

## CHAPTER 4

### TERMINATION OF SERVICES, REVERSION TO LOWER GRADE/POST, RESIGNATION AND DESERTION FROM DUTY

Sl. No.	Chapter Contents	Page No(s)
	<b>I. TERMINATION OF SERVICES</b>	457
1	C.S.R. 436. Notice of Discharge on the Abolition of Post to Permanent Employees	457
2	Termination of Services of Temporary Government Servants	458
3	Termination of Services of Officers Employed on Contract	458
	<b>II. REVERSION</b>	459
4	Reversion to Lower Grade/Post	459
4-A	Imposition of Penalty for Specific Period	459
5	Reversion from Selection Posts	460-461
6	Reversion to Parent Group/Cadre	461
7	Reversion of <i>Ad-Hoc</i> Appointees	461-462
8	Departmental Promotion Committee not Concerned with Demotions/Reversions	462
	<b>III. RESIGNATION FROM GOVERNMENT SERVICE</b>	463
9	Resignation of Permanent Government Servants	463
10	Acceptance of Resignation During Pendency of Disciplinary Proceedings	463-464
11	Withdrawal of Resignation by Government Servants	464-465
12	Proposal for Resignation and Original Letter of Resignation	465-466

13	Resignation of Temporary Government Servants	466
14	Resignation – Notice and Acceptance	466-467
15	Proposals for Resignation to be Self-Contained	467
16	Procedure for Processing of Cases of Resignation of Officers	467-468
17	Absence from Duty Without Leave	468

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## I. TERMINATION OF SERVICES

Sl. No. 1

### **C.S.R. 436. Notice of Discharge on the Abolition of Post to Permanent Employees**

Reasonable notice should be given to an officer in permanent employ before his services are dispensed with on the abolition of his office. If, in any case, notice of at least three months is not given, and the officer has not been provided with other employment on the date on which his services are dispensed with, then, with the sanction of the authority competent to dispense with the officer's services, a gratuity not exceeding his emoluments for the period by which the notice actually given to him falls short of three months, may be paid to him, in addition to the pension to which he may be entitled under \*these regulations; but the pension shall not be payable for the period in respect of which he receives a gratuity in lieu of notice.

1. The gratuity prescribed in this Article is not granted as compensation for loss of employment but only in lieu of notice of discharge with a view to mitigating the hardship caused an officer by the sudden loss of employment. When, therefore, an officer discharged without notice is provided with some other employment on the date on which his services are dispensed with whether that re-employment be in qualifying or non-qualifying service, he is not entitled to any gratuity.

2. Unless it contains an express statement to the contrary, an order for the abolition of an office or appointment shall not be brought into operation till the expiry of three months after notice has been given to the officers whose services are to be dispensed with on such abolition. The immediate head of the office or the department will be held responsible that there is no necessary delay in giving such notice. In the case of an officer on leave, the order shall not be brought into operation until the leave expires.

NOTE.-"Emoluments" in this rule means the emoluments or leave allowances (or partly the one, partly the other) which the officer would be receiving during the period in question had the notice not been given to him.

**CSR 436-A.** Whenever it is found necessary to determine the service of an officer serving under a contract within the period of his agreement, a specific intimation of the determination of the agreement and of the grounds on which it has been determined shall be furnished to the officer in writing.

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\* Added *vide* Finance Division Notification No. D.203-RSII/69, dated 24-02-1969.

Sl. No. 2

### **Termination of Services of Temporary Government Servants**

A civil servant is not necessarily in temporary employment merely because of a statement in the order of appointment that his appointment will be purely temporary and liable to termination at any time without any notice or reasons being assigned. No civil servant is a temporary employee as long as the employment is for an indefinite period or against a post which continues to exist for an indefinite period. It is extremely difficult to attribute to the legislature an intention to clothe the authorities concerned with arbitrary powers of terminating the services of a civil servant in their discretion without assigning any reason. The courts have always been reluctant to interpret these provisions in a manner as would justify the extenuation of an employee without any justification.

2. Further, after the enactment of Civil Servants Act, 1973\*, the services of a civil servant can either be terminated under Section 11 of the Act or under Government Servants (E&D) Rules, 1973\*\*. It is not possible to spell out any power to terminate the services of an employee without notice and without assigning any reason from the provision of sub section (3) of Section 11 of Civil Servants Act, 1973\*, especially in the presence of the provisions of sub-section (1) thereof regarding termination of service during the initial or extended period of probation. If an employee has passed through the period of probation to the satisfaction of the competent authority, he is no longer a temporary employee within the meanings of sub-section (3) if his employment is for an indefinite period or against a post which continues to exist for an indefinite period.

3. In the light of the above advice of the Justice Division\*\*\* services of an employee can no more be terminated without notice and without assigning reason.

*[Authority.- Extract from Estt. Division O.M.No. 31/64-86-R-3 dated 20-4-1987].*

Sl. No. 3

### **Termination of Services of Officers Employed on Contract**

It has been decided by the government that officers employed on contract normally be given 3 months' notice clause in the contract.

2. All concerned are, therefore, requested to keep in view the above decision when appointing an officer on contract and to stipulate in the agreement that the services of the officer employed on contract may be terminated on 3 month's notice on either side even before expiry of the period of the contract.

*[Authority.- Estt. Div.'s O.M.No. 132/66-D.I. dated 27-6-1966].*

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\* Chapter 1, Sl.No.2.

\*\* Chapter 9, Sl. No. 85, Vol. II, see also Removal from Service (Special Powers) Ordinance, 2000, Chapter 9, Sl. No. 185, Vol. II for present position.

\*\*\* Law and Justice Division.

## II. REVERSION

Sl. No. 4

### **Reversion to Lower Grade/Post**

*Fundamental Rule 29.*- If a Government servant is, on account of misconduct or inefficiency, reduced to a lower grade\* or post, or to a lower stage in his time-scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so, to what extent.

*Auditor General's Decision.*- Having regard to the principle underlying Fundamental Rule 29, the question as to whether an increment falling due during the period of reduction should or should not be allowed is one necessarily to be decided with reference to the exact terms of the orders of the punishing authority. If the Audit Officer feels any doubt about the intention underlying the orders of the punishing authority, he has simply to ascertain it and act accordingly.

*[Authority.- Auditor General's letter U.O. No. 917/308-42, dated 19-12-1942].*

Sl. No. 4-A

### **Imposition of Penalty for Specific Period**

It has been noted that the Government Servants (E&D) Rules do not require an authority to specify the period for which any penalty mentioned in Rule 4 (1) shall be effective, although according to Fundamental Rule 29 it is imperative for him to do so. To resolve this apparent discrepancy between the two rules, it is decided that in imposing a penalty under Rule 4 (1) of G S (E&D) Rules\*\* care should be taken to see that such an imposition is for a specified period and it should be stated whether, on restoration, it shall operate to postpone future increments and, if so, to what extent in order to make it in conformity with Fundamental Rule 29.

*[Authority.- Estt. Division O.M.No. 2/3/65-DI, dated 7-8-1965].*

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\* BPS.

\*\* Note: Reference is to Government Servants (E&D) Rules, 1960 which were repealed by the Government Servants (E&D) Rules, 1973 (Chapter 9, Sl. No. 85, Vol. II) Rule 4(1) of the Government Servants (E&D) Rules, 1960 relates to minor penalties, including withholding or stoppage of increment. The Government Servants (E&D) Rules, 1973, too, have similar provision under rule 4(1). Similar provision has been made in the Removal from Service (Special Powers) Ordinance, 2000, Sl. No. 185, Section 3(1).

Sl. No. 5

**Reversion from Selection Posts**

The views of Ministries/Divisions were invited on the following points:-

- (a) 'A' was appointed to officiate in a selection post after having been formally selected from amongst various possible candidates, from which he reverted after the expiry of the period of the vacancy. During this period his work was satisfactory. Subsequently, another vacancy occurred in the same grade\*. Should 'A' be appointed to this vacancy automatically (by virtue of his previous selection) or fresh selection be made.
- (b) Whether reversions from or confirmations in selection posts should follow the order in which the persons concerned were promoted to the posts in question (*i.e.* the candidates first appointed to officiate in the selection post should be confirmed when a permanent vacancy occurs and the candidate last appointed to officiate reverted when a vacancy terminates), or fresh selection should be made from amongst persons officiating in the selection posts each time a permanent vacancy occurs or a vacancy terminates.

The question has been considered in the light of the replies received from Ministries/Divisions and the opinion of the Federal Public Service Commission, and the following instructions are issued.

2. As regards (a), in accordance with the instructions contained in the Establishment Division Office Memoranda No. F. 33/I/47-Ests. (SEII), dated the 29th January, 1948\*\* and No.33/49-SE, dated the 18th June, 1949 (Sl.No.178, Chapter 2), Departmental Promotion Committees are required to prepare a list of officers whom they consider fit for promotion in selection posts. This list, which should be revised periodically, should indicate the names of officers who have not been promoted to a higher grade\* in any capacity, or who have officiated off and on or are officiating against any leave vacancies, or any temporary posts of short duration, and are, therefore, liable to revert in the normal course to the lower grade. The position would thus be that, if "A" is appointed on the recommendations of the Departmental Promotion Committee to a selection post for a short period, after which he reverts to the lower grade, for no fault of his own, he should be promoted automatically by the appointing authority in the next vacancy that arises if the list is not revised by the Departmental Promotion Committee before the material vacancy

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\* BPS/post.

\*\* Sl. No. 246, Chapter 2.

arises, or, if the list has in the meantime been revised his position still remains No. 1 on the revised list. In other words, there should be no question of selection when a vacancy occurs ; the vacancy should be filled by the promotion of the official who tops the list prepared by the Departmental Promotion Committee and which is in force at the time when the vacancy is filled.

3. As regards (b), reversions should be made in the reverse order of promotion, and confirmations should follow the order of seniority in the grade\* concerned. In other words, there should be no fresh selection either for the purpose of reversion or for confirmations.

4. While the list of officials recommended by the Departmental Promotion Committee for promotion to selection posts is being prepared, the claims of all officials eligible for promotion to the grade concerned, including those who happen to be absent from the office for one reason or the other, should be duly considered, and it should be recorded on the file that this has been done.

*[Authority.- Cabinet Secretariat, Estt. Branch O.M.No.54/10/51-ME, dated 31-8-1951].*

Sl. No. 6

#### **Reversion to Parent Group/Cadre**

Instances have come to the notice of the Establishment Division where officers inducted into the Secretariat Group have asked for reversion to their original Group\*\*. This defeats the purpose of horizontal movement which was envisaged under the Administrative Reforms to ensure a fair representation of officers with varied experience at policy making levels in the Federal Government. It has, therefore, been decided that officers 'inducted into an Occupational Group with their consent, will not in future be allowed to opt out.

2. However, officers of the Secretariat Group can be posted to other groups for exigencies of service and in public interest.

*[Authority.- Estt. Division O.M. No.7(3)76-AV, dated 4-6-1980].*

Sl. No. 7

#### **Reversion of *Ad-Hoc* Appointees**

Ad hoc appointees cannot be promoted to higher \*grade *vide* Establishment Division O.M. No. 3/29/70-D. III, dated the 7th January, 1971 (*Annex* to Sl. No. 90, Chapter 2). The question of determination of the seniority of the ad hoc appointees for purposes of promotion, therefore, does not arise. However, sometimes the

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\* BPS/post.

\*\* The word 'Service (s) may be added.

question which does arise is as to which one of the several ad hoc appointees should be reverted when the F.P.S.C. qualified candidates become available. It has been decided that reversion should be made in the reverse order of ad hoc appointments. However, when the date of ad hoc appointment of more than one officer is one and the same, the reversion should be made in the reverse order of the seniority in the lower grade\* if available, otherwise the younger in age should revert first. Reversion, for the purposes of this O.M., includes termination of service where the ad hoc appointee was recruited directly from outside.

*[Authority.- Estt. Division O.M.No.1/8/72-DIII, dated 4-5-1972].*

Sl. No. 8

### **Departmental Promotion Committee not Concerned with Demotions/Reversions**

It appears from references made recently to the Establishment Division that the scope and functions of Departmental Promotion Committees\*\* are not clearly understood. In certain cases, government servants officiating without any condition in higher grades\* have been demoted on the recommendation of Departmental Promotion Committees. It is necessary, therefore, that the position should be clarified.

2. As their name indicates, the function of Departmental Promotion Committee\*\* is to make recommendations in respect of promotions and there is nothing in Establishment Division Office Memorandum No. 33//47-Ests. (SEII), dated the 29th January, 1948 which relates to the constitution of these Committees to suggest that these Committees have been given the power to recommend the demotion of an officiating officer.

3. What Departmental Promotion Committees should do is to prepare a list of officers whom they consider fit for promotion. They should revise this list periodically which means that they can either add to, or subtract from it. An officer who has been substantively promoted to a higher grade\* will not, of course, figure in this list. Similarly, an officer who has been promoted to officiate in a substantive vacancy for an indefinite period should not appear in the list because he is for all practical purposes to continue in the higher grade\*. In other words, the officers whose names will be shown in the list maintained by these Committees will be those who have not been promoted to a higher grade in any capacity or who have officiated off and on or who are officiating against leave vacancies or in temporary posts of short duration and are, therefore, liable to revert in the normal course to the lower grade\*.

*[Authority.- Cabinet Secretariat, Estt. Branch O.M.No.F.33/49-SE, dated 18-6-1949]\*\*\*.*

### **III. RESIGNATION FROM GOVERNMENT SERVICE**

\* BPS/Post (s). Sl. No.1, Chapter 2.

\*\* Rule 2(d) of the Civil Servants (Appointment, Promotion and Transfer) rules, 1973 framed under the Civil Servants Act, 1973 (Sl. No. 2, Chapter 1) contains the definition of the term "Departmental Promotion Committee (Chapter 2, Sl. No. 1)".

\*\*\* This O.M also appears in Chapter 2, Sl. No. 178 in Section II-Promotion. Here the context is reversion.

Sl. No. 9

### **Resignation of Permanent Government Servants**

A question has been raised whether the undertaking given by a temporary government servant at the time of his entering service, that he shall give one month's notice of his intention to resign or in default forfeit to government a sum not exceeding one month's pay, remains binding on that employee or lapses from the time he is confirmed. It is stated that the undertaking of the kind mentioned above lapses when the persons concerned become permanent, as notice is not provided for in the case of permanent government servants.

2. The position regarding permanent government servants is different. 'Permanent service' is the result of a bilateral contract for the termination of which the consent of both the employer and the employees is necessary. If a permanent government servant tenders his resignation, he continues to be in service until the resignation is accepted, for the reason that, for the cancellation of the contract of service, the consent of the other party is also necessary. Till his resignation is accepted, the employee continues to be in the employment of the employer and, if he absents himself from duty, he incurs a penalty prescribed for such default which may be dismissal in certain cases. A permanent government servant, therefore, continues to remain in service till his resignation is accepted.

*[Authority.- Cabinet Secretariat, Estt. Branch O.M.No.13/3/49-Ests.(SE),dated 17-5-1949].*

Sl. No. 10

### **Acceptance of Resignation During Pendency of Disciplinary Proceedings**

The instructions contained in the Establishment Division Office Memorandum No. 5/3-A/52-ME, dated the 6th January, 1953 (Annex) can be interpreted to mean that the resignation of a government servant, whose conduct is under enquiry, can be accepted and the orders of dismissal or discharge can be passed in due course. The legal position, however, is that any orders of dismissal or discharge passed after retirement or resignation will be void, and inoperative on the ground that the person concerned does not remain in service as soon as his resignation has been accepted. The instructions contained in the Office Memorandum, dated the 6th January, 1953 (Annex) have, therefore, been considered further by the Establishment Division in consultation with the Ministry of Law and the following clarification is issued for the guidance of the Ministries, etc:-

- (a) Service of a temporary government servant who has signed the undertaking can be terminated by the government on 14 days' notice.
- (b) If such a government servant wants to terminate his employment, he

should submit his resignation.

- (c) The employer may or may not accept his resignation.
- (d) If his resignation is not accepted on any ground, including the ground of disciplinary action outstanding against him, he continues to be in service inspite of his having given 14 days' notice of his intention to do so.
- (e) He should not absent himself from office without leave.
- (f) If his resignation is accepted, he does not continue his service, and his presence in office should not be insisted upon.
- (g) In the event of his resignation having been accepted the disciplinary action standing against him, should not be proceeded with as he cannot be punished for the reason that he does not continue in service.
- (h) The undertaking prescribed for temporary employees does not reserve any right in a temporary government servant to terminate his employment by mere notice. He has to resign his post on the expiry of the notice and the resignation does not become effective unless it is accepted by government.

*[Authority.- Estt. Division O.M. No. 1/34/57-ME, dated 12-11-1957 read with O.M. No. 1/3/57-ME, dated 9-5-1958].*

**(ANNEX)**

(See Sl. No. 10)

**[Copy of Establishment Division O.M. No. 5/3-A/52-ME, dated the 6th January, 1953].**

A question arose whether temporary employees who have signed the prescribed undertaking should be allowed to resign if disciplinary proceedings are pending against them. It has been decided, in consultation with the Ministry of Law, that if such a government servant gives the prescribed notice of his intention to resign or forfeit his pay to the President in lieu thereof, his continuance in service should not be insisted upon. The person concerned should, therefore, be relieved of his duties but the departmental proceedings against him may be continued if considered necessary and formal orders passed.

**Sl. No. 11**

**Withdrawal of Resignation by Government Servants**

The question whether resignation once tendered by a government servant before completion of 25 years qualifying service may be allowed to be withdrawn before or after its acceptance by the competent authority has been under consideration in the Establishment Division.

2. The following decisions have been taken in consultation with the Ministry of Finance:-

- (i) *Withdrawal of resignation before acceptance.*- In case a government servant withdraws resignation before it is accepted by the competent authority, the resignation should be deemed to have been withdrawn.
- (ii) *Withdrawal of resignation after its acceptance but before it becomes effective (i.e. before the government servant concerned is relieved).*- It should be open to the authority accepting the resignation to allow the government servant concerned to withdraw the resignation on the merits of the case.

*[Authority.- Estt. Div.'s O.M. No. 8/13/69-F.I, dated 30-1-1970 read with Estt. Division O.M.No.6/9/79-D.I., dated 19-6-1979]*

Sl. No. 12

### **Proposal for Resignation and Original Letter of Resignation**

It has been observed that proposals for acceptance of resignation of officers of Grade\*-17 and above received in the Establishment Division for submission to the competent authority\*\* are not accompanied by the original letter of resignation sent by the officer concerned. This requires a reference back to the Ministries/Divisions for obtaining the letter of resignation. All Ministries/ Divisions are, therefore, requested to please ensure that the letter of resignation of the officer in original invariably forwarded alongwith the Summary for acceptance by the competent authority.

2. Besides, the Summary should contain information on the following points:-

- (i) Whether any dues are recoverable from the officer.
- (ii) Whether any disciplinary proceedings are pending or are contemplated against him.
- (iii) Whether the officer concerned is required to serve the government for any specified period in accordance with the terms and conditions

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\* BPS

\*\* With the delegation of powers of appointment to Secretaries of Ministries/Divisions/Heads of Departments except those Groups/Service administratively controlled by the Establishment Division in respect of civil servants in BPS 17 & 19, the position has changed. In respect of the resignation of the officers in BPS 17 to 19 borne on the Cadres/Groups/Service controlled by the Establishment Division and all the officers in BPS 20 and above, the orders in Sl.No. 12 are to be followed. Para 2 above is to be adhered to in all cases by Ministries/Divisions/ Departments concerned.

of his appointment. If so, whether that period has expired. If it has not expired, whether any money spent on his training etc, are recoverable in accordance with any rule or bond executed by him.

*[Authority.- Estt. Division O.M. No.1/11/80-D.I., dated 13-2-1980].*

Sl. No. 13

### **Resignation of Temporary Government Servants**

Sub-section (3) of section 11 of the Civil Servants Act, 1973\* makes the services of a civil servant subject to the provision of sub-section (2) liable to termination on fourteen days' notice or pay in lieu thereof. Cases have come to the notice of the Establishment Division in which a civil servant, who intends to resign from service, gives 14 days' notice or deposits 14 days' pay in lieu thereof. After expiry of the notice period or having deposited 14 days' pay in lieu thereof, he absents himself from office without waiting for acceptance of his resignation. This is against the rules. There is no provision in the Civil Servants Act, 1973\*, whereunder a civil servant, whether permanent or temporary, who wants to terminate his employment, is required to give or can give 14 days' notice or forfeit his pay to government in lieu thereof.

2. A civil servant, permanent or temporary, who wishes to terminate his appointment, should submit his resignation in writing. The resignation shall not become effective unless it is accepted by the competent authority. Till such time the resignation is accepted, the civil servant concerned continues to be in service and cannot absent himself from his duties without proper leave. The position in this regard is already explained in the Establishment Division's O.M. No. 1/34/57-MS, dated the 12th November, 1957, read with O.M. of even number dated the 9th May, 1958 (Sl. No 10).

*[Authority.- Estt. Division O.M.No.6/3/81-RI(DI), dated 26-7-1981].*

Sl. No. 14

### **Resignation – Notice and Acceptance**

Reference Establishment Division's O.M. No. 6/3/81- R.I(D-I), dated the 26th July, 1981 (Sl.No. 13). Cases are still being received in the Establishment Division where a civil servant, who intends to resign from service, gives fourteen days' notice, is relieved of his duties by the Ministry/Division/Department after expiry of the notice period or having deposited fourteen days' pay in lieu thereof. Thereafter, his case is recommended to the competent authority for acceptance of his resignation with retrospective effect.

2. As already explained in the Establishment Division's aforementioned O.M. (Sl. No. 13), there is no provision in the Civil Servants Act, 1973\*, whereunder a civil

\* Chapter 1, Sl.No. 2.

\* Chapter 1, Sl.No.2.

servant, who wants to terminate his employment, is required to give 14 days' notice or forfeit his pay to Government in lieu thereof and absent himself from duty. The correct position is that a civil servant who wishes to terminate his appointment has to submit his resignation in writing and has to continue in service till his resignation is accepted by the competent authority. He can neither absent himself from his duties without proper leave nor it is desirable to relieve him before acceptance of his resignation. On receipt of the resignation, Ministry/ Division/Department concerned should forward it immediately to the competent authority and also ask the civil servant concerned to wait until his resignation is accepted.

*[Authority.- Estt. Division O.M.No.6/3/81-RI, dated 13-2-1982].*

Sl. No. 15\*\*

### **Proposals for Resignation to be Self-Contained**

Attention is invited to the Establishment Division's O.M. No.1/11/80-D.I, dated the 13th February, 1980 (Sl. No.12). It is stated that inspite of instructions contained therein, the Ministries/Divisions have been sending proposals for acceptance of resignation of officers to the Establishment Division which are not self-contained. The proposals are neither sent in the form of a Summary nor are accompanied by the original letter of resignation of the officer. A number of such references also do not give the information as required in para 2 of the aforesaid O.M. (Sl. No. 12). This requires back reference to the Ministry/Division concerned causing delay in the disposal of the case. The Ministries/ Divisions are, therefore, requested to submit, in future, the cases of resignation strictly in accordance with the instructions contained in the Establishment Division's O.M. quoted above and may also keep in view the orders contained in O.M. No. 6/3/81-R.I, dated the 13th February, 1982 (Sl.No. 14).

*[Authority.- Estt. Division O.M. No. 15/11/84-R.2, dated 28-5-1984].*

Sl. No. 16\*\*\*

### **Procedure for Processing of Cases of Resignation of Officers**

The Ministries/Divisions have been sending proposals for acceptance of resignation of officers to the Establishment Division after the officers have been relieved of their duties. In most of the cases, it has come to the notice of Establishment Division that government servants usually tender resignation from government service on 14 days' notice or forfeit pay in lieu thereof and absent themselves from duties without waiting for the acceptance of their resignations by the competent authority. If a person has submitted resignation from service he continues to be in service, inspite of his having given 14 days notice, till his resignation is accepted by the competent authority. If he absents himself from duty

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\*\* See footnote \*\* under Sl.No. 12.

\*\*\* Footnote \*\* under Sl. No. 12 is relevant.

he is liable to be proceeded against under the Efficiency and Discipline Rules, 1973\* which may also result in dismissal from government service.

2. Ministries/Divisions are, therefore, requested to forward the cases for acceptance of resignation to the Establishment Division well in time and should not relieve the resigning officer from his duties till his resignation from service is accepted by the competent authority.

*[Authority.- Estt. Division O.M. No. 15/6/85-R.2 dated 3-3-1986].*

Sl. No. 17

### **Absence from Duty Without Leave**

Cases have come to notice where government servants have applied for leave, but before the leave was sanctioned, have absented themselves from duty and left their station without permission, while government dues were payable by them on various accounts. In some cases, government servants have proceeded on short leave, and subsequently applied for extension of leave, which was not granted, whereupon they have resigned their appointments without clearing the government dues outstanding against them. Such behaviour on the part of government servants is not only undesirable but also contravenes the provisions of the Pakistan Essential Service (Maintenance) Act, 1952, which makes all employment under government an essential service. If any government servant, without reasonable excuse, abandons his employment or absents himself from work, he is liable to conviction to be punished with imprisonment and fine *vide* section 5 and 7 of the Act.

2. It is, therefore, requested that the attention of all government servants may kindly be drawn to the provisions of the Act and they may be warned that any contravention of the Act renders them liable to prosecution. A number of prosecutions have already been instituted in the court and others are in contemplation.

*[Authority.- Estt. Division O.M. No. 11/1/60 E.V., dated 22-10-1960].*

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\* Sl. No. 85, Chapter 9, Vol II; Sl. No. 185, Chapter 9, Vol II.