

**AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW, JUSTICE AND PARLIAMENTARY AFFAIRS DEPARTMENT,
MUZAFFARABAD**

Dated the 28th December, 2001

No. LD/Leg/1533-40/2001. The following Act of the Assembly received the assent of the President on the 11th December, 2001 is hereby published for general information:-

(ACT XXV OF 2001)¹

**AN
ACT**

to provide for dismissal, removal, compulsory retirement from service and reduction to lower post or pay scale of certain persons from Government service and corporation service;

Whereas, in the view of prevailing circumstances it is expedient and necessary and in the public interest and further for good governance to provide for measures, inter-alia, dismissal, removal etc., of certain person of Government service and corporation service as hereinafter stated;

And whereas it is necessary to provide for speedy disposal of such cases and for matter connected therewith or ancillary thereto;

It is hereby enacted as follows:

1. **Short title, extent, commencement and application.**-(1) This Act may be called the Removal from Service (Special Powers) Act, 2001.
(2) It extends to the whole of Azad Jammu and Kashmir.
(3) It shall come into force at once.

¹ Act XXV of 2001 dt. 28-12-2001 (with all amendments) repealed through Act III of 2020 dt. 8-1-2020.

- (4) It shall apply to persons in Government service and corporation service.

2. Definition.-In this Act, unless there is anything repugnant in the subject or context;

- a) “Competent authority” means, the Prime Minister and where, in relation to any person or class of persons, the Prime Minister authorizes any Officer or Authority, to exercise the power of competent authority under this Act, that officer or authority, and, in relation to an employee of a Court or Tribunal functioning under the government, the appointing authority or the Chairman or presiding Officer of the Court or Tribunal.
- b) “misconduct” includes conduct prejudicial to good order or service discipline or conduct unbecoming of an officer and a gentleman or involvement or participation for gain either directly or indirectly in industry, trade or speculative transactions or abuse or misuse of the official position to gain undue advantage or assumption of financial or other obligations to private institutions or persons such as may cause embarrassment in the performance of official duties or functions;
- c) “persons in corporation service” means every person in the employment of a corporation, corporate body, authority, statutory body or other organizations or institutions set up, established, owned, managed or controlled by the Government or by or under any law for the time being in force or a body or organization in which the Government has a controlling share or interest and includes the

Chairman and the Managing Director, and the holder of any other office therein;

- d) “person in Government service” includes every person who is a member of a Civil Service of the Government or who holds a civil post in connection with the affairs of the Azad Jammu and Kashmir; and
- e) “Government” means the Azad Government of the State of Jammu and Kashmir.

3. Dismissal, Removal, and compulsory retirement.- (1) Where, in the opinion of the competent authority, a person in Government or corporation service, is-

- a) inefficient, or has ceased to be efficient for any reason; or
- b) is quality of being habitually absent from duty without prior approval of leave; or
- c) guilty of misconduct; or
- d) corrupt, or may reasonably be considered as corrupt, because-
 - i) he, or any of his dependents or any other person, through him or on his behalf, is in possession of pecuniary sources or of property, for which he cannot reasonably account for, and which are disproportionate to his known resources of income; or
 - ii) he has assumed a style of living beyond his known sources of income; or
 - iii) he has a persistent reputation of being corrupt; or

- iv) he has enter into a plea bargain under any law from the time being enforce and has returned the assets or gain acquired through corruption or corrupt practices voluntarily, or
 - e) engaged, or is reasonably believed to be engaged, in subversive activities, and his retention in service is prejudicial to national security or he is guilty of disclosure of official secrets to any unauthorized persons; or
 - f) found to have been appointed or promoted on extraneous grounds in violation of law and the relevant rules, the competent authority, after inquiry by the Committee constituted under section 5, may, notwithstanding anything contained in any law or the terms and conditions of service of such person, by order in the writing dismiss or remove such person form service, compulsorily retire from service or reduce him to lower post or pay scale, ¹[or recovery of the whole or any part of any pecuniary loss caused to government by negligence or breach of orders]or impose one or more minor penalties as prescribed in the AJ&K Civil Servants (Efficiency and Discipline) Rules, 1977.
- (2) Before passing an order under subsection (1) the competent authority shall;
- a) by order in writing inform the accused of the action purposed to be taken with regards to him and the grounds of the action; and

1 Ins. by the Removal from Service (Special Powers) (Amdt.) Act, 2002 (Act XII of 2002) dt. 13.12.2002.

- b) give him a reasonable opportunity to showing cause against that action within seven days or with such extended period as the competent authority may determine:

Provided that no such opportunity shall be given where the competent authority is satisfied that in the interest of security of Azad Kashmir or Pakistan or any part thereof it is not expedient to give such opportunity:

Provided further that no such other opportunity shall be given where the accused is dismissed or removal from service or rendered in rank on the ground of conduct, which has held to a sentence of a fine or of imprisonment by a Court.

- (3) The dismissal or removal or premature retirement from service or reduction to lower post or pay scale of a person under sub-section (1) shall not absolve such person from liability to any punishment to which he may be liable for an offence under any law committed by him while in service.

4. **Suspension.**- A person against whom action is proposed to be taken under sub-section (1) of Section 3 may be placed under suspension with immediate effect if, in the opinion of the competent authority, suspension is necessary or expedient;

Provided that the competent authority may, in an appropriate case, for reasons to be recorded in writing, instead of placing such person under suspension, require him to proceed on such leave as may be admissible to him from such date as may be specified by the competent authority.

5. Power to appoint an Inquiry Officer or Inquiry

Committees:- (1) Subject to the provision of subsection (2), the competent authority shall before passing an order under Section 3, appoint an inquiry officer or inquiry committee to scrutinize the conduct of a person in Government service or a person in corporation service, who is alleged to have committed any of the acts or omissions specified in Section 3, the inquiry officer, or, as a case may be inquiry committee shall,

- (a) communicate to accuse charges and statements of allegations specified in the order of inquiry passed by the competent authority;
- (b) required the accused within seven days from the day of charge is communicated to him to put in a written defence;
- (c) enquire into the charge and may examine such oral or documentary evidence in support of the charge in defence or in the accused as may be considered necessary and the accused shall be entitled to cross examine the witness against him; and
- (d) hear the case from day to day and to adjournment shall be given except for special reasons to be recorded in writing and intimated to the competent authority.

(2) Where the inquiry officer or a case may be, the inquiry committee is satisfied that the accuses hampering or attempting to hamper, the progress of the inquiry he or it shall record of finding to that affect and proceed to complete the inquiry in such manners as he, or it, deems proper in the interest of justice.

(3) The inquiry officer or, as a case may be, the inquiry committee shall submit his, or its, findings and recommendations to the competent authority within ¹[sixty] days of the institution of the inquiry²[:

“Provided that the government may extend the said period whenever it deems appropriate”]

(4) The competent authority may dispense with the inquiry under subsection (1), if it is in possession of sufficient documentary evidence against the accused or for reason to be recorded in writing, it is certified that there is no need of holding an inquiry.

(5) Where a person who has entered into plea bargain under any law for the time being enforce, and has return the assets or gain acquired through corruption or corrupt practices voluntarily, the inquiry shall not be ordered provided that show cause notice shall be issued on the basis of such plea bargaining to such person informing of the action purpose to the taken against him and the ground of such action requiring him to submit reply within fifteen days of the receipt of the notice.

(6) On receipt of the reply, the competent authority may pass such orders, as it may deem fit.

6. Powers of the Inquiry Committee.-- The Inquiry Committee or Inquiry Officer as the case may be shall have power-

1 In subsection (3) of Sec.5 for the words “twenty five” the word “sixty” has been subs. by the AJ&K Removal from Service (Special Powers) (Amdt.) Act, 2002 (Act IX of 2002) dt. 18.09.2002.

2 In subsection (3) of Sec. 5 the full stop at the end is subs. by a colon and thereafter the proviso has been added by Ibid

- a) to summon and enforce attendance of any person and examine him on oath;
- b) to require the discovery and production of any document;
- c) to receive evidence on affidavits; and
- d) to record evidence.

7. **Procedure to be followed by the Inquiry Committee/Inquiry Officer.-** The Inquiry Committee or an Inquiry Officer as the case may be shall, subject to any rules made under this Act, have power to regulate its own procedure, including the fixing of place and time of its sitting and deciding whether to sit in public or in private, and in the case of corporate Committee, to act notwithstanding the temporary absence of any of its members.
8. **Order to be passed upon a finding.-** Every finding recorded by the Inquiry Officer, as a case may be, Inquiry Committee under Section 5 shall, with the recommendation provided for in that section, be submitted to the competent authority and the competent authority may pass such orders thereon as it may deem proper in accordance of the provisions of this Act.
9. **Representation and review.-** (1) A person who has been dismissed or removed or compulsorily retired from service or reduced to lower post or pay scale or against whom any order has been made under section 3 by the competent authority, may, within fifteen days from the date of communication of the order prefer a representation to the Prime Minister or such officer or authority as the Prime Minister may designate:

Provided that where the order has been made by the Prime Minister such person may, within the aforesaid period, submit a review petition to the Prime Minister.

(2) The Prime Minister, or an officer or authority, as may be designated for the purpose by the Prime Minister, may, on consideration of the representation, review petition and any other relevant material, confirm, set aside, vary or modify the order in respect of which such representation or review petition is made within sixty days thereof¹:

“Provided that the government may extend the said period whenever deem appropriate.”]

10. **Appeal.**- Notwithstanding anything contained in any other law for the time being in force, any person aggrieved by any final order under section 9 may, within thirty days of the order, prefer an appeal to the Service Tribunal established under the AJ&K Service Tribunals Act, 1975 (XXII of 1975).
11. **Act to override other laws.**- The provisions of this Act shall have effect notwithstanding anything to the contrary contained in the Civil Servants Act, 1976 (VI of 1976), and the rules made thereunder and any other law for time being in force.
12. **Proceeding under this Act.**- All proceedings initiated on the commencement of this Act in respect of matters and persons in service provided

¹ In subsection (2) of Sec.9 the full stop at the end shall be subs. by a colon and thereafter proviso added by the AJ&K Removal from Service (Special Powers) (Amdt.) Act, 2002 (Act XII of 2002) dt. 13.12.2002.

for in this Act shall be governed by the provisions of this Act and rules made thereunder¹:

Provided that the Government, may, by notification in the official Gazette, exempt any class or classes of employees of a Govt. Department, corporation, corporate body, authority, statutory body or other organization or institution set up, established, owned, managed or controlled by it or a body or organization in which it has a controlling share or interest from the provisions of the Removal from Service (Special Powers) Act, 2001 and such class or classes of employees shall, notwithstanding anything contained in the Act, be proceeded against and dealt with under the laws and rules applicable to such employees before the commencement of the said Act.”]

- 13. Pending proceeding to continue.**- For the removal of doubts, it is hereby provided that all proceeding pending immediately before the commencement of this Act against any person whether in Government service or corporation service under the Civil Servants Act, 1976 (VI of 1976) and rules made thereunder, or any other law or rules, shall continue under the said laws and rules, and as provided thereunder.
- 14. Pensionary benefits etc.**- Notwithstanding anything contained in the Act the payment of pension or other benefits to a person retired or reduced to a lower post or pay scale under this Act shall, if admissible, be regulated in accordance with the law for the time being in force relating thereto.

¹ In Sec. 12 full stop at the end shall be subs. by a colon and thereafter proviso added by the AJ&K Removal from Service (Special Powers) (Amdt.) Act, 2008 (Act IV of 2008) dt. 27.06.2008.

15. **Power to make rules.**- The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.
16. **Removal of difficulties.**- If any difficulty arises in giving effect to any of the provisions of this Act, the President may make such order, not inconsistent with the provisions of this Act, as may appear to him to be necessary for the purpose of removing the difficulty.
17. **Repeal.**- The Removal from Service (Special Powers) Ordinance, 2001 (Ordinance LXII of 2001) is hereby repealed.

Sd/-(Rashid Majeed Sheikh)

Deputy Secretary