (ii) Stamped receipts for fees paid to the Lawyers.

- (iii) Original claim of the claimant.
- (iv) Certified copy of the order sheet or a certificate showing the number of days on which the case was posted for hearing and on which it was actually heard.

References seeking the Commission's advice on such cases should invariably be accompanied by the *pro forma* (Annexure XIII) prescribed for the purpose, duly filled in, giving the necessary information in full and enclosing the requisite documents.

[UPSC Circular letter No. F. 5/34/67-S.II dated 16-12-67.]

XII. Extraordinary Pension

58. Under Article 320(3)(e) of the Constitution, the Commission are required to be consulted on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India in a Civil capacity and any question as to the amount of any such award. Under the UPSC (Exemption from Consultation) Regulations, consultation with the Commission in such matters is not required in the case of persons belonging to Central Services Class III & IV.

59. A person who is serving with a Military Force in a civil capacity, irrespective of the fact that he is subject to the Army or the Air Force or the Navy Act, serves in a civil capacity within the meaning of clause 3(e) of Article 320 of the Constitution. The fact that he is paid from the Defence Estimates does not affect the nature of his service. A civilian officer subjected to the Army Act 1950, by reason of Section 2(1)(i) of that Act, and a civilian officer subjected to the Air Force Act 1950, by reason of Section 2(1)(d) of that Act and a civilian officer subjected to the Navy Act 1957, by reason of Section 2(1)(f) of that Act would not lose his civilian capacity. The Commission should be consulted on any claim for the award of a pension to such persons in respect of injuries sustained by them while serving in a civil capacity with the Army or Navy or Air Force.

[MHA O.M. No. 18/39/55-Ests(B) dated 20-12-55.]

60. The amount of pension or gratuity admissible in such cases is regulated by the following rules:—

- (1) The Superior Civil Services (Extraordinary Pension) Rules 1936—for officers appointed by the former Secretary of State for India.
- (2) The Extraordinary Pension Rules contained in Chapter XXXVIII of the Civil Service Regulations—for Government servants who were in permanent Government employment before the 1st of April 1937.

- (3) The Central Civil Services (Extraordinary Pension) Rules 1939, for other officers who were not in permanent Government employment before 1st April 1937.
- (4) Railway Wound and Extraordinary Pension Rules contained in Chapter XXVII of the Indian Railway Establishment Code Vol. 2—for Railway Servants who were in permanent employment of the Railways before 1st April 1937.
- (5) Railway Services (Extraordinary Pension) Rules contained in Appendix XLIII to the Indian Railway Establishment Code Vol. 2—for other Railway servants who were not in the permanent employment of the Railways before 1st April 1937.

Consequent on the introduction of the Family Pension Scheme, 1964, the rates of extraordinary family pension payable to a widow and motherless children under the C.S.S.(E.P.) Rules, 1939, in their application to Government servants governed by the Family Pension Scheme, 1964, have been revised. The revised rates will not, however, be admissible in respect of a Government servant who dies in service before completion of one year's service. In such a case, title to extraordinary pension awards will be regulated in accordance with Schedule III to Rule 10 of the C.S.S.(E.P.) Rules

[M/o Finance O.M. No. 19(3)-EV(A)/65 dated 9-9-1965 and No. 4(15)EV/69 dated 21-10-1969.]

61. For officers of the All-India Services, grant of Extraordinary pension is to be regulated as follows:—

- (1) In the case of persons serving in connection with the affairs of the Union, by the Rules, Regulations and Orders of the Central Civil Services Class I.
- (2) In the case of persons serving in connection with the affairs of a State, by the Rules, Regulations and Orders applicable to officers of the State Civil Services Class I, subject to such exceptions and modifications as the Central Government may, after consultation with the State Government concerned by order in writing, make. The Ministry of Home Affairs, Government of India, have however decided that in the matter of grant of Extraordinary Pension to the A.I.S. officers serving in connection with the affairs of a State, an option may be granted to the officers to select the Extraordinary Pension Rules of the State Government or the orders contained in the Government of India, Ministry of Finance O.M. No. 19(3)-EV(8)/65 dated 9-9-65, whichever is more favourable to them

[MHA Circular letter No. 30/2/65-AIS.II dated 3-7-1967.]

The grant of extraordinary pension/gratuity in respect of a State Government servant on deputation to the Central Government and *vice versa* is to be regulated in accordance with the rules of the borrowing Government.

62. All cases of extraordinary pension shall be referred to the Commission for their advice keeping the relevant rules in view. The Commission are also required to be consulted when it is proposed to reduce, enhance, stop or continue extraordinary pension. References to the Commission on extraordinary pension cases should be accompanied by the following:

- (a) A full statement of the circumstances in which the injury was sustained or the disease was contracted or death occurred.
- (b) An application for injury/family pension in the prescribed form.
- (c) Medical Officer's report regarding injury/death etc.
- (d) A report of the Audit Officer concerned as to whether an award is admissible under the Rules and if so, the amount thereof.

Where it is proposed to make ex-gratia awards, a reference should be made to the Commission after obtaining the views of the Ministry of Finance on the proposals.

XIII. Disciplinary Cases

A. *Officers serving under the Government of India in a civil capacity, other than All India Service Officers*

63. (1) It shall not be necessary to consult the Commission in regard to the making of any disciplinary case other than—

- (a) an original order by the President imposing any of the following penalties:—
 - (i) Censure;
 - (ii) withholding of increments or promotion;
 - (iii) recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;
 - (iv) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant 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.

[Deptt. of Personnel Notification No. 18/4/71-Ests(B) dated 6-9-71.]

- (ivA) reduction to a lower time-scale of pay, grade, post or Service with or without further directions regarding conditions or restoration to the grade or post or Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or Service;

[Department of Personnel Notification No. 18/4/71-Ests(B) dated 6-9-71.]

- (v) compulsory retirement;
- (vi) removal from service;
- (vii) dismissal from service;
- (b) an order by the President on an appeal against an order imposing any of the said penalties made by the subordinate authority;
- (c) an order by the President over-ruling or modifying, after consideration of any petition or memorial or otherwise, an order imposing any of the said penalties made by the President or by a subordinate authority;
- (d) an order by the President imposing any of the said penalties in exercise of his powers of review and in modification of an order under which none of the said penalties has been imposed.

[MHA Notification No. F.18/7/59-Ests(B) dated 23-5-61.]

(2) It shall not be necessary to consult the Commission in regard to any disciplinary matter affecting a person belonging to a Defence Service (Civilian).

(3) It shall not be necessary for the President to consult the Commission—

- (a) in any case where the President proposes to make an order of dismissal, removal or reduction in rank after being satisfied that such action is necessary in the interest of the security of the State; and
- (b) in any case where the President proposes to make an order under rule 3 of the Central Civil Services (Safeguarding of National Security) Rules, 1953, or rule 3 of the Railway Services (Safeguarding of National Security) Rules, 1954, as amended by the Railway Services (Safeguarding of National Security) Amendment Rules, 1960.

[MHA. Notification No. F.18/10/60-Ests(B) dated 17-8-61]

B. Officers of All India Services

64. The Commission are required to be consulted in regard to the making of the following orders in any disciplinary case affecting a person belonging to an All India Service:

- (a) an original order by the Central Government or the State Government imposing on a member of the All India Service any

penalty specified in rule 6 of the A.I.S. (Discipline and Appeal) Rules, 1969; [Rules 9, 10, 19 and 24 of the A.I.S. (D&A) Rules, 1969.]

- (b) an order by the Central Government on an appeal against an order by the State Government imposing any penalty specified in clauses (i) to (vi) of rule 6 of the A.I.S. (Discipline and Appeal) Rules, 1969;
- (c) an order by the Central Government or the State Government revising, of its own motion or otherwise, under rule 24 of the A.I.S. (Discipline and Appeal) Rules 1969 an order passed by it after consultation with the Commission.

C. Pensioners

65. The Commission are required to be consulted in regard to the making of the following orders in the disciplinary cases of pensioners:

- (a) An order of the President withholding or withdrawing the pension or any part of it, whether permanently or for a specified period or recovering from the pensioner of the whole or part of any pecuniary loss caused to Government if, in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.

[M.F. Notification No. F.4(30)-EV(C)/62 dated 22-8-62.]

- (b) An order of the President, in his capacity as the pension sanctioning authority, withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct.

[M.F. Notification No F.19(1)-EV/68 dated 20-4-68.]

- (c) Any order which the President may deem fit to make, in his capacity as the appellate authority, in respect of appeals made by pensioners against orders passed by the pension sanctioning authority in cases of the nature specified in (b) above.

D. Procedure to be followed

66. (1) All references should be made direct to the Commission by the administrative Ministry concerned in the form of an official letter. On all occasions where a reference has to be made to the Commission, no letter should ordinarily issue until after an officer not below the rank of Deputy Secretary has discussed the matter personally with the Secretary of the Commission or his nominee.

[MHA O.M. No. 18/18/48-Ests dated 20-8-49 & MHA D.O. No. F.31(7)-E.O./55 dated 12-3-55.]

- (2) As it is impossible for the Commission to tender advice in the absence of proper records, it should be ensured that complete records of the

disciplinary cases are invariably furnished to the Commission in original along with the communication seeking their advice.

[MHA O.M. No. 18/9/62-Ests(B) dated 24-10-62; MHA O.M. No. 23/64/68-Estt(B), dated 28-8-69.]

(3) The official letter of reference to the Commission should invariably be accompanied by the prescribed proforma (Annexure XIV) showing the service particulars etc. of the officer concerned. The proforma should be filled in completely in all cases and care should be taken to ensure that the cases are sent to the Commission complete in all respects, with all relevant information and records as per proforma, including the officer's C.Rs., in original.

[MHA O.M. No. 234/2/66-AVD-II dated 30-3-66, and MHA O.M. No. 234/2/66-AVD-II dated 18-3-68.]

(4) *Original cases*—Where an original order is to be passed by the President, care should be taken, as far as possible, to avoid expressing an opinion on the merits of the case while referring it to the Commission. Where the procedure for imposing minor penalties has been followed and no inquiry has been held, it would be necessary to send to the Commission, along with the memorandum containing the allegations and the official's reply thereto, a self-contained factual note giving clarifications/comments on the points made in the official's explanation. These comments/clarifications should, however, be only factual and procedural and should form part of the record.

Where an inquiry has been held but the Government consider, in the light of the explanation furnished by the officer and the findings of the Enquiry Officer that there is no need to impose a major penalty, there may not be any need for preparing a self-contained note except where it is necessary to clarify the factual/procedural points in the light of any remarks contained in the inquiry report. In the letter forwarding the records to the Commission or in a separate note (signed by a responsible officer) it may be mentioned that the Government have reached the provisional conclusion that no major penalty is called for. The note should, however, form part of the record.

Where an inquiry has been held and Government consider that a major penalty is called for, it will be necessary for the Disciplinary Authority to record a provisional conclusion regarding the penalty to be imposed. While forwarding the officer's reply to the show-cause notice and the other relevant records to the Commission, it will be sufficient in such cases to deal with any factual/procedural points which may have been raised in the officer's reply to the show-cause notice in a separate note which will form part of the record. The note should not, however, discuss the merits of the case and should not record any findings on the charges or express any opinion regarding the penalty to be imposed on the officer.

(5) *Cases of appeals*—While forwarding an appeal to the Commission, there should not be any expression of opinion on the merits of the case; it is necessary, however, to ensure that the comments of the Disciplinary Authority as required under the rules are invariably sent to the Commission.

(6) *Cases of review on memorials/petitions or otherwise*—The Commission are required to be consulted only when the President proposes to pass an order overruling or modifying, after consideration of any petition or memorial or otherwise, an order imposing any of the penalties made by him or by a subordinate authority, or an order imposing any of the penalties in exercise of his powers of review and in modification of an order under which none of the penalties had been imposed. In such cases there is no objection to the Ministry indicating, in a separate note or the forwarding letter, the considerations on account of which a modification of the order already passed in the case is called for.

In cases where, as a result of the review, it is proposed to enhance the penalty and a show-cause notice to this effect is issued to the officer, a note containing the Government's comments on any factual/procedural points raised by the officer in the reply to the show-cause notice should be forwarded to the Commission together with other relevant papers without, however, expressing any view regarding the findings on the charges or the penalty to be imposed on the officer.

In disciplinary cases where orders of penalty/exoneration passed by a subordinate authority are proposed to be modified on review by the President, the said orders should not be cancelled until the advice of the Commission as to the orders to be passed by the President has been obtained. It is only at the final stage when orders are issued by the President as a result of the review, modifying the original orders passed by the subordinate authority, that it would be necessary and proper to set aside the original order of penalty/exoneration.

[MHA O.M. No. 18/18/48-Ests. dated 20-8-49; MHA O.M. No. 18/9/63-Ests(B) dated 4-8-64.]

E. Action on receipt of Commission's advice

67. The Commission should be informed of the action taken on their advice in all cases. Ordinarily an endorsement forwarding copies of communications in which orders are conveyed will be sufficient. The letter containing the findings of the Commission shall form part of the records of the case and shall be communicated to the officer or officers concerned along with the orders of the authority empowered to pass orders in the case.

XIV. Seniority

68. For regulating the seniority of officers of the All India Services, seniority rules have been framed by the Government. For regulating the seniority of other officers, general principles for determining the seniority have been laid down by the Government in consultation with the

Commission. In cases where consultation with the Commission is necessary, such consultation should be made only after obtaining prior comment of the Department of Personnel.

[MHA. O.M. No. 9/11/55-RPS dated 22-12-59.]

XV. Re-employment

69. Re-employment of an officer after retirement amounts to fresh and direct appointment for the purposes of consultation with the Commission and the Commission should be consulted in all such cases where the appointments are not exempted from the purview of the Commission under the provisions of the UPSC (Exemption from Consultation) Regulations. Re-employment of officers may be made under the provisions of Regulation 4 only if the conditions laid down therein are satisfied, namely—

- (i) if the person appointed is not likely to hold the post for a period of more than one year; and
- (ii) if it is necessary in the public interest to make the appointment immediately and a reference to the Commission will cause undue delay.

Provided that—

- (i) such appointments shall be reported to the Commission as soon as they are made i.e. through the monthly returns;
- (ii) if any such appointment continues beyond a period of six months, a fresh estimate, as to the period for which the person is likely to hold the post, shall be made and reported to the Commission; and
- (iii) if such estimate indicates that the person appointed is likely to hold the post for a period of more than one year from the date of appointment, the Commission shall immediately be consulted in regard to filling of the post.

All references to the Commission regarding re-employment of officers should invariably be accompanied by a *pro forma* duly filled in, prescribed for the purpose as at Annexure XV.

[MHA O.M. No. 60/314/48-Ests dated 27-6-49; U.P.S.C. No. F 8/28/59-A.I. dated 9-11-59; MHA No. 23/27/68-Ests(B) dated 26-12-68.]

XVI. Recognition of Educational Qualifications

70. The Commission are associated, by special orders, with the question of grant of recognition to the Degrees and Diplomas of private institutions for the purposes of appointment to the services and posts under the Government of India. The following procedure is prescribed for this purpose:

- (i) For the recognition of qualifications of a general, academic or non-technical nature, the Ministry of Home Affairs issue the formal orders after obtaining the advice of the Ministry of Education, who refer their proposals to the Commission.
- (ii) For the recognition of degrees and diplomas concerning health and medical subjects awarded by Private institutions, the Ministry of Health and Family Planning issue the formal orders after consultation with the Commission where such consultation is necessary.
- (iii) For the recognition of degrees and diplomas etc. of a technical or professional nature other than medicine, health and law subjects, the Ministry of Education issue formal orders. For the purpose of examining the standards of technical or professional qualifications and to advise what recognition, if any, should be accorded for the purpose of recruitment to Government services, an Assessment Board, on which a representative of the Commission acts as the Chairman, has been set up.

[MHA O.M. No. 32/10/49-Ests. dated 24-6-49; MHA O.M. No. F.20/18/67-Ests(D) dated 20-12-67; MEd, letter No. F. 18-23/51-T2 dated 24-3-53.]

XVII. Conventions regarding accepting the Commission's advice

Conventions

71. A convention has been established by the Government of India that in the following classes of cases referred to the Commission, the recommendations made by them shall be accepted save in exceptional circumstances: —

- (1) Quasi-judicial cases, i.e.
 - (a) Original orders, appeals, memorials, and petitions relating to disciplinary matters.
 - (b) Interpretation of existing conditions of service.
 - (c) Equitable treatment in the matters, referred to the Commission, in regard to payment of compensation to officers affected by abolition of posts.

- (2) Selection for appointment of candidates.
- (3) Recommendations made by the Commission for the appointment of a candidate(s) on a higher initial pay than the minimum pay of the post, when the requisition for recruitment sent to the Commission admits of such higher initial pay being recommended by the Commission or where the Commission are consulted on the question of the initial pay to be given to any candidate.
- (4) Claims for costs incurred by Government Servants in defending legal proceedings instituted in respect of acts done or purporting to be done in the execution of duty, referable to the Commission under Article 320(3)(d) of the Constitution.

[MHA O.M. No. 18/18/48-Ests. dated 20-8-49.]

72. Where the Union Public Service Commission have been consulted in regard to any appointment(s), the recommendations made by the Commission should not be departed from unless, in the opinion of the Minister concerned, exceptional circumstances exist which in the public interest require such departure. In such a case, the reasons for holding this opinion should be communicated to the Commission and the Commission given an opportunity of further justifying their recommendation. On receipt of the observations of the Commission, their recommendations should be considered further by the Ministry concerned. If, after further consideration, the Ministry still considers that the recommendations made by the Commission should not be accepted, the case should be referred with a self-contained summary to the Establishment Officer to the Government of India, who will place it before the Appointments Committee of the Cabinet. The decision reached by the Appointments Committee in all such cases should be communicated to the Commission by the Ministry administratively concerned. Final orders in accordance with the decision will be issued by that Ministry; copy being endorsed to the Commission.

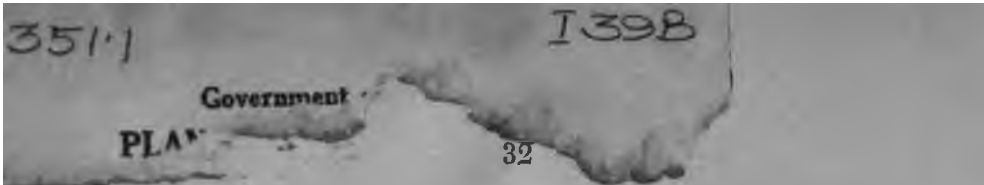
[MHA O.M. No. 18/42/50 Ests. dated 27-11-50.]

73. In any other case, not covered by the foregoing para, in which it is proposed not to accept the advice of the Commission, the case should be shown to the Department of Personnel before orders are passed.

[MHA O.M. No. 18/18/48-Ests., dated 20-8-49.]

74. It is the duty of the Commission to present annually to the President a report as to the work done by the Commission, and on receipt of such a report, the President is required to cause a copy thereof to be laid before each House of Parliament, together with a memorandum explaining in respect of cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance. [Art. 323(1) of the Constitution.]

75. Although powers have been delegated to the appointing authorities to correspond directly with the Commission, it should be noted that in cases where it is proposed not to accept the advice of the Commission or of a Departmental Promotion Committee presided over by a Member



of the Commission, in cases of appointments, promotions etc. all further references to the Commission where necessary, antecedent to submission of the case to the Appointments Committee of the Cabinet, should be made by the Administrative Ministry concerned and not by the Head of the attached/subordinate office, to whom powers of appointment may have been delegated.

[MHA O.M. No. F.18/1/59-Ests(B), dated 24-2-59.]

XVIII. Returns to be sent to the Commission

76. The following returns are required to be sent to the Commission regularly by all the Ministries/Departments of the Government:

- (1) Monthly returns showing appointments to Class I and Class II Central Services and posts and to Ministerial Services in the Government of India Secretariat and Attached Offices made without reference to the Commission (Annexure IV). Even *nil* returns are also required to be sent.

[MHA. O.M. No. 23/27/68-Ests(B) dated 26-12-68.]

- (2) Yearly return showing the lists of Class I and Class II officers attaining the age of superannuation during the subsequent official year (Annexure XVI).

[MHA O.M. No. 18/8/56-Ests.(B) dated 11-6-56 & No. F. 18/20/59 Ests(B) dated 20-1-60.]

- (3) Quarterly returns in the prescribed proforma (Annexure XVII) showing the progress of framing of recruitment rules for Class I—III posts under the various Ministries/Departments etc.

[MHA O.M. No. 20/21/66-Est(D) dated 2-3-67; MHA O.M. No. 2/74/68-Est(D) dated 5-6-68.]