

F.No.C-30013/6/2012-AdIVA-Vol.II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi dated the 10th October, 2016

Memorandum

The All India Association of Central Excise Gazetted Executive Officers has given notice vide their letter dated 04.10.2016 for observing the following:

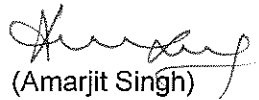
- (i) Peaceful Lunch Hour gathering in front of the residence of your good self (Hon'ble FM) on 14.10.2016 to hand-over the Memorandum and Lunch Hour peaceful protests in front of every Headquarters Office throughout the country.
- (ii) Peaceful Lunch Hour protests on 09.11.2016 in all CCA Offices throughout the country.
- (iii) Wearing of Black Badge in all Offices on 07.12.2016 throughout the country.
- (iv) Day long protest programme in front of all CCA offices on 05.01.2017 throughout the country.
- (v) Mass Casual Leave on Budget Day by all Officers.

2 GST is a major tax reform. All decision will be taken by the GST Council, keeping in mind the interest of all concern – the tax payer and officers. In this back ground, you are advised to refrain from proposed course of action.

3. Further, attention of the All India Association of Central Excise Gazetted Executive Officers is invited to Rule 7 of the Central Civil Services (Conduct) Rules, 1964 and the instructions issue thereunder in the matter of participation by Government servants in demonstrations/strikes. Relevant extracts from the Central Civil Services (Conduct) Rules, 1964 are enclosed for ready reference. A copy of OM No. 41016/1/(S)/90-Estt(B) dated 01.05.1991 and No.33012/1(s)/2008-Estt(B) dated 12th September, 2008 containing instructions issued by the Deptt. Of Personnel & Training regarding treatment of period of strike by Government servants, are also enclosed.

This issues with the approval of Chairman, CBEC

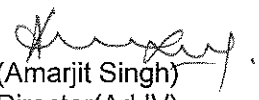
Encl. As above:


(Amarjit Singh)
Director(Ad.IV)
Tel: 011 2616 2694.

✓ The Secretary General
All India Association of Central Excise Gazetted Executive Officers
240, Razapur, Ghaziabad – 201 001 (UP)

Copy to:

1. All Chief Commissioners of Central Excise
2. DG, HRD, CBEC
3. Web Manager, Directorate General of Systems and Data Management for uploading the communication on the Board's website.


(Amarjit Singh)
Director(Ad.IV)
Tel: 011 2616 2694.

No.41016/1(S)/90-Estt. (B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, the 1st May, 1990

OFFICE MEMORANDUM

Subject: Treatment of period of strike by Central Government employees.

Attention of the Ministry of Finance, etc. is invited to the Department of Personnel & Administrative Reform O.M.No.33011/1/77-Estt.(B) dated the 25th April, 1978 in which the Ministries/Departments were requested to ensure compliance of the following directions of the Cabinet, namely:—

- (i) all Ministries/Departments must observe the principle of 'no work - no pay' and this should not be circumvented in any way including by grant of leave for the period of a strike; and
 - (ii) on all important service matters which are likely to have repercussions on other services (e.g. action taken against Government employees participating in strikes), all Ministries/Departments, including the Ministry of Railways should, with a view to ensuring the maximum possible uniformity in the general approach, consult the Department of Personnel & A.R. (now Department of Personnel and Training) before taking/announcing any decision so that embarrassment to the Government in dealing with the generality of civil services is avoided.
2. Notwithstanding the above directions, the Department of Personnel & Training has been receiving several references from Central Government offices that in the case of employees who had participated in a strike, the period of absence may be treated as duty or leave instead of applying the principle of 'no work-no pay'. It has also come to notice that in some cases, Ministries/Departments had taken decisions on important service matters likely to have repercussions on other services without consulting this Department and in contravention of the said directions.
3. The principle of 'no work-no pay' is laid down in proviso to Fundamental Rule 17(1) which provides that any officer who is absent without any authority shall not be entitled to any pay and allowances during the period of such absence. The principle was examined in depth by the Supreme Court and upheld in the Civil Appeal No.2581 of 1986 - Bank of India Vs. T.S. Kelawala & Others (1990 (3) SLJ). Though the issue did not pertain directly to applicability of the principle to Government servants, the Court has analysed the principle in all its facets and its observations are relevant. Some relevant extracts of the Supreme Court judgement delivered on 4th May, 1990 are as under:-

"xx xx xx xx xx xx

Where the contract, Standing Orders or the service rules/regulations are silent on the subject, the Management has the power to deduct wages for the absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed. Whether the deduction from wages will be *pro rata* for the period of absence only or will be for a longer period will depend upon the facts of each case such as whether there was any work to be done in the said period, whether the work was in fact done and whether it was accepted and acquiesced in, etc.

It is not enough that the employees attend the place of work. They must put in the work allotted to them. It is for the work and not for the mere attendance that the wages/salaries are paid.

xx xx xx xx xx xx

It is clear that wages are payable only if the contract of employment is fulfilled and not otherwise. Hence, when the workers do not put in the allotted work or refuse to do it, they would not be entitled to the wages proportionately.

xx xx xx xx xx xx

Whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. The liability to lose wages does not either make the strike illegal as a weapon or deprive the workers of it. When workers resort to it, they do so knowing full well its consequences. During the period of strike, the workers withhold their labour. Consequently, they cannot expect to be paid.

xxx xxx xxx xxx xx xx

In the light of the above, the Cabinet has now reviewed the general policy in this regard and directed that all Ministries/Departments should observe the instructions contained in Department of Personnel & Administrative Reforms M. of 25th April, 1978 (reproduced in para 1 of this O.M.) scrupulously.

Ministry of Finance etc. are accordingly requested to bring the directions of the Cabinet to the notice of all concerned for strict compliance in future.


(M.S. BALI)

Deputy Secretary to the Government of India

1. All Ministries/Depts. of the Government of India.
2. Comptroller and Auditor General of India, New Delhi.
3. Supreme Court of India, New Delhi.
4. UPSC, New Delhi.
5. C.V.C., New Delhi.
9. Election Commission, New Delhi.
10. All U.T. Administrations.
11. All Zonal Councils.
12. C.A.T. Delhi.

7. Demonstration and strikes

No Government servant shall -

(i) engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign States, public order, decency or morality, or which involves contempt of court, defamation or incitement to an offence, or

(ii) resort to or in any way abet any form of strike or coercion or physical duress in connection with any matter pertaining to his service or the service of any other Government servant.

Government of India Decisions

(1) Restriction on Government servants who are office-bearers of service associations, in dealing in their official capacity with matters connected with those associations.

Reference Home Ministry's Office Memorandum No. 24/23/57-Ests.(B), dated the 3rd March, 1959, (not reproduced), on the above subject and to say that a point has been raised whether after the promulgation of the Central Civil Services (Recognition of Service Associations) Rules, 1959, the convention that an officer who may be required to deal in a responsible capacity with representations from a service Association, should not be an office-bearer or a member of the Executive Committee of that Association, would continue to be observed. It has been decided that any Government servant who is an office-bearer or a member of the Executive Committee of a Service association should not himself deal in his official capacity with any representation or other matters connected with that Association.

[MHA OM No. 24/1/60-Estt. (B), dated 25.01.1960]

(2) "Strikes" – interpretation of what constitutes a strike under the conduct Rules

Rule 7 (ii) of the Central Civil Services (Conduct) Rules, 1964, provides that no Government servant shall resort to or in any way abet any form of strike in connection with any matter pertaining to his service or the service of any other Government servant. Instances have come to the notice of Government where employees resort to various methods of protests for redress of grievances, some of which are tantamount to strike. References have been received seeking clarification whether certain acts, are covered under the definition of 'strike' and if so, whether action can be taken against such employees for violation of the Conduct Rules.

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It is, therefore, clarified that 'strike' means refusal to work or stoppage or slowing down of work by a group of employees acting in combination, and includes -

(i) mass absentation from work without permission (which is wrongly described as "mass casual leave");

(ii) refusal to work overtime where such overtime work is necessary in the public interest;

(iii) resort to practices or conduct which is likely to result in, or results in the cessation or substantial retardation of work in any organization. Such practices would include, what are called 'go-slow', 'sit-down', 'pen-down, stay-in', 'sympathetic' or any other similar strike; as also absence from work for participation in a Bandh or any similar movements.

Government servants who resort to action of the above kind violate rule 7 (ii) of the Central Civil Services (Conduct) Rules, 1964 and disciplinary action can be taken against them. It may be noted that the list of activities which are covered under the definition of strike as enumerated above is only illustrative and not exhaustive. It only clarifies the position in respect of practices which are often resorted to at present.

[MHA OM No. 25/23/66-Ests.(A), dated 09.12.1966]

(3) Participation in "GHERAO" by Central Government servants -

Instances have come to the notice of Government in which employees of certain Central Government offices staged which is called "Gherao", involving forcible confinement of public servants within office premises by surrounding their places of duty and have held demonstrations/meetings both within office premises during office hours and also outside the office premises beyond office hours, tending to forcible confinement of public servants within office premises. Such demonstrations/activities are prejudicial to public order and also involve criminal offences like wrongful restraint, wrongful confinement, criminal trespass or incitement to commit offences. They are also subversive of discipline and harmful to the public interest, and participation in them by Government servants and would constitute good and sufficient reason within the meaning of Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It has, therefore, been decided that a serious view should be taken of such acts of lawlessness and insubordination on the part of public servants. The Central Government Departments are advised to take action on the following lines in such cases :-

(i) Disciplinary action should be taken against the prominent participants in the 'Gherao' for contravention of Rules 3 and 7 of the Central Civil Services (Conduct) Rules, 1964. In the charge-sheet to be served in pursuance of such disciplinary action, it should be specified to the extent that the facts justify, that demonstrations prejudicial to public order and involving criminal offences, namely, wrongful restraint, wrongful confinement, criminal trespass and

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incitement to such offences, have been held; that such conduct was subversive of discipline and harmful to the public interest; and that the conduct was wholly unbecoming of a Government servant.

(ii) Absence from work on account of participation in 'Gherao', should in all cases be treated as unauthorized absence involving break in service. The absence should not be regularized as leave of any kind.

(iii) Whenever there is a case of 'Gherao', wrongful restraint, wrongful confinement or criminal trespass or of any other cognizable offence, a written report should be made to the Officer-in-charge of the Police Station having jurisdiction, requesting him to register the offence and to take action under the law. The names of the offenders should be included in the written report. Copies of the report should be endorsed to the Police Commissioner/Superintendent of Police and the Home Secretary to the State Government concerned for necessary action according to law.

(iv) If, notwithstanding the mandatory provisions of the Criminal Procedure Code, Police takes no action on such a report, action should be taken promptly to file a complaint before the appropriate Magistrate in respect of the substantive offences under the Indian Penal Code or other law. In certain circumstances a petition could be filed before the High Court for issue of the appropriate writ, but this should be done after taking legal advice.

[OM No. 25/S.11/67-Ests.(A), dated the 13th April, 1967]

While taking action to file a complaint before the appropriate Magistrate, the assistance of the Officer of the Central Bureau of Investigation if any, available locally, may also be taken in drafting the complaints and deciding the manner, in which evidence should be collected and produced.

[M.H.A. OM No. 25/S.11/67-Estt. (A), dated the 15th April, 1967]

(4) Demonstrations in the vicinity/neighbourhood of Government offices

It has been noticed that when some demonstrations organized by political parties were held in or passed through the vicinity of Government offices, the Government employees working in these offices came out to witness the demonstration. In this process the Government employees sometimes got mixed up with the demonstrators and it became difficult to segregate the demonstrators from the Government employee. In order to avoid such situations in future, the Ministry of Finance etc., are requested to impress upon the employees working under them that it is desirable on such occasions that they stay inside their offices and keep away from the demonstrators or the crowd near the place of demonstration.

[D.P. & A.R. No. 25/6/73-Ests.(A), dated 09.03.1973]

-8- Estt/Strike matters
-14- 12

File No. 33012/1(s)/2008-Estt(B) (Pt)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

Dated the 12th September, 2008

OFFICE MEMORANDUM

Subject:- Participation in any form of strike/mass casual leave/boycott of work etc. by Government servants - CCS(Conduct) Rules - regarding.

The undersigned is directed to say that the instructions issued by the Department of Personnel & Training prohibit the Government servants from participating in any form of strike including mass casual leave, go-slow etc. or in any way abet any form of strike which will be in violation of Rule 7 of the CCS(Conduct) Rules, 1964. The Supreme Court has also agreed in several judgements that going on a strike is a grave misconduct under the Conduct Rules and that misconduct by the Government employees is required to be dealt with in accordance with law. Any employee going on strike in any form would face the consequences which, besides deduction of wages, may also include appropriate disciplinary action.

2. A Joint Consultative Machinery (JCM) for Central Government employees is already functioning. This scheme has been introduced with the object of promoting harmonious relations and of securing the greatest measure of cooperation between the Government, in its capacity as employer, and the general body of its employees in matters of common concern, and with the object, further of increasing the efficiency of the public service.

3. Therefore, apart from the fact that any form of strike/mass casual leave/boycott of work would be in violation of the CCS(Conduct) Rules, going on any form of strike will also not be in the interest of the employees. Accordingly, the undersigned is directed to convey that if any employee or an association/group of employees, under any nomenclature, indulge in any form of strike/boycott of work in pursuance of any alleged demands, or send any letter conveying of their intention to organize any such event, in terms of the provisions mentioned in para-1 above, the salary of such employees for the day/days in question shall not be paid and the details of such employees shall have to be intimated by the concerned office where such an event took place to the Administrative Ministry/Department concerned, within 15 days of such incident for a decision on how to treat the unauthorized absence occasioned by such an action by the employees. This will be without prejudice to any disciplinary action that may be initiated against such employees. All Ministries/Departments are requested to bring the contents of this O.M. to the notice of all concerned offices under them.

(Suneel K. Arora)

Under Secretary to the Government of India

To

All Ministries/Departments.