



सत्यमेव जयते

THE GAZETTE OF INDIA



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MINISTRY OF SURFACE TRANSPORT (Ports Wing) New Delhi

NOTIFICATION

G.S.R. 700(E) - In exercise of the powers conferred by sub-section (i) of section 124, read with sub-section (1) of section 132 of the Major Port Trust Act, 1963 (38 of 1963), the Central Government hereby approves the Calcutta Port Trust Employees' (Classification, Control and Appeal) Regulations, 1987 made by the Board of Trustees for the Port of Calcutta and set out in the Schedule annexed to this Notification.

2. The said regulations shall come into force on the date of publication of this notification in the Official Gazette.

[File No.PW/PER-7/85]

P.M. ABRAHAM, ADDL. SECY.

SCHEDULE

In exercise of the powers conferred by section 28 read with Section 124 of the Major Port Trusts Act, 1963 (38 of 1963), and in suppression of the existing rules on the subject, the Board of Trustees of the Port of Kolkata, hereby makes the following Regulations, namely :

PART I - GENERAL

1. **Short title and commencement-** These regulations may be called the Kolkata Port Trust Employees' (Classification, Control and Appeal) Regulations, 1987.

2. **Application.** - (i) These regulations shall apply to all employees of the Board except -

(a) persons in casual employment

(b) persons subject to discharge from service on less than one month's notice.

(ii) **Special provision by agreement** - Where it is considered necessary to make special provisions in respect of an employee inconsistent with any of these regulations the authority competent to make the appointment may, by agreement with the employee and subject to the approval of the Board, make such special provisions and thereupon these regulations shall not apply to such employee to the extent to which the special provisions so made are inconsistent therewith :

Provided that in respect of an employee holding Class I post, the previous approval of the Central Government to such special provisions shall be obtained by the Board.

(iii) Protection of rights and privileges conferred by any law or agreement - Nothing in these regulations shall operate to deprive any right or privilege to which an employee is entitled :

(a) by or under any law for the time being in force, or

(b) by the terms of any agreement subsisting between such person and the Board at the commencement of these regulations.

3. **Definitions** - In these regulations unless there is anything repugnant in the subject or context -

(i) "**Act**" shall mean the Major Port Trusts Act, 1963.

(ii) "**Board**", "**Chairman**", "**Deputy Chairman**" and "**Head of a Department**" shall have the same meaning as assigned to them respectively in the Act.

(iii) **Disciplinary Authority** , - Disciplinary Authority in relation to an employee shall mean the authority prescribed as such in Schedule (A) annexed to these Regulations.

(iv) **Appellate Authority**, - Appellate Authority in respect of an order passed by a Disciplinary Authority shall mean the Authority prescribed as such in these regulations.

(v) "**Employee**" shall mean an employee of the Board in any post or capacity and also include any such persons on foreign service or whose services are temporarily placed at the disposal of the Board and also any person in the service of the Central or State Government or a local or other authority whose services are temporarily placed at the disposal of the Board.

(vi) Review Committee shall mean a committee constituted by the Board of Trustees for review of cases of suspension.

PART II - CLASSIFICATION OF POSTS

4. Ports under the Board shall be classified as follows :-

(1) **Class I Posts :**

(a) All posts of Heads of Departments.

(b) All posts carrying pay or scale of pay (excluding of allowances), the maximum of which is Rs.15100/-(or as may be revised from time to time) per month or more.

(c) All posts not covered by (a) and (b) above especially declared to be Class I Posts by the Board.

(2) **Class II posts :**

(a) All posts carrying pay or scale of pay (excluding of allowances), the maximum of which is more than Rs.11975/- (or as may be revised from time to time) per month but less than Rs. 15100/-(or as may be revised from time to time) per month.

(b) All posts not covered by (a) above especially declared to be Class II posts by the Board.

(3) Class III posts :

(a) All posts carrying pay or scale of pay (exclusive of allowances) the maximum of which is more than Rs. 7330/-(or as may be revised from time to time) per month but does not exceed Rs. 11975/-(or as may be revised from time to time) per month.

(b) All posts not covered by (a) above especially declared as Class III posts by the Board.

(4) Class IV posts :

All posts carrying pay or scale of pay (exclusive of allowances) the maximum of which is Rs.7330/-(or as may be revised from time to time) or below per month, excepting those especially declared otherwise by the Board.

5. **Appointing Authorities.** - The powers of appointing any person to any post, whether temporary or permanent, under the Board shall be exercisable by the Appointing Authorities specified in schedule 'B' hereto. Provided that the power to make appointment to such posts exercisable by an Authority specified in the said schedule may also be exercised by another Authority higher than that Authority.

PART III - SUSPENSION

6. **Suspension.** - (i) The Appointing Authority or any Authority to which it is subordinate or the Disciplinary Authority in relation to an employee may place under suspension -

(a) an employee against whom disciplinary proceedings are contemplated or are pending, or

(b) an employee against whom a case in respect of any criminal offence is under investigation or trial :

Provided that no such order in relation to an employee referred to in Clause (a) sub-Section (i) of Section 24 of the Act shall have effect until it is approved by the central Government.

(ii) An employee who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours, shall be deemed to have been suspended by an order of the appropriate authority with effect from the date of detention and shall remain under suspension, until further orders.

(iii) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee under suspension is set aside in appeal or on review under these regulations and the case is remitted for further enquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory requirement and shall remain in force until further orders.

(iv) Where a penalty of dismissal removal or compulsory retirement from service imposed upon an employee as a penalty is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority on a consideration of the circumstances of the case, decides to hold a further enquiry against the employee on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the appropriate authority from the date of the original order of

dismissal, removal or compulsory retirement and shall continue to remain under suspension, until further orders:

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

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

(b) Where an employee is suspended (whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceedings is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded in writing, direct that the employee shall continue to be under suspension until the termination of all or any of such proceedings.

(vi) An order of suspension made or deemed to have been made under this regulation may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

(vii) An order of suspension made or deemed to have been made under this regulation shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the date of order of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(viii) Notwithstanding anything contained in Sub-regulation (v) and (vi), and order of suspension made or deemed to have been made under Sub-regulations (i) or (ii) of this regulation shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days.

PART IV

Nature of penalties

7. The following penalties may, for good and sufficient reasons and as hereinafter provided be imposed on an employee, namely :-

Minor penalties :

(i) Censure;

(ii) Withholding of his promotion;

(iii) Recovering from his pay of the whole or part of any pecuniary loss caused by him to the Board by negligence or breach of orders;

(iv) Withholding of increments of pay.

Major penalties

(v) Reduction to a lower stage in a time-scale of pay for a specified period with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) Reduction to a lower time-scale of pay, grade or posts which shall ordinarily be a bar to the promotion of the employee to the time-scale of pay, grade or posts from which he was reduced with or without further directions regarding conditions of restoration to the time-scale, grade or post from which the employee was reduced and his seniority and pay on such restoration to that time-scale, grade or posts;

(vii) Compulsory retirement :

(viii) Removal from service which shall not be a disqualification for future employment under the Board.

(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Board.

. **Explanation** .- The following shall not amount to a penalty within the meaning of this regulation :

(i) withholding of increments of an employee for failure to pass a departmental examination in accordance with the regulations or orders governing the posts which he holds or the terms of his appointment;

(ii) stoppage of an employee at the efficiency bar in the time-scale on the ground of his unfitness to cross the bar ;

(iii) non-promotion whether in a substantive or officiating capacity of an employee after consideration of his case to a grade or posts, for promotion to which he is eligible;

(iv) reversion to lower grade or posts of an employee officiating in a higher grade or posts on the ground that is considered, after a trial, to be unsuitable for such higher grade or post or on any administrative ground unconnected with his conduct ;

(v) reversion to his permanent grade or posts of an employee appointed on probation to another grade or posts during or at the end of the period of the probation in accordance with the terms of his appointment or the regulations and orders governing probation;

(vi) replacement of the services of an employee whose services have been borrowed from the Central Government or State Government or an authority under the control or the Central Government or State Government at the disposal of the authority which lent his service :

(vii) compulsory retirement of an employee in accordance with the provisions relating to his superannuation or retirement;

(viii) termination of the services -

(a) of an employee appointed on probation during or at the end of the period of probation in accordance with the terms of his appointment or the regulations and orders governing probation;

(b) of an employee employed under an agreement in accordance with the terms of such agreement;

(c) of a temporary employee in accordance with the orders governing such employee.

(d) of an employee on reduction of Establishment

(2) The punishment mentioned in clause (III) of Regulation 7 above is subject to the provisions of the Payment of Wages Act, 1936, and the Minimum Wages Act, 1948.

7A. Penalty for misconduct committed prior to recruitment -

The penalties, specified in Regulations 7 may, for good and sufficient reasons; as hereinafter provided, be imposed on an employee appointed through direct recruitment in respect of misconduct committed before his employment if the misconduct was of such a nature as has rational connection with his present employment and renders him unfit or unsuitable for continuing in service.

7B. Disciplinary authorities -

The authorities mentioned in the schedule 'A' shall be competent to impose penalties on the employees as indicated in the said schedule.

Provided that the Central Government may impose any of the penalties mentioned in regulation 7 on any employee of the Port.

7C. Authority to institute proceedings -

(1) The Chairman may -

(a) institute disciplinary proceedings against any employee;

(b) direct a disciplinary authority to institute disciplinary proceedings against any employee on whom that disciplinary authority is competent to impose under these regulations any of the penalties specified in Regulations 7.

(2) A disciplinary authority competent under these regulations to impose any of the penalties specified in clauses (i) to (vi) of Regulation 7 may institute disciplinary proceedings against any employee for the imposition of any of the penalties specified in clauses (vii) to (ix) or Regulation 7 notwithstanding that such disciplinary authority is not competent under these regulations to impose any of the latter penalties.

8. Procedure for imposing major penalties :-

(1) No order imposing any of the major penalties specified in clauses (v) to (viii) of regulation 7 shall be made except after an enquiry is held in accordance with this regulation.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may appoint any Board of Enquiry or an Enquiring Officer (hereinafter called the Enquiring Authority) to enquire into the truth thereof.

(3) Where the Disciplinary Authority itself enquires or appoints an Enquiring Authority for holding an enquiry, it may, by an order, appoint any person to be known as the "Presenting Officer" to present on its behalf the articles of charge.

(4) Where it is proposed to hold an inquiry, the disciplinary authority shall draw up_

(i) The substance of the imputations of misconduct or misbehavior into definite and distinct articles of charges;

(ii) a statement of imputation of misconduct or misbehavior in support of each article of charge;

(iii) a list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained.

(5) The disciplinary authority shall deliver or cause to be delivered to the employee a copy of the article of charge, the statement of imputation of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the employee to submit, within such time as may be specified, written statement whether he admits or denies any or all the articles of charge.

(6) On receipt of the written statement of the employee or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or by any Enquiring Authority appointed under sub-clause (2) :

Provided that it may not be necessary to hold an enquiry in respect of the charges admitted by the employee in his written statement. The Disciplinary Authority shall, however, record its findings on each such charge.

(7) The Disciplinary authority shall, where it is not the enquiring authority forward to the enquiring authority -

(i) A copy of the article of charge and the statement of imputation of misconduct or misbehavior;

(ii) a copy of the written statement, if any submitted by the employee;

(iii) a copy of the list of witnesses and documents referred to in sub-regulation 4:

(iv) evidence proving the delivery of the documents referred to in sub-regulation 5;

(v) a copy of the order appointing the Presentation Officer.

(8) The employee shall appear in person before the enquiring authority on such day at such time, not exceeding 15 days from the date of receipt of the articles of charge and at a place as the enquiring authority may be notice in writing specify.

(9) The employee may take the assistance of any other employee (hereinafter called the Assisting Officer) to assist him in his case but may not engage a legal practitioner for the purpose provided, however, that an employee holding a Class III or Class IV post may engage as his Assisting Officer, if he so desires, any representative of a labour Union who is himself an employee or retired employee of the Board. However, the employee shall not take the assistance of any other employee or retired employee of the Board, who has two pending disciplinary cases on hand in which he has to give assistance.

(10) If the employee who has not admitted any of the articles of charge in his written statement or has not submitted any written statement, appears before the Enquiring Authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of

charge, the Enquiring Authority shall record the plea, the record and obtain the signature of the employee thereon. The Enquiring Authority shall return a finding of guilt in respect of these articles of charge to which the employee concerned pleads guilty.

(11) The Enquiring Authority shall, if the employee fails to appear within the specified time or refuses or omits to plead, require the Presentation Officer to produce the evidence by which he proposes to prove the articles of charge and shall adjourn the case to a later date not exceeding 30 days, after recording an order that the employee may for the purpose of preparing his defence -

(i) Inspect within 5 days of the order the documents specified in the list referred to in sub rule 4 ;

(ii) submit a list of witnesses to be examined on his behalf:

(iii) give a Notice within 10 days of the order for the production of any document which are in possession of the Trustees but not in the list referred to in sub-rule 4.

Note - The employee shall indicate the relevance of the documents and witnesses required by him to be produced during enquiry.

(12) The Enquiring Authority shall, on receipt of the Notice for production of documents, forward the same or copies thereof to the Authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisitions :

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

(13) The authority in whose custody or possession the requisitioned documents are, shall arrange to produce the same before the Enquiring Authority, on the date, place and time specified in the requisition notice.

Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interests of the Board. In that event it shall inform the Enquiring Authority accordingly. The Enquiring Authority shall on being so informed communicate the information to the employee and withdraw the requisition made by it for the production of such document.

(14) On the date fixed for the enquiry the oral and documentary evidence by which the Articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witness shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the employee. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the Enquiring Authority. The Enquiring Authority may also put such question to the witness as it thinks fit.

(15) Before the close of the case for the Disciplinary Authority, Enquiring Authority may, at its discretion, allow the Presenting Officer to produce evidence not included in the charge-sheet, or may itself call for new evidence or recall or re-examine any witness. In such case the employee shall be given an opportunity to inspect the documentary evidence before it is taken on record; or to cross-examine a witness who has been so summoned.

(16) When the case for the Disciplinary Authority is closed, the employee may be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally it shall be recorded

and the employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any appointed.

(17) The evidence on behalf of the employee shall then be produced. The employee may examine himself in his own behalf if he so prefers. The witness produced by the employee shall then be examined and shall be liable for examination, cross-examination and re-examination by the Enquiring Authority according to the provision applicable to the witnesses for the Disciplinary Authority.

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

(19) The Enquiring Authority may, after the completion of production of evidence, hear the Presentation Officer first and then the employee, or permit them in the same sequence to file written briefs of their respective case within 15 days of the date of completion of production of evidence.

(20) If the employee does not submit the written statement of defence referred to in sub-regulation (3) on or before the date specified for the purpose or does not appear in person, or through the Assisting Officer or otherwise fails or refuses to comply with any of the provisions of these regulations, the Enquiring Authority may hold the enquiry ex-parte.

(21) Whenever any Enquiring Authority after having heard and recorded the whole or any part of the evidence in an enquiry, is replaced and succeeded by another Enquiring Authority which has, and which exercises such jurisdiction, the Enquiring Authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself :

Provided that if the succeeding Enquiring Authority is of the opinion that further examination of any of the witness whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

- (22) (i) After the conclusion of the enquiry, report shall be prepared and it shall contain -
- (a) a gist of the Articles of charge and the statement of the imputation of misconduct or misbehaviour;
 - (b) a gist of the defence of the employee in respect of each Article of Charge;
 - (c) an assessment of the evidence in respect of such Article of Charge;
 - (d) the findings of each Article of Charge and the reasons therefore;

Explanation - If in the opinion of the Enquiring Authority the proceedings of the enquiry establish any Articles of Charge different from the original Articles of Charge, it may record its findings on such Articles of Charge :

Provided that the findings on such Article of Charge shall not be recorded unless the employee has either admitted the facts on which such Articles of Charge are based or has a reasonable opportunity of defending himself against such Articles of Charge.

(ii) The Enquiring Authority where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall include -

- (a) the report of the enquiry prepared by it under sub-clause (i) above :
- (b) the written statement of defence, if any, submitted by the employee referred to in sub-regulation (5);
- (c) the oral and documentary evidence produced in the course of the enquiry;
- (d) written briefs referred to in sub-regulation (19), if any, and
- (e) the orders, if any, made by the Disciplinary Authority and by the Enquiring Authority in regard to the inquiry.

(iii) Whenever the enquiry officer has furnished a report to the disciplinary authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report for having an opportunity to make a representation if any, against said report before the disciplinary authority within fifteen days from the date of receipt of said report.

Provided that no such report is required to be given to the delinquent if the enquiry is conducted by the disciplinary authority himself.

8A. Action on the enquiry report-(1) (i) The Disciplinary Authority if it is not itself the Enquiring Authority, may on perusal of the enquiry report and representation, if any, of the delinquent, remit the case to the enquiring authority, for further enquiry and report after recording its reasons in writing and the enquiring authority shall thereupon proceed to hold further enquiry as per Rule.

(ii) the Disciplinary Authority shall if it disagrees with the findings of the Enquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on records is sufficient for the purpose.

(iii) if the Disciplinary Authority, having regard to its findings on all or any of the articles of charge is of the opinion that no penalty is called for, it may pass an order exonerating the employee concerned.

(2) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties as specified in Clauses (i) to (iv) of Regulation 7 should be imposed on the employee, it shall notwithstanding anything contained in Regulation 9, make an order imposing such penalty.

(3) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the enquiry, is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Regulations 7 should be imposed on the employee, itself make an order imposing such penalty and it shall not be necessary to give the employee any further opportunity of making representation on the penalty proposed to be imposed.

9. **Procedure for imposing minor penalties**-(1) Subject to the provisions of sub-regulation (4) of Regulation 8 no order imposing any of the penalties specified in Clauses (i) to (iv) of Regulation 7 shall be passed except after -

(a) informing in writing the employee of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken and given him an opportunity of making any representation he may wish to make against the proposal ;

(b) holding an enquiry in the manner laid down in sub-regulations (4) to (22) of Regulation 8 , in every case in which the disciplinary authority is of the opinion that such enquiry is necessary;

(c) taking the representation, if any, submitted by the employee under clause (a) and the record of enquiry, if any, held under clause (b) into consideration; and

(d) recording a finding on each imputation of misconduct or misbehavior.

(2) The record of the proceedings in such cases shall include -

(a) a copy of the intimation to the employee of the proposal to take against him;

(b) a copy of the statement of imputation of misconduct or misbehavior delivered to him;

(c) his representation, if any;

(d) the evidence produced during the enquiry :

(e) the findings on each imputation of misconduct or misbehavior; and

(f) the orders or the case together with the reasons therefore.

(3) Notwithstanding the provisions contained in clause (b) of sub-regulation (1), if in a case it is proposed, after considering the representation, if any, submitted by the employee, to withhold increments of pay for a period exceeding 3 years or to withhold increments of pay with cumulative effect for any period or if the penalty of withholding of increments is likely to affect adversely the amount of pension payable to the employee, and enquiry shall invariably be held in the manner laid down in sub-regulation (4) to (22) of Regulation 8, before making any order imposing on the employee any such penalty.

9A. **Communications of orders** - Orders made by the disciplinary authority shall be communicated to the employee who shall also be supplied with a copy of the report of the enquiry, if any, held by the disciplinary authority and a copy of its findings on each article of charge, or where the disciplinary authority is not the enquiring authority, a copy of the report of the enquiring authority and a statement of the findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the findings of the enquiring authority.

10. **Common Proceedings** : - Subject to the provision of the Act-

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

Provided that if one of the employees involved in a joint enquiry is holding a post referred to in clause (a) of sub-section (1) of section 24 of the Act, the Disciplinary Authority shall obtain the prior concurrence of the Central Government before ordering the common proceedings.

(2) Any such order shall specify -

(i) the authority which may function as the Disciplinary Authority for the purpose of such common proceedings ;

(ii) the penalties specified in regulation 7, which such Disciplinary Authority shall be competent to impose; and

(iii) whether the procedure prescribed in regulation 8 or regulation 9 may be followed in the proceedings.

11. **Special Procedure in certain Cases** - Subject to the provisions of the Act and notwithstanding anything contained in the Kolkata Port Trust Employees' (Classification, Control and Appeal) Regulations -

(i) where a penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said regulations and the approval of the Chairman has been obtained;

(iii) where the Chairman is satisfied that in the interest of the security of the State or the Port of Kolkata it is not expedient to follow the procedure, prescribed in the regulations;

(iv) where it is proposed to impose a penalty on all employee on the basis of the findings of an enquiry conducted in accordance with the provisions or Part XII of the Merchant Shipping Act, 1958 (Act 44 of 1958), the Disciplinary Authority or the Chairman as the case may be consider the circumstances of the case and pass such orders thereon as deemed fit.

* Provided that the employee may be given an opportunity of making representation on the penalty proposed under Clause (i) ;

Provided further that the approval of Central Government shall be obtained before passing such orders in relation to an employee covered by Clause (a) of sub-section (i) Section 24 of the Act.

12. **Provision regarding officers lent to the Central Government, etc.**- (1) Where the services of any employee of the Board are lent to the Central Government or to a State Government or to an authority or undertaking subordinate thereto or to a local or other authority (hereinafter in this regulation referred to as "The Borrowing Authority"), the Borrowing Authority shall have the powers of the appointing authority for the purpose of placing the employee under suspension and of the Disciplinary Authority for the purpose of taking disciplinary proceedings against him :

Provided that the Borrowing Authority shall forth with inform the Chairman of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceedings, as the case may be.

(2) In the light of the findings in the disciplinary proceedings taken against the employee -

(i) If the Borrowing Authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of Regulation 7 should be imposed on him, it may in consultation, with the Chairman pass such orders in the case as it deems necessary ;

Provided that in the event of a difference of opinion between the Borrowing Authority and the Chairman, the services of the employee shall be replaced at the disposal of the Board :

(ii) if the Borrowing Authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Regulation 7 should be imposed on him, it shall replace his services at the disposal of the Board and transmit to Chairman the proceedings of the enquiry and thereupon the Chairman shall pass such orders in the case as it deems necessary :

Provided that in passing any such order the Chairman shall comply with the provisions Regulation 8A.

Explanation - The Disciplinary Authority may make an order under this clause on basis of the record of the enquiry transmitted by the Borrowing Authority, or after holding such further enquiry as it may deem necessary .

13. **Provisions regarding officers borrowed from the Central Government or State Government etc.** - (1) Where an order of suspension is made or a disciplinary proceedings is taken against an employee whose services have been borrowed by the Board from the Central Government or a State Government or against the servant of an authority or undertaking subordinate thereof or of a local or other authority, the authority lending his services (hereinafter in this regulation referred to as "the Lending Authority") shall forth with be informed by the Chairman of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceedings as the case may be.

(2) In the light of the findings in the disciplinary proceedings taken against such Employee -

(i) if the Disciplinary Authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of regulation 7 should be imposed on him, it may, after consultation with the Lending Authority, pass such orders on the case as it deems necessary :

Provided that in the event of difference of opinion between the Borrowing Authority and the Lending Authority, the services of the Employee shall be replaced at the disposal of the Lending Authority.

(ii) if the Disciplinary authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of regulation 7 should be imposed on him it shall replace his services at the disposal of the Lending Authority and transmit to it the proceedings of the enquiry for such action as it deems necessary.

PART - V

APPEAL ARISING OUT OF DISCIPLINARY PROCEEDINGS

14. **Orders against which no appeals lies** - Notwithstanding anything contained in this part, no appeals shall lie against. -

- (i) any order made by the Central Government ;
- (ii) any order in appeal or any order in review made by the Chairman ;
- (iii) any order passed by an enquiring authority in the course of an enquiry under Regulation 8 ;
- (iv) any order of an interlocutory nature or of the nature of a step-in-aid or the final disposal of a disciplinary proceeding other than an order of suspension;

15. **Order against which appeals lies** :- Subject to provision of Regulation 14, an employee may prefer an appeal against all or any of the following orders, namely :-

- (i) an order of suspension made or deemed to have been made under Regulation 6:
- (ii) an order imposing any of the penalties specified in Regulation 7 made by the disciplinary authority :

(iii) an order which -

(a) denies or varies to his dis-advantage his pay, allowances, pension or other conditions of service as regulated by regulations; or

(b) interprets to his dis-advantage the provisions of any such regulations :

(iv) an order -

(a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(b) reverting him while officiating in a higher grade or post to a lower grade or posts otherwise than as a penalty ;

(c) reducing or withholding the pension or denying the maximum pension admissible to him under the regulation ;

(d) determining the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion thereof;

(e) determining his pay and allowances -

(i) for the period of suspension, or

(ii) for the period from the date of his dismissal, removal or compulsory retirement from service or from the date of his reduction to a lower grade, post, timescale or stage in a time-scale of pay to the date of his re-instatement or restoration to his grade or post, or

(f) determining whether or not the period from the date of his suspension or from the date of his dismissal, removal or compulsory retirement, or reduction to a lower grade, post, time-scale or pay or a stage in a time-scale of pay to the date of his re-instatement or restoration to his grade or post shall be treated as a period spent on duty for any purpose.

Explanation: In this regulation -

(i) the expression of "**employee**" includes a person who has ceased to be in the Boards service ;

(ii) the expression "**pension**" includes additional pension, gratuity and any other retirement benefits.

16. **Appellate Authorities** : _ An employee, including a person who has ceased to be in the Board's service, may prefer an appeal against -

(i) an order of suspension, to the authority which the authority which made or deemed to have made the order is immediately sub-ordinate.

(ii) an order imposing any of the penalties specified in Regulation 7 to the authority specified in this behalf in the schedule.

(iii) all or any of the orders specified in Regulation 15 to the authority to which an appeal against an order imposing upon him the penalty of dismissal would lie.

17. **Appellate Authorities in special circumstances** - Notwithstanding anything contained in Regulation 16.

(i) an appeal against an order in common proceeding shall lie to the authority to which the authority functioning as disciplinary authority is immediately subordinate;

(ii) where the person who made the order appealed against becomes by virtue of his subsequent appointment as the Chairman, an appeal against such order shall lie to the Central Government and the Central Government in relation to that appeal shall be deemed to be the appellate authority for the purpose of this regulation.

18. **Period of limitation for appeals** : - No appeal preferred under this Part shall be entertained unless such appeal is preferred within a period of two months from the date on which a copy of the order appealed against is delivered to the appellant :

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

19. **Form and Contents of appeals** - (1) Every person preferring an appeal shall do so separately and in his own name.

(2) (a) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against.

(b) The appeal shall contain all materials statements and arguments on which the appellant lies, shall not contain any disrespectful or improper language, and shall be complete in itself.

(3) The authority which made the order appealed against shall, on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the appellate authority without any avoidable delay and without waiting for any direction from the appellate authority.

20. **Consideration of appeal** - (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Regulation 6 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Regulation 7 or enhancing any penalty imposed under the said regulation, the appellate authority shall consider -

(a) Whether the procedure laid down in these regulations has been complied with, and if not whether such non-compliance has resulted in the failure of justice:

(b) Whether the findings of the disciplinary authority are warranted by the evidence on the record; and ;

(c) Whether the penalties imposed is adequate, inadequate or severe, and pass orders -

(i) Confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

Provided that -

(i) If the enhanced penalty which the appellate authority proposed to impose in one the penalties specified in clauses (v) to (ix) of Regulation 7 and an enquiry under Regulation 8 has not already been held in the case, the appellate authority shall, subject to the provisions of Regulation 12, itself hold such enquiry or direct that such enquiry be held in accordance with the provisions of Regulation 8 and thereafter, on a consideration of the proceedings of such enquiry, may make such orders as it may deem fit ;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clause (V) to (IX) of Regulation 7 and an enquiry under Regulation 8 has already been held in the case appellate authority shall, may make such orders as it may deem fit; and

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of Regulation 8, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in Regulation 15, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

21. **Implementation of orders in appeal-** The authority which made the order appealed against shall give effect to the orders passed by the appellate authority.

22. Notwithstanding anything contained in this part where the person who made the orders appealed against becomes, by virtue of his subsequent appointment or otherwise, the Appellate Authority under Regulation 16, in respect of the appeal against such order, such person shall forward the appeal to the authority to which he is immediately subordinate and such authority shall, in relation to that appeal, be deemed to be the Appellate Authority for the purpose of Regulation 22 and 23.

23. **Review.** - (1) Notwithstanding anything contained in these regulations-

(i) the Central Government, or

(ii) the Chairman

may at any time, either on its or his own motion, or otherwise, call for the records of any inquiry and review any order made under these regulations, or under the regulations or orders or practices repealed by regulation 26, from which an appeal is allowed, but no appeal has been preferred, or from which no appeal is allowed, after consultation with the Central Government, where such consultation is necessary, and may -

(a) confirm, modify or set aside the order ; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit :

Provided that no order imposing or enhancing any penalty shall be made by the reviewing authority unless the employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of regulation 7 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Regulation 8 and except after consultation with the Central Government, where such consultation is necessary :

Provided further that no power of review shall be exercised by the Chairman unless -

- (i) the authority which made the order in appeal,
 - or
 - (ii) the authority to which an appeal would lie where no appeal has been preferred is himself or is subordinate to him.
- (2) No proceeding for review shall be commenced until after -
- (i) the expiry of the period of limitation for an appeal, or
 - (ii) the disposal of the appeal where any such appeal has been preferred.
- (3) An application for review shall be dealt with in the same manner as if it were an appeal under these regulations.

PART VI

MISCELLANEOUS

24. **Service of orders and notices.** - Every order notice and other process made or issued under these regulations shall be served in person on the employee concerned or communicated to him by registered post.

24.A. **Power to relax time-limit and to condone delay**--- Save as otherwise expressly provided in these regulations, the authority competent under these regulations to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these regulations for any thing required to be done under these regulations or condone any delay.

25. **Repeal and savings** - (1) All regulations, rules, resolutions, circulars, notification, directions and orders corresponding to these rules in force immediately before the commencement of these regulations and all directives or orders issued pursuant thereto are hereby repealed :

Provided that -

- (a) such repeal shall not affect the previous operation of the said regulations, rules, resolutions, circulars, notifications, directives and orders or anything done or any action taken there under :
- (b) any proceeding under the said regulations, rules, resolutions, circulars, notifications, directives and orders pending at the commencement of these regulations shall be continued and disposed of as far as may be, in accordance with the provisions of these regulations;

(2) Nothing in these regulations shall operate to deprive any person to whom these regulations, apply of any right of appeal which had accrued to him under the regulations, rules, resolutions, circulars, notifications, directives and orders repealed by sub-regulations (1) in respect of any order passed before the commencement of these regulations :

(3) An appeal pending at or preferred after the commencement of these regulations against an order made before such commencement shall be considered and orders thereon shall be passed, in accordance with these regulations.

26. Removal of doubt - Where a doubt arises as to the interpretation of any of the provisions of these regulations, the matter shall be referred to the Chairman, who shall decide the same.

SCHEDULE 'A'***

Sec Regulation 3(ii)

Sl. No.	Category of Employee	Authority competent to impose penalties and penalties which it may impose (with reference to clauses (i) to (ix) of Regulation (7))		Appellate Authority
		Authority	Penalties	
1	2	3	4	5
1	Posts covered by Clause (a) of Sub-section (1) of Section 24 of Major Port Trusts Act, 1963.	Chairman Central Govt	(i) to (iv) All	Central Govt Central Govt
2	Class-I posts other than those covered by Section 24 (1)(a) of MPT Act, 1963 having pay scales two levels/four levels above Class-I entry scale or higher in respect of employees of KDS/HDC respectively.	Dy.Chairman Chairman	(i) to (v) All	Chairman Central Govt
3	All other Class I and Class II posts not included in Sl. No. 1 and 2 above.	Dy.Chairman	All	Chairman
4	Class III	HOD(KDS)/GM (HDC)	All	Dy.Chairman
5	Class IV	HOD(KDS)/GM(HDC)	All	Dy.Chairman

SCHEDULE- 'B'***

(Sec Regulation 5)

Sl.No.	Description of employee	Appointing authority
1	Posts covered by Clause (a) of Sub-section (1) of Section 24 of Major Port Trusts Act, 1963.	Central Government
2	Class-I posts other than those covered by Section 24 (1)(a) of MPT Act, 1963 having pay scales two levels/four levels above Class-I entry scale or higher in respect of employees of KDS/HDC respectively.	Chairman
3	All other officers of Class I & Class II	Dy.Chairman (H)/(K)
4	Class III & IV	Heads of Departments in Kolkata Dock System and General Managers in Haldia Dock Complex.

* Substituted by First Amendment Regulations

** Substituted by Second Amendment Regulations.

*** Amended by Third Amendment Regulations.

Note: The principal regulations were published in the Gazette of India vide GSR.700(E) dated the 10th August 1987. The 1st Amendment regulation was published vide GSR. 474(E) dated the 20th April, 1988, the 2nd Amendment regulation was published vide GSR 372(E) dated 27th March 1992, the 3rd Amendment Regulation was published by G.S.R.223(E) dated 26th March 2004 and the 4th Amendment Regulation was published by G.S.R.284(E) dated 12th May, 2006.