



GOVERNMENT OF SIKKIM

No. 83/GEN/DOP

Dated 29.10.2002

NOTIFICATION

In exercise of the power conferred by the proviso to article 309 of the Constitution of India, the Governor of Sikkim is pleased to make the following rules, namely: -

1. Short titles, commencement and application: -

- (1) These rules may be called the Sikkim State Jail Employees (Discipline and Appeal) Rules, 2002
- (2) These shall come into force on the date of their publication in the Official Gazette.
- (3) These rules shall apply to all the members of Sikkim State Jail Employees serving the Government or on deputation with the Central Government or any State Government or a on foreign service or a company, corporation, organization or a local authority;

Provided that nothing in these rules shall apply to any other jail officer / employee serving the Government on deputation from the Central Government or from any other State Government Department.

2. Definition: - In these rules, unless the context otherwise requires: -

- (1) “appointing authority” means the authority empowered to make appointment to the post which the member of the State Jail Employee for the time being holds.
- (2) “disciplinary authority” means the authority competent under these rules to impose on a member of Jail employee any of the penalties specified in rule 3.
- (3) “Government” means the State Government of Sikkim.
- (4) “Jail Employee” means a member of the State Jail Employee appointed under the Sikkim State Jail Employees (Recruitment, Promotion and Seniority) Rules, 2002 and all such other subordinate officers who are for time being serving in Sikkim State Jail.
- (5) “Governor” means the Governor of Sikkim.
- (6) “Schedule” means the Schedule appended to these rules.

3. Penalties: - Without prejudice to the provision of any law or any special order for the time in force, the following penalties may, for good and sufficient reasons, be imposed on any member of Jail employees, namely: -

- (1) Punishment drill not exceeding seven days,
- (2) Extra Guard duty,
- (3) Confinement to quarters for a term not exceeding 15 (fifteen) days, with or without punishment drill, extra guard, fatigue or other duty,
- (4) Fine to any amount not exceeding one month's pay,
- (5) Removal from any office of distinction or special emolument,
- (6) Deprivation of Good conduct pay,
- (7) Censure,
- (8) Withholding of promotion,
- (9) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders,
- (10) Withholding of increment of pay,
- (11) Reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not he will earn increment 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 return increment of his pay,
- (12) Reduction to a lower time scale of pay, post, grade or service which shall ordinarily be a bar to promotion of member of Jail Employee to the time scale of pay, grade, post or service from which he was reduced with or without further directions regarding conditions of restoration to the grade or post on service from which he was reduced and his seniority and pay on such restoration to the grade, post or service.
 - (13) Compulsory retirement,
 - (14) Removal from service which shall not be a disqualification for future employment under the Government,
 - (15) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

Provided that: -

- (a) the penalties specified in sub-rules (1) to (3) may be imposed only on the Head Warders and below;
- (b) the amount of fine imposed on Head Warder and below under sub-rule (4) shall not exceed 7 (seven) days basic pay in the course of a month.

Note: The amount of fine should be recovered in cash and credited to the Jail Staff Welfare Fund. The recovery should not appear in the Establishment pay bills.

Explanations: - The following shall not amount to a penalty within the meaning of these rules, namely: -

- (1) Withholding of increment for his / her failure to pass any departmental examination in accordance with the rules or orders governing the service to which he / she belongs or which he / she holds.
- (2) Non-promotion whether in a substantive or officiating capacity after consideration of his case to a service to a service grade or post for promotion to which he / she is eligible.
- (3) Reversion of a person officiating in a higher service, grade or post to a lower service, grade or post on the ground that he is considered to be unsuitable for such higher service or grade or post or on any administrative ground unconnected with his conduct.
- (4) Reversion of a person appointed on probation to any other service, grade or post to his permanent service, grade or post during or at the end of the probation period in accordance with the term of his appointment or the rules of order governing such probation.
- (5) Compulsory retirement of a person in accordance with the provision relating to his / her superannuation or retirement.
- (6) Termination of service: -
 - (a) of jail employee appointed on probation, during or at the end of the period of probation in accordance with the term of his / her appointment or the rules or orders governing such probation; or
 - (b) of a temporary jail employee appointed on temporary basis under the orders of the appointing authority; or
 - (c) of a jail employee, employed under an agreement in accordance with the terms of such agreement.

4. Disciplinary authority: -

- (1) The disciplinary authority may impose any of the penalties specified in rule 3, subject to limitations indicated therein on any member of State Jail Employees.
- (2) Without prejudice to the provisions of sub-rule (1), any of the penalties specified in rule 3, subject to limitations indicated therein, may be imposed on a jail employee by the disciplinary authority specified in the Schedule in this behalf.

5. Procedures for imposing penalties specified in sub-rules (1) to (3) of rule 3: -

- (1) The disciplinary authority may impose on any jail employee of and including the rank of Head Warder and below any of the penalties specified in sub-rules (1) to (3) summarily. The jail employee concerned shall be called by the disciplinary authority to appear before him and when he appears the particular of the allegation shall be stated to him by the disciplinary authority and he shall be asked to state whether he / she pleads guilty or has any defence to make.
- (2) If he / she pleads guilty, the disciplinary authority may pass order imposing on jail employee any one of the penalties mentioned above. If he / she does not plead guilty, the disciplinary authority shall record the substance of the evidence and finding with a brief statement or reasons therefore, and if the disciplinary authority finds him guilty, the disciplinary authority shall make appropriate order imposing any one of the aforesaid penalties.

6. Procedures for imposing penalties specified in sub-rule (4) to (10) of rule 3: -

- (1) Subject to the provisions of sub-rule (26) of rule 7, no order imposing any of the penalties specified in sub-rules (4) to (10) of rule 3 shall be passed against a jail employee except after: -
 - (a) informing the jail employee in writing 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 giving him reasonable opportunity of making such representation as he may wish to make against the proposal;
 - (b) holding an inquiry in the manner laid down in sub-rule (3) to (22) of rule 7.
 - (c) Taking the representation if any, submitted by the jail employee under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;
 - (d) Recording a finding of such imputation of misconduct or misbehavior.
- (2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in case it is proposed after considering the representation if any, made by the jail employee under clause (a) of that sub-rule, to withhold increment of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the person or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an enquiry shall be held in the manner laid down in sub-rule (3) to (22) of rule 7, before making any order imposing such penalty on a jail employee.
- (3) The record of the proceedings in such case shall include: -
 - (a) a copy of the intimation to jail employee of the proposal to take action 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 advice of the Commission, if any;
 - (f) the finding on each imputation of misconduct or misbehavior; and
 - (g) the order on the case together with the reasons therefore.

7. Procedures for holding enquiry for imposing penalties specified in sub-rules (11) to (15) of rule 3.

- (1) No order imposing any of the penalties specified in sub-rules (11) to (15) of rule 3 shall be made except after an inquiry is held, as far as possible in the manner provided in these rules.
- (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 a person it may itself inquire into, or appoint an authority to inquire into the truth thereof;

Explanation: - When the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to (20) and (22), the inquiry shall be constructed as a reference to the disciplinary authority.

- (3) Whenever it is proposed to hold an inquiry against a jail employee, the disciplinary authority shall draw up or cause to be drawn up: -
 - (a) the substance of the imputation of misconduct or misbehavior into definite and distinct article of charge;
 - (b) a statement of imputation of misconduct or misbehavior in support of each article of charge, which shall contain:
 - (i) a statement of all relevant facts including any admission or confession made by him / her and
 - (ii) a list of documents by which and a list of witnesses by whom, the articles of charges are proposed to be sustained.
- (4) The disciplinary authority shall deliver or cause to be delivered to the jail 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 enquire the jail employee to submit, within such time as may be specified a written statement of defence and to state whether he desires to be heard in person.
- (5)
 - (a) On receipt of the written statement of defence the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or if it considers it necessary to do so, appoint under sub-rule (2) an inquiry authority for the purpose, and where all the articles of charge have been admitted by the jail employee in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in sub-rule (25).
 - (b) If no written statement of defence is submitted by the jail employee, the disciplinary authority may itself inquire into the charge, it may, by an order, appoint an officer or a legal practitioner, to be known as the Presenting Officer to present on its behalf the case in support of the article of charge.
- (6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority: -
 - (a) a copy of the articles of charge and the statement of the imputation of misconduct or misbehavior;
 - (b) a copy of the written statement of defence, if any submitted by the jail employee;
 - (c) a copy of the statement of witnesses, if any referred to in sub-rule (3);
 - (d) evidence providing the delivery of documents referred to in sub-rule (3) to the jail employee; and
 - (e) a copy of the order appointing the Presenting Officer.
- (7) The jail employee shall appear in person before the inquiring authority on such day and time within ten working days from the date of receipt by him the articles of charge and the statement of the imputation of misconduct or misbehavior as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.
- (8) The jail employee may take the assistance of any other officer to present the case on his behalf but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits.
- (9) If the jail employee, who has not submitted any of the articles of charge in his written statements of defence or has not submitted any written statement of defence appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea sign the record and obtain the signature of the jail employee thereon.
- (10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the jail employee pleads guilty.
- (11) The inquiring authority shall, if the jail employee fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to later date not exceeding thirty days after recording an order that the jail employee may, for the purpose of preparing his defence;

(a) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(b) submit a list of witnesses to be examined on his behalf;

Note: - If the jail employee applies in writing for the supply of copies of the statement of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than 3 days before the commencement of the examination of witnesses on behalf of the disciplinary authority.

(c) give a notice within ten days of order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3);

Note: The jail employee shall indicate the relevant of the documents required by him to be discovered or produced by the Government.

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

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

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

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

(14) On the fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved 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 behalf of the jail 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 any new matter, without the leave of the inquiring authority. The inquiring authority also may put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the closure of the case on behalf of the disciplinary authority, the inquiring authority may in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the jail employee or may itself call for new evidence or recall and re-examine any witness and in such case, the jail employee shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence exclusive of the day of the adjournment and the day to which the inquiry is adjourned. The inquiry authority shall give the jail employee an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the jail employee to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interest of justice.

Note: New evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally or the inquiring officer thinks that it is necessary for just decision of the case.

(16) When the case for the disciplinary authority is closed, the jail employee shall 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 jail 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 jail employee shall then be produced. The jail employee may examine himself on his own behalf if he so prefers the witnesses produced by the jail employee shall then be examined and shall be liable to cross-examination re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.
- (18) The inquiring authority may after the jail employee closes his case, and shall if the jail employee has not examined himself generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the jail employee to explain and circumstances appearing in the evidence against him.
- (19) The inquiring authority may, after completion of the production of evidence hear the Presenting Officer, if any appointed and the jail employee, or permit them to file written brief of their respective cases, if they so desire.
- (20) The jail employee to whom a copy of the articles of charge has been delivered does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex-parte.
- (21) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has and which exercise such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself.

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

- (22) (a) After the conclusion of the inquiry, a report shall be prepared and it shall contain; -
 - (i) the articles of charge and the statement of the imputation of misconduct or misbehaviour,
 - (ii) an assessment of evidence in respect of each article of charge,
 - (iii) an assessment of evidence in respect of each article of charge,
 - (iv) the findings on each article of charge and reasons therefore.

Explanation: If in the opinion of the inquiring authority, the proceedings of the inquiry 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 articles of charge shall not be recorded unless the jail employee has either submitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself such article of charge.

- (b) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority, the records of inquiry which shall include: -
 - (i) the report prepared by it under clause (a);
 - (ii) the written statement of defence, if any, submitted by the jail employee
 - (iii) the oral and documentary evidence produced in the course of inquiry,
 - (iv) written brief if any filed by the Presenting Officer or the jail employee or both during the course of enquiry, and
 - (v) the order, if any, made by the disciplinary authority and the inquiring authority in regard to the enquiry.
- (23) The disciplinary authority, if it is not itself the inquiring authority may for reasons to be recorded by it in writing return the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of this rule.
- (24) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient or the purpose.

- (25) If the disciplinary authority having regard to its findings on all or any of the article of charge is of the opinion that any of the penalties specified in sub-rules (11) to (15) of rule 3 should be imposed on the jail employee, it shall not be necessary to give the jail employee any opportunity of making representation to the penalties proposed to be imposed.
- (26) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in sub-rule (11) to (15) of rule 3 should be imposed on the jail employee, it shall notwithstanding anything contained in rule 6, make an order imposing such penalty.
- (27) Order made by the disciplinary authority shall be communicated to the jail employee who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority and a copy of its findings of each articles of charge, or, where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring 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 inquiring authority unless they have already been supplied to him.

8. Common Proceeding: -

Where two or more jail employees are concerned in any cse, the disciplinary authority may make an order directing that the disciplinary actions against all of them may be taken in common proceeding.

Note: If the authority competent to impose the penalties specified in rule 3 are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authority with the consent of other.

9. Special Procedure in certain cases: -

Notwithstanding anything contained in rule 6, 7 and 8: -

- (1) where any penalty is imposed on delinquent on the ground of conduct which has led to his conviction on a criminal charge, or
- (2) where the disciplinary authority is satisfied, for reasons to be recorded by it in wiring that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
- (3) where the disciplinary authority is satisfied that in the interest of the security of the state, it is not expedient to hold any inquiry in the manner provided in these rules. The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.

10. Suspension: -

- (1) The disciplinary authority or any higher authority may place a jail employee under suspension: -
 - (a) where a disciplinary proceeding against him is contemplated or is pending or
 - (b) here in the opinion of the aforesaid authority, he has engaged himself in activities prejudicial to the interest or the security of the state, or
 - (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

Provided that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.
- (2) A person shall be deemed to have been placed under suspension by an order of appointing authority: -
 - (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period of forty-eight hours or more.
 - (b) With effect from the date of his conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment for forty-eight

hours or more and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation: The period of forty-eight hours referred to in clause (b) shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent period of imprisonment, if any, shall be taken into account.

- (3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon the jail employee under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.
- (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon the jail employee is set aside or declared 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 further inquiry against him on the allegation on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the jail employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further order;
Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case.
- (5)
 - (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.
 - (b) Where a person is suspended, whether in connection with any disciplinary proceeding 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 by it in writing direct that the jail employee shall continue to be under suspension until the termination of all or any such proceedings.
 - (c) An order of suspension made or deemed to have been made under these rules may at any time be modified or revoked by the authority which made or is deemed to have made the order.

11. Appeals: -

- (1) Notwithstanding anything contained in these rules, no appeal shall lie against
 - (a) an order made by the Governor;
 - (b) any order of an interlocutory nature or of the nature step-aid for the final disposal of a disciplinary proceeding, other than an order of suspension;
 - (c) an order passed by an inquiring authority in course of an inquiry under rule 5;
 - (d) an order made by the disciplinary authority under rule 3;
- (2) Subject to the provisions of sub-rule (1), the jail employee may prefer an appeal against all or any of the following orders, namely: -
 - (a) an order of suspension made or deemed to have been made under rule 10.
 - (b) an order imposing any of the penalties specified in rule 3 whether made by the disciplinary authority or by an appellate or reviewing authority;
 - (c) an order enhancing any penalty imposed under rule 3;
 - (d) an order which,
 - (i) denies or varies to his disadvantages his pay, allowances, pension or other conditions of service as regulated by rules or agreement; or
 - (ii) interprets to his disadvantage the provisions of any such rule or agreement;
 - (e) an order: -
 - (i) reverting him while officiating in a higher service grade or post to lower service grade or post otherwise than as a penalty;

- (ii) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;
- (iii) determining the substance and other allowances to be paid to him for the period during which he is deemed to be under suspension or for any portion thereof;
- (iv) determining his pay and allowances -
 - (a) for the period of suspension or
 - (b) for the period from the date of his dismissal, removal or compulsory retirement from service or from the date of his reduction to a lower service, grade, post, timescale of pay, to grade or post; or
- (v) determining whether or not the period from the date of his suspension or from the date his dismissal, removal or compulsory retirement or reduction to a lower service, grade, post, restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.

Explanation: In this rule –

- (i) The expression 'jail employee' includes a person who has ceased to be in Government service;
- (ii) The expression 'pension' includes additional pension, gratuity and any other retirement benefits;
- (iii) A jail employee including a person who is ceased to be in Government service may prefer an appeal against all or any of the orders specified in sub-rule (2) to the authority specified in this behalf in the Schedule.
 Provided that an appeal against an order in a common proceeding held under rule 8 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate.
- (iv) No appeal preferred under this rule shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant:
 Provided that the appellate authority may entertain the appeal after the expiry of the said period if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.
- (v) (A) In the case of an appeal against an order of suspension the appellate authority shall consider whether in the light of the provisions of rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly;
- (B) In the case of an appeal against an order imposing any of the penalties specified in rule 3, the appellate authority shall consider -
 - (i) whether the procedure laid down in these rules has been complied with and if not whether such non-compliance has resulted in the violation of any provisions of the constitution of India or in the failure of justice;
 - (ii) whether the findings of the disciplinary authority are warranted by the evidence on record; and penalty imposed is adequate, inadequate or severe; and pass orders –
 - (a) confirming enhancing reducing or setting aside the penalty; or
 - (b) 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 such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in sub-rules (11) to (15) of rule 3 and an inquiry under rule 7 has not been held in the case, the appellate authority shall subject to the provisions of rule 9, itself hold inquiry or direct that such inquiry be held in accordance with the provisions of rule 7, and thereafter giving the appellate reasonable opportunity of making

representation against the penalty proposed on the basis of the evidence adduced during the inquiry, make such orders as it may deem fit.

- (ii) if the proposed penalty which the appellate authority proposed to impose is one of the penalties specified in sub-rule (11) to (15) of rule 3 and an inquiry under rule 7 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the inquiry, making such orders as if any deem fit;
- (iii) No order imposing an enhanced penalty shall be made in any other case unless the appellate has been given a reasonable opportunity of making representation against such enhanced penalty;
- (iv) In an appeal against an any other specified in sub-rule (2) of rule 11, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

12. Revision: -

- (1) Notwithstanding anything contained in these rules, the disciplinary authority may at any time, either on his own motion or otherwise, call for the record of any inquiry and revise any order made under these rules or under the rules repealed by rule 14 from which no appeal is allowed 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 any revising authority unless the jail employee 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 sub-rules (11) to (15) of rule 3 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in rule 7 and after giving a reasonable opportunity.

- (2) An application for revision shall be dealt with in the manner as if it were an appeal under these rules.

13. Review: - The disciplinary authority may at any time, either on his own motion or otherwise, review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of enhancing the nature of the case, has come or has been brought to his notice: -

Provided that no order imposing or enhancing any penalty shall be made by the disciplinary authority unless the jail employee has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the penalties specified in sub-rules (11) to (15) of rule 3 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in sub-rules (11) to (15) and if an inquiry under rule 7 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in rule 7, subject to the provision of rule 9.

14. Non-applicability of Sikkim Government Servant's (Discipline and Appeal) Rules, 1985 and savings thereof: -

- (1) On and from the date of commencement of these rule, the Sikkim Government Servant's (Discipline and Appeal) Rules, 1985 shall cease to apply to the member of Sikkim State Jail Employees;
Provided that the proceedings initiated under Sikkim Government Servant's (Discipline and Appeal) Rules, 1985 and pending at the commencement of these rules shall be continued and disposed of in accordance with the

provisions of these rules as if such proceedings were proceeding under these rules.

- (2) Nothing in these rules shall be construed as depriving any person of any right of appeal which had accrued to him under the rules, notifications or orders in force before the commencement of these rules;
- (3) An appeal pending at the commencement of these rules against an order made before such commencement shall be considered and order thereon shall be made in accordance with the provision of these rules as if such order was made and the appeal was preferred under these rules;
- (4) As from the commencement of these rules, any appeal or application for review against any orders made before such commencement shall be preferred or made under these rules, as if such orders were made under these rules.

Provided that nothing in these rules shall be construed as reducing any period of limitation for any appeal or review provided by any rule in force before the commencement of these rules.

- 15. Removal of doubts:** - If any doubt arises as to the interpretation of any of the provisions of these rules, it shall be referred to the Government in the Department of Personnel, Administrative Reforms and Training, whose decision shall be final.

Sd/- D. DADUL – IAS
COMMISSIONER – CUM – SECRETARY
DEPARTMENT OF PERSONNEL, ADM. REF. & TRAINING.

Schedule
Disciplinary Authority

Sl. No.	Description of posts	Disciplinary Authority	Authority competent to impose a kind of penalty	Appellate authority
1.	Jailer	Home Secretary	All	Governor
2.	Sub-Jailor	Superintendent of Police of Jail / Dy. Inspector General of Police	All	Home Secretary
3.	Asstt. Sub-Jailor	Superintendent of Police of / Dy. Inspector General of Police	All	Home Secretary
4.	Head Warder	Superintendent of Police of / Dy. Inspector General of Police	All	Home Secretary
5.	Warder, driver and followers	Superintendent of Police of / Dy. Inspector Gneral of Police	All	Home Secretary