

CHAPTER I—EXTENT OF APPLICATION

1. These rules may be called the Uttar Pradesh Fundamental Rules. They shall come into force with effect from April 1, 1942.

Nothing in these rules shall, however, be construed as affecting or invalidating any rules or orders made, or any rights, privileges or concessions accrued or granted to government servants, or any leave earned by them, or any pay or allowances fixed, under the rules in force immediately before the introduction of these rules, and all rules and orders and all such rights, privileges, concessions, leave, pay and allowances shall continue to remain operative in the same manner as they would have been operative under the said rules and shall, so far as may be, be deemed to have been made, earned or granted under the appropriate provisions of these rules.

2. These rules apply to all government servants the conditions of whose service have been or may be prescribed by the Governor under sub-section (2) (b) of section 241 of the Act.

3. and 4. [* * *]

5. The power to make rules or issue general orders under these rules shall be exercised by the Governor in the manner prescribed by the rules made by him under sub-section (3) of section 59 of the Act.

6. The Governor may delegate to any subordinate authorities under his control, subject to any conditions which he may think fit to impose, any power exercised by him under these rules with the following exceptions:

(a) the power to make rules;

(b) powers under rules 6, 9 (6) (b), 44, 45-A, 45-C, 83, 108-A, 119, 121 and 127(c), and by the first proviso to clause (1) of rule 30.

(For delegations of powers made by the Governor under this rule and rule 7, see Part IV of this volume).

7. No powers may be exercised or delegated under these rules except after consultation with the Finance Department. It shall be open to that department to prescribe, by general or special order, cases in which its consent may be presumed to have been given.

Note—For powers delegated under these rules, see Part IV of this volume.

8. [* * *]

CHAPTER II—DEFINITIONS

9. Unless there be something repugnant in the subject or context, the terms defined in this chapter are used in the sense here explained:

(1) The Act means the Government of India Act, 1935.

(2) Except as provided otherwise in this subrule, average pay means the average monthly pay earned during the 12 complete months immediately preceding the month in which the event occurs which necessitates the calculation of average pay:

Provided that—

In respect of any period spent on deputation out of India which has been declared by the Government to be under quasi-European conditions the pay which the government servant would have drawn if on duty in India shall be substituted for the pay actually drawn.

Exceptions—1. For the purpose of calculating the leave salary admissible to government servant recruited on or after 1st January, 1931, and before 1st January, 1936, the term "average pay" means either the average of the monthly pay earned during the three complete years immediately preceding the month in which the leave is take or the average substantive pay of the government servant during the 12 complete months immediately preceding the month in which the leave is taken, whichever is greater.

2. For the purpose of calculating the leave salary admissible to government servant recruited on or after 1st January, 1936, the term "average pay" is defined in the explanation given under rule 87-A.

Audit instruction regarding rule 9 (2)

1. According to the definition of "average pay" in this rule the average is to be taken of the monthly pay earned during the 12 complete months immediately preceding the month in which the leave is taken and for this purpose "the 12 complete months immediately preceding" should be interpreted literally. Thus, a government servant who has been on leave from 23rd March, 1922 to 22nd July, 1922, inclusive, is granted leave from 4th February, 1923. His average pay should be calculated on the pay earned for the periods 1st February, 1922 to 22nd March 1922, and 23rd July 1922 to 31st January, 1923. If, however, a government servant happens to be on leave for more than 12 months immediately preceding the date on which he takes leave under the Fundamental Rules, then the average should be taken of the monthly pay earned during the 12 complete months immediately preceding the month in which the leave originally commenced.

1-A. A civil government servant belonging to the India Army Reserve of Officers when called to Army service, or such a government servant belonging to the Indian Territorial Force while undergoing training with the force, is not a 'military officer' as defined in Fundamental Rule 9(16) (b)* and in his case 'pay' as defined in Fundamental Rule 9(21)[* * *] does not include 'rank pay' received during the period of his Army service or training. In such cases the pay which the government servant would have received if he had not been called to Army service or training, and not the 'rank pay' actually drawn during the period, should be taken into account for purposes of calculating leave salary based on average pay under the Fundamental Rules.

2. In the case of a government servant on foreign service out of India lasting for more than 12 months who on reversion to Government service immediately takes leave under the Fundamental Rules, the calculation of average pay in respect of leave earned while in Government service should be based on the pay drawn by him during the 12 complete months preceding the month in which he was transferred to foreign service.

3. In the case of government servant of a vacation department, the vacation falling in the period of 12 complete months immediately preceding the month in which leave is taken should be treated as duty under Fundamental Rule 82 (b) and the emoluments drawn by the government servant during the vacation should be treated as pay drawn on duty, and should therefore be taken into account in determining his leave salary during the succeeding leave.

3-A. In the case of a government servant of a vacation department both prefixing and suffixing leave to a vacation, the leave-salary for the leave affixed should be calculated on the emolument drawn by the government servant during the twelve complete months preceding the commencement of his leave prefixed to the vacation.

3-B. In order to determine the pay which a government servant would have drawn, if on duty in India for the purpose of the proviso to Fundamental Rule 9 (2), vacation should be treated as equivalent of leave on average pay for the purposes of this proviso.

3-C. For an interpretation of the expression "pay which the government servant would have drawn if on duty in India" in the proviso to Fundamental Rule 9(2), see paragraph 2 of the Audit Instructions regarding Fundamental Rules 50 and 51.

4. The term "month" in this rule means "calendar month" as in rule 9(18).

5. Any Period of joining time taken either under clause (b) or under clause (c) of rule 105 during the preceding 12 month should be ignored in calculating average pay, as no "pay" is drawn in respect of such joining time.

(3) Barrister means a practicing barrister of England or Northern Ireland or a practicing member of the Faculty of Advocates in Scotland. It does not include a person who, though called to the Bar, has never practiced the profession of barrister.

(4) Cadre means the strength of a service or a part of a service sanctioned as a separate unit.

(5) Compensatory allowance means an allowance granted to meet personal expenditure necessitated by the special circumstances in which duty is performed. It includes a travelling allowance.

Audit instruction regarding rule 9(5)

The allowance granted to professors of medical colleges who are denied the privilege of private practice should be treated as compensatory allowance.

(6) Duty—(a) Duty includes—

* In Part 1 of this Volume

(i) Service as a probationer or apprentice, provided that, except as otherwise provided in the special rules applicable to an appointment or service, such service is followed by confirmation.

(ii) Joining time.

(iii) Extra leave on average pay granted to a government servant undergoing treatment at an anti-rabic treatment centre.

(b) The Governor may issue orders declaring that, in circumstances similar to those mentioned below, a government servant may be treated as on duty:

(i) During a course of instruction or training in or outside India.

Order of the Governor regarding rule 9 (6) (b) (i).

Whenever government servants who are members of the Territorial army are called up for military duty in aid of civil power or for supplementing or supporting the regular armed forces during actual war, or are permitted to attend a course of instruction, their absence from their offices should be treated as duty for the purpose of civil leave and pension. If a government servant is on an incremental scale of pay, he will count his military service for increments in the time-scale of

pay applicable to him in his civil post and also towards civil pension, in the same way as if he had put in that period of service in his appointment.

(ii) In the case of a student, stipendiary or otherwise, who is entitled to be appointed to the service of the Government on passing through a course of training at a university, college or school in or outside India, during the interval between the satisfactory completion of the course and his assumption of duties.

(iii) When a Government servant after reporting for duty has compulsorily to wait for taking charge of a post for which he is in no way responsible, during the interval between the date of such report and the date on which he takes charge of his duties.

(iv) In the circumstances and subject to conditions stipulated in Fundamental Rules 83 and 83-A for the first six months of disability and their after provisions of aforementioned rules shall apply.

(For rules made by the Governor under this rule, see Part III of this volume, Chapter II.)

Orders of the Governor under rule 9 (6)

Mr. N, an executive engineer, while officiating as superintending engineer, was granted leave on average pay on medical certificate for 4 months and 12 days expiring on 25th August, 1924. After receipt of a medical certificate of fitness, the question of his posting was taken up on the 16th August, 1924, and it having been finally decided to post him as officiating superintending engineer, orders for his posting were issued on the 26th September, 1924. Mr. N, joined duty on the forenoon of the 4th October, 1924. The question arose how the period 26th August, 1924 to 3rd October, 1924, should be treated.

The circumstances of the case are similar to those referred to in Fundamental Rule 9 (6) (b) (iv) in as much as in both cases the essential point is the compulsory waiting by the government servant concerned for orders of Government posting him to a particular post. Accordingly, the Central Government with the concurrence of the Auditor General, ordered that the period of waiting in the case of Mr. N, and in other similar cases should be treated as duty as in the case mentioned in Fundamental Rule 9 (6) (b) (iv). The Governor has decided that the above ruling shall also apply to government servants under his rule-making power.

Order of the Governor under Fundamental Rule 9(6) (a)

The probationary service of ex-soldiers enlisted in the Police department will counts as duty.

Audit instructions regarding rule 9(6)

1. (a) The term "probationer" in Fundamental Rule 9(6) (a) (i) does not cover a government servant who holds substantively a permanent post in a cadre and is merely appointed on "probation" to another post. Such a government servant not being a probationer, the proviso in Fundamental Rule 9(6) (a) (i) does not apply to him, and the service rendered by him is duty for all purposes of the Fundamental Rules without any restriction or limitation.

(b) No person appointed substantively to a permanent post in a cadre is a probationer, unless definite conditions of probation have been attached to his appointment, such as the condition that he must remain on probation pending the passing of certain examinations.

(c) The status of a probationer is to be considered as having the attributes of a substantive status except where the rules prescribe otherwise.

2. Propriety of reckoning leave as 'duty' for the purposes of the Fundamental Rules—No leave can be treated as duty for the purpose of Fundamental Rules 61* or for the purpose of any other Fundamental Rule unless the contrary is expressly stated therein.

(6-A) Fee means a recurring or non-recurring payment to a government servant from a source other than the Consolidated Fund of State or the Consolidated Fund of India, whether made directly to the government servant or indirectly through the intermediary of Government, but does not include—

(a) unearned income such as income from property, dividends and interest on securities; and

(b) income from literary, cultural, artistic, scientific or technological efforts, if such efforts are not aided by the knowledge acquired by the government servant in the course of his service.

(This amendment shall be deemed to have come into force with effect from April 6, 1974).

(7) Foreign service means service in which a government servant receives his substantive pay with the sanction of the Government (a) from any source other than the revenues of the Central or of a State Government or the Railway Board; or (b) from a company working a State railway.

(7-A) Government, unless the contrary is evident from the context, means "the Government of Uttar Pradesh."

* In Part I of this Volume.

(7-B) Government servant for purposes of these rules, means a person appointed to a civil post or a civil service under the State Government in India, and serving in connexion with affairs of the Uttar Pradesh, whose conditions of service have been or may be prescribed by the Governor under section 241 (2) (b) of the Act.

NOTE—In the case of Subsidiary Rules made under these rules and under the Fundamental Rules in Part I this expression also all servants of the late secretary of State Services under the control of the Government to whom the Subsidiary Rules may be made applicable.

(7-C) Governor means the Governor of Uttar Pradesh.

(8) Subject to the provisions of section 136 of the Act—

(i) Revenues of the Federation include all revenues and public moneys raised or received by the Federation. Until the Federation is established, the term "revenues of the Federation" shall mean the Central revenues.

(ii) Revenues of the Province include all revenues and public moneys raised or received by the Uttar Pradesh Government.

(9) Honorarium means recurring or non-recurring payment granted to a government servant from the Consolidated Fund of a State or the Consolidated Fund of India as remuneration for special work of an occasional character.

(10) Joining time means the time allowed to government servant in which to join a new post or to travel to or from a station to which he is posted.

(11) Leave on average (or half or quarter average) pay means leave on leave-salary equal to average (or half or quarter average) pay, as regulated by rules 89 and 90.

(12) Leave salary means the monthly amount paid by the Government to a government servant on leave.

(13) Lien means the title of a government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post, including a tenure post, to which he has been appointed substantively.

(14) Local fund means—

(a) revenues administered by bodies which by law or rule having the force of law come under the control of the Government, whether in regard to proceedings generally or to specific matters, such as the sanctioning of their budgets, sanction

to the creation or filling up of particular posts, or the enactment of leave pension or similar rules; and

(b) the revenues of any body which may be specially notified by the Government as such.

Order of the Governor under rule 9 (14)

According to the decision given by the Government of India in consultation with the Comptroller and Auditor General of India in 1942, all Universities established by law are within the meaning of definition given in clause (a) above.

(15) [* * *

(16) [* * *]

(17) Ministerial servant means a government servant of a subordinate service whose duties are entirely clerical and any other class of government servant specially defined as such by general or special order of the government.

Orders of the Governor regarding rule 9 (17)

1. The assistant secretaries to the Government in the Civil and Public Works Secretariate have been declared to be ministerial servants.

2. The Registrar of the Board of Revenue has been declared to be a ministerial government servant if previous to his promotion he was a member of the ministerial establishment of the Board's Office and not a member of the U. P. Civil Service.

3. The Deputy Registrar and the Assistant Registrar of the High Court at Allahabad [* * *] have been declared to be ministerial servants.

4. Partition amins have been declared as ministerial servants.

(18) Month means calendar month. In calculating a period expressed in terms of months and days, complete calendar months, irrespective of the number of days in each, should first be calculated and the odd number of days calculated subsequently.

Audit instruction regarding rule 9(18)

In calculating a period of 3 months and 20 days from January 25, 3 months should be taken as ending on April 24, and the 20 days on May 14. In the same way the period from January 30 to March 2, should be reckoned as 1 month and 2 days because one month from January 30, ends on February 28.

A period of one month and 29 days commencing from the 1st January will expire, in an ordinary year (in which February is a month of 28 days) on the last day of February, because a period of 29 days cannot obviously mean to exceed a period of full calendar month and leave for two months from 1st January would end on the last day of February. The same would be the case if February were a month of 29 days or if the broken period were 28 days (in an ordinary year).

(19) Officiate—A government servant officiates in a post when he performs the duties of a post on which another person holds a lien. The Government may, if they think fit, appoint a government servant to officiate in a vacant post on which no other government servant holds a lien.

(20) Overseas pay means pay granted to a government servant in consideration of the fact that he is serving in a country other than the country of his domicile.

Orders of the Governor regarding the drawal of overseas pay under rule 9(20)

1. Where it is provided in the rules regulating conditions of appointment to any service or post, that the pay of the service or post shall include overseas pay, such overseas pay shall, unless it be otherwise expressly provided in such rules, be drawn only by a member of the service or an incumbent of the post whose domicile at the date of his first substantive appointment to such service or post was elsewhere than in Asia. Provided that no such government servant shall be entitled to overseas pay who, prior to such appointment, has, for the purpose of his appointment to a post under the Government or of the conferment upon him by the Government of any scholarship, emoluments or other privilege, claimed and been deemed to be of Indian domicile.

2. (i) The domicile of a person shall be determined in accordance with the provisions set out in the schedule* to these rules.

(ii) No government servant who after his appointment to a service or post acquires a new domicile shall thereby lose his right to or become entitled to overseas pay.

(iii) A government servant who has been drawing overseas pay in good faith and whose domicile is challenged should receive a personal allowance equal to the amount of overseas pay hitherto drawn, the allowance to be absorbed in increments, from the date when his domicile is questioned, and should continue to enjoy such allowance in the event of an eventual adverse decision.

(21) Pay means amount drawn monthly by a government servant as—

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in

an officiating capacity, or to which he is entitled by reason of his position in a cadre, and

(ii) overseas pay, technical pay, special pay and personal pay, and

(iii) any other emoluments which may be specially classed as pay by the Governor.

Orders of the Governor under rule 9(21) (iii)

Judicial pay and language pay have been declared to be pay.

Audit instructions regarding rule 9(21)

1. If language allowances are lump sum allowances, they will be dealt with under rule 46. If they are recurring payment, they will fall under the head "pay" under rule 9(21).

2. [* * *]

3. Pay drawn by civil government servants belonging to the India Army Reserve of Officers when called to Army Service or those belonging to the Indian Territorial Force while undergoing training with the Force.

See audit instruction no. 1-A regarding Fundamental Rule 9(2).

(22) Permanent post means a post carrying a definite rate of pay sanctioned without limit of time.

* See pages 164 to 166 of this Part.

(23) Personal pay means additional pay granted to a government servant—

(a) to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or to any reduction of such substantive pay otherwise than as a disciplinary measure; or

(b) in exceptional circumstances, on other personal considerations.

Orders of the Governor regarding rule 9(23) (b)

1. No application for the grant of a compensatory personal pay should be entertained unless—

(a) the government servant's service has been consistently satisfactory and has been of a character superior to what is ordinarily expected of the incumbent of the appointment:

(b) the government servant is fit for promotion but there is no possibility of giving him any advancement in the near future; and

(c) the government servant has been at least five years on the same pay or if his pay is progressive, on the maximum pay of his appointment.

The mere fulfillment of the conditions mentioned above should not be regarded as securing a personal pay to a government servant as a matter of course, the purpose of the conditions being to enable obviously weak claims to be summarily rejected. No case for personal pay will be considered by the Government which is not of an entirely exceptional character.

2. The maximum of a grade is definitely fixed as being the maximum pay which it is justifiable to give to a man performing the duties of the post. The fact that one man, owing perhaps to luck in promotion, reaches the maximum of his grade some years before he is due to retire is not in itself a sufficient reason for increasing that maximum by the grant of personal pay. On the other hand, there is every reason why no personal pay should be given, because a man who reaches the maximum of his grade earlier than was intended when the grade was fixed should consider himself fortunate in being able to draw the maximum for so long a period in his service.

(24) Presumptive pay of a post, when used with reference to any particular government servant, means the pay to which he would be entitled if he held the post substantively and were performing its duties; but it does not include special pay unless the government servant performs or discharges the work or responsibility, or is exposed to the unhealthy conditions, in consideration of which the special pay was sanctioned.

Audit instruction regarding rule 9 (24)

The first part of the definition is intended to facilitate the use of the term in relation to a government servant who has been absent from post for some time but still retains a lien on it.

(25) Special pay means an addition of the nature of pay, to the emoluments of a post or of a government servant, granted in consideration of—

(a) the specially arduous nature of the duties; or

(b) a specific addition to the work or responsibility.

(This amendment shall be deemed to have come into force with effect from April 1, 1979).

Audit instruction regarding the calculation of special pay in certain cases

When special pay has been sanctioned in the form of a portion or percentage of pay in the ordinary line and the pay in the ordinary line includes an element of sterling overseas pay, such special pay should be determined as follows:

- (a) the special pay is admissible on the sterling overseas pay as well as on the rupee basic pay;
- (b) the special pay must be expressed and drawn wholly in rupees;
- (c) the sterling overseas pay should, for the purpose of calculating the special pay, be converted into rupees at the rate of 1 s. 6 d. to the rupee.

Orders of the Governor regarding rule 9 (25)

1. There is no inter-dependence between special pay and compensatory allowance; they are essentially different. Where the cost of living, for example, would justify the grant to a government servant of a compensatory allowance he should not be rendered ineligible for such allowance simply because he has already been granted special pay in recognition of the duties and responsibilities of the post; and, if the attachment of special pay to a post is justified under the terms of these rules, it should not be subject to reduction because for reasons substantially different a compensatory allowance as defined in rule 9 (5) is subsequently granted.

2. In order that the Accountant General may see whether additions to pay, such as special pay and compensatory allowance, have been correctly classified, the reasons for granting such additions should be briefly recorded in the order conveying the sanction. Where it is not advisable to record the reasons in an open letter the reasons should be communicated confidentially to the Accountant General.

3. The following principles are laid down to govern the grant of special pay:

(1) (a) Special pay should be granted only when the conditions laid down in this rule apply strictly. It should not be given merely for the purpose of improving the prospects of a service or for the purpose of serving as a substitute for, or as an addition to, a selection grade of pay.

(b) The posts in the ordinary time-scale of a service will naturally vary in intensity and responsibility, but this is no ground ordinarily for granting special pays to the holders of the heavier charges. If owing to circumstances a junior government

servant has to hold one of the more responsible regular charges, he is thereby given an opportunity or proving his fitness for higher posts.

(c) The placing of a government servant on special duty does not necessarily mean that his work becomes specially arduous or so increased in quantity and responsibility as to justify special pay. A government servant's posting is in the hands of the Government and he has no right to refuse a post which the Government in the cause of the public service allots to him. This applies also to government servants transferred by agreement between two Governments from one Government to another. A protest against a posting should be formally admitted only on the ground of loss of pay or prospects and even on these grounds the Government is the final arbiter.

(d) A comparison between the circumstances of one government servant and another or of one service and another should not necessarily be accepted as an argument for the grant or for the enhancement of special pay.

(2) It is not permissible to grant special pay because a place lacks amenities. Nor does a change of duties necessarily can note an increase of work or responsibility.

(26) * * *

(27) Subsistence grant means a monthly grant made to a government servant who is not in receipt of pay or leave-salary.

(28) Substantive pay means the pay other than special pay, personal pay or emoluments classed as pay by the Governor under rule 9(21) (iii), to which a government servant is entitled on account of a post to which he has been appointed substantively or by reasons of his substantive position in a cadre.

(29) Technical pay means pay granted to a government servant in consideration of the fact that he has received technical training in Europe.

(30) Temporary post means a post carrying a definite rate of pay sanctioned for a limited time.

(30-A) Tenure post means a permanent post which an individual government servant may not hold for more than a limited period.

NOTE — In case of doubt the Government may decide whether a particular post is or is not a tenure post.

(31) (a) Time-scale pay means pay which, subject to any conditions prescribed in these rules, rises by periodical increments from a minimum to a maximum. It includes the class of pay formerly known as progressive.

(b) Time-scales are said to be identical if the minimum, the maximum, the period of increment and the rate of increment of the time-scales are identical.

(c) A post is said to be on the same time-scale as another post on a time-scale if the two time-scales are identical and the posts fall within a cadre, or a class in a cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility, in a service or establishment or group of establishments; so that the pay of the holder of any particular post is determined by his position in the cadre or class and not by the fact that he holds that post.

(32) Travelling allowance means an allowance granted to a government servant to cover the expenses which he incurs in travelling in the interests of the public service. It includes allowances granted for the maintenance of conveyances, horses and tents.

CHAPTER III—GENERAL CONDITIONS OF SERVICE

10. Except as provided by this rule, no person may be substantively appointed to a permanent post in Government service without a medical certificate of health. The medical certificate shall be furnished in such form and should be signed by such medical or other officers as the Governor may, by general rule or order, prescribe. The Governor may, in individual cases, dispense with the production of a certificate, and may, by general order exempt any specified class of government servants from the operation of this rule.

(This amendment shall be deemed to have come into force on March 17, 1973).

Order of the Governor regarding rule 10

Once a person is asked to produce a medical certificate of fitness for entry into Government service and has actually been examined and declared unfit, it is not open to the appointing authority to use its discretion to ignore the certificate that has been produced.

(For rules made by the Governor under this rule, see Part III of this volume, Chapter III).

11. Unless in any case it be otherwise distinctly provided, the whole time of a government servant is at the disposal of the Government, and he may be employed in any manner required by proper authority, without claim for additional remuneration, whether the services required of him are such as would ordinarily be remunerated from the revenues of the State or from a local fund or from the funds of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government.

12. (a) Two or more government servants can not be appointed substantively to the same permanent post at the same time.

(b) A government servant cannot be appointed substantively, except as a temporary measure, to two or more permanent posts at the same time.

(c) A government servant cannot be appointed substantively to a post on which another government servant holds a lien.

12A. Unless in any case it be otherwise provided in these rules, a government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

13. Unless his lien is suspended under rule 14 or transferred under rule 14-B, a government servant holding substantively a permanent post retains a lien on that post:

(a) while performing the duties of that post;

(b) while on foreign service, or holding a temporary post, or officiating in another post;

(c) during joining time on transfer to another post; unless he is transferred substantively to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the old post;

* (d) while on leave, except on leave granted under rule 86 or 86-A, as the case may be; and

(e) while under suspension.

Orders of Governor regarding rule 13

Government servants who are appointed as officers of the Army in India Reserve of Officers, shall retain a lien on their permanent posts under the Government during the period for which they are called to service in the Defence Department.

14. (a) The lien of a government servant on a permanent post which he holds substantively shall be suspended if he is appointed in a substantive capacity:

(1) to a tenure post, or

(2) to a permanent post outside the cadre on which he is borne, or

(3) provisionally, to a post on which another government servant would hold a lien had his lien not been suspended under this rule.

(b) The Government may, at their option, suspend the lein of a government servant on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or, in circumstances not covered by clause (a) of this rule, is transferred, whether in a substantive or officiating capacity, to a post in another cadre, and if in any of these cases there is reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years.

(c) Notwithstanding anything contained in clause (a) or (b) of this rule, a government servant's lien on a tenure post may in no circumstances be suspended. If he is appointed substantively to another permanent post, his lien on the tenure post must be terminated.

(d) If a government servant's lien is suspended under clause (a) or (b) of this rule, the post may be filled substantively, and the government servant appointed to hold it substantively shall acquire a lien on it; provided that the arrangements shall be reversed as soon as the suspended lien revives.

NOTES—(1) This clause applies also if the post concerned is a post in a selection grade of a cadre.

(2) When a post is filled substantively under this clause, the appointment will be termed a provisional appointment; the government servant appointed will hold a provisional lien on the post; and that lien will be liable to suspension under clause (a) but not under clause (b) of this rule.

(e) A government servant's lien which has been suspended under clause (a) of this rule shall revive as soon as he ceases to hold lien on a post of the nature specified in sub-clause (1), (2) or (3) of that clause.

(*This amendment shall come into force with effect from April 1, 1965).

(f) A government servant's lien which has been suspended under clause (b) of this rule shall revive as soon as he ceases to be on deputation out of India, or on foreign service, or to hold a post in another cadre, provided that a suspended lien shall not revive because the government servant takes leave if there is reason to believe that he will, on return from leave, continue to be on deputation out of India, or on foreign service or to hold a post in another cadre and the total period of absence on duty will not fall short of three years, or that he will hold substantively a post of the nature specified in sub-clause (1), (2) or (3) of clause (a).

When it is known that a government servant on transfer to a post outside his cadre is due to retire on superannuation pension within three years of his transfer, his lien on the permanent post cannot be suspended.

14A. (a) A government servant's lien on a post may in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post.

(b) In a case covered by sub-clause (2) of clause (a) of rule 14, the suspended lien may not, except on the written request of the government servant concerned, be terminated while the government servant remains in Government service.

14B. Subject to the provisions of rule 15, the Government may transfer to another permanent post in the same cadre the lien of a government servant who is not performing the duties of the post to which the lien relates, even if that lien has been suspended.

15. (a) a government servant may be transferred from one post to another; provided that, except—

(1) on account of inefficiency or misbehaviour, or

(2) on his written request,

a government servant shall not be transferred substantively to, or, except in a case covered by rule 49, appointed to officiate in, a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under rule 14.

(b) Notwithstanding anything to the contrary contained in these Rules, the Governor may in the public interest transfer a government servant to a post in another cadre or to an ex-cadre post.

(c) Nothing contained in clause (a) of this rule or in clause (13) of rule 9 shall operate to prevent the retransfer of a government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of rule 14.

16. A government servant may be required to subscribe to a provident fund, a family pension fund or other similar fund in accordance with such rules as the Governor may by order prescribe.

17. (1) Subject to any exception specifically made in these rules, and to the provisions of sub-rule (2) a government servant shall begin to draw the pay and allowance attached to his tenure of a post with effect from the date when he

assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties.

Exception—A candidate from the Forest College, Dehra Dun, approved for appointment to the Uttar Pradesh Forest Service or to the Uttar Pradesh Subordinate Forest Service shall be allowed to draw the minimum pay of his appointment from the date following the date of his obtaining the prescribed certificate qualifying him for appointment to the service for which he has been approved and the period intervening between the date of the certificate and the date of taking over charge shall be treated as duty provided that he actually joins his appointment within ten days from the date of his certificate.

(2) The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed.

Audit instructions regarding rule 17.

1. A government servant will given to draw the pay and allowances attached to his tenure of a post with effect from the date on which he assumes the duties of that post if the charge is transferred before noon of that date. If the charge is transferred afternoon, he commences to draw them from the following day. The rule does not—however, apply to cases in which it is the recognized practice to pay a government servant at a higher rate for more important duties performed during a part only of a day.

2. * * *

Orders of the Governor regarding rule 17(2)

The date of commencement of pay of government servants recruited in the United Kingdom on behalf of the Government shall be the date of embarkation for India, subject to their proceeding from the port of disembarkation to take up their duties without avoidable delay.

NOTE 1—The phrase "without avoidable delay" refers only to delay on the part of the government servant in reporting himself for duty (either at the headquarters of the Government or at the actual place of duty as the case may be) and not to delay caused by the Government deferring the issue of his posting orders either inadvertently or deliberately. The stipulation implied by the phrase should be regarded as fulfilled if the government servant reports for the duty within the period allowed by the joining time rules with only one day for preparation at the port of disembarkation.

NOTE 2—When a government servant recruited to a service or post under the Government on or after January 1, 1936, is prevented from proceeding at once from the port of disembarkation in India to take up his appointment he should be granted in respect of the period in excess of that mentioned in the preceding note leave on medical certificate on half average or leave on private affairs on half average pay as the case may require provided such leave is admissible to him. If no such leave be admissible, he should be allowed extra-ordinary leave without pay for the period in question. For the purpose of calculating the rate of leave salary, if any, admissible during the leave, the minimum of the Government servant's time-scale of pay (including overseas pay) should be treated as his average pay.

18. Unless the Government, in view of the special circumstances of the case, shall otherwise determine, after five years' continuous absence from duty elsewhere than on foreign service in India, whether with or without leave, a government servant ceases to be in Government employ.

18A. Subject to the provisions of sections 241 (3) (a) and 258 (2) (b) of the Act, a government servants' claim to pay and allowances is regulated by the rules in force at the time in respect of which the pay and allowances are earned and to leave by the rules in force at the time the leave is applied for and granted.

CHAPTER IV—PAY

19. The Pay of a government servant shall not exceed the pay sanctioned by a competent authority for the post held by him. No special or personal pay shall be granted to a government servant without the sanction of the Government.

20. In respect of any period treated as duty under rule 9 (6) (b), a government servant may be granted such pay as Government may consider equitable but in no case exceeding the pay which the government servant would have drawn had he been on duty other than duty under rule 9(6) (b).

Audit instruction regarding rule 20

1. Deleted.

2. The expressions "the pay of his substantive appointment" and "the pay of any officiating appointment" occurring in Fundamental Rule 20, should be taken to mean "the pay which the government servant drew in the post which he held substantively" and "the pay which the government servant drew in the post in which he officiated" respectively. In neither case is there any restriction on the kind of "pay" to be drawn, and the expressions should therefore be held to include special pay, if any which the government servant drew in the post he held substantively or in an officiating capacity.

Orders of the Governor regarding rule 20

1. Government servants who belong to the Army in India Reserve of Officers when called up for training will receive the following emoluments:

(i) When proceeding to carry out their training direct from their civil appointments, the pay and allowances, which they would have drawn in their civil appointments but for the training for the whole period of absence on such training inclusive of the time spent in transit to and fro.

(ii) When proceeding to carry out their training while on leave in India, Burma, Ceylon, Great Britain or Northern Ireland, the civil leave pay and allowances which they would have drawn but for the training.

(iii) When proceeding to carry out their training on the expiry of leave out of India taken from their civil appointments but before rejoining their civil appointments for duty, joining time civil pay from the date of disembarkation in India to the date preceding that on which their training commenced and full civil pay for the period of actual training and the period spent in journeying to the place of their civil appointments.

(iv) Military pay and allowances for the period of actual training—

(a) The emoluments drawn under (i) to (iii) are debitable to the revenues of the State and that under (iv) to the Defence estimates. The latter shall not be required to bear any share of the leave and pension charges accruing in respect of the period that a government servant is undergoing training.

(b) Government servants who join the Army in India Reserve of Officers when employed on part-time military duty in peace time will get their civil pay only which will be charged to the revenues of the State.

2. (1) Government servants who have been permitted to join the Territorial Army will during the period of training and during the period spent in camp receive (in addition to pay and allowances which they might receive from the Defence Services Estimates), their civil pay and allowances.

(2) Government servants whose rates of pay at the time they are called up for military duty [vide orders of the Governor regarding Fundamental Rule 9(6)(b)(i)] are higher than the military pay and allowances to which they would be entitled in respect of military duty, would receive pay at the civil rates at which they would have drawn it if they had not proceeded on military duty and the difference between the civil pay and allowances and military pay and allowances shall constitute a charge against the ordinary head of expenditure to which civil pay of the individual concerned is debitable.

3. An officer of the Provincial Medical Service, who is in receipt of a special pay at the time of his deputation for training in jail administration, will not be entitled to draw the same during the period of his training except on the production of a certificate from the Director of Medical and Health Services, to the effect that but for his deputation the officer would have continued to draw the special pay.

4. The pay of government servants awarded foreign scholarships who under rule 9(6)(b) are treated as on duty during the tenure of the scholarships, shall be limited to the amount of the scholarship.

Exception—The above order does not apply to government servants who are granted Rockefeller Fellowships. Government servants selected for Rockefeller Foundation Fellowships should, as a rule, be granted the following terms:

(1) Pay that the scholars would have drawn had they remained on duty in India, subject to usual restrictions in hard currency areas. In case family allowance is granted by the Rockefeller Foundation, pay will not be admissible.

(2) No compensatory allowance will be admissible.

(3) Period of absence will be treated as duty and not as leave, except in the case of those who are granted family allowance. In such cases, the period of absence should be treated as extraordinary leave and, as required under Fundamental Rule 85, the consent of the scholar should be obtained in writing before such leave is granted.

(4) The stipend, travelling expenses and other allowances granted by the Rockefeller Foundation, other than the family allowance, will be admissible.

21. Time-scale of pay—Rules 22 to 29 inclusive and rule 31 apply to time-scales of pay generally.

22. The initial substantive pay of a government servant who is appointed substantively to a post on a time-scale of pay is regulated as follows:

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended—

(i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 30) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;

(ii) when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that

pay, plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increments in the time-scale of the old post, or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum pay of the time-scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay;

(iii) when appointment to the new post is made on his own request under rule 15(a) and the maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post he will draw that maximum as initial pay.

(b) If the conditions prescribed in clause (a) are not fulfilled, he will draw as initial pay the minimum of the time-scale:

Provided, both in cases covered by clause (a) and in cases, other than cases of re-employment after resignation or removal or dismissal from the public service, covered by clause (b), that if he either—

(1) has previously held substantively or officiated in —

(i) the same post, or

(ii) a permanent post or temporary post on the same time-scale, or

(iii) a permanent post, other than a tenure post, on an identical time-scale, or a temporary post on an identical time-scale, such post being on the same time-scale as a permanent post; or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated,

then the initial pay shall not be less than the pay, other than special pay, personal pay or emoluments classed as pay by the Governor under rule 9(21) (iii), which he drew on the last such occasion, and he shall count the period during which he drew that pay on such last and any previous occasions for increments in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government servant in a temporary post has been inflated by the grant of premature increments, the pay which he would have drawn but for the grant of those increments shall be taken for the purposes of this proviso to be the pay which he last drew in the temporary post.

Exception—The condition in paragraph (iii) of the first proviso that the temporary post should be on the same time-scale as a permanent post shall not be enforced when a temporary post is (i) created by one Government or Department for the

purpose of work of the same nature as the ordinary work for which permanent posts exist in a cadre under a different Government or Department, and (ii) sanctioned or a time-scale identical with the time-scale applicable to the permanent posts in the cadre under the different Government or Department.

NOTES—(1) If the Government servant is entitled to overseas pay in the new post but was not drawing overseas pay in the old post, the overseas pay in the new post, shall not be taken into account in determining the stage in the time-scale of the new post to which he is entitled under clause (a)

(2) For the purposes of this rule sterling overseas pay shall be converted into rupees at such rate of exchange as the Government may by order prescribe.

Auditor-General's decision under rule 22

(1) * * * A government servant when appointed to a post substantively while officiating in it, is entitled to have his pay fixed a new under * * * Fundamental Rule 22 with reference to his substantive pay at the time in respect of his old permanent post.

[Auditor-General's letter no. T-1176-A/170-34, dated September 11, 1934].

(2) The words 'the stage of the time-scale next above his substantive pay in respect of the old post' occurring in clause (a)(i) of this rule means the stage in the time-scale which is next in amount above his substantive pay, although the time-scale of the new post may carry only bienniel increments.

Illustration—An officer in receipt of substantive pay of Rs. 350 in a permanent post in the scale of Rs. 275-25—500—E.B.—30—650—E.B.—30—800 was appointed to officiate in a post involving higher responsibilities in the scale of Rs. 350—350—380—380—30—590—E.B.—30—770—40—850. It was declared that the latter time-scale carrying bienniel increments for the relevant stages, viz. Rs. 350 and Rs. 380. It was agreed that his substantive pay in the scale of Rs. 275—800 being Rs. 350 per mensem his officiating pay in the scale of Rs. 350—850 may be fixed at Rs. 380 instead of at the second stage of Rs. 350 per mensem.

Audit instructions regarding rule 22

1. Deleted.

2. When the next increment in the time-scale of either the new or the old post falls due, the government servant should draw the next increment in the time-scale of the new post, and forthwith lose the personal pay and all connexion with the time-scale of his old post. The personal pay is given to a government servant only for the purpose of initial pay and not at any subsequent stage in the new time-scale in

which the government servant might draw less pay than he would have drawn had he remained in the old time-scale.

3. Deleted.

4. A time-scale may be of recent introduction whereas the cadre or class to which it is attached may have been in existence on a graded scale before the time-scale came into force or it may be that one time-scale has taken the place of another. If a government servant has held substantively or officiated in a post in the cadre or class prior to the introduction of a new scale and has drawn during the period salary or pay equal to a stage, or intermediate between two stages, in the new time-scale, then the initial pay in the new time-scale may be fixed at the salary or pay last drawn and the period during which it was drawn may be counted for increment in the same stage, or if the salary or pay was intermediate between two stages, in the lower stage of that time-scale.

5. The expression "if he holds a lien on a permanent post" occurring in clause (a) of Fundamental Rule 22 should be held to include the lien on a permanent post to which a government servant is appointed in a provisional substantive capacity under Fundamental Rule 14(d), and the expression "substantive pay in respect of the old post" occurring in that rule should be held to include his substantive pay in respect of that provisional substantive appointment. Fundamental Rule 22(a) should therefore be held to permit the substantive pay in respect of a provisional substantive appointment being taken into account in determining his initial pay in another post to which he is appointed. When the initial pay of a government servant in a post is thus fixed, it will not be affected even if during the tenure of his appointment to that post he reverts from his provisional appointment.

Orders of the Governor regarding rule 22

1. For the purpose of clause (a) of Fundamental Rule 22, a declaration as to the relative degrees of responsibility of two posts should be obtained from the appointing authority or the Government in the administrative department according as the posts are in the same or different departments.

2. A temporary post on a certain rate of pay (fixed or time-scale) which is converted into a permanent post on the same or a different rate of pay is not the "same post" as the permanent post even though the duties remain the same. In other words in view of rule 9(30) the temporary post is to be regarded as having ceased to exist and to have been replaced by the permanent post. The incumbent of the temporary post is thus entitled only to the pay of the permanent post if it is on a fixed rate of pay or to the minimum pay of the time-scale of the permanent post if it is on a time-scale unless his case is covered by the concession admissible under provisions (1)(ii) and (1)(iii) to rule 22.

22-A. The initial substantive pay of a government servant who is appointed substantively to a post on a time-scale of pay which has been reduced for reasons other than a diminution in the duties or responsibilities attached to posts thereon and who is not entitled to draw pay on the time-scale as it stood prior to reduction, is regulated by rule 22:

Provided that—

(a) if he is appointed to a post in another service which is reserved for the service to which he belongs, his initial pay shall be fixed at a stage which approximates as closely as possible to the initial pay which he would have drawn in the unreduced scale, and

(b) both in cases covered by clause (a) of that rule and in cases, other than those of re-employment after resignation or removal or dismissal from the public service, covered by clause (b), if he either—

(1) has previously held substantively or officiated in—

(i) the same post prior or reduction of its time-scale, or

(ii) a permanent post or temporary post on the same time-scale as the unreduced time-scale of the post, or

(iii) a permanent post other than a tenure post, or a temporary post, on a time-scale of pay identical with the unreduced time-scale of the post, such temporary post being on the same time-scale as a permanent post, or

(2) is appointed substantively to a tenure post the time-scale of which has been reduced without a diminution in the duties or responsibilities attached to it, and has previously held substantively or officiated in another tenure post on a time-scale identical with the unreduced time-scale of the tenure post,

then the initial pay shall not be less than the pay, other than special pay, personal pay or emoluments classed as pay by the Governor under rule 9(21)(iii) which he would have drawn under rule 22 on the last such occasion if the reduced time-scale of pay had been in force from the beginning and he shall count for increments the period during which he would have drawn that pay on such last and any previous occasions:

Provided further that the initial pay of a government servant who was in service on January 1, 1922, shall not be less than the initial pay admissible to him under rule 22.

22-B(1) Notwithstanding anything contained in these rules, where a government servant holding a post in a substantive, temporary or officiating capacity is

promoted or appointed either in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay arrived at by notionally increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued:

Provided that the provisions of this rule shall not apply where a government servant holding a post in a substantive, temporary or officiating capacity and drawing pay in a pay scale the maximum of which exceeds Rs. 900 p.m., Rs. 1200 p.m. or Rs. 2050* p.m. respectively in the scales introduced with effect from April 1, 1965, August 1, 1972, or July 1, 1979, is appointed in a substantive, temporary or officiating capacity to a post carrying higher duties or responsibilities:

Provided further that the provision of sub-rule (2) of Fundamental Rule 31 shall not be applicable in any case where the initial pay is fixed under this rule:

Provided also that where a government servant is immediately before his promotion or appointment to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by an amount equal to the last increment in the time-scale of the lower post:

* This amendment come into force with effect from January 1, 1984 vide Notification No. G-2-29/X—301-81 dated December 12, 1984.

Provided that if a government servant either:

(1) has previously held substantively or officiated in—

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post other than a tenure post or a temporary post on an identical time-scale, or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively, or in which he has previously officiated;

then proviso to Fundamental Rule 22 shall apply in the matter of the initial fixation of pay and counting of previous service for increment.

(2) (i) If as a result of fixation of initial pay under sub-rule (1) there arises an anomaly, namely, that the rate of pay admissible to a government servant on the higher post would exceed that of another government servant senior to him in the lower grade or scale and promoted earlier to another identical post the pay of the latter shall with effect from the date of promotion or appointment of the former be stepped up by the Government to an amount admissible to the former as pay fixed under sub-rule (1) subject, however, to the following conditions:

(a) the junior and the senior government servants belong to the same cadre and the posts to which they have been promoted or appointed are identical and in the same cadre;

(b) the time-scale of pay for the lower and higher posts in which the junior and the senior government servants are entitled to draw their pay is identical;

(c) the anomaly referred to above must have arisen as a direct result of the application of sub-rule (1) and not for any other reason;

Explanation—(1) If the government servant is allowed a higher pay to start within a time-scale regard being had to his having been previously in any other employment under government, and subsequently upon his promotion or appointment to the higher post, there is fixation made of initial pay under sub-rule (1), the anomaly resulting vis-a-vis the rate of pay admissible to the senior Government servant on the higher post shall not be deemed for purposes of this sub-rule to arise as a direct result of the application of this rule.

Explanation—(2) If a government servant has, on account of getting advance increment in his lower post, received more pay from time to time, than the senior government servant appointed or promoted earlier to the higher post and subsequently there is fixation of pay under sub-rule (1) in the case of the former, then also the initial fixation of pay under sub-rule (1) shall not be deemed, for purposes of this sub-rule to arise as a direct result of the application of sub-rule (1).

(d) the senior government servant shall draw his next increment on completion of the requisite qualifying service with effect from the date of such stepping up of his pay.

(ii) The provisions of this rule shall apply also in case of promotion to an ex-cadre post if the government servant has been appointed in the time-scale of pay pertaining to the higher ex-cadre post without any condition being attached to the effect that while working on the higher ex-cadre post he shall draw any deputation allowance or special pay in addition to the pay in the time-scale for the lower post;

NOTE—1. The provisions of this rule shall not apply to cases of appointment from an ex-cadre post to a cadre post.

NOTE—2. In cases of appointment/promotion from one ex-cadre post to another ex-cadre post where the official opts to draw pay in the scale of the ex-cadre post, the pay in the second or subsequent ex-cadre posts should be fixed under F.R. 22-B (1) with reference to pay in the cadre post only.

(iii) The pay of a government servant on reversion to his old lower post or to some other post in the same time-scale of pay shall be such as he will have actually drawn if he had not been promoted to the higher post. If the pay of a government servant has already been fixed under Fundamental Rule 27, then, on reversion, his pay will be re-fixed under Fundamental Rule 27 giving to him also, the benefit of his service rendered in the higher post according to Fundamental Rule 26 (c);

(iv) If a government servant is reverted from a higher post to such lower post, the time-scale of pay of which is higher than that of the post in which he drew his pay before being appointed to the higher post, then, in that case, the pay admissible to him on such intermediary post shall be fixed according to this rule.

22-C. Notwithstanding anything contained in these rules, where a Government servant who does not hold a lien on any permanent post is appointed either in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of lesser or same importance than those attached to the post held by him, and, in cases not covered by Fundamental Rules, 22, 22-B or 26(c), his initial pay in the time scale of the lower or the equivalent post shall be fixed at the stage arrived at by allowing over the minimum of the time-scale of such post one increment for each completed year of service rendered in the previous post provided that the pay so fixed shall not exceed—

(a) the pay last drawn in the previous post, and

(b) the maximum of the scale of the new post:

Provided further that where the new post is in an identical time-scale of pay, the pay of such Government servant shall be fixed at the stage last drawn in the previous post and service rendered in it at that stage shall count for increments in the scale of pay of the new post:

Provided further that where the new post is in an equivalent scale of pay, pay of such Government servant shall be fixed at the stage next below the pay last drawn and the difference will be made good by the grant of a personal pay under Fundamental Rule 9 (23) (b) which will be absorbed in future increments.

NOTE—The provisions of this rule shall not apply to cases of appointments from an ex-cadre post to a cadre post.

23. (1) The holder of a post the pay of which is changed shall be treated as if he were transferred to a new post on the new pay; provided that he may at his option retain his old pay until the date on which he has earned his next or any subsequent increment on the old scale, or until he vacates his post or ceases to draw pay on that time-scale. The option once exercised is final.

(2) Notwithstanding anything contained in sub-rule (1) above, a Government servant may, insofar as the option for the new scales of pay introduced with effect from April 1, 1965 is concerned, elect the said new scales of pay either from the aforesaid date or from the date of his next increment in the old scale of pay falling immediately after the said date, and the like option shall be separately available to him in respect of the post, if any, on which he may be officiating.

NOTE—Sub-rule (2) of F.R. 23 will also apply mutatis mutandis to cases of option for the new scales of pay introduced with effect from August 1, 1972 or July 1, 1979 subject to the condition that it will also apply to cases of option where a Government servant elects the new scales of pay from the date of his appointment falling between August 1, 1972 and March 7, 1973 or July 1, 1979 and September 30, 1981 respectively.

Audit instructions regarding rule 23

1. If the maximum pay of a post is altered with no change the rate of increment and the minimum, the initial pay of the holder of that post should be fixed under rule 22(b) and not under rule 22(a), even though he may be holding the post substantively.
2. This rule applies to an officiating as well as to a substantive holder of a post.
3. The expression "subsequent increment on the old scale" in the proviso to rule 23 should be held to include grade promotion in cases in which a time-scale of pay has been substituted for a graded scale of pay.

Orders of the Governor regarding rule 23

In connection with the application of Fundamental Rule 23 and the Audit Instruction below it, a question was raised whether an official officiating in a higher scale on the date from which different posts on different scales in the same cadre were merged in a common scale, could exercise, under Fundamental Rule 23, the option of retaining his officiating pay in old higher scale when all the posts of the different categories were on the same new scale from that date and no higher responsibility was involved.

The Governor has decided that the words "his old pay" occurring in the proviso to the rule should be held to include not only the rate at which the individual was

drawing his officiating pay on the crucial date but also the time-scale of pay in which he was drawing that pay. Thus for the period of option the old scale of pay in which he was drawing his officiating pay should be treated as continuing for the individual concerned and since he is entitled to retain his old pay during that period his drawing of that pay under the option need not depend on whether the constructive officiating appointment after the crucial date does or does not involve the assumption of duties and responsibilities of greater importance. The option, however, ceases to operate once the individual concerned constructively ceases to officiate in the post or ceases to draw pay in the particular scale in which he was drawing the officiating pay.

Both the substantive part of Fundamental Rule 23 and its proviso cannot be operative at one and the same time. For the period during which the option exercised under the proviso operates, the substantive portion of the rule remains inoperative. Failure to exercise the option from whatever cause entails forfeiture of the benefit of the rule.

24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a government servant by the Government, or by any authority to whom the Government may delegate this power under rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.

25. Where an efficiency bar is prescribed in a time-scale the increment next above the bar shall not be given to a government servant without the specific sanction of the authority empowered to withhold increments.

Orders of the Governor regarding rule 25

1. On each occasion on which a government servant is allowed to pass an efficiency bar which had previously been enforced against him, he should come on to the time-scale at such stage as the authority competent to declare the bar removed may fix for him, subject to the pay admissible according to his length of service.

2. The cases of all persons held up at the efficiency bar should be reviewed annually by the withholding authorities with a view to determine whether the quality of their work has improved, and generally whether the defects for which they were stopped at the bar have been remedied to an extent sufficient to warrant the removal of the bar.

26. The following provisions prescribe the conditions on which service counts for increments in a time-scale:

(a) All duty in a post on a time-scale counts for increments in that time-scale:

Provided that, for the purpose of arriving at the date of the next increment in that time-scale the total of all such periods as do not count for increment in that time-scale, shall be added to the normal date of increment:

Provided further that increments falling due after the 1st of April, 1978, shall accrue on the first day of the month in which they would have accrued:

(b) (i) Service in another post, other than a post carrying less pay referred to in clause (a) of rule 15, whether in a substantive or officiating capacity, service on deputation out of India and leave except extraordinary leave taken otherwise than on medical certificate shall count for increments in the time-scale applicable to the post on which the government servant holds a lien, as well as in the time scale applicable to the post or posts, if any, on which he would hold a lien had his lien not been suspended:

(ii) All leave except extraordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time-scale applicable to a post in which a government servant was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India:

Provided that the Governor may, in any case in which he is satisfied that the extraordinary leave was taken for any cause beyond the Government servant's control or for prosecuting higher scientific and technical studies direct that extraordinary leave shall be counted for increments under clause (i) or (ii).

(The amendment shall be deemed to have come into force with effect from April 1, 1978).

(c) If a government servant, while officiating in a post or holding a temporary post in a time-scale of pay is appointed to officiate in a higher post or to hold a higher temporary post, his officiating or temporary service in the higher post shall, if he is re-appointed to the lower post or is appointed or re-appointed to a post on the same time-scale of pay, count for increments in the time-scale applicable to such lower post. The period of officiating service in the higher post which counts for increment in the lower is, however, restricted to the period during which the government servant would have officiated in the lower post but for his appointment to the higher. This clause applies also to a government servant who is not actually officiating in the lower post at the time of his appointment to the higher post, but who would have so officiated in such lower post or in a post on the same time-scale of pay had he not been appointed to the higher post.

Audit instruction regarding rule 26 (c)

The intention of this rule is to allow the concession, irrespective of whether the higher post is within or outside the department to which the government servant belongs.

(d) (Deleted).

(e) Foreign service counts for increments in the time-scale applicable to—

(i) the post in government service on which the government servant concerned holds a lien as well as the post or posts, if any, on which he would hold a lien had his lien not been suspended.

(ii) the post in government service in which the government servant was officiating immediately before his transfer to foreign service, for so long as he would have continued to officiate in that post or a post on the same time-scale but for his going on foreign service, and

(iii) any post to which he may receive officiating promotion under rule 113, for the duration of such promotion.

Orders of the Governor regarding rule 26

(i) A government servant, who has elected to remain under the leave rules contained in the Civil Service Regulations, is entitled to the benefit of Article 210 of those Regulations and in his case the application of that article has the effect of overriding the definition of the word "lien" in rule 9(13) for the purpose of the interpretation of that word in rule 26(b).

(ii) The practice of making appointments in a substantive capacity against temporary posts shall be discontinued altogether. Even those government servants who have already been appointed on temporary posts in a substantive capacity will be allowed to count the periods of leave for increments in such temporary posts only to the extent indicated in sub-paragraph (iii) below. The certificate on the lines indicated in that sub-paragraph will, however, not be necessary in such cases.

(iii) Periods of leave on average pay up to a maximum of four months, and earned leave up to a maximum of one hundred and twenty days, taken at a time shall count for increments in the scale attached to the post, whether permanent or temporary, in which a government servant was officiating at the time of proceeding on leave provided the appointing authority certifies in each case that the government servant concerned would actually have continued to officiate in the post but for his proceeding on leave, and the period of leave will count for increment only to the extent it is covered by the certificate. Joining time under rule 105(b) following leave should count for increments in the scale attached to the post, whether temporary or permanent, in which a government servant is officiating at the time of

proceeding on leave and would have continued to officiate but for his proceeding on leave and joining time taken, if any, subject to the condition that leave on average pay/earned leave plus joining time does not exceed 4 months/120 days.

(iv) For the purpose of Fundamental Rule 26(c), the officiating and temporary service in the higher posts will include the period of leave which counts for increments in that post under sub-paragraph (iii) above.

(v) For the purpose of clause (c) of this rule, the officiating and temporary service in the higher post will also include the period of leave on average pay for four months or earned leave up to a maximum of 120 days taken at a time, provided it is certified by the appointing authority that the government servant concerned would have actually officiated in the lower post but for proceeding on leave from the higher post.

(vi) Under clause (b) of this rule, the periods of leave on average pay up to a maximum of four months and earned leave up to a maximum of 120 days taken at a time can count for increments in the time-scale applicable to the post in which a government servant was officiating at the time of proceeding on leave, if it is certified by the appointing authority that he would have continued to officiate in that post but for his proceeding on leave. The certificate envisaged in the rule may be furnished by competent authority, if necessary, in respect of more than one person for the same post and for the same period of leave, subject, of course, to other considerations namely, their continuance otherwise in the post in question.

Audit instructions regarding rule 26

1. A period of overstaying of leave does not count towards increments under the Fundamental Rules.
2. If a probationer is confirmed at the end of a period of probation exceeding twelve months, he is entitled to claim retrospectively the increments which, but for his probation, he would have received in the ordinary course.
3. In the case of a government servant who, while officiating in one post, is appointed to officiate in another, the period of joining time spent in proceeding from one post to the other should be treated as duty in the post, the pay of which the government servant draws during the period and will count for increment in the same post under clause (a) of the rule.
4. In the case of a government servant who, while officiating in a post, proceeds on training or to attend a course of instruction and who is treated as on duty while under training, the period of such duty will count for increment in the post in which he was officiating prior to his being sent for training or instruction if he is allowed the pay of the officiating post during such period.

5. Although joining time taken under Fundamental Rule 105 (b) and (c) is treated as duty under Fundamental Rule 9(6)(a)(ii), it cannot be treated as duty for the purposes of increment in an officiating post inasmuch as only leave-salary is drawn for the period. This restriction will not, however, apply to the joining time under sub-clause (i) of rule 105 (b), provided the leave on average pay/earned leave plus joining time availed of does not exceed 4 months/120 days and it is certified that the government servant would have continued to officiate but for his proceeding on leave and joining time.

27. An authority may grant a premature increment to a government servant on a time-scale of pay if it has power to create a post in the same cadre on the same scale of pay.

Orders of the Governor regarding rule 27

The authorities subordinate to the Government to whom power has been delegated to create temporary posts subject to certain limitations regarding rates of pay, period, etc. can under the above rule grant premature increments to holders of temporary posts created by them. Under rule 7, however, the Government have decided that such subordinate authorities as have been empowered to create temporary posts shall not grant premature increments to the holders of such posts unless they are specially authorized by the Government to do so and then only to such extent as may be specified by the Government.

28. The authority which orders the transfer of a government servant as a penalty from a higher to a lower grade or post may allow him to draw any pay, not exceeding the maximum of the lower grade or post, which it may think proper:

Provided that the pay allowed to be drawn by a government servant under this rule shall not exceed the pay which he would have drawn by the operation of rule 22 read with clause (b) or clause (c), as the case may be, of rule 26.

Orders of the Governor regarding rule 28

There is nothing in these rules to prevent a reduction of pay from a higher to a lower stage in the same time-scale as a disciplinary measure.

29. (1) If a Government servant is reduced as a measure of penalty to a lower stage in his time-scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and, if so, to what extent.

(2) If a government servant is reduced as a measure of penalty to a lower grade or post, the authority ordering the reduction may or may not specify the period for which the reduction shall be effective; but where the period is specified, that

authority shall also state whether, on restoration, the period of reduction shall operate to postpone future increments and, if so, to what extent.

Orders of the Governor regarding rule 29

1. Normally even in cases of reduction to a lower grade or post, the period of punishment should be specified and, if this is not done for some exceptional reasons, those reasons must be recorded in writing by the authority ordering the reduction.

2. (a) Every order passed by a competent authority imposing on a government servant the penalty of reduction to a lower stage in a time-scale should indicate:

(i) the date from which it will take effect and the period (in terms of years and months) for which the penalty shall be operative;

(ii) the stages in the time-scale (in terms of rupees) to which the government servant is reduced; and

(iii) the extent (in terms of years and months), if any, to which the period referred to at (i) above should operate to postpone future increments.

It should be noted that reduction to a lower stage in a time-scale is not permissible under the rules either for an unspecified period or as a permanent measure. Also when a government servant is reduced to a particular stage, his pay will remain constant at that stage for the entire period of reduction.

The period to be specified under (iii) should in no case exceed the period under (i);

(b) The question as to what should be the pay of a government servant on the expiry of the period of reduction should be decided as follows:

(i) if the order of reduction lays down that the period of reduction shall not operate to postpone future increments, the government servant shall be allowed the pay which he would have drawn in the normal course but for the reduction. If, however, the pay drawn by him immediately before reduction was below the efficiency bar he should not be allowed to cross the bar except in accordance with the provisions of Fundamental Rule 25;

(ii) if the order specifies that the period of reduction was to operate to postpone future increments for any specified period, the pay of the government servant shall be fixed in accordance with (i) above but after treating the period for which the increments were to be postponed as not counting for increments.

3. (1) Under sub-rule (2) of Fundamental Rule 29, if a government servant is reduced as a measure of penalty to a lower grade or post, the authority ordering the

reduction may or may not specify the period for which the reduction shall be effective, but where the period is specified, that authority shall also state whether, on restoration, the period of reduction shall operate to postpone future increments, and if so, to what extent. Where the period of reduction is specified in the order of penalty the government servant concerned shall be automatically restored to his old post after the expiry of the specified period.

(2) The question as to what should be the pay of a government servant on restoration to the higher post/grade, in cases where the period of reduction is specified, shall be decided as follows:

(i) if the order of reduction lays down that the period shall not operate to postpone future increments, the government servant shall be allowed the pay which he would have drawn in normal course but for his reduction to the lower post. If the pay drawn by him immediately before reduction was below the efficiency bar, he shall not be allowed to cross the bar except in accordance with the provisions of Fundamental Rule 25;

(ii) if the order lays down that the period of reduction shall operate to postpone his future increments for any specified period which shall not exceed the period of reduction to the lower post/grade, the pay of the government servant on restoration shall be fixed in accordance with (i) above but after treating the period for which increments are to be postponed as not counting for increments.

In cases where the reduction to the lower post/grade is for an unspecified period, if and when the government servant is re-appointed to the higher post in the normal course, the pay in the higher post will be regulated only in accordance with normal rules relating to pay fixation.

Audit instructions regarding rule 29

1. The change from rupee to sterling overseas pay, or the grant of an increased rate of sterling overseas pay, should be regarded as an increment and should, therefore, not take effect if a government servant is debarred by the stoppage of an increment from drawing the corresponding rate of rupee basic pay.

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

29-A. Where an order of penalty of withholding of increment of a government servant or his reduction to a lower grade or post, or to a lower time-scale, or to a

lower stage in time-scale, is set aside or modified by a competent authority on appeal or review, the pay of the government servant shall, notwithstanding anything contained in these rules, be regulated in the following manner:

(a) If the said order is set aside, he shall be given, for the period such order has been in force, the difference between the pay to which he would have been entitled had that order not been made and the pay he had actually drawn;

(b) if the said order is modified, the pay shall be regulated as if the order as so modified had been made in the first instance.

Explanation—If the pay drawn by a government servant in respect of any period prior to the issue of the orders of the competent authority under this rule is revised, the leave salary and allowances (other than travelling allowance), if any, admissible to him during that period shall be revised on the basis of the revised pay.

30. Pay of officiating government servants:

(1) Subject to the provisions of Chapter VI, a government servant who is appointed to officiate in a post shall not draw pay higher than his substantive pay in respect of a permanent post, other than a tenure post, unless the post in which the appointment is made in an officiating capacity belongs to a Selection Grade of a service, or, unless the officiating appointment involves the assumption of duties and responsibilities of greater importance than those attaching to the post, on which he holds a lien or would hold a lien had his lien not been suspended:

Provided that the Government, subject to such conditions as they may prescribe, may exempt from the operation of this rule any service which is not organized on a time-scale basis and in which the system of officiating promotion from grade is in force.

Provided further that Government may specify posts outside the ordinary line of a service the holders of which may, notwithstanding the provisions of this rule and subject to such conditions as the Government may prescribe, be given any officiating promotion in the cadre of the service which the authority competent to order promotion may decide, and may thereupon be granted the same pay (whether with or without any special pay attached to such posts) as they would have received if still in the ordinary line.

NOTE—The pay on an officiating appointment to a Selection Grade post which does not involve assumption of duties or responsibilities of greater importance may be fixed under the provisions of F.R. 22 (a) (ii) and the benefit of the second proviso of this rule may be extended in such cases subject to all the conditions of that rule being satisfied.

(This amendment shall be deemed to have come into force with effect from the date of its publication in the Gazette, i.e. May 12, 1973.)

Audit instructions regarding the second proviso to clause (1) of rule 30

It is not intended that the phrase "outside the ordinary line of a service" in the second proviso to clause (1) of Fundamental Rule 30 should be rigidly interpreted either as "outside the cadre of a service" or as "outside the ordinary time-scale".

* * * *

The specification of a post under this proviso will enable a government servant to count service in that post for increment in the grade in which he would have officiated had he not been holding the specified post.

Order of the Governor regarding rule 30

For the purpose of rule 30, a declaration as to the relative degrees of responsibility of two posts should be obtained from the appointing authority or the Government in the administrative department according as the posts are in the same or different departments.

NOTE—Higher officiating pay is not permissible to persons entitled to the old scales in cases where different posts on different time-scales of pay have been merged into a single time-scale for new entrants.

In the case of ministerial and other establishments in which there are no grades in the sense in which the word is used in the Civil Services Regulations, the first proviso is intended to cover where necessary, all cases of the grant of acting allowances from one fixed rate of pay to another without change of duty. This applies also to the case of ministerial and other establishment not organised on a time-scale basis in which the rates of pay are progressive.

Orders of the Governor regarding the first proviso to rule 30 (1)

I. The conditions of rule 30 shall not apply to the services mentioned below until such time as they are reorganized on a time-scale basis. Officiating promotion will continue therefore to be made from grade to grade as hitherto, except that in respect of the service marked with an asterisk, officiating promotion will be permissible only on occasions and under conditions of which sub-pro-tem promotion would be admissible under Paragraph VI of these orders.

Public Works Departments

1. Lower subordinates.

2. Deputy revenue officers, ziladars and amins*,

Forest Department

Rangers, deputy rangers, foresters and forest guards.

Revenue Department

1. Tahsildars and naib-tahsildars*.

2. Superintending kanungos*.

3. Supervisor kanungos*.

4. Patwari school teachers and assistant teachers*.

5. Kurk Amins.

Agriculture Department

1. Subordinate agriculture service*.

2. Fieldmen*.

Registration Department

1. Sub-registrars*.

Police Department

1. Inspectors and sub-inspectors*.

2. Head constables.*

3. Sergeants*.

Education Department

1. Drill instructors in the Government High and Normal Schools.

2. Teachers of model schools (boys)*.

II. The following orders do not apply to posts which are organized on a time-scale basis. Their application is restricted to the other posts which the Government have exempted from the operation of rule 30. In the case of posts in which time-scales

of pay have been introduced for new entrants, the restriction to the drawal of full officiating pay admissible under the rules will apply only to government servants eligible for the old rates of pay on substantive promotion to such posts. If the officiating promotion from one exempted post to another involves the assumption of duties and responsibilities of greater importance than those attaching to the post on which the government servant holds a lien or would hold a lien had his lien not been suspended under rule 14, the officiating pay will be that admissible under rule 31, and will not be subject to the restrictions laid down in these orders. For example, when a forester officiates as deputy ranger, a deputy ranger as ranger, a clerk as head clerk, head assistant or office superintendent, full officiating pay admissible under the rules will be given; but when a forest ranger of one grade officiates as forest ranger in a higher grade, a deputy ranger officiates in a higher grade of deputy rangers, the officiating pay will be subject to the restrictions laid down in these orders.

NOTE—Full officiating pay calculated under rule 31 is, however, not permissible to persons entitled to the old rates in cases where different posts on different rates or progressive scales of pay have been merged into a single time-scale for new entrants. In such cases also the officiating pay will be regulated under the provisions of Paragraphs IV and V below.

III. (a) A government servant without a substantive post on a permanent establishment appointed to officiate in a post carrying fixed pay or a progressive rate of pay, as explained in Paragraph V below, will draw the full officiating pay admissible under rule 31 provided that if the fixed pay or the minimum of the progressive scale is not less than Rs. 100 per mensem, the officiating pay will ordinarily be equal to half the pay or half the minimum pay to the post.

(b) In special cases the pay may, with the sanction of the head of the department, be raised to an amount not exceeding the pay admissible under rule 31. This power may, however, be exercised by heads of departments only in respect of non-gazetted posts under their control.

(c) A person without a substantive post in a permanent establishment appointed to hold charge of the current duties of a post under the Government will draw, in respect of such additional duties, pay at one-tenth of the minimum pay of the post in which he is appointed to hold charge.

NOTE—A section writer or a press servant who is paid for a piece work is for the purpose of these orders held to be a government servant without a substantive post.

Example—Municipal sanitary inspectors appointed to hold charge of the current duties of municipal officers of health during their absence on short leave.

IV. A government servant with a substantive post in one grade who officiates in a post in a higher grade in the same establishment is entitled to an additional pay of one-fifth of the pay of the higher grade, provided his substantive pay plus that additional pay do not exceed the pay of the higher grade in which he officiates.

V. The following provisions are applicable to government servants holding or officiating in post to which progressive rates of pay were attached before January 1, 1922, and which have not been declared on a time-scale basis. Where time scales have been introduced in such posts for new entrants, these provisions will not apply to government servants entitled to pay on the time-scales.

NOTE—Under rule 9(31) "time-scale pay" includes the class of pay known as "progressive" before January 1, 1922. In this paragraph the term "progressive pay" is used in contradiction to "time-scale pay" and in the sense in which it was understood before the above date.

Explanation—Progressive pay means incremental scales which are divided into grades and in which promotion from a lower to a higher scale depends on the occurrence of a vacancy in the higher grade as per example:

1 post on Rs. 250—10—350.

3 posts on Rs. 200—10—250.

5 posts on Rs. 150—10—200.

8 posts on Rs. 120—6—150.

10 posts on Rs. 90—6—120.

10 posts on Rs. 65—5—90.

37 posts (all of which are in the same cadre).

(i) A government servant whose substantive pay is progressive and who officiates in a post of which the pay is fixed, is entitled to an additional pay calculated under Paragraph IV above as if his substantive pay were a fixed one equal to the amount at which from time to time it stands.

(ii) A government servant whose substantive pay is fixed and who officiates in a post of which the pay is progressive, is entitled to an additional pay calculated under Paragraph IV above, upon the pay to which he would from time to time have risen if he had held the officiating post substantively.

(iii) The pay of a government servant whose substantive pay is progressive and who officiates in a post of which the pay is progressive is regulated as follows:

(a) He draws his substantive pay with increments as they fall due.

(b) He also draws the additional pay to which he would be entitled under Paragraph IV above if the substantive and officiating posts were both on fixed pay equal to the minimum of the respective posts.

NOTES—(1) The maximum limit of pay admissible under this clause is the substantive pay of the officiating servant or the pay in the officiating post to which he would have risen if his officiating tenure had been substantive, whichever is greater.

(2) No government servant should be appointed to officiate in a post carrying a progressive rate of pay the average of which is less than that of his substantive post, save for special reasons of a public nature to be recorded by the appointing authority.

(3) When calculating the pay of a government servant officiating in a post the whole of the officiating tenure, whether continuous, or not should be taken into account.

VI. A government servant may be appointed substantively pro tempore on the pay admissible under Fundamental Rule 31 in place of government servant who draws no part of the pay of his post or a government servant on deputation out of India or holding a temporary post, provided that the deputation or the temporary post lasts for six months more. The full pay of the post of the government servant thus appointed substantively for a time may in like manner and upon the same condition be given to a government servant similarly appointed to that post.

31. (1) Subject to the provisions of rules 30 and 35, a Government servant, who is appointed to officiate in a post will draw the presumptive pay of that post.

(2) *On an enhancement in the substantive pay, as a result of increment or otherwise, the pay of such Government servant shall be fixed under sub-rule (1) from the date of such enhancement as if he was appointed to officiate in that post on that date where such refixation is to his advantage:

† Provided that in so far as the new scales introduced with effect from April 1, 1965, August 1, 1972 and July 1, 1979 are concerned, nothing in this sub-rule shall entitle the Government servant to claim refixation of pay in the post in which he is officiating until the date of option exercised by him in respect of that post:

Provided further that nothing in the preceding proviso shall apply where the pay scale relating to the higher post has not been revised with effect from the said date:

Provided also that the provisions of Fundamental Rule 22-B shall not be applicable in the matter of refixation of pay under sub-rule (2).

NOTE—Where the increment of Government servant in the post in which he is officiating has been withheld under rule 24 or rule 25, without any reference to the increments that will accrue to him in the post held by him substantively, the provisions contained in sub-rule (2) of this rule shall not apply before the date from which the orders withholding the increment finally cease to be operative. However, during the period of penalty of withholding the increment, the Government servant may be allowed pay equal to his substantive pay from time to time if the same happens to be more than the officiating pay, the difference between the substantive pay and the officiating pay being allowed to the Government servant in the shape of personal pay.

Audit instructions regarding rule 31

1. The pay of a government servant officiating in a post the pay of which is subject to increase upon the passing of an examination or upon the completion of a certain period of service is the pay which he would from time to time receive if he held the post substantively.

2. The pay of a government servant officiating in a post the pay of which has been reduced with effect from the next succession thereto is the reduced pay.

* This rule has been introduced with effect from October 1, 1958.

† This provision comes into effect from April 1, 1965.

3. [Deleted.]

4. [Deleted.]

5. Under this rule read with Fundamental Rule 22, a government servant who has no substantive post under the Government and who is appointed to officiate in a post on a time-scale of pay, may count all periods of past non-continuous officiating service in any stage of the time-scale for increments in that stage. A competent authority may, however, in exercise of his powers under rule 35, order that in case of persons having no substantive post under the government, past non-continuous officiating service shall not count for increments.

Orders of the Governor regarding rule 31

1. Under this rule, the title of a government servant officiating in a post carrying a time-scale (or progressive rate) of pay to the presumptive pay of the post is always subject to the provisions of rule 30. According to the latter rule, where the officiating appointment does not involve the assumption of duties and

responsibilities of greater importance than those attaching to the post on which the government servant holds a lien or would hold a lien had his lien not been suspended, it is not permissible for him to draw pay higher than his substantive pay in respect of a permanent post. In other words, while these rules are not prohibitive in respect of officiating promotions in such circumstances they restrict the officiating pay to the substantive pay, from time to time, of the government servant concerned. This means that the government servant will continue to draw from time to time the pay which he would have drawn in his substantive appointment, and will not be allowed increments in the scale of the pay of the post in which he officiates, but only such increments as would have fallen due to him in his substantive post.

The case of a government servant without a lien on a permanent post and therefore, having no substantive pay in respect of such a post, is different. Rule 30 being inapplicable in such a case, full presumptive pay is admissible exclusively under this rule (rule 31) read with rule 22(b) unless in any individual case it is fixed by the competent authority under rule 35 at an amount less than that admissible under the above rules or unless the post to which the officiating appointment is made carries a fixed pay or a progressive rate of pay and the officiating pay is regulated by Paragraph III of the orders of the Governor under the first proviso to rule 30(1).

2. Where an increment in the substantive post of a government servant falls due during a period of leave and the re-fixation of officiating pay under clause (2) of the rule is to the advantage of the government servant and if the period of leave counts for increment in the officiating post either under Fundamental Rule 26(bb) or 26(b), subject to the fulfillment of the conditions and production of the necessary certificates, his officiating pay may be re-fixed under the above clause (2) from the very date of increment or increase in substantive pay as if he was appointed to officiate in that post on that date. The benefit of the increase in officiating pay can be had by him only from the date of resumption of duties but his next increment in the officiating post will accrue to him from an earlier date in the next year calculated with reference to the date of re-fixation of pay.

If, however, the period of leave does not count for increment in the officiating post, the government servant loses all connections with that post during that period and he will be entitled to get his officiating pay re-fixed only from the date he returns from leave in which case the next increment will fall due only after completion of prescribed period of duty from the date of resuming charge unless he becomes entitled to re-fixation of pay under Fundamental Rule 31(2) once again from an earlier date.

32. [***]

33. When a government servant officiates in a post the pay of which has been fixed at a rate personal to another government servant, the Government may permit him

to draw pay at any rate not exceeding the rate so fixed or if the rate so fixed be a time-scale, may grant him initial pay not exceeding the lowest stage of that time-scale and future increments not exceeding those of the sanctioned scale.

Audit instructions regarding rule 33

1. This rule prescribes the initial rate of pay of a government servant officiating in a post the pay of which has been fixed at a rate personal to another government servant. If the pay thus personally fixed is on a time-scale, it is not intended that an officiating incumbent should be debarred from drawing increments in that time-scale according to the ordinary rules.

2. If a government servant, who is personally qualified to draw overseas pay, is appointed to officiate in a post on a time-scale the pay of which is fixed personally for the substantive holder of the post and includes sterling overseas pay, the lowest stage in the time-scale, for the purposes of Fundamental Rule 33, is the minimum of the time-scale, plus the sterling overseas pay included in the pay fixed personally for the substantive holder of the post. A local government is, therefore, competent to grant to such officiating government servant the sterling overseas pay included in the pay fixed personally for the substantive holder of the post.

34. * * *

35. The Government may fix the pay of an officiating government servant at an amount less than that admissible under these rules.

Audit instructions regarding rule 35

1. One class of cases falling under this rule is that in which a government servant merely holds charge of the current duties and does not perform the full duties of the post.

2. When a government servant is appointed to officiate in a post on a time-scale of pay but has his pay fixed below the minimum of the time-scale under Fundamental Rule 35, he must not be treated as having effectually officiated in that post within the meaning of Fundamental Rule 22, or having rendered duty in it within the meaning of Fundamental Rule 26. Such a government servant, on confirmation, should have his initial pay fixed under Fundamental Rule 22(b) and draw the next increment after he has put in duty for the usual period required calculated from the date of his confirmation.

36. Officiating appointment or arrangement may be made in place of government servants who are treated as on duty under rule. 9(6)(b) subject to such general or special orders as the Governor may issue.

Orders of the Governor under rule 36

1. Officiating appointment or arrangement may be made in the place of government servants who have joined the Army in India Reserve of Officers when they are sent for training and who under the orders issued in G. O. no. 96/III—359, dated the 25th January, 1928, are treated during the period of training as on duty. The additional cost involved will be charged on the revenue of the State.

1-A. Officiating promotions may be made in place of government servants who are called up for military duty in the circumstances mentioned in the orders of the Governor regarding Fundamental Rule 9(6)(b)(i).

2. The order of the Governor under this rule allowing officiating appointment or arrangement in place of a government servant who is treated as on duty during his period of training carries with it the consent of the Government to any increase over the sanctioned strength without the formal creation of a temporary post.

37. Personal pay—Except when the authority sanctioning it orders otherwise, personal pay shall be reduced by any amount by which the recipient's pay may be increased, and shall cease as soon as his pay is increased by an amount equal to his personal pay.

38. Pay of official members of the Indian Legislature—A government servant nominated as a member of the Central Legislative Assembly or the Council of State shall receive, while serving on the Assembly or the Council, the pay which he would from time to time have drawn had he not been so serving. He shall receive, in addition, such travelling allowance as the Government may fix.

Audit instruction regarding rule 38

When a government servant is nominated as a member of the Central Legislative Assembly or the Council of State, it is permissible for the local Government to create a temporary post for the period of his absence from his headquarters and to appoint him thereto. Officiating arrangements can then be made under the ordinary rules for the performance of the regular duties at his permanent headquarters.

39. Pay of temporary posts—When a temporary post is created which may have to be filled by a person not already in Government service, the pay of the post shall be fixed with reference to the minimum that is necessary to secure the services of a person capable of discharging efficiently the duties of the post.

NOTE—Model forms of agreement for employing government servants on contract are contained in Part III—Appendix B—of this handbook.

40. When a temporary post is created which will probably be filled by a person who is already a government servant its pay should be fixed with due regard to—

- (a) the character and responsibility of the work to be performed, and
- (b) the existing pay of government servants of a status sufficient to warrant their selection for the post.

Audit instruction regarding rules 39 and 40

Under the Fundamental Rules special duty or deputation in India will not be recognised. A temporary post will be created for the performance of that duty. If the special duty is to be undertaken in addition to the ordinary duties of the Government servant, then rules 39 and 40 will apply.

Orders of the Governor under rule 40

1. There is a tendency to sanction enhanced pay for all posts temporarily created without sufficient regard to the provisions of this rule. Government, therefore, deem it expedient to lay down the following procedure to be observed in fixing the pay of temporary posts.
2. Temporary posts may be divided into two categories—(1) posts created to perform the ordinary work for which permanent posts already exist in a cadre, the only distinction being that the new posts are temporary and not permanent, and (2) isolated posts created for the performance of special tasks unconnected with the ordinary works which a service is called upon to perform. An example of the latter type of post would be a post on a commission of enquiry. The former class of post should be considered to be a temporary addition to the cadre of a service whoever may be the individual appointed to the post. The latter class of temporary posts should be considered as unclassified and isolated ex-cadre posts.
3. Temporary posts which by this criterion should be considered as temporary additions to the cadre of a service should be created in the time-scale of the service ordinarily without extra remuneration. Incumbents of these posts will therefore draw their ordinary time-scale pay. If the posts involve decided increase in work and responsibility in comparison with the duties of the parent cadre generally, it may be necessary to sanction a special pay in addition. In deciding the question whether special pay in a temporary post is justifiable, regard should be had to the principles governing the grant of special pay laid down in the order under rule 9(25), while special pay should in no case exceed, without the special sanction of the Finance Department, one-fifth of substantive pay excluding overseas pay or Rs. 10 a day whichever is less.

4. For isolated ex-cadre posts it may occasionally be desirable to fix consolidated rates of pay. Where, however, the post is to be held by members of a service it will ordinarily be preferable also to create the post in the time-scale of the holder's service. The observations contained in paragraph 3 above will apply with equal force to the grant of special pay over and above the ordinary time-scale in such a case.

41. * * *

42. * * *

43. * * *

CHAPTER V—ADDITIONS TO PAY

44. Compensatory allowances—Subject to the general rule that the amount of a compensatory allowance should be so fixed that the allowance is not on the whole a source of profit to the recipient, the conditions under which such allowances may be sanctioned and the amounts which may be so paid to government servants, shall be regulated by such rules and orders as the Governor may issue.

(For rules made by the Governor under this rule, see the rules in Part III of this Volume, Chapter III-A.)

Audit instructions regarding rule 44

1. No revision of claims of travelling allowance is permissible in cases where a government servant is promoted or reverted or is granted an increased rate of pay with retrospective effect in respect of the period intervening between the date of promotion or reversion or grant of increased rate of pay, and that on which it is notified, unless it is clear that there has been an actual change of duties.

2. A government servant transferred from one State to another will draw travelling allowance for the journey according to the rules in force at the time of transfer in the State to which he is transferred.

3. Hill allowances fall under "Compensatory allowances."

* * * * *

NOTE—The order of the Governor reproduced under rule 9 (25) regarding the correct classification of additions to pay applies also to the grant of compensatory allowances.

Order of the Governor regarding rule 44

1. Every sub-inspector who is selected from the general cadre to undergo a special course of training for appointment as reserve inspector, will be entitled, during the period of the training and up to the date of his confirmation as reserve inspector, but not during any period during which he may officiate as reserve inspector, to the compensatory allowances which he was drawing as sub-inspector, provided that he will be entitled to the compensatory allowances only if he actually incurs in expenditure which the compensatory allowances are intended to meet.

2. The Sub-Inspectors of the Police Department nominated to the Reserve Sub-Inspectors Course will be allowed with effect from November 4, 1968 a compensatory allowance of Rs. 15 (rupees fifteen) per month only per person for the entire period of their training of nineteen months, viz. six months at the A. T. C., Sitapur and one month at the P. M. T. Workshop, Sitapur and twelve months under a Reserve Inspector. They will continue to draw such other compensatory allowances as they were drawing on the post of Sub-Inspector before joining the training provided the conditions on which those allowances were allowed are still fulfilled.

NOTE—The compensatory allowances mentioned above do not include conveyance allowances, the drawal of which by such sub-inspectors is governed by the special rules in Appendix VII of the Financial Hand book, Volume III.

45. The Principles governing the allotment to government servants, for use by them as residences, of buildings owned or leased by the Government, or portions thereof, which the Government may make available for the purpose and the circumstances in which a government servant shall be considered to be in occupation of a residence shall be regulated by such rules and orders as may be issued by the Governor.

(For rules made by the Governor under this rule, see Part III of this Volume, Chapter IV).

45-A. I. * * *

II. For the purpose of the assessment of rent, the capital cost of a residence owned by the Government shall include the cost or value of sanitary, water supply and electric installations and fittings, but exclude the cost or value of the site (including expenditure on its preparation); and shall be either—

(a) the cost of acquiring or constructing the residence and any capital expenditure incurred after acquisition or construction; or when this is not known;

(b) the present value of the residence.

NOTE—The cost of restoration or special repairs shall not be added to capital cost or present value, unless such restoration or repairs add to accommodation or involve replacement of the existing type of work by work of a more expensive character.

Provided that—

(i) the present value of residences shall be determined in the manner which the Governor may prescribe by rules or orders;

(ii) the expenditure which is to be regarded, for the purpose of sub-clause (a) above, as expenditure upon the preparation of site, shall be determined in accordance with such rules or orders as the Governor may issue;

(iii) the Government may, after recording the reasons, authorize a revaluation of all residences of a specified class or classes within a specified area to be conducted under the rules referred to in proviso (i) above, and may revise the capital cost of any or all such residences on the basis of such revaluation;

(iv) the capital cost howsoever calculated, shall not take into consideration (1) any charges on account of establishment and tools and plant other than such as were actually charged direct to the work in cases in which the residence was constructed by the Government, or (2) in other cases, the estimated amount of such charges;

(v) the Government may after recording the reasons, write off a specified portion of the capital cost of a residence—

(1) when a portion of the residence must be set aside, by the government servant to whom the residence is allotted, for the reception of official and non-official visitors visiting him on business, or

(2) when they are satisfied that the capital cost, as determined under the above rules, would be greatly in excess of the proper value of the accommodation provided;

Order of the Governor regarding rule 45A-II, Proviso (v) (2)

The capital value of any portion of a building which is abandoned permanently or dismantled without replacement should be written off the total capital value of the building.

(vi) in assessing the cost or value of the sanitary, water supply and electric installations and fittings, the Governor may by rules determine what are to be regarded as fittings for this purpose.

NOTE—Government servants of the Central Government or of the Governments of Madras, Andhra Pradesh, the Punjab, Madhya Pradesh, Assam and Orissa occupying by, official arrangement, residences provided by this Government, shall be charged rent for such residences under this rule.

Orders of the Governor regarding rule 45A-II

The capital cost of walls and washerman's tanks shall be included in the capital cost of the residence.

Orders of the Governor under the note to rule 45A-II (a) and (b)

1. An increased rate for the same specification shall not constitute replacement by work of a more expensive character.
2. When a work is replaced by work of a more expensive character, the cost of the replacement shall be reduced by the value of the dismantled work before it is added to the capital cost.
3. The cost of all structural alterations, additions or repairs to newly-purchased or previously abandoned buildings, required for bringing them into use, shall be added to the capital cost.

Orders of the Governor regarding rule 45 A-II,

Provison (v) (1)

The proportionate capital cost of a portion of a residence set aside for visitors' room shall be calculated in accordance with the following formula:

- | | |
|---------|--|
| Let a = | Total plinth area of the main building. |
| b = | Area of room set aside for the visitors' room measured from centres to centres of walls. |
| c = | Area of portion of verandah or verandahs directly in front of visitors' room and which is normally utilised by visitors' coming to interview the occupant. |
| d = | Area of bathroom (if any) attached to the visitors' room measured from centres to |

centres of walls.

Then (b+c+d)	=	Plinth area of visitors' room portion.
X	=	Capital cost of the main building (including electric, water and sanitary installations, but excluding site).
Y	=	Cost of subsidiary buildings (out-houses, cook houses, fencing, etc.).
$[b+c+d / a \times X]$	=	Proportionate capital cost of the portion set aside for the visitors' room.
$[X - b+c+d / a \times X]$	=	Proportionate capital cost of the residential portion.
$[X - b+c+d / a \times X] + Y$	=	Total cost of the residence for the purpose of assessment of rent.

2. The proportionate capital cost of portion of a hired residence set aside for visitors' room shall be calculated in accordance with the following formula:—

Let a	=	Total carpet area of the residence.
b	=	Carpet area of the portion set aside for the visitors' room.
c	=	Carpet area of the portion of verandah or verandahs directly in front of visitors' room and which is normally utilised by visitors coming to interview the occupant.
d	=	Carpet area of bathroom (if any), attached to the visitors' room.
Then (b+c+d) / a	=	Carpet area of visitors' room portion.
X	=	Capital cost of the residence
$(b+c+d) / a \times X$	=	Proportionate capital cost of the portion set aside for visitors' room.

NOTES—(1) Carpet area means the plinth area of the building excluding the area covered by pillars and walls.

(2) The cost of the visitors' room once fixed should not be altered unless there are some additions or alterations to the room itself.

(3) No rebate will be allowed on account of electric current consumed in the Visitors' room or on account of proportionate water charges.

(For rules made by the Governor under rule 45 A-II, see Part III of this Volume, Chapter IV.)

III. The standard rent of a residence shall be calculated as follows:

(a) In the case of leased residences the standard rent shall be the sum paid to the lessor, plus an addition determined under rules which the Governor may make, for meeting during the period of lease, such charges for both ordinary and special maintenance and repairs and for capital expenditure on additions or alterations as may be a charge on the Government and for the interest on such capital expenditure, as also for municipal and other taxes in the nature of house or property tax payable by the Government in respect of the residences.

(b) In the case of residences owned by the Government, the standard rent shall be calculated on the capital cost of the residence, and shall be either—

(i) a percentage of such capital cost equal to such rate of interest as may from time to time be fixed by the Governor plus an addition for municipal and other taxes in the nature of house or property tax payable by the Government in respect of the residence and for both ordinary and special maintenance and repairs, such addition being determined under rules which the Governor may make, or

(ii) six percent per annum of such capital cost, whichever is less.

(c) In both cases standard rent shall be expressed as standard for a calendar month and shall be equal to one-twelfth of the annual rent as calculated above, subject to the proviso that, in special localities or in respect of special classes of residence, the Government may fix a standard rent to cover a period greater than one month but not greater than one year. Where the Government take action under this proviso standard rent so fixed shall not be a larger proportion of the annual rent than the proportion which the period of occupation as prescribed under rule 45 above bears to one year.

NOTE 1— For the purpose of sub-clauses (a) and (b) above, the additions for both ordinary and special maintenance and repairs shall not include anything for the establishment and tools and plant charges, except to the extent allowed under proviso (iv) to Clause II.

NOTE 2— The Governor may by rule permit minor additions and alterations, the cost of which does not exceed a prescribed percentage of the capital cost of the residence, to be made during such period as the rule may determine, without the rent of the residence being increased.

(For rules made by the Governor under rule 45A-III, see Part III of this Volume, Chapter IV.)

Orders of the Governor under rule 45A-III(b)(i)

1. The rate of interest to be applied in calculating the rent of a house which may be occupied for

the first time after 19th June, 1922, shall be the rate* which is in force, as the standard of return from productive irrigation works, at the time of the acquisition or construction of the house. The basic interest rate on which rents for houses previously occupied have been calculated may remain unaltered, unless in any case they are higher than that now prescribed for houses occupied hereafter.

2. For the purposes of assessing rent, the time of construction should be taken as the date on which the accounts of the estimate for the construction of the residence are closed.

Audit instruction regarding rule 45-A-III (b) (i)

The rates of interest given in the following table should be applied in calculating the standard rent of residences under Clause III (b) of Fundamental Rule 45-A:

Date of acquisition or construction of the residence	Buildings occupied on or before June 19, 1922	Rate of interest Buildings occupied after June 19, 1922
1	2	3
Before April 1, 1919	3½ per cent	4 per cent
April 1, 1919 to July 31, 1921.	3½ " "	5 " "
August 1, 1921 to December 31, 1921.	3½ " "	6 " "
From January 1, 1922, until further orders.	6 " "	6 " "

NOTE— The date of construction referred to in column (1) of this table should be taken as the date on which the accounts of the estimate for the construction of the residence are closed. In respect of expenditure on additions and alterations to a residence the interest should be calculated at the rate applicable on the date on which the accounts of the estimates for the additions or alterations are closed.

Orders of the Governor under Clause III of rule 45-A

1. Administrative departments of the Government have been authorized to sanction standard rents of residential buildings without the concurrence of the Finance Department.

* These rates are as follows:

(a) Before April 1, 1919, 4 per cent.

(b) From April 1, 1919 to July 31, 1921, 5 per cent.

(c) From August 1, 1921, 6 per cent.

2. Heads of departments have also been authorized to sanction standard rents of residential buildings according to the principles laid down in this rule, provided that the sanction of the Government is obtained in all cases falling under clause (c) of rule 45A-III and Subsidiary Rule 20.

IV. When a government servant is supplied with a residence, leased or owned by the Government the following conditions shall be observed:

(a) The scale of accommodation supplied shall not, except at the government servant's own request, exceed that which is appropriate to the status of the occupant.

(b) Unless in any case it be otherwise expressly provided in these rules, he shall pay—

(i) rent for the residence, such rent being the standard rent as defined in Clause III above, or 10 per cent of his monthly emoluments whichever is the less; and

(ii) municipal and other taxes payable by the Government in respect of the residence not being in the nature of house or property tax.

(c) Notwithstanding anything contained in sub-clause (b) above, the Government may—

(i) at any time, after the standard rents have been calculated under the provisions of Clause III above, group a number of residences, whether in a particular area or of a particular class or classes, for the purpose of assessment of rent, subject to the following conditions being fulfilled:

(1) that the basis of assessment is uniform; and

(2) that the amount taken from any government servant shall not exceed 10 per cent of his monthly emoluments;

(ii) by general or special order, provide for taking a rent in excess of that prescribed in sub-clause (b) above from a government servant—

(1) who is not required or permitted to reside on duty at the station at which the residence is supplied to him, or

(2) who, at his own request, is supplied with accommodation which exceeds that which is appropriate to the status of the post held by him, or

(3) who is in receipt of a compensatory allowance granted on account of dearness of living, or

(4) who is permitted to sub-let the residence supplied to him, or

(5) who sub-lets without permission the residence supplied to him, or

(6) who does not vacate the residence after cancellation of allotment.

Audit instruction under rule 45—IV (b)

The following procedure should be observed regarding recovery of rent for residential accommodation from officers of the State Governments for whom residential accommodation is provided by Railway Administration and also regarding the recovery of rent from Railway officers occupying residential accommodation belonging to State Governments—

(1) State Railway quarters occupied by civil servants of Uttar Pradesh Government by mutual agreement.

The rent will be limited to 6 per cent on the capital cost, excluding cost of land, subject to 10 per cent of pay.

(2) Quarters belonging to Uttar Pradesh Government occupied by railway employees by mutual agreement.

In these cases civil rules will apply, i.e. 6 per cent on capital cost excluding the cost of land, subject to 10 per cent pay.

Audit instruction under Fundamental Rule 45-A-IV(c)(ii)

Under Clause IV(c)(ii) of Fundamental Rule 45-A, a local Government may recover rent in excess of 10 per cent of a government servant's emoluments, even if it exceeds the standard rent as defined in clause III of that rule.

Orders of the Governor under rule 45-A-IV (a)

1. Expenditure on a residential building should as far as possible be limited to a figure that the standard rent calculated thereon in the manner indicated in rule 45-A-III shall not exceed 10 per cent of the average pay of the post held by the government servant or the class of government servants for whom the residence is constructed. The permissible limit of expenditure calculated in this manner will include the cost of electric, sanitary and water-supply installations. In order to enable the expenditure permissible on the building and on the installations to be separately determined, the total permissible limit of expenditure should be distributed as follows:

- | | | |
|-------|--|-----------------------------------|
| (i) | On the building | 85 per cent of permissible limit. |
| (ii) | On electric installation | 7½ per cent of permissible limit. |
| (iii) | On water-supply and sanitary installations | 7½ per cent of permissible limit. |

2. The accommodation to be supplied to any government servant should be determined when the question of building a residence for him is actually taken up, and if in any case it is found that suitable accommodation can only be supplied at a cost exceeding the permissible limit of expenditure, the sanction of the Government should be obtained.

Order of the Governor regarding rule 45-A-III (a) and 45 A-IV (b) (ii)

The term "property tax" as used in this rule, should be interpreted in the general sense and not in the technical sense assigned to it any particular Act or Code. It should, therefore, not be considered to include taxes levied for specific services rendered for the benefit of the occupier. Such taxes in all cases should be excluded from the standard rent irrespective of the fact whether they were by local rule or custom payable in the first instance by the landlord or by the occupier. All taxes of a service character, such as water, drainage and lighting taxes, scavenging tax and tax for the cleaning of latrines and privies should be recovered separately from the occupier under clause IV (b) (ii) of this rule. These orders apply also in cases where government servants are provided with Government accommodation free of rent.

Orders of the Governor under rule 45 A-IV (c)

1. If a government servants, with the Government's permission, continues to occupy while on leave a residence owned or leased by the Government, he shall be liable to pay as rent, during the periods of leave on average pay not exceeding four months the standard rent of the residence or 10 per cent of his emoluments,

whichever is less. For the rest of his leave or during leave of any other kind he shall be liable to pay the full standard rent.

2. In cases of optional occupation by a government servant while not on duty, of an official residence not occupied, by him while on duty, the full standard rent shall be charged even if this exceeds 10 per cent of his emoluments.

3. A government servant who, at his request, is supplied with a residence, owned or leased by the Government, of a higher class than that for which he is eligible, when a house of his class is available for him, shall be charged the full standard rent of the residence and shall not be given the benefit of the 10 per cent concession afforded by rule 45 A-IV (b).

4. When a government servant draws a house rent allowance on a compensatory allowance on account of dearness of living, then—

(a) if the standard rent minus the house rent allowance or such portion of the compensatory allowance as represents the cost of house accommodation, is less than 10 per cent of his emoluments, he shall pay the standard rent;

(b) if the standard rent minus the house rent allowance or such portion of the compensatory allowance as represents the cost of house accommodation is more than 10 per cent of his emoluments, he shall pay rent amounting to—

(1) the house rent allowance or such portion of the compensatory allowance as represents the cost of house accommodation,

plus

(2) 10 per cent of his emoluments other than the house rent allowance or that portion of the compensatory allowance which represents the cost of house accommodation.

V. In special circumstances, after recording the reasons, the Government—

(a) may, by general or special order, grant rent free accommodation to any government servant or class of government servants, or

(b) may, by special order, waive or reduce the amount of rent to be recovered from any government servant.

Audit instruction regarding Fundamental Rule 45A-V (b)

It is permissible to deal, under clause V (b) of this rule, not only with individuals but also with classes of government servants.

VI. If a residence is supplied with services, other than water-supply, sanitary or electric installations and fittings, such as furniture, tennis court, or garden maintained at the cost of the Government, rent shall be charged for these in addition to the rent payable under clause IV. The tenant will also be required to pay the cost of the water, electric energy, etc. consumed. The Governor may by rules prescribe how the additional rents and charges shall be determined, and such rules may also authorize the remission or reduction of the additional rent or charge in special circumstances for reasons which are to be recorded.

(For rules made by the Governor under rule 45-A-VI, see Part III of this Volume, Chapter I V.)

VII. * * *

VIII. * * *

45-B. * * *

45-C. For the purpose of rule 45-A "emoluments" means:

(i) Pay.

(ii) Payments from the revenues of the State and fees if such payments or fees are received in the shape of a fixed addition to monthly payment and allowances as part of the authorized remuneration of a post.

(iii) Compensatory allowances, other than travelling allowance, uniform allowance, clothing allowance, outfit allowance, special outfit allowance, uniform grant and grant for horse and saddlery, whether drawn from the Consolidated Fund of the State or from a local fund.

Orders of the Governor under clause (iii) of this rule:

"Dearness allowance though a compensatory allowance shall be excluded in calculating 'emoluments' for the purpose of calculating the rent payable by a Government servant under Fundamental Rule 45-A in respect of a residential building provided for him by the Government."

(iv) * * *

(v) Pension, other than a pension drawn under the provisions of Chapter XXXVIII, Civil Service Regulations, or compensation received under the Workmen's Compensation Act, 1923, as subsequently amended.

(vi) In the case of a government servant under suspension and in receipt of a subsistence grant, the amount of the subsistence grant, provided that if such government servant is subsequently allowed to draw pay for the period of suspension the difference between the rent recovered on the basis of the subsistence grant and the rent due on the basis of the emoluments ultimately drawn shall be recovered from him.

It does not include allowances attached to the Victoria Cross, the Military Cross, the King's Police Medal, the Indian Police Medal, the Order of British India or the Indian Order of Merit.

NOTE 1—The emoluments of a government servant paid at piece-work rates shall be determined in such manner as the Government may prescribe.

NOTE 2—The emoluments of a government servant on leave mean the emoluments drawn by him for the last complete calendar month of duty performed by him prior to his departure on leave.

Order of the Governor regarding rule 45C (v)

The word "pension" in clause (v) for this rule means the full sanctioned pension prior to commutation where a portion of the pension has been commuted.

46. (a) Fees—Subject to any rules made under rule 46-A and rule 47, a government servant may be permitted, if this can be done without detriment to his official duties and responsibilities, to perform a specified service, or series of services, for a private person or body, or for a public body including a body administering a local fund, and to receive as remuneration therefor, if the service be material, a non-recurring or recurring fee.

NOTE—This clause does not apply to the acceptance of fees by medical officers for professional attendance which is regulated by the orders of the Government.

(b) Honoraria—The Government may grant or permit a government servant to receive an honorarium as remuneration for work performed which is occasional in character and either so laborious or of such special merit as to justify a special reward. Except when special reasons, which should be recorded in writing, exist for a departure from this provision, sanction to the grant or acceptance of an honorarium should not be given unless the work has been undertaken with the prior consent of the Government and its amount has been settled in advance.

(c) Fee and Honoraria—In the case of both fees and honoraria and sanctioning authority shall record in writing that due regard has been paid to the general principle enunciated in rule 11, and shall record also the reasons which in his opinion justify the grant of the extra remuneration.

Audit instructions regarding rule 46

1. The rule requires that the reasons for the grant should be recorded in writing, as it is intended that the grant of an honorarium or fee should be carefully controlled by the Government and scrutinized by audit and that audit should be given an effective opportunity of comment if it be deemed necessary. Audit officers may, therefore, require that the reasons for the grant of an honorarium or free should be communicated to them in each case.

2. The honorarium paid to an officer selected as an examiner or lecturer on purely personal grounds irrespective of his position under the Government, though these grounds may bring about his appointment in successive years, or for a term of years, should be dealt with under Fundamental Rule 46 and not treated as a recurring charge.

46-A. Acceptance of fees by medical officers for services other than professional attendance, shall be subject to such conditions and limits as the Governor may by general rule or order, prescribe.

(For rule made under rule 46-A, see Chapter V-A in Part III of this Volume.)

47. Subject to the provisions of the rules made by the Governor under rule 46-A and to such conditions and limits as he may by rules or orders, impose, the authorities subordinate to the Government may sanction the grant or acceptance of honoraria, and the acceptance of fees, other than the acceptance of fees by medical officers for professional attendance.

Orders of the Governor in connexion with rules 46(b) and 47

The payment of honoraria to government servants for the use by the Government of inventions patented by them is not governed by rules 46(b) and 47, but by the provisions contained in section 17 of the Inventions and Designs Act, 1888, and section 21 of the Indian Patents and Designs Act, 1911.

(For rules made by the Governor under rule 47, see Part III of this Volume, Chapter V.)

48. Any government servant is eligible to receive without special permission—

(a) the premium awarded for an essay or plan in public competition;

(b) any reward offered for the arrest of a criminal or for information or special service in connexion with the administration of justice;

(c) any reward payable in accordance with the provisions of any Act or regulation or rules framed thereunder;

(d) any reward sanctioned for services in connexion with the administration of the customs and excise law; and

(e) any fees payable to a government servant for duties which he is required to perform in his official capacity under any special or local law or by order of Government.

48-A. A government servant whose duties involve the carrying out of scientific or technical research shall not apply for or obtain, or cause or permit any other person to apply for or obtain, a patent for an invention made by such government servant save with the permission of the Government and in accordance with such conditions as the Government may impose.

48-B. If a question arises whether a person is a government servant to whom rule 48-A applies, the decision of the Government shall be final.

Orders of the Governor under rules 48-A and 48-B

1. Application for permission under rule 48-A should be made by the government servant making an invention to the head of his department, or if he is himself the head of the department, to the Secretary to the Government in the Industries Department.

2. The head of the department should deal with the application confidentially and with expedition, so that the inventor may not be prejudiced by delay in making his application at the Patent Office, and should forward it with his recommendations to the Secretary to the Government in the Industries Department.

3. If the invention has no connexion with the government servant's official duties and has not resulted from facilities provided at Government expense permission may be granted to the applicant by the Government to take out a patent for his own benefit, subject to his undertaking in writing—

(i) to permit the use of the invention in the service of the Government, either without payment of any royalty or on such terms as the Government may consider reasonable; and

(ii) to sell or dispose of the patent in such a manner as will leave him no further hand in the working or management thereof and will reserve to him no other right or control in the patent except the right to receive royalties:

Provided that the Government will not supply the invention to any member of the public otherwise than on payment to the inventor of such royalty as may be mutually agreed upon.

4. If the invention is made in the course of the government servant's official duties or has resulted from facilities provided at Government expense, then—

(a) if the invention is of such general interest and utility that the public interest will be best served by allowing the public a free use of the invention, the application for taking out a patent should be refused and the invention should be published. An ex gratia payment should ordinarily be made to the inventor as a reward in all such cases;

(b) if the invention is not of the kind mentioned in (a) but is of sufficient public utility as is likely to make its commercial exploitation profitable, the inventor should be directed to take out a patent and to assign his rights under the patent to the Government. In all such cases, the inventor should be rewarded either by a suitable lump sum payment or by a liberal percentage of the profits made by the Government in connexion with the invention;

(c) in other cases, the inventor should be allowed to take out a patent for his own benefit subject to his under-taking, in writing;

(i) to permit the use of the invention in the service of the Government without payment of any royalty; and

(ii) to dispose of the invention in the manner prescribed in paragraph 3 (ii) above.

5. When the invention has been assigned to the Governor under paragraph 4 (b) above, the Government may exploit the patent themselves, or

(a) advertise the patent and grant licences on payment to manufacturers, or

(b) sell the rights under the patent to a firm or to a private person.

6. In order to secure reasonable uniformity of practice and to secure for the Government the full benefits of inventions, the Controller of Patents and Design should ordinarily be consulted before any awards are made under paragraph 4 above or steps are taken for the exploitation of the patents under paragraph 5 above.

CHAPTER VII—DEPUTATION OUT OF INDIA

50. No government servant may be deputed for duty out of India without the sanction of the Government.

51. (1) When a government servant is with proper sanction temporarily deputed for duty out of India either in connexion with the post held by him in India or in connexion with any special duty on which he may temporarily be placed, his pay shall be regulated as follows:

(a) If he is deputed for duty in Europe or his deputation elsewhere is declared by the Government to be under quasi-European conditions and if he is sent from India for the purpose of his deputation and does not include any leave within the period of his absence from India, he shall receive—for the first month of his absence from India, the pay which he would have drawn if he had remained on duty in India, for the second month of such absence, eleven-twelfths of such amount, for the third month of such absence, five-sixths of such amount, for the fourth month of such absence, three-fourths of such amount, for the fifth to tenth months of such absence, two-thirds of such amount, and thereafter three-fourths of such amount.

(b) If he is deputed for duty in Europe or his deputation elsewhere is declared by the Government to be under quasi-European conditions, and if he is not sent from India for the purpose of his deputation, or having been so sent includes a period of leave within the period of his absence from India, he shall receive throughout his deputation three-fourth of the pay which he would have drawn if he had remained on duty in India.

(c) If he is deputed for duty elsewhere than in Europe and his deputation is not declared by the Government to be under quasi-European conditions, his pay shall be as determined by the Government with due regard to the provisions of rule 40 as though a temporary post had been created:

Provided that—

(i) no government servant on deputation out of India shall draw pay at a rate exceeding Rs. 5,500 per month;

(ii) a government servant having his domicile in India may in any case be allowed by the Government to draw during the period of deputation out of India pay not exceeding the full amount of the pay which he would have drawn had he remained on duty in India in lieu of the pay admissible to him under sub-clause (a) or sub-clause (b) of this clause.

(2) In addition to the pay admissible under clause (1) of this rule a government servant on deputation may be granted a compensatory allowance of such amount as the Government may think fit.

NOTE—The sterling equivalent of the pay admissible under clause (1) to a government servant during deputation shall be calculated at such rate of exchange as the Secretary of State may have prescribed in the case of deputation of officers of All-India Services.

1. A subordinate police officer who may be deputed by the Government to any country outside India, to accompany or take charge of criminals or lunatics, or on any other business which is part of his duty as a police officer, may be granted—

(a) full pay for the entire period of absence from India; with

(b) actual travelling expense and a subsistence allowance not exceeding the following scale while in any country outside India:

			s.	d.	
For an officer of the	inspector	class	22	6	a day
" "	sergeant	"			
" "	constable	"	15	0	"

NOTE—An officer of the inspector class includes a sub-inspector.

2. Government servants subject to the leave rules in the Civil Service Regulations are also governed by the provisions of sub-clause (b) of the above rule.

3. The travelling and halting allowances of members, including non-officials, of any commissions, committees, etc, which may be sent by the Government on deputation out of India, will be governed by such rules or orders as may be laid down by the Government.

4. Government servants who, while on leave, are required by the Government to attend conferences or congresses in the United Kingdom or on the Continent of Europe, whether as official representatives or as unofficial visitors, will be allowed such terms in regard to pay and allowances as may be determined by the Government in each case.

5. Government servants on leave, who are unwilling to undertake special duty on deputation rates of pay, may be allowed by the Government to continue to consume leave and receive an honorarium fixed at one-sixth of Indian pay.

6. The option of consuming leave on average pay during a period of deputation and of drawing an honorarium of one sixth of India pay shall be limited to cases in which government servants are placed on deputation while already on leave out of India on average pay.

Audit instructions regarding rules 50 and 51.

1. The period of the deputation runs from the date on which the government servant takes over charge of his office in India to the date on which he resumes it;

or if the government servant is on leave out of India at the time he is placed on deputation, the period of the deputation is the time actually occupied by the duty.

2. In the expression "pay he would draw if he were on duty in India" occurring in Fundamental Rule 51 (a) and in the similar expression in Fundamental Rule 9(2), the term "pay", should be interpreted literally with reference to Fundamental Rule 9(21) and the pay which an officer would have drawn if on duty in India should be determined for this purpose by the appropriate authority in India. In the case of government servants who are not deputed out of India for special items of works but are placed on continuous service with commission and committees whose functions require work both in and out of India, the expression should be interpreted as having reference to the pay which they would have drawn in India had they continued on duty with the commission or committee there.

51-A. When a government servant is with proper sanction deputed for duty out of India to hold a regularly constituted permanent or quasi-permanent post, other than a post borne on the cadre of the service to which he belongs, his pay shall be regulated by the orders of the Government.

CHAPTER VIII—DISMISSAL, REMOVAL AND SUSPENSION

52. The pay and allowance of a government servant who is dismissed or removed from service cease from the date of such dismissal or removal.

53. (1) A government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:—

(a) a subsistence allowance at an amount equal to the leave salary which the government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary:

Provided that where the period of suspension exceeds three months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows:—

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the government servant;

(ii) the amount of subsistence allowance may be reduced by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

(b) Any other compensatory allowance admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension:

Provided that the government servant shall not be entitled to the compensatory allowances unless the said authority is satisfied that the government servant continues to meet the expenditure for which they are granted.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government servant dismissed or removed from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.

(This amendment shall be deemed to have come into force with effect from December 26, 1981).

Orders of the Governor regarding rule 53

1. The suspending authority may appoint a substitute in place of a government servant under suspension, provided that the period of suspension does not exceed six months. The word 'substitute' here means the substitute appointed in the resultant vacancy or at the bottom in the chain of arrangements.

2. Departments of the government are authorized to appoint a substitute in place of a government servant under suspension for more than six months.

3. The Board of Revenue is authorized to appoint a substitute in place of a government servant under suspension for more than six months under intimation to Government every three months.

4. Commissioners of Divisions are authorised to appoint a substitute in place of government servant under suspension for more than six months under intimation to the Board of Revenue every three months.

NOTE—The authority sanctioning such employment shall draw the special attention of the Accountant General to the sanction.

(Effective with effect from July 13, 1974)

*54. (1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired, has been fully exonerated the Government servant shall, subject to the provisions of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in

*This amended rule is effective from May 3, 1980.

writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determine.

(3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) *In cases other than those covered by sub-rule (2) [including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of noncompliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held], the Government servant shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection, within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be, shall be converted into leave of any kind due and admissible to the Government servant.

NOTE—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

(a) extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) leave of any kind in excess of five years in the case of permanent Government servant.

(6) The payment of allowances under sub-rule (2) of sub-rule (4) shall be subject to all other conditions under which such allowances are admissible.

(7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4), shall not be less than the subsistence allowance and other allowances admissible under rule 53.

(8) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of his removal, dismissal or compulsory retirement, as the case may be,

*This amended rule is effective from February 19, 1986.

and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant.

NOTE—Where the Government servant does not report for duty within reasonable time after the issue of the orders of reinstatement after dismissal, removal or compulsory retirement, no pay and allowances will be paid to him for such period till he actually takes over charge.

*54-A (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the court.

‡(2) (i) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, and no further inquiry is proposed to be held, the Government servant shall, subject to the provisions of sub-rule (7) of rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice:

(ii) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the court shall be regularised in accordance with the provisions contained in sub-rule (5) of rule 54.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the period intervening between the

date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal, or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

* This amended rule is effective from May 3, 1980.

‡ This amended rule is effective from February 19, 1986.

NOTE—Where the Government servant does not report for duty with-in reasonable time after the issue of the orders of reinstatement after the dismissal, removal or compulsory retirement, no pay and allowances will be paid to him for such period till he actually takes over charge.

* 54-B. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in rule 53, where a Government servant under suspension dies before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), to be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings

*These amended rule is effective from may 3, 1980.

by the authority mentioned in sub-rule (1), who shall make an order according to the provisions of sub-rule (3) or sub-rule (5), as the case may be.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

NOTE—The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of—

(a) Extraordinary leave in excess of three months in the case of temporary Government servant; and

(b) Leave of any kind in excess of five years in the case of permanent Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 53.

(10) Any payment made under this rule to Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of suspension and the date of reinstatement or the date of retirement on superannuation while under suspension. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant.

NOTE—Where the Government servant does not report for duty within reasonable time after the issue of the order of reinstatement after suspension, on pay and allowances will be paid to him for such period till he actually takes over charge.

Orders of the Governor regarding rule 54

1. This rule permits a revising or an appellate authority to convert a period spent under suspension into one of leave.

2. In a case where a government servant is punished by an original authority but the order is reversed in appeal, the following procedure should be observed:

(a) If the appellate authority finds the original order entirely wrong, the appellant should be reinstated with effect from the date of the original order and should not be deprived of a part or the whole of his emoluments during the interval between the dates of the original and the appellate orders, as it is an accepted principle that no government servant may suffer as the result of a mistake not committed by himself. If some other government servant has received promotion during the same period, the demand for recovery of the additional pay drawn by him should be waived with the sanction of the Government. The revision or appellate authority can, however, write-off such additional expenditure up to a limit of Rs. 500 in each

case provided that the period of employment of the substitute does not exceed six months.

(b) If the appellate authority finds the appellant to be blameworthy but the order passed to be too severe, it may, if it so desires, order restoration from the date of the appellate order. In such a case the demand for recovery of the additional pay drawn by some other government servant during the period in question will not arise.

3. The above procedure does not apply to cases where an ordinary order of promotion has been reversed as a result of an appeal preferred by a superseded government servant. An order of punishment set aside in appeal differs from an order of promotion reversed in appeal in one important respect. In the former case the government servant punished as previously held the post in which he has been reinstated as a result of his appeal and the period of suspension or dismissal is treated as a period spent on duty. In the latter case the government servant promoted to a post in consequence of the reversion of orders has not previously held that post and can, therefore, draw the pay, attached to it only from the date when he takes over that post, and accordingly the orders of the appellate authority can take effect only from the date on which they are passed. No question of recovery or write-off of the promotion pay drawn by the government servant wrongly promoted will arise.

4. Orders contained in paragraph 3 above cannot be applied to grade promotions in the same cadre, which are given with retrospective effect from the date of the vacancy while the duties and the posting of the government servants concerned remain unchanged. In such cases when an appellate authority for good reason, decides to grant grade promotion to the appellant not from the date of his order but from the date of the occurrence of the vacancy and when the promotion does not involve assumption of different duties and responsibilities, the additional pay drawn by the government servant originally promoted need not be recovered but should be written off with the sanction of the Government.

55. Leave may not be granted to a government servant under suspension.

FUNDAMENTAL RULE 56, FINANCIAL HANDBOOK, VOLUME II, PARTS II TO IV

56. *(a) Except as otherwise provided in this Rule, every Government servant other than a Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public grounds, which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances.

*^(b) A Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. He must not be retained in service after that date, except in very special circumstances and with sanction of the Government.

‡^(c) Notwithstanding anything contained in clause (a) or clause (b), the appointing authority may, at any time, by notice to any Government servant (whether permanent or temporary), without

*These amended sub-rules (a) & (b) are effective from April 1, 1975.

† These sub-rules (c) & (d) are effective from June 7, 1975.

assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of forty-five* years or after he has completed qualifying service of twenty years.

†^(d) The period of such notice shall be three months:

Provided that—

(i) any such Government servant may by order of the appointing authority, without such notice or by a shorter notice, be retired forthwith at any time after attaining the age of fifty years, and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice, or as the case may be, for the period by which such notice falls short of three months, at the same rates at which he was drawing immediately before his retirement;

(ii) it shall be open to the appointing authority to allow a Government servant to retire without any notice or by a shorter notice without requiring the Government servant to pay any penalty in lieu of notice:

Provided further that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated, shall be effective only if it is accepted by the appointing authority, provided that in the case of a contemplated disciplinary proceeding the Government servant shall be informed before the expiry of his notice that it has not been accepted:

Provided also that the notice once given by a Government servant under clause (c) seeking voluntary retirement shall not be withdrawn by him except with the permission of the appointing authority.

**^(e) A retiring pension shall be payable and other retirement benefits, if any, shall be available in accordance with and subject to the provisions of the relevant rules

to every Government servant who retires or is required or allowed to retire under this rule.

†† Provided that where a Government servant who voluntarily retires or is allowed voluntarily to retire under this rule the appointing authority may allow him, for the purposes of pension and gratuity, if any, the benefit of additional service of five years or of such period as he would have served if he had continued till the ordinary date of his superannuation, whichever be less;

Explanation—(1) The decision of the appointing authority under clause (c) to require the Government servant to retire as specified therein shall be taken if it appears to the said authority to be in the public interest, but nothing herein contained shall be construed to require any recital,

*This figure—‘Fourty five years’ was substituted with effect from November 18, 1976.

†These sub-rules (C) & (C) are effective from June 7, 1975

** (This sub-rule is effective from June 7, 1975.)

†† (This proviso came into effect from November 18, 1976.)

in the order, of such decision having been taken in the public interest.

(2) In order to be satisfied whether it will be in the public interest to require a Government servant to retire under clause (c) the appointing authority may take into consideration any material relating to the Government servant and nothing herein contained shall be construed to exclude from consideration—

(a) any entries relating to any period before such Government servant was allowed to cross any efficiency bar or before he was promoted to any post in an officiating or substantive capacity or on an ad-hoc basis; or

(b) any entry against which a representation is pending, provided that the representation is also taken into consideration along with the entry; or

(c) any report of the Vigilance Establishment constituted under the Uttar Pradesh Vigilance Establishment Act, 1965.

(2-A) Every such decision shall be deemed to have been taken in the public interest.

(3) The ‘expression’ appointing authority means the authority which for the time being has the power to make substantive appointments to the post or service from which the Government servant is required or wants to retire; and the expression

‘qualifying service’ shall have the same meaning as in the relevant rules relating to retiring pension.

(4) Every order of the appointing authority requiring a Government servant to retire forth-with under the first proviso to clause(d) of this rule shall have effect from the afternoon of the date of its issue, provided that if after the date of its issue, the Government servant concerned, bonafide and in ignorance of that order, performs the duties of his office his acts shall be deemed to be valid notwithstanding the fact of his having earlier retired.

NOTE—(1) (Deleted)

NOTE—(2) The grant, under rule 86, of leave extending beyond the date on which a government servant must compulsrily retire, or beyond the date upto which a government servant has been permitted to remain in service, shall not be treated as sanctioning an extension of service, and the government servant shall not be permitted to retain a lien on his permanent post or any other post during the period of such leave.

(This shall come into force with effect from April 1, 1965).

NOTE—(3) A government servant whose date of birth is the firstday of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifty-eight or sixty years, as the case may be.

CHAPTER IX—COMPULSORY RETIREMENT

Audit instructions regarding rule 56

1. When a government servant is required to retire, revert or cease to be on leave, on attaining a specified age, the day on which he attains that age is reckoned as a non-working day, and the government servant must retire, revert or cease to be on leave (as the case may be) with effect from and including that day. * * *

1-A. Clause (a) * * * of Fundamental Rule 56 applies to all government servants to whom the Fundamental Rules as a whole apply, whether they be holding temporary or permanent posts substantively or in an officiating capacity. * * *

1-B. * * * The purpose of Fundamental Rule 56 is not to confer upon government servants any right to be retained in service up to a particular age, but to prescribe the age beyond which they may not be retained in service.

1-C. Fundamental Rule 56 is generally applicable to re-employed personnel, and the rules in Chapter XXI of the Civil Service Regulations are subject to the conditions laid down in Fundamental Rule 56. Article 520, Civil Service Regulations, however, from the nature of its concession and conditions, puts the re-

employment of a person in receipt of a superannuation or retiring pension in a special class outside. Fundamental Rule 56 and subject to the conditions stated in the article itself which must be observed with every renewal of sanction.

Orders of the Governor regarding rule 56

Rule 56 shall not apply to patwaris in the Revenue Department except those in the Kumaun Division. The normal age at which patwari of the Kumaun Division should retire has been fixed at 55 years, subject to the condition that the Deputy Commissioner-in-charge, Kumaun Division, may, on public grounds, grant annual extensions up to the age of 60 years.

57 * * *

LEAVE

(58—60)

Section I—EXTENT OF APPLICATION

58. Unless in any case it be otherwise distinctly provided, the rules in this Chapter apply to all government servants mentioned in rule 2: provided that the leave of those government servants who were in service on January 1, 1922, and who have under rule 58 of the Fundamental Rules made by the Secretary of State in Council under section 96-B of the Government of India Act, 1919, elected (by making a specific declaration to the Government to that effect) to remain under the leave rules in the Civil Service Regulations shall be governed by those rules.

59. †Except as provided in Fundamental Rules 83 and 83-A, leave is earned by a government servant under Sections I to V of this Chapter if he holds a lien on a permanent post or would hold a lien on such a post had his lien not been suspended.

Exception—Government servants who hold quasi-permanent posts in the Settlement Department in a substantive capacity shall earn leave under Sections I to V of this Chapter.

NOTE—The following posts in the Settlement Department have been declared to be on a quasi-permanent footing from the date mentioned against each post:

(a) In the office of the Settlement Commissioner

- (i) One Superintendent From April 1, 1941.
- (ii) Three noters and drafters

- (iii) One accountant-cum-store-keeper
- (iv) One reference clerk From April 1, 1940.
- (v) One camp clerk-sarishtedar
- (vi) One camp assistant to Settlement Commissioner

(b) In Settlement Offices

- (i) Head clerk
- (ii) Second clerk
- (iii) Sadar munsarim From October 1, 1899.
- (iv) Settlement Officer's reader
- (v) Nazir
- (vi) Record-keeper

†(This rule has come into effect from April 1, 1966).

Audit instruction regarding rule 59

There is no restriction in these rules on the grant to a government servant on the abolition of his post of such leave as was admissible to him immediately before the abolition of the post. In the case of a government servant who holds no lien on any post except that which it is proposed to abolish, the correct practice in deciding the exact date from which the post is to be abolished is to defer the date of abolition up to the termination of such leave as may be granted.

60. Leave is earned by duty only. For the purpose of this rule a period spent in foreign service counts as duty if contribution towards leave-salary is paid on account of such period.

61 to 63. * * *

LEAVE

(64—74)

64. Unless in any case it be otherwise expressly provided by or under these rule, a government servant transferred to a service or post to which these rules apply from a service or post to which they do not apply is not ordinarily entitled to leave under these rules in respect of duty performed before such transfer; but a government servant reverting from duty as Judge of the High Court of Judicature at Allahabad or the Chief Court of Avadh may count such duty for leave as though it were duly performed in a vacation department; all leave taken during the service concerned being treated as taken under these rules.

65. (a) If a government servant, who quits the public service on compensation or invalid pension or gratuity, is re-employed and if his gratuity is thereupon refunded or his pension held wholly in abeyance, his past service thereby becoming pensionable on ultimate retirement, he may, at the discretion of the authority sanctioning the re-employment and to such extent as that authority may decide, count his former service towards leave.

NOTE—Clause (a) of this rule will apply to men who, after resigning their appointments in the police force of any province, were re-enlisted in the Uttar Pradesh Police Force in accordance with paragraph 393 of the Police Regulations on or after March 1, 1933. Cases of such men re-enlisted before that date will be regulated under old clause (a) of Fundamental Rule 65 as it stood before revision on September 5, 1928.

Audit instruction regarding rule 65(a)

Treatment for the purpose of leave of the previous service of a government servant who resigns one appointment to take up another appointment—Resignation of the public service, even though it is followed immediately by re-employment, should entail forfeiture of past service for the purpose of leave under the Fundamental Rules and should, therefore, constitute an "interruption of duty" for the purpose of Subsidiary Rule 158.

(b) A government servant who is dismissed or removed from service, but is reinstated on appeal revision, is entitled to count his former service for leave.

65-A. A government servant who had been in military employ prior to his re-employment in the service of the Government and who was in such service on December 31, 1931, is entitled, irrespective of any break between his military and civil employment, to a credit to his leave account in accordance with the provisions of rule 77, based on such portion of his military service as, under the rules for the time being in force, is permitted to count for pension.

Order of the Governor regarding rule 65-A

Leave charges on account of leave granted in respect of military service allowed to count under this rule will be met from the provincial revenues.

66. Except as expressly mentioned otherwise, leave, other than special disability leave and leave extending beyond the date of compulsory retirement, may be granted by such authorities subordinate to the Government as the Governor may by rules or orders, specify.

(For rules made by the Governor under rule 66 see Part III of this Volume, Chapter VI).

NOTE—(1) The High Court of Judicature at Allahabad are competent to grant all kinds of leave (including special disability leave and leave extending beyond the date of compulsory retirement) to persons belonging to the Subordinate Civil Judicial Service, or in other words, to Munsifs and Civil Judges (including Judges of the Small Cause Courts established under the Provincial Small Cause Courts Act) under their control subject to the conditions and restrictions laid down in the rules made by the Governor and general orders issued by him under those rules.

NOTE—(2) The Chief Justice of the High Court of Judicature at Allahabad is competent to grant all kinds of leave (including special disability leave and leave extending beyond the date of compulsory retirement) as may be admissible under the rules to persons serving on the staff attached to the Court.

Orders of the Governor regarding rule 66

The High Commissioner for India is authorized under this rule to exercise the powers mentioned in the rules framed by the Governor under rule 74(b) in respect of extensions of leave other than special disability leave.

67. Leave cannot be claimed as of right. When the exigencies of the public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.

68. Leave ordinarily begins on the day on which transfer of charge is effected and ends on the day preceding that on which charge is resumed. When joining time is allowed to a government servant returning from leave out of India, the last day of his leave is the day before the arrival of the vessel in which he returns at her mooring or anchorage in the port of disembarkation, or, if he returns by air, the day on which the aircraft in which he returns arrives at its first regular port in India. Sundays or other recognized holidays may be prefixed to leave or affixed to leave or joining time subject to such conditions and under such circumstances as the Governor may by rule or order prescribe.

(For rules made by the Governor under rule 68, see Part III of this Volume, Chapter VII).

Audit instructions regarding rule 68

1. The joining time of a government servant who returns from leave out of India and disembarks, not at the first port of call in India, but at another such port, should be reckoned from the day of arrival of the vessel at the second or subsequent port at which he actually disembarks, whether the sea journey from the first port of call in India to the subsequent port of disembarkation is made in the same steamer which takes him to the first port of call or in some other steamer.

2. The provision in this rule—that when joining time is allowed to a government servant returning from leave out of India, the last day of his leave is the day before the arrival of the vessel in which he returns at her mooring or anchorage in the port of disembarkation, or if he returns by air, the day on which the aircraft in which he returns arrives at its first regular port in India—applies only to cases falling under Fundamental Rule 105(c) in which joining time is granted to a government servant returning from leave out of India of more than four months' duration.

69. A government servant on leave may not take any service or accept any employment without obtaining the previous sanction of—

(a) the Government, if the proposed service or employment lies elsewhere than in Asia;

(b) the Governor, if the proposed service or employment lies in Asia elsewhere than in India; and

(c) the Governor or any lower authority empowered to appoint him, if the proposed service or employment lies in India;

Provided that a government servant who has been granted permission to take any service or accept any employment under this rule, during leave preparatory to retirement, shall be precluded, save with the specific consent of the Governor or any lower authority empowered to appoint him, as the case may be, from withdrawing his request for permission to retire, and from returning to duty.

NOTE—This rule does not apply to casual literary work, or to service as an examiner or similar employment; nor does it apply to acceptance of foreign service, which is governed by rule 110.

Orders of the Governor regarding rule 69

1. In a case where a government servant has been granted leave on the strength of a medical certificate this rule should not be construed as permitting him to undertake regular employment during such leave.

2. Officers on leave preparatory to retirement, desiring to take up Government employment, shall be given the option of retiring forthwith, or of remaining on leave, until they have exhausted the leave admissible to them, on condition that, so long as they are employed under the Government, leave-salary will be restricted to the amount of the pension admissible to them on retirement. In the case of non-pensionable government servants re-employed during their leave preparatory to retirement in a department other than their present departments in India or Pakistan, the leave-salary shall, however, be restricted to half of leave-salary admissible in respect of leave on full pay or average pay as the case may be.

70. All orders recalling a government servant to duty before the expiry of his leave should state whether the return to duty is optional or compulsory. If the return is optional, the government servant is entitled to no concession. If it is compulsory, he is entitled—

(a) If the leave from which he is recalled is out of India—

(i) to receive a free passage to India; and, provided that he has not completed half the period of his leave by the date of leaving for India on recall, or three months, whichever period is shorter, to receive a refund of the cost of his passage from India;

(ii) to count the time spent on the voyage to India as duty for purposes of calculating leave; and

(iii) to receive leave-salary during the voyage to India and for the period from the date of landing in India to the date of joining his post to be paid leave-salary at the same rate at which he would have drawn it had he not been recalled but returned in the ordinary course on the termination of his leave and for the latter period travelling allowance under rules made in this behalf by the Governor.

(b) If the leave from which he is recalled is in India, to be treated as on duty from the date on which he starts for the station to which he is ordered, and to draw travelling allowance under rules made in this behalf by the Governor for the journey, but to draw until he joins his post leave-salary only.

Orders of the Governor regarding rule 70

1. Order recalling a government servant from leave out of India should be communicated to him officially through the High Commissioner for India.

2. The concession referred to in the second sentence of this rule is a concession of the category permitted by this rule. The concessions under rule 70 are clearly not intended to affect the Privileges of government servants which are admissible under other rules; the concession may be availed of when they happen to prove additional to, or better than, the ordinary privileges.

Audit Instructions regarding rule 70(a)(iii)

The expression "on the termination of his leave" in clause (a)(iii) of Fundamental Rule 70 means "on the termination of the period of leave as determined by his recall as opposed to the whole of the leave he was originally granted". The effect of this interpretation will be to make the same leave-salary admissible for the period of transit in India as would be admissible had the return to duty been voluntary and the period of voyage been leave proper and the period of transit in India been leave proper or joining time under Fundamental Rule 105, as the case may be.

71. No government servant who has been granted leave on medical certificate may return to duty without first producing a medical certificate of fitness in such form as the Governor may by rule or order prescribe. The Government may require a similar certificate in the case of any government servant who has been granted leave for reasons of health, even though such leave was not actually granted on a medical certificate.

(For rules made by the Governor under rule 71, see Part III of this Volume, Chapter VIII).

72. Unless he is permitted to do so by the authority which granted his leave, a government servant on leave may not return to duty more than fourteen days before the expiry of the period of leave granted to him.

73. A government servant who remains absent after the end of his leave is entitled to no leave-salary for the period of such absence, and that period will be debited against his leave account as though it were leave on half average pay, unless his leave is extended by the Government. Wilful absence from duty after the expiry of leave may be treated as misbehaviour for the purpose of rule 15.

NOTE—In the case of a government servant governed by leave rules laid down in Fundamental Rule 81-B and Subsidiary Rule 157-A, who remains absent after the end of his leave, the period of such overstaying of leave should, unless the leave is extended by the competent authority, be treated as follows:

(a) If the government servant is in superior service and holds a lien on a permanent post—

(i) as leave on private affairs to the extent such leave is due unless the overstayal is supported by a medical certificate.

(ii) as leave on medical certificate to the extent such leave is due, if the overstayal is supported by a medical certificate,

(iii) as extraordinary leave to the extent the period of leave on private affairs and/or on medical certificate falls short of the period of overstayal;

(b) If the government servant is in superior service without a lien on a permanent post or in inferior service, as in (a) (ii) and (iii) above mutatis mutandis.

The period of overstayal of leave will be debited as leave taken but no leave salary will be paid for such period unless it is covered by an extension of leave granted by the competent authority.

74. (a) Subject to the instructions contained in the rules made by the Governor under section 151 of the Act in connexion with the control of the issue of money from treasuries, or by the Auditor General of India in order to secure efficiency and uniformity of audit, the procedure to be followed in India in respect of the following matters shall be such as the Governor may, be rule or order, prescribe:

(i) in making application for leave and for permission to return from leave.

(ii) in granting leave,

(iii) in the payment of leave salary, and

(iv) in the maintenance of records of service.

(b) The procedure to be followed elsewhere than in India will also be prescribed by the Governor in a similar manner.

(For instructions of the Auditor General and rules made under rule 74 by the Governor, see Part III of this Volume, Chapters IX and X and Appendix 'A' at the end of that Part).

Section III—* * *

75 to 75C. * * *

LEAVE

(76—78)

Section IV—GRANT OF LEAVE

76. A leave account shall be maintained for each government servant.

Audit instructions regarding rule 76

Two sets of leave accounts may be maintained in the case of government servants who served under district boards for whom contribution for leave has not paid.

Auditor-General's decision under rule 76

The overstay of leave taken by a government servant before January 1st, 1922, should not be debited in his leave account.

77. In the leave account of a government servant shall be credited—

(i) if he was recruited before January 1, 1931, two-elevenths of the period spent on duty; and

(ii) if he was recruited on or after January 1, 1931 but before January 1, 1936, three-twenty-seconds of the period spent on duty.

NOTE—The following credits shown in the leave account of a government servant recruited prior to January 1, 1922, shall stand:

(1) the privilege leave which was, on the date on which he became subject to the Fundamental Rules, permissible to grant to him under the rules in force prior to that date, plus

(2) one-twelfth of the period spent on duty or on privilege leave prior to that date, plus

(3) two-elevenths of the period spent on duty subsequent to that date, plus

(4) in the case of a government servant who was subject, at the time when the Fundamental Rules came into force, to the Indian Service Leave Rules which were in force in January, 1920, one-third of any period of leave on medical certificate taken under those rules.

Audit instructions regarding rule 77

1. Fractions of a day should not appear in the leave accounts. Fractions below $\frac{1}{2}$ should be ignored and those of $\frac{1}{2}$ or more should be reckoned as one day.

2. †Five-twenty-seconds of the period spent on duty should be calculated thus:

The amount of duty as expressed in terms of years, months and days should be multiplied by five and the product divided by twenty-two. In this process of multiplication and division a month should be reckoned as equal to 30 days.

Two-elevenths of the period spent on duty should also be calculated similarly.

†Mentioned in Fundamental Rule 77 in Part I of this Volume.

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78. In the case of a government servant for whom a leave account is maintained, the amount of leave debited against his account is—

(a) the actual period of leave on average pay, including any furlough on average salary taken under rules in force prior to January 1, 1922, but excluding special disability leave on average pay under rule 83(7), and

(b) half the period of leave on half average pay (other than special disability leave) or on quarter average pay or of special disability leave on average pay under rule 83(7) (b).

NOTE—(1) No privilege leave taken under the former Civil Leave Rules is debitable under (a) above.

NOTE—(2) Furlough, leave on medical certificate and special leave with allowances taken under the Indian Service Leave Rules as they stood before January 1, 1922, are debitable under (b) above.

79. * * *

LEAVE

(80—93)

80. The amount of leave due to a government servant for whom a leave account is maintained is the balance of leave at his credit in the leave account.

81. Leave may be granted at the discretion of the authority competent to grant the leave, subject to the following restrictions in respect of government servants for whom a leave account is maintained:

(a) The maximum amount of leave which may be granted expressed in terms of leave on average pay is—

(i) one-eleventh of the period spent on duty; or in the case of a government servant recruited before January 1, 1922, who has formerly been subject to the leave rules in the Civil Service Regulations, the period of privilege leave which was permissible to grant to him under those rules on the date on which he ceased to be subject to them, plus one-eleventh of the period spent on duty subsequent to that date; plus

(ii) two and a half years:

Provided that special disability leave on half average pay or on average pay under rule 83(7)(a) shall not be taken into account in calculating the maximum prescribed by this clause, and in the case of such leave taken on average pay, under rule 83(7)(b), account shall be taken of only half the period thereof.

(b) The maximum amount of leave on average pay including any furlough on average salary taken under rules in force prior to January 1, 1922, but excluding special disability leave on average pay under rule 87(7)(a) which may be granted is—

(i) four months at any one time, and

(ii) in all, one-eleventh of the period spent on duty; or in the case of a government servant recruited before January 1, 1922, who has formerly been subject to the leave rules in the Civil Service Regulations, the period of privilege leave which was permissible to grant to him under those rules on the date on which he ceased to be subject to them, plus one-eleventh of the period spent on duty subsequent to that date:

Provided that in the case of a government servant, who either takes leave on medical certificate other than leave preparatory to retirement or spends his leave elsewhere than in India, Pakistan, Ceylon, Nepal, or Burma, the maximum leave on average pay which may be granted to him is eight months at any one time if he was recruited before January 1, 1931, and six months at any one time if he was recruited on or after January 1, 1931, and before January 1, 1936, and in all, the total period mentioned in clause (b) (ii) above, plus one year or six months

according as he was recruited before January 1, 1931, or on or after that but before January 1, 1936.

(c) Save in the case of leave preparatory to retirement, leave not due may be granted subject to the following conditions:

(i) on medical certificate, without limit of amount; and

(ii) otherwise than on medical certificate, for not more than three months at any one time and six months in all, reckoned in terms of leave on average pay.

NOTE—In cases where a government servant who has been granted leave not due under this clause applies for permission to retire voluntarily the leave not due shall, if the permission be granted, be cancelled and his retirement shall have effect from the date on which such leave commenced.

(d) The maximum period of continuous absence from duty on leave granted otherwise than on medical certificate is twenty-eight months. This period shall in no circumstances be exceeded by a government servant who is on leave preparatory to retirement.

(e) When a government servant returns from leave which was not due and which was debited against his leave account, no leave will become due to him until the expiration of a fresh period spent on duty sufficient to earn a credit of leave equal to the period of leave which he took before it was due.

Orders of the Governor regarding rule 81(b)

1. If a government servant is placed on deputation in Europe or America while on leave out of India, the deputation shall be regarded as an interruption of the leave already granted. The expression "at any one time" in the above rule should be interpreted as meaning "in each separate period of leave granted". The leave of such a government servant will, in ordinary circumstances, be extended by the period of deputation, but the deputation will not entitle him to a fresh grant of leave.

The intention of the above orders is that in such cases the balance of the unenjoyed leave should be worked out before the deputation intervenes and the amount of leave to be enjoyed subsequently on the expiry of the deputation should be restricted to this available balance.

2. When a government servant proceeds on leave on medical certificate not more than one year before the right of voluntary retirement accrues to him or when he is likely to reach the age of superannuation in the course of a year, and is granted leave on average pay in excess of that admissible otherwise than on medical

certificate, by virtue of a medical certificate under the proviso to clause (b) of rule 81, an undertaking should be taken from him that if he subsequently decides to retire at the end of the leave or of an extension of that leave he will refund overpayments, if any, representing the difference between average pay and half average pay for the period in excess of that admissible otherwise than on medical certificate. If a government servant is compulsorily retired by reason of being invalided, no demand for the recovery of excess leave salary resulting from the conversion of a portion of his leave on average pay into leave on half average pay should be made. In other cases recovery of the excess payment must be made. The authority competent to sanction retirement should deal with the question of the recovery or otherwise of excess leave salary without making a reference in each case to Government. Only such cases should be referred to Government in which even though the retirement is voluntary it is proposed in view of some exceptional circumstances not to make the recovery of the excess leave salary. The leave on average pay in excess of that admissible otherwise than on medical certificate should in all cases of subsequent retirement be commuted into leave on half average pay and should be counted for pension as such.

Orders of the Governor regarding rule 81(c)

Leave not due may in no case be granted unless the sanctioning authority is satisfied that, as far as can be reasonably foreseen, the government servant will return to duty and earn it. Except as provided in the Note to rule 81(c), when leave not due is granted, it should in all cases (subject to the government servant's wishes) be allowed to stand, including cases in which the government servant fails to earn it by subsequent duty.

Orders of the Governor regarding rule 81

When a government servant belonging to a vacation department is allowed to affix vacation to leave taken under this rule, the period of leave on average pay plus vacation which may be taken at any one time is limited to four months. If, however, the period of leave on average pay and the vacation are covered by a medical certificate or spent outside India, Ceylon, Nepal, Burma or Aden, leave on average pay may be taken in combination with vacation up to a total period of eight months or six months as the case may be.

Audit instructions regarding rule 81

1. If leave on average pay is applied for after a government servant has had leave on half average pay in continuation of a period of leave on average pay either by the production of a medical certificate or by a government servant proceeding out of India, Ceylon or Nepal, the period of leave on average pay that may then be granted should be similarly limited to the period actually covered by the medical certificate or spent elsewhere than in India, Ceylon or Nepal. The grant of the leave

should also be so regulated that the total period of leave on average pay during that spell of leave does not exceed eight months. In such cases the total period of leave on average pay shall be treated as one continuous spell of leave on average pay in order to determine whether the first four months of leave should be treated as privilege leave for purposes of pension.

2. The limit of 28 months of continuous absence prescribed in this rule includes the period of vacation, if any, with which leave is combined.

3. (i) In the case of a government servant subject to the ordinary leave rules two pro forma accounts of leave on full average pay will have to be kept, one which includes leave on medical certificate or spent outside India, Ceylon or Nepal and the other which excludes such leave. Assuming the privilege leave at credit of a government servant on January 1, 1922, to be "x", the one-eleventh of the period spent on duty subsequent to that date to be "y" and the additional year referred to at * * clause (b) * * of rule 81, or any less period which alone he may have at his credit as "z" two accounts will have to be kept—

(1) for x y z which may be called account "A", and

(2) for x y which may be called account "B".

All leave on full average pay should be debited to account "A" and whenever the government servant proceeds on such leave on medical certificate or outside India, Ceylon or Nepal, it should be seen that this account is not overdrawn. Leave without medical certificate spent in India, Ceylon or Nepal should alone be debited to account "B" and whenever such leave is granted it should be seen that neither this account nor account "A" is overdrawn.

(ii) In preparing leave account "A", "z" is always the actual amount of leave on average pay taken on medical certificate or outside India, Ceylon or Nepal subject to a maximum of one year. When one application is received for leave on average pay on medical certificate or outside India, Ceylon or Nepal it must be seen that the amount asked for plus the amount already taken does not exceed "one year".

(iii) It is not necessary that the two pro forma accounts of leave on average pay should be opened on separate pages of the leave account. The column "Leave taken on average pay" in the prescribed form can be used for account "A" referred to above, account "B" being worked out in any spare space available either in the last column or elsewhere.

4. The expression "continuous absence from duty on leave" occurring in clause (d) of this rule does not include absence on extraordinary leave; but includes absence on "special leave" granted in connexion with the award of Commonwealth Fund

Service Fellowships if, owing to a combination of ordinary leave with such "special leave", the aggregate period of absence exceeds 28 months.

5. If, under the operation of the proviso to rule 81 (b) * * the maximum amount of leave on average pay admissible at a time (i.e. the period of leave at credit in column 6 of the leave account in form no. 11-B subject to a maximum of four months) is increased, further leave on average pay may not be granted in continuation unless such leave is taken on medical certificate or is spent elsewhere than in India, Ceylon or Nepal, but such leave on average pay which may be taken on medical certificate or outside India. Ceylon or Nepal up to a maximum of twelve months in a government servant's whole service, if due, does not consume the leave on average pay which may be taken without medical certificate.

6. (a) In addition to leave on average pay for four months under Fundamental Rule 83(7)(a) which is not debit to the leave account, the maximum amount of leave on average pay that can be taken whether under Fundamental Rule 83(7)(b) or under Fundamental Rule 81(b) or both can be only eight months. This follows from * * * Fundamental Rule 83(7)(b), under which a government servant is allowed to draw leave salary equal to average pay for a period not exceeding the period which would otherwise be admissible to him as leave on average pay. Under Fundamental Rule 81(b) this period is limited to * * * four months * * * which may be extended by another four months in certain circumstances * * *. In case leave on average pay for eight months, if admissible under Fundamental Rule 81(b), is all taken under Fundamental Rule 83(7)(b), no further leave on average pay can be taken under the provisions of the former rule. The total leave on average pay that can be granted to a government servant, therefore, is only twelve months, viz., four months under Fundamental Rule 83(7)(a) and eight months under Fundamental Rule 83(7)(b) or under Fundamental Rule 81 (b) or both.

(b) Under Fundamental Rule 83(4) special disability leave can be combined with leave of any other kind. There is no objection to the interpolation of ordinary leave between periods of special disability leave provided that the limits laid down in Fundamental Rule 81(b) are not exceeded in respect of leave on average pay other than special disability leave taken under Fundamental Rule 83(7)(a). An amplification of Fundamental Rule 83(4) has not been considered to be necessary as Fundamental Rule 81 (b) indicates clearly that for the calculation of the maximum leave on average pay other than such leave taken under Fundamental Rule 83 (7)(a) should not be excluded.

81—A * * *

81-B. With the exception of government servants of non-Asiatic domicile who may be specially recruited overseas and who shall be subject to such leave terms as may be prescribed by Government in each case, the following leave rules shall apply to:

(a) all government servants who enter government service on or after April 1, 1966, and hold a lien on a permanent post or would have held a lien on such post, had their lien not been suspended;

(b) all government servants who were recruited before April 1, 1966, and to whom Fundamental Rule 81-B applied on that date:

Provided that the earned leave at their credit on April 1, 1966, shall stand and they shall earn further leave under sub-rule (1) of this rule with effect from that date;

(c) all government servants, recruited before January 1, 1936, to whom Fundamental Rule 81 applies and who elect in writing to come under these rules by making specific declaration to Government to this effect. The option once exercised shall be final:

Provided that:

(i) the balance of leave on average pay at the credit of such a government servant on the date of exercising the option referred to above shall not lapse, He will first exhaust all such leave in excess of one hundred and eighty days and when the balance of such leave falls below this period, he shall begin to earn leave under these rules;

(ii) the amount of leave on average pay on medical certificate already taken under the proviso to clause (b) of Fundamental Rule 81 shall be deducted from the maximum limit of twelve months' leave on medical certificate on average pay admissible under sub-rule (2) of this rule;

(iii) the number of days of leave on average pay in excess of four months spent elsewhere than in India, Pakistan, Ceylon, Nepal, Burma or Aden under the proviso to clause (b) of Fundamental Rule 81 shall be deducted from the maximum limit of 365 days' leave on private affairs on half average pay admissible, under sub-rule (3) of this rule; but in case the total exceeds 365 days no further leave on private affairs shall be earned.

(1) Earned leave—A government servant to whom these rules apply shall earn leave in respect of the period spent on duty and the earned leave admissible to him shall be one-eleventh of the period spent on duty:

Provided that—

(i) when the total of his earned leave amounts to one hundred and eighty days he shall cease to earn such leave;

(ii) subject to the provisions of Fundamental Rules 67 and 86-A:

(a) the maximum period of earned leave that may be granted to him at a time shall be one hundred and twenty days if spent in Asia;

(b) earned leave may be granted to him exceeding a period of one hundred and twenty days but not exceeding one hundred and eighty days if the entire leave so granted or any portion thereof is spent outside Asia but the period of such leave spent in India shall not in the aggregate exceed the limit of one hundred and twenty days:

Provided further that in the case of a government servant serving in a vacation department—

(i) the period of earned leave admissible to him shall be reduced by thirty days for each year of duty in which he avails himself of the full vacation;

(ii) if he is prevented by reason of Government work from availing himself of the full vacation in any year as provided for in Subsidiary Rules 145 and 146, the earned leave admissible to him shall be reduced by a fraction of thirty days equal to the proportion which the part of the vacation availed of bears to the full period of the vacation;

(iii) if in any year he does not avail him-self of the vacation in terms of Subsidiary Rules 145 and 146, the earned leave admissible to him shall not be subject to any reduction;

(iv) vacation may be taken in combination with, or in continuation of, any kind of leave under these rules, provided that the total duration of vacation and earned leave taken in conjunction whether the earned leave is taken in combination with, or in continuation of, other leave or not, shall not exceed the amount of earned leave admissible to him at a time under the first proviso to sub-rule (1) of this rule except when it is taken for obtaining higher technical qualifications in which case the limit shall be two hundred and seventy days.

(2) Leave on medical certificate—(i) A government servant to whom these rules apply may be granted leave on medical certificate not exceeding twelve months in all during his entire service. Such leave shall be given only on production of a certificate from such medical authority as the Governor may by general or special order specify in this behalf and for a period not exceeding that recommended by such medical authority:

Provided that when the maximum period of twelve months is exhausted further leave on medical certificate not exceeding six months in all during entire service may be granted in exceptional cases on the recommendations of a medical board:

Provided further that in all cases in which government servants may have before the date of application of these rules to them availed of leave on medical certificate under Fundamental Rule 81-B and Subsidiary Rules 157 or 157-A, as the case may be, the period of such leave availed of, under Fundamental Rule 81-B and Subsidiary Rule 157-A, as the case may be, and half the period of such leave availed of under Subsidiary Rule 157, shall be taken into account in calculating the leave due to them under this rule.

(ii) No leave may be granted under this rule, unless the authority competent to sanction leave is satisfied that there is a reasonable probability that the government servant will be fit to return to duty on the expiry of the leave applied for. (See also Subsidiary Rule 87).

(3) Leave on Private Affairs—A government servant to whom these rules apply may also be granted leave on private affairs not exceeding three hundred and sixty five days in all during his entire service. Such leave shall be earned by him at one-eleventh of the period spent on duty and shall be granted, on any one occasion, for not more than ninety days if spent wholly in Asia and not more than one hundred and eighty days if spent wholly outside Asia. If the leave is spent partly in and partly outside Asia, the period shall be ninety days plus such time as is actually spent outside Asia subject to a maximum total period of one hundred and eighty days:

Provided that no leave may be granted under this sub-rule unless the authority competent to sanction leave has reason to believe that the government servant will return to duty on its expiry or unless it is included in leave preparatory to retirement:

Provided further that in all cases in which government servants may have before the date of application of these rules to them availed of leave on private affairs under Fundamental Rule 81-B and Subsidiary Rule 157-A the period of leave so availed of shall be taken into account in arriving at the amount of leave on private affairs admissible under this sub-rule. For this purpose, the government servants shall be deemed to have earned the leave on private affairs, not exceeding three hundred and sixty-five days, at the rate of one-eleventh of the period spent on duty from the commencement of their continuous service, whether in a temporary or a permanent capacity. If leave in excess of three hundred and sixty-five days has been taken by a government servant before the application of this sub-rule in his case, the minus balance shall be waived and no further leave shall be earned by him. In other cases where a government servant has availed of leave in excess of the leave admissible on the date but not exceeding the limit of three hundred and sixty-five days, it shall be adjusted against the leave on private affairs that will be earned by him subsequently.

(4) Commuted leave—Commuted leave, that is half the amount of leave on private affairs admissible under sub-rule (3) of this rule, may be allowed at the option of the government servant proceeding on study leave under Fundamental Rule 84, subject to the following conditions:

(i) The authority competent to sanction leave is satisfied that the government servant requires the leave for purposes of obtaining higher technical qualifications;

(ii) The grant of the leave shall be restricted on any one occasion to forty-five days if spent wholly in Asia and to ninety days if spent wholly outside Asia. If the leave is spent partly in and partly outside Asia, the period shall be restricted to forty-five days plus such time as is actually spent outside Asia subject to a maximum total period of ninety days;

(iii) When commuted leave is granted, twice the amount of such leave shall be debited in the leave account against the leave on private affairs due;

(iv) No leave may be granted under this rule unless the authority competent to sanction leave has reason to believe that the government servant will return to duty on its expiry.

(5) Extraordinary leave—A government servant to whom these rules apply may be granted extraordinary leave in accordance with the provisions of Fundamental Rule 85, read with Fundamental Rule 18.

(6) Any kind of leave under these rules may be granted in combination with or in continuation of any other kind of leave.

Orders of the Governor regarding rule 81-B

1. In calculating "earned leave" under this rule, the actual number of days of duty performed should first be counted and then multiplied by one-eleventh, the product expressed in days (and fractions of a day) and limited to 120 days being the "earned leave" admissible under this rule.

2. The term "year" occurring in the second proviso to rule (I) of this rule, should as in the case of the expression "each year of duty" in clause (b) of rule 82 be interpreted to mean not a calendar year in which duty is performed, but twelve months of actual duty; and the earned leave admissible to a government servant on a particular date should be calculated in the manner indicated in paragraph 1 of the audit instructions regarding rule 82(b) and in the order of the Governor regarding that rule.

3. It is not desirable that a government servant should exhaust in the early part of his service all the medical leave that may be admissible to him under the rules, and

therefore long stretches of such leave should not be sanctioned without careful scrutiny. In particular the sanctioning authority should be satisfied in each case that after the expiry of the leave the government servant will be fit for duty. Medical authorities are precluded from recommending the grant of leave in cases in which there appears no reasonable prospect of a government servant being ever fit to resume his duties. In doubtful cases, the sanctioning authority can further satisfy itself by asking for the medical authority's opinion specifically on this point, or where the leave has been recommended by an authority other than a medical committee, by referring the case to such a committee. The subsidiary rules in Part III clearly lay down that the possession of a medical certificate as prescribed therein does not by itself confer upon the government servant concerned any right to leave, and in extreme cases it may be necessary to refuse the leave altogether in order that the government servant may be invalidated from service.

81-C. * * *

82. The following provisions apply to vacation departments only:

(a) The departments or parts of departments which shall be treated as vacation departments and the conditions in which a government servant shall be considered to have availed himself of a vacation, shall be determined according to the rules which the Governor may prescribe.

(For rules made by the Governor under rule 82, see Part III of this Volume, Chapter XI).

(b) Vacation counts as duty, but in the case of a government servant recruited before January 1, 1936, other than an inferior government servant, the periods of total leave in rules 77, 81 (a) and 81 (b) should ordinarily be reduced by one month for each year of duty in which government servant has availed himself of the vacation. If a part only of the vacation has been taken in any year, the period to be deducted will be a fraction of a month equal to the proportion which the part of the vacation taken bears to the full period of the vacation.

Orders of the Governor regarding rule 82(b)

In the case of a government servant who, at the time of going on leave, has not completed a full year of duty and has not for that reason enjoyed any portion of a vacation but who enjoys the next vacation in continuation of the leave, it has been decided that, for the purpose of clause (b) of this rule as explained in paragraph 1 of the audit instructions, a deduction of one-twelfth may be made for the period for which one-eleventh is credited. If subsequently it is found that the vacation has not been enjoyed, the deduction already made can be suitably corrected.

Audit instructions regarding rule 82(b)

1. The term "each year of duty" should be interpreted to mean, not a calendar year in which duty is performed, but twelve months of actual duty in a vacation department. If the government servant has enjoyed such vacation as falls within a period of twelve months beginning on the date following the date on which he completed the previous year of duty, then one month should be deducted from his leave account. It does not matter whether the day on which this year ends, falls in a vacation in the succeeding calendar year. The only question is whether the government servant has enjoyed such vacation as fell within the period of one year as interpreted above. If, to take an example, a government servant before going on leave has not completed a full year of duty (including vacation) during the course of the second calendar year, then the fraction of one month which should be deducted from the leave account is the fraction which the period of duty, including vacation, bears to the whole year. If to take a further complication, he has not enjoyed the whole of the vacation which fell during that period of less than a year, then the amount which should be deducted in the proportion of the period, which the proportion of vacation actually enjoyed plus the vacations that will fall within the remaining period of twelve months bears to the whole period of vacation which fall within the period, of twelve months.

In the case of government servants who are allowed two vacations in the year instead of one, the periods of the two vacations should be regarded as combined into one.

2. For the purposes of Government of India, Finance Department, resolution no. 1260-C. S. R. dated December 21, 1921, a government servant of a vacation departments who combines vacation with leave on average pay can count as service for pension only a total period of four months on each occasion; except in cases where the total amount of vacation taken is four months or more, in which case the full amount of vacation, and no leave, will count for service.

(c) In cases of urgent necessity, when a government servant other than an inferior government servant recruited before January 1, 1936, requires leave and no leave is due to him, the periods in rules 77 and 81(a), as reduced by clause (b) of this rule, may be increased by one month for every two years of duty in a vacation department.

Orders of the Governor regarding rule 82 (c)

A government servant of a vacation department may be granted the additional leave which is credited under this rule even though he may have a debit balance in his leave account. The credit of one month allowed by this rule is, however, for every completed two years of duty and no fractional credit for a period of less than two years is permissible.

(d) When a government servant other than an inferior government servant recruited before January 1, 1936, combines vacation with leave, the period of vacation shall be reckoned as leave in calculating the maximum amount of leave on average pay which may be included in the particular period of leave.

Audit instructions regarding rule 82

1. (i) The reduction by one month for each year of duty in which the government servant has availed himself of the vacation as required to be made under this rule is intended to be made in respect of leave earned and vacation taken from January 1, 1922.

(ii) Thus, in the case of government servants of vacation department, the leave credited to their leave account under rule 77 will be—

(1) privilege leave at their credit on January 1, 1922, i.e. privilege leave earned under articles 272 to 275, Civil Service Regulation, plus

(2) * * * one-twelfth of the period spent on duty or vacation (or privilege leave) up to December 31, 1921, plus

(3) * * * two-elevenths of the period spent on duty or vacation from January 1, 1922.

From this a reduction will be made of one month for each year of duty in which the government servant avails himself of the vacation after January 1, 1922. Similarly, the total leave admissible under rules 81(a) and 81 (b) will be reduced by one month for each year of duty in which the vacation is taken after January 1, 1922.

2. The amount credited to the leave account under this rule as well as that added to the maximum under rule 81(a) should be the actual amount of additional leave taken under this rule and not the total amount theoretically permissible, viz., one month for every two years of duty.

3. It is not the intention to retain in the Fundamental Rules the restrictions on the combination of leave and vacation which were imposed by article 278, Civil Service Regulations. Such combination is, however, subject to the condition mentioned in rule 82(d) and it is thus permissible to allow a vacation to intervene between two periods of leave. Similarly, vacations may be prefixed or affixed to leave or both prefixed and affixed.

83. (1) The Governor may grant special disability leave to a government servant, whether permanent or temporary, who is disabled by injury intentionally inflicted or caused in, or in consequence of, the due performance of his official duties or in consequence of his official position.

(2) Such leave shall not be granted unless the disability manifested itself within three months of the occurrence to which it is attributed, and the person disabled acted with due promptitude in bringing it to notice. But the Governor, if he is satisfied as to the cause of the disability, may permit leave to be granted in cases where the disability manifested itself more than three months after the occurrence of its cause.

(3) The period of leave granted shall be such as is certified by a medical board to be necessary. It shall not be extended except on the certificate of a medical board and shall in no case exceed 24 months.

(4) Such leave may be combined with leave of any other kind.

(5) Such leave may be granted more than once if the disability is aggravated or reproduced in similar circumstances at a later date, but not more than 24 months of such leave shall be granted in consequence of any one disability.

(6) Such leave shall be counted as duty in calculating service for pension, and shall not, except as provided in rule 78(b), be debited against the leave account.

(7) Except as mentioned below, leave-salary during such leave shall be equal—

(a) for the first four months of any period of such leave, including a period of such leave granted under clause (5) of this rule, to average pay, and

(b) for the remaining period of any such leave to half average pay, or at the government servant's option, for a period not exceeding the period of average pay which would otherwise be admissible to him, to average pay:

Provided that the maxima specified in the table in sub-rule (2) of rule 89 shall, notwithstanding anything contained in that rule apply to the whole period of such leave and the minima specified in the table in rule 90 shall apply when leave salary during such leave is equal to half average pay subject to the conditions stated in that rule.

Exception—In the case of government servants governed by Fundamental Rule 81-B or Subsidiary Rule 157-A—

(1) the limit of four months laid down in sub-clause (a) shall be taken to mean 120 days;

(2) the term "period of average pay" occurring in sub-clause (b) shall be taken to mean "earned leave" admissible under sub-rule (1) of Fundamental Rule 81-B or sub-rule (1) of Subsidiary Rule 157-A as the case may be;

(3) one-half of the amount of leave on average pay taken under sub-clause (b) shall be counted as earned leave taken; and

(4) leave salary during leave taken under this rule shall be regulated in accordance with the provisions of Fundamental Rule 87-A or sub-rule (6) of Subsidiary Rule 157-A as the case may be.

(8) (i) In the case of a person to whom the Workmen's Compensation Act, 1923, applies, the amount of leave salary payable under this rule shall be reduced by the amount of compensation payable under section 4 (1) (d) of the said Act.

(ii) In the case of a person to whom the Employees' State Insurance Act, 1948, applies, the amount of leave salary payable under this rule shall be reduced by the amount of benefit admissible under the said Act for the corresponding period.

(9) The provisions of this rule apply to a civil servant disabled in consequence of service with a military force, if he is discharged as unfit for further military service, but is not completely and permanently incapacitated for further civil service, and to a civil servant not so discharged who suffers a disability which is certified by a medical board to be directly attributable to his service with a military force; but in either case, any period of leave granted to such a person under military rules in respect of that disability shall be reckoned as leave granted under this rule for the purpose of calculating the period admissible.

NOTE—In the case of temporary government servants any disability leave sanctioned under this rule shall not extend beyond the date the appointment is likely to last.

[For the maximum amount of leave on average pay admissible under rule 81(b) in cases where (i) special disability leave on average pay is taken under rule 83 (7) (b) and (ii) ordinary leave is combined with, or interpolated between, periods of special disability leave under rule 83(4), see paragraph 6 of the Audit Instruction regarding rule 81].

83-A. The Governor may extend the application of the provisions of Fundamental Rule 83 to a government servant, whether permanent or temporary, who is disabled by injury accidentally incurred in or in consequence of the due performance of his official duties or in consequence of his official position, or by illness incurred in the performance of any particular duty which has the effect of increasing his liability to illness or injury beyond the ordinary risk attaching to the civil post which he holds. The grant of this concession is subject to the further conditions:

(1) that the disability, if due to disease, must be certified by a medical board to be directly due to the performance of the particular duty; and

(ii) that if the government servant has contracted such disability during service otherwise than with a military force, it must be, in the opinion of the Governor, so exceptional in character or in the circumstances of its occurrence as to justify such unusual treatment as the grant of this form of leave; and

(iii) that the period of absence recommended by medical board may be covered in part by leave under this rule and in part by other leave, and that the amount of special disability leave granted on average pay may be less than—

(a) four months, in the case of government servants governed by Fundamental Rule 81 or Subsidiary Rule 157 as the case may be, and

(b) one hundred and twenty days, in the case of government servants governed by Fundamental Rule 81-B or Subsidiary Rule 157-A as the case may be.

NOTE—In the case of temporary government servants any disability leave sanctioned under this rule shall not extend beyond the date the appointment is likely to last.

83-B. (1) A government servant recruited before January 1, 1936, who has been granted special disability leave under rule 83, and whose domicile is elsewhere than in Asia, may be granted by the Governor, free passage by sea for himself, his wife and children to the United Kingdom, or to any port in Europe or in a British colony, dominion, or possession, and on the conclusion of such leave return passage to India, unless he takes leave other than leave on medical certificate in continuation of special disability leave, in which case return passage shall not be granted save with the special sanction of the Governor: provided that the cost of any passages granted under this rule shall not exceed the cost of passages between India and the United Kingdom.

(2) Passages granted under this rule may include travel by land between port of embarkation and port of debarkation, and shall be of such class as the Governor in each case may determine.

(3) The Governor may extend the application of the provisions of clauses (1) and (2) to a government servant recruited before January 1, 1936, who has been granted Special disability leave under rule 83-A and whose domicile is elsewhere than in Asia; provided that he may, at his discretion, grant free passages to the government servant only, or to the government servant and his wife only.

(4) For the purpose of this rule—

(i) the domicile of a government servant is his domicile at the time of his appointment to Government service, as determined in accordance with the provisions set out in the *schedule to these rules and no government servant who

after his appointment to a service or post under the Government, acquires a new domicile, shall thereby lose his eligibility to, or become entitled to admission to, the benefits under this rule;

(ii) "child" means a legitimate child (including a step-child) residing with and wholly dependent on the government servant, who, if a female, is unmarried, or, if a male, is under the age of 16.

84. Leave may be granted to government servants, on such terms as the Governor may by rule or order prescribe, to enable them to study scientific, technical or similar problems or to undergo special courses of instruction. Such leave is not debited against the leave account.

(For rules made by the Governor under rule 84, see Chapter XI-A, Part III of this Volume.)

85. (a) Extraordinary leave may be granted in Special circumstances (1) when no other leave is by rule admissible, or (2) when, other leave being admissible, the government servant concerned applies in writing for the grant of extraordinary leave. Such leave is not debited against the leave account. No leave salary is admissible during such leave.

(b) The authority which has the power to sanction leave may grant extraordinary leave as in clause (a) in combination with, or in continuation of, any leave that is admissible and may

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commute retrospectively periods of absence without leave into extraordinary leave.

Orders of the Governor regarding rule 85 (b)

The power of commuting retrospectively periods of absence without leave into extraordinary leave is absolute and not subject to the conditions mentioned in clause (a) of the rule; in other words such commutation is permissible even when other leave was admissible to the government servant concerned at the time his absence without leave commenced.

Audit instructions regarding rule 85

1. Extraordinary leave without pay granted under the rules of the Civil Service Regulations will not also be debited against the leave account under note 2 to rule 78.

2. "Leave not due" applied for by a government servant with or without medical certificate is "leave admissible under rule" and in cases where "leave not due" can

be granted, the grant of extraordinary leave under Fundamental Rule 85 will be irregular unless the latter kind of leave is specifically applied for in writing.

86. (a) In the case of a government servant recruited before January 1, 1936, leave at his credit in his leave account shall lapse on the date of compulsory retirement provided that if in sufficient time before that date he has—

(1) formally applied for leave and been refused it, or

(2) ascertained in writing from the sanctioning authority that leave if applied for would not be granted—

in either case the ground of refusal being the requirements of the public service, then the government servant may be granted, after the date of retirement, the amount of leave so refused subject to a maximum of six months.

(b) A government servant retained in service after the date of compulsory retirement shall earn leave on average pay at the rate of 1/11th of duty performed after that date and shall be allowed to add thereto any amount of leave which could have been granted to him under clause (a) had he retired on that date. The total period which he may take on any one occasion shall not exceed six months. When his duties finally cease, the government servant may be granted leave preparatory to retirement, up to a maximum of six months, as follows:

(i) the balance after deducting the amounts of leave, if any, taken during the period of extension, from the amount of leave which could have been granted to him under clause (a) had he retired on the date of compulsory retirement, plus

(ii) the amount of leave earned under this clause which is due to the government servant and which he has, in sufficient time during the period of extension—

(1) formally applied for and been refused, or

(2) ascertained in writing from the sanctioning authority, would not be granted if applied for, in either case the ground of refusal being the requirements of the public service.

Orders of the Governor regarding rule 86.

Leave extending beyond the date of compulsory retirement can only be granted with the sanction of the State Government. Such sanction will be accorded only in very exceptional circumstances as it is not the intention that a government servant should have the option of availing himself of leave after, instead of before, the date on which he is required to retire. In no case will such leave be granted in which the requirements of the rule are not fulfilled. The Government will not entertain an

application for the grant of leave under this rule unless it is accompanied by the following documents:

- (1) the application in which leave was applied for but which was refused, or,
- (2) the written reply from the sanctioning authority to the effect that the leave, if applied for, would be refused.

All cases in which the sanctioning authority proposes to refuse leave preparatory to retirement on public grounds should be submitted to Government for orders. The sanctioning authority should bear in mind that refusal of leave within the meaning of this rule must be on account of the requirements of the public service and should, therefore, clearly state those requirements while submitting cases to Government recommending refusal of leave in case mentioned in (1) above or proposing refusal of leave in the written reply mentioned in (2) above.

It follows from the above that the sanctioning authority should ordinarily grant the leave applied for preparatory to retirement and should recommend to Government the refusal of leave only where it is essential in the interest of the public service to do so, as for example—

- (i) when the particular government servant is doing an important class of work for which he is specially qualified and the performance of which by another servant would cause undue dislocation at the time, or
- (ii) when the cadre of the service to which the servant belongs is so depleted that further depletion due to leave is likely to cause Government serious embarrassment.

2. Even in those cases in which the requirements of the rule, as explained above, are fulfilled, there is no vested right to leave under this rule and the Government will consider each case on its merits, having regard to the following points:

- (a) whether the government servant has taken leave at frequent intervals, so as to exhaust most of the leave admissible;
- (b) the date on which he last returned from leave;
- (c) the total amount of leave enjoyed during his service;
- (d) whether leave has, on any previous occasion, been refused to him on public grounds in circumstances involving material hardship; and
- (e) the quality of the service rendered by him.

A recommendation for the grant of leave under this rule should be accompanied by a report on all these points to facilitate the disposal of the application for leave by the Government.

3. When a government servant has been retained in service beyond the ordinary age of superannuation, the grant to him when his duties finally cease of leave earned during the period of extension of service is subject to all the conditions set forth in this order.

4. While the amount of the leave refused under Fundamental Rule 86(a) or (b) is fixed, the quality of the leave (i.e. on average or half average pay), whether it is taken before or after the date of compulsory retirement or, as the case may be the date of final cessation of duties, may be varied to the advantage of the government servant concerned within the normal leave rule by the leave earned and standing to his credit on the date he proceeds on leave; and no second application for leave in sufficient time and its refusal are necessary merely to ensure this variation.

5. The above orders apply mutatis mutandis to cases of grant of leave under rule 86-A.

Audit instructions regarding rule 86

1. In the case of government servants belonging to vacation departments the period of six months referred to in this rule should include any vacation with which leave may be combined.

2. A government servant retained in service after the age of compulsory retirement is entitled to earn leave under clause (b) of Fundamental Rule 86 and a debit balance, if any, on the date he attained that age should be considered as wiped off.

3. Compulsory recall from leave preparatory to retirement should be deemed to be a constructive refusal of the balance of leave unenjoyed for the purpose of Fundamental Rule 86.

4. While the amount of the leave refused under Fundamental Rule 86 (a) is fixed, the quality of that leave (i.e. on average or half average pay), whether it is taken before or after the date of compulsory retirement or after the date of final cessation of duties, may be varied within the normal leave rules to the advantage of the government servant concerned in accordance with the leave earned and standing to his credit on the date on which he proceeds on leave prior to the date of compulsory retirement whenever he takes a portion of his refused leave before that date and ultimately on the date of his compulsory retirement, and no second application for leave in sufficient time and its refusal are necessary merely to ensure this variation. Similarly, the character of any period of leave on average pay admissible under Fundamental Rule 86(a), original or so modified, may, if the

government servant so desires, be converted within the quantum admissible into a portion on average and the balance on half-average pay. No such conversion, however, is admissible in respect of the leave on average pay (not in terms of average pay) earned under clause (b) of this rule.

86-A. A government servant recruited on or after January 1, 1936, shall not be granted any leave beyond the date on which he must compulsorily retire:

Provided that the authority empowered to grant leave may allow any government servant, who has been denied in whole or in part on account of the exigencies of the public service the earned leave which was due to him pending retirement under rule 81-B, the whole or any portion of the earned leave so denied even though it extends to a date beyond the date on which such government servant must compulsorily retire:

Provided further that a government servant whose service has been extended in the interests of the public service beyond the date of his compulsory retirement may similarly be granted either within the period of extension of, if the conditions of the preceding proviso are satisfied, after its expiry, any earned leave which could have been granted to him under the preceding proviso had he retired on that date and in addition any earned leave due in respect of such extension. In determining the amount of earned leave due, in respect of the extension, with reference to rule 81-B, the earned leave, if any, admissible on the date of compulsory retirement shall be taken into account.

Section V—LEAVE SALARY

87. Subject to the conditions in rules 81, 88, 89, 90 and 91, a government servant other than an inferior government servant, recruited before January 1, 1936, who is on leave shall, during leave, draw leave-salary as follows:

- (a) if the leave is due, leave-salary equal to average pay, or to half average pay, or to average pay during a portion of the leave and half average pay during the remainder, as he may elect; and
- (b) if the leave is not due, leave-salary equal to half average pay:

Provided that when a non-gazetted government servant who was in service on the 24th day of August, 1927, takes leave, and—

- (i) his pay is less than Rs. 300, or
- (ii) the leave taken does not exceed one month, his average pay for the purpose of this rule may be taken to be the pay which he would draw in the permanent post

held substantively by him at the time of taking leave if this pay be more than the average pay.

87-A. A government servant subject to the leave rules in Fundamental Rule 81-B, when on leave, shall be entitled—

(1) except as provided in sub-rule(2) below, if on earned leave, or on leave on medical certificate against the limit of twelve months laid down in that rule, to leave salary equal to average pay or the substantive pay to which the government servant is entitled immediately before the commencement of the leave, whichever is greater;

(2) if he proceeds on earned leave, or on leave on medical certificate against the limit of twelve months laid down in that rule, from a post the maximum of which does not exceed Rs. 90 per mensem, to leave salary equal to the pay drawn immediately before proceeding on leave;

(3) if on leave on private affairs under sub-rule (3) or on leave on medical certificate under the first proviso to sub-rule (2) (i) of Fundamental Rule 81-B, to leave salary equal to half the amount specified in sub-rule (1) or sub-rule (2) above, as the case may be, subject to a maximum of Rs. 750;

Provided that the limit of Rs. 750 shall not apply if the leave is for pursuing an approved course of study otherwise than on study leave terms;

(4) if on commuted leave, to leave salary equal to the amount admissible under sub-rule (1) or sub-rule (2) above, as the case may be;

(5) It on extraordinary leave, to no leave salary.

Explanation I—For the purposes of this rule, ‘average pay’ means the average monthly pay earned during the ten complete months immediately preceding the month in which the leave commences, and where such ten complete months have not elapsed, since the date of joining the service, ‘average pay’ means the average monthly pay earned during the complete months immediately preceding the month in which the leave commences.

Explanation II—For the purposes of this rule ‘substantive pay’ will have the same meaning as given in F.R. 9(28).

NOTE—In the case of a person to whom the provisions of Employees State Insurance Act, 1948, apply, the leave salary payable under this rule in respect of leave on medical certificate shall be reduced by the amount of benefit admissible under the said Act for the corresponding period.

Orders of the Governor regarding rule 87

1. An authority empowered to grant leave may not under rule 67 interfere with the option which a government servant may exercise under clause (a) of this rule and compel him against his wishes to take leave on half average pay when leave on full average pay is admissible to him. This does not interfere with the discretion of the authority competent to grant leave to determine with reference to rule 67 whether leave should or should not be granted.
2. For purposes of the proviso in rule 87 the pay, and status of a government servant should be determined with reference to the post which he was holding (whether in a substantive or in an officiating capacity) before going on leave.
3. The right of election allowed by rule 87(a) is only between the three different forms of leave-salary mentioned in it and does not confer any right of choice as to the period during which average pay and half average pay leave allowance may be drawn when a government servant has once elected to take leave partly on full average pay and partly on half-average pay. In such a case the intention is that the period on average pay should be taken first and should be succeeded by the period on half average pay.

Audit instruction regarding rule 87 (a)

The words "as he may elect" in rule 87(a) imply election once for all and therefore debar a government servant from claiming commutation of leave as of right. However, under the Fundamental Rules, the authority which granted leave can (if so disposed) commute leave of any kind retrospectively into leave of a different kind which was admissible under the rules, but the government servant does not possess any right to insist that it should be so commuted.

Audit instructions regarding rule 87

1. (i) A government servant who was not holding substantively a permanent post on the 24th August, 1927, but was holding a temporary post or officiating in a permanent post, has no claim under the proviso to this rule.
- (ii) A government servant who was in permanent government service on or before the 24th August, 1927, and was therefore entitled to the privilege under the proviso to Fundamental Rule 87, will retain that privilege when re-appointed after resignation or discharge or re-instated after dismissal, if he is allowed to count his past service for leave under Fundamental Rule 65(a) or (b).
- (iii) A government servant who was holding, on probation, a permanent post on the 24th August, 1927, and had no lien on any other post, is not entitled to the concessions admissible under the proviso to Fundamental Rule 87, since his leave is absolutely governed by Fundamental Rule 104 and not by the rules in sections I to V of Chapter X of the Fundamental Rules.

2. A government servant who holds substantively a non-gazetted permanent post but proceeds on leave from a gazetted post, should be regarded as a gazetted government servant for the purpose of this rule.
3. The term "pay" occurring in the expression "the pay which he would draw in the permanent post held substantively by him" contained in the proviso should be interpreted as including "special pay" whether attached to a post or personal to a particular government servant who holds it since, in either case, he would draw it in the post which he holds substantively.
4. The permanent post may be a post on which the government servant's lien has been suspended, if he holds a lien on no other permanent post.
5. The phrase "at the time of taking leave," occurring in the proviso to this rule, denotes a point in time and that point is the moment at which leave begins. If, therefore, a government servant proceeds on leave with effect from the forenoon of a day on which an increment falls due, this increment cannot be taken into account in the calculation of his leave salary. His increment does not begin to accrue until the previous midnight is past, and by that time he is assumed to be on leave and therefore incapable of drawing increment because he is no longer on duty.
6. (i) For the purpose of these proviso to Fundamental Rule 87, the status of a government servant while on foreign service, i.e. gazetted or non-gazetted, should be determined with reference to the permanent post under Government on which he holds a lien or would hold a lien had his lien not been suspended, or, if during his absence on foreign service he is given any promotion under Fundamental Rule 113, with reference to the post under Government to which he is so promoted.

(ii) In the case of such a government servant, the term "his pay" occurring in item (i) of the proviso should be construed to mean what is prescribed under Fundamental Rule 117(b) for counting his pay for the purpose of Fundamental Rule 9 (2), i.e., the pay drawn in foreign service at the time leave is taken less, in the case of a government servant paying his own contribution for leave salary and pension, such part of the pay as may be paid as contribution.

(iii) The expression "the pay he would draw in the permanent post held substantively by him at the time of taking leave" occurring in the proviso should, in its application to a government servant on foreign service, be taken to mean the pay which he would draw in the permanent post under Government on which he holds a lien, or would hold a lien had his lien not been suspended, at the time of taking leave.

1. In the cases of government servants to whom rule 87-A applies, the authority competent to grant leave has no power to alter the nature of leave applied for.

2. The authority which granted leave to a government servant governed by rule 87-A can commute it retrospectively into leave of a different kind which was admissible at the time the leave was originally granted but the government servant concerned cannot claim it as a matter of right. (See also orders of the Governor under Subsidiary Rule 158).

3. The commutation of one kind of leave into another automatically carries with it the drawal of arrears of leave-salary or recovery of amounts overdrawn.

88. After continuous absence from duty on leave for a period of 28 months, a government servant for whom a leave account is maintained will draw leave-salary equal to quarter average pay, subject to the maxima and minima prescribed in rules 89 and 90.

Audit instructions regarding rule 88

1. The expression "continuous absence from duty on leave" occurring in this rule does not include absence on extra-ordinary leave; but includes absence on special leave granted in connexion with the award of Commonwealth Fund Service Fellowships, if owing to a combination of ordinary leave with such special leave, the aggregate period of absence exceeds 28 months.

2. The period of 28 months mentioned in this rule includes the period of vacation, if any, with which leave is combined.

89. (1) Except in the case of a government servant recruited on or after January 1, 1936, to whom the maximum rates of leave-salary prescribed in this rule shall not apply, leave-salary during the first four months of any period of leave on average pay, is subject to an absolute maximum of Rs. 4,000 per mensem.

(2) Except during the first four months of any period of leave on average pay, leave salary is subject to the monthly maxima shown in the following table:

Average		Half average		Quarter average	
Outside Asia	In Asia	Outside Asia	In Asia	Outside Asia	In Asia
£	Rs.	£	Rs.	£	Rs.
150	1,500	75	750	60	600

NOTE—The maximum of average pay does not apply to a government servant serving in a vacation department during a period of leave on average pay equivalent to a month for each year since his last leave during which he has not availed himself of the vacation, and to a proportionate fraction of a month during which he has taken a part only of the vacation: provided that, in the case of a government servant who is transferred with leave to his credit from a non-vacation to a vacation department, the Government shall decide, on the first occasion on which he takes leave after such transfer, the period not exceeding four months for which the maximum limit of leave salary shall not be applied to him.

Order of the Governor regarding rule 89(2)

The note below this rule is not meant to give any additional advantage but is intended to be a restrictive exception to the rule. A government servant is not entitled to the concession mentioned in that note in addition to the concession granted by the rule itself but only to the drawing of full pay for a period equivalent to one month for each year since the last leave taken during which vacation has not been enjoyed.

Order of the Governor regarding rules 89 and 90

For the purpose of applying the rupee limits of leave salary in rules 89 and 90 when a portion of the leave salary is paid in sterling, the latter should be converted into rupees at the rate of 1s. 6d. to the rupee.

Audit instructions regarding rule 89

1. Vacation should be treated as the equivalent of the leave on average pay for the purposes of this rule.
2. For the purpose of the note below rule 89(2), when vacation is combined with leave, the first four months of leave on average pay which is exempt from the application of the maximum of average pay [apart from the limit of Rs. 4,000 imposed by clause (1) of rule 89] should be calculated after taking into account the full period of the vacation so combined, even when the vacation does not fall within the first four months of any period of combined leave and vacation. In other words, the concession of drawing full average pay during leave combined with vacation should be restricted to such period of leave on average pay earned by detention on duty during vacation since last return from leave as is equal to the residual period, if any, which remains after deducting the period of vacation from the period of four months. If, however, the officer so elects, he may in the alternative be allowed to have the full amount of leave on average pay at his credit earned by detention on duty during vacation since his last return from leave subject to the limit of four months and to combine with it as much of vacation (on full pay)

as would make up the total of four months, the rest of the vacation being sanctioned as leave on average pay, as the case may be.

90. Subject to the condition that the leave-salary of a government servant shall in no case exceed his average pay, leave-salary, except as otherwise provided in this rule, is subject to the monthly minima shown in the following table when leave is taken or extended out of India elsewhere than in Pakistan, Ceylon, Nepal or Burma.

	Half average		Quarter average	
	Outside Asia	In Asia	Outside Asia	In Asia
	£	Rs.	£	Rs.
	25	250	12½	125

Exception—The minimum rates of leave-salary prescribed in this rule shall not apply to a government servant recruited on or after January 1, 1936.

Audit instruction regarding rule 90

The words "average pay" occurring in Fundamental Rule 90 should be interpreted in terms of Fundamental Rule 9 (2) and not taken as the pay which the non-gazetted government servant would draw in the permanent post held substantively by him at the time of taking leave, if this pay be more than the average pay.

91. (1) That portion of leave-salary which represents overseas pay drawn in sterling shall be paid in all cases in sterling and unless the government servant exercises his option under sub-rule (4) of drawing it in a Dominion or Colony along with the balance of his leave-salary, the payment shall be made by the High Commissioner for India in London.

(2) Subject to the provisions of sub-rule (1) leave-salary shall be drawn in rupees, but leave-salary in respect of leave spent out of Asia may, at the option of the government servant, be drawn in sterling:

Provided that—

(a) In the case of leave on average pay not exceeding four months, or of the first four months of such leave if it exceeds four months, leave-salary due in respect of an initial period of such leave spent in Asia may, if the government servant proceeds out of Asia during the currency of such leave, or within one month of its termination, be drawn in sterling.

(b) In the case of leave of any other description, or of periods of leave on average pay after the first four months of such leave, if the amount of such leave spent in Asia prior to embarkation does not in all exceed one month, leave-salary in respect of the whole of such leave may be drawn in sterling.

(c) In the case of an attachment order having been issued by a court in India in accordance with rule 48, Order XXI, First Schedule, Code of Civil Procedure, 1908 (Act V of 1908), that part of leave-salary which is attached shall be remitted to the court in rupees by the accounts authority in India. The balance of leave salary if payable in sterling, may then be drawn after reducing the maximum and minimum rates of leave-salary prescribed in rules 89 and 90 by the amount specified in the attachment order converted into sterling at the rate of exchange mentioned in the note under rule 51.

NOTE—For the purposes of this rule Cyprus shall be regarded as outside Asia.

(3) Leave-salary drawn in rupees shall be drawn in India, or, in the case of a government servant who spends his leave in Ceylon, or Burma, as the case may be.

(4) Leave-salary drawn in sterling shall be drawn in London, or, at the government servant's option, in any British dominion or colony which the Governor may by order prescribe for the purpose, provided that the government servant spends his leave in the dominion or colony in which he has elected to draw his leave-salary; but if leave-salary due in respect of any portion of leave out of Asia, and payable to the government servant in sterling remains undrawn for no fault on his part, the Governor may authorize the undrawn amount to be paid in India at the exchange rate mentioned in the note under rule 51.

NOTE—Payment of leave-salary in a colony shall be subject to such restrictions in the matters of Foreign Exchange as the Government of India may from time to time impose.

(5) Leave-salary shall be converted into sterling at the rate of exchange mentioned in the note under rule 51.

(6) Any leave-salary drawn outside India shall be subject to deduction of Indian income-tax and super-tax at the rate which would have been applicable if that leave-salary had been drawn in India.

Orders of the Governor regarding rule 91

1. Leave-salary may be drawn in sterling in the following British Dominion and Colonies:

Dominion or colony	Designation of paying officers
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Europe	
Gibraltar	Command Paymaster, Army Pay Office, Gibraltar.
Malta	Command Paymaster, Army Pay Office, Malta.
America and West Indies	
Canada	An officer residing in Canada or New Foundland takes payment from the Home Treasury, remittance being effected under arrangements made by the India Office through the Bank of Montreal.
Bahamas	Receiver General, Nassa.
Barbados	Colonial Treasurer, Barbados.
Bermuda	Command Paymaster, Army Pay Office, Bermuda.
British Guiana	Colonial Secretary, Georgetown.
British Honduras	Treasurer, Pelize.
Jamaica	Command Paymaster, Army Pay Office, Jamaica.
Dominion or colony	Designation of paying officers
Falkland Islands	Treasurer, Stanley.
North Africa	
Gambia	Treasurer, Bathurst.
Gold Coast	Treasurer, Accra.
Nigeria	Treasurer, Logas.
Sierra Leone	Command Paymaster, Army Pay Office, Sierra Leone.
Egypt	Command Paymaster, Army Pay Office Cairo.

Somaliland	Treasurer, Somaliland Protectorate, Berbera.
Northern Rhodesia	Treasurer, Livingstone.
Africa other than North Africa	
Union of South Africa	Secretary for Finance, The Treasury, Pretoria.
Kenya	Treasurer, Nairobi.
St. Helena	Colonial Treasurer, St. Helena.
Uganda	Treasurer, Entebbe.
Mauritius	Colonial Secretary, Port Louis.
Nyasaland	Treasurer, Nyasaland Protectorate, Zomba.
South Rhodesia	Treasurer, Salisbury.
Tanganyika	Treasurer, Dares-Salaam.
The Seyohelles Island	Treasurer, Seychelles Island.
Australasia	
New South Wales	Accountant, Commonwealth Sub-treasury, Sydney.
Dominion or colony	Designation of paying officers
Queensland	Accountant, Commonwealth Sub-treasury, Brisbane.
South Australia	Accountant, Commonwealth Sub-treasury, Adelaide.
Tasmania	Accountant, Commonwealth Sub-treasury, Hobart.
Victoria	Secretary, Commonwealth Treasury, Melbourne.
Western Australia	Accountant, Commonwealth Sub-treasury, Perth.

NOTE—Leave -salary may also be drawn in sterling in Egypt while a British Army Pay Office is retained there.

2. Government servants spending their leave in Ceylon will draw their leave salaries from the Colonial Treasurer.

3. In the case of a government servant who is placed on deputation in interruption of leave out of India, the leave is treated as one spell of leave and consequently the leave before and after the deputation should both be treated as "initial period" for the purposes of proviso (a) to this rule and he should be allowed to draw, if he desires, leave-salary in India for the portion of leave immediately following the deputation. In such cases the period of deputation should not be taken into account in calculating the maximum period of four months prescribed in the above rule since deputation is duty for all purposes.

92. The rupee and sterling maxima and minima prescribed in rules 89 and 90 shall be applied to leave salaries paid respectively in rupees and in sterling.

Audit instructions regarding rules 91 and 92

Under Fundamental Rule 91(2)(b) read with Fundamental Rule 92, a government servant who spend not more than one month of his leave in Asia prior to embarkation to spend the balance elsewhere, is entitled to draw leave-salary in respect of the entire period of his leave at the privileged rates and subject to the sterling minimum prescribed in Fundamental Rule 90.

93. A compensatory allowance should ordinarily be drawn only by a government servant actually on duty, but subject to such conditions as the Governor may by rule prescribe, a government servant on leave may continue to draw a compensatory allowance, or a portion thereof, in addition to leave-salary. One-of these conditions should be that the whole or a considerable part of the expense to meet which the allowance was given continues during leave.

(For rules made by the Governor under rule 93, see Part III of this Volume, Chapter XII).

Audit instruction regarding rule 93

When vacation is combined with leave, the entire period of vacation and the leave should be taken as one spell of leave for the purpose of this rule.

Section VI—EXCEPTIONS AND SPECIAL CONCESSIONS

94 to 100.***

100-A. Deleted.

LEAVE

(101 and 103—104)

101. Subject to such conditions and in accordance with such principles as the Governor may by rule or order prescribe, maternity leave may be granted to female government servants and leave on account of ill-health to members of such subordinate services, as may be specified, whose duties expose them to special risk of accident or illness.

Maternity leave and leave on account of ill-health shall be not debited to the government servant's leave account.

(For rules made by the Governor under rule 101, see Part III of this Volume, Chapters XIII and XIV).

102.***

103. The leave which may be earned by—

(a) temporary and officiating service;

(b) service which is not continuous; and

(c) part-time service, or service which is remunerated wholly or partly by the payment of honoraria or daily wages,

shall be such as the Governor may by rule or order prescribe.

Orders of the Governor regarding rule 103

The service of a pensioner re-employed after having retired on superannuation or retiring pension should be regarded as temporary for the purpose of rule 103, and leave may be granted to him in accordance with the rules framed under rule 103(a).

(For rules made by the Governor under rule 103, see Part III of this Volume, Chapters XV and XVI).

Orders of the Governor prescribing the leave terms for government servants engaged on contract

1. These leave terms shall apply to—

(a) government servants of Asiatic domicile engaged on contract on or after January 1, 1936, whether in India or abroad, and

(b) government servants of non-Asiatic domicile engaged on contract on or after the date mentioned above, but not specially recruited overseas for service under the Government.

NOTES—(1) Government servants of non-Asiatic domicile engaged on contract who may be specially recruited overseas on or after January 1, 1936 shall be subject to such leave terms as may be prescribed by the Governor in each case.

(2) Government servants of Asiatic domicile engaged on contract before January 1, 1936, shall be entitled to leave under Subsidiary Rule 157.

2. Where the contract is for one year or less, earned leave admissible will be at one-twenty-second of the period spent on duty. Though ranking as earned leave, this may be granted only on medical certificate and if subsequently it becomes necessary to grant the government servant further leave, after the earned leave has been exhausted, leave on medical certificate may be granted to him subject to the condition that the total period of the two kinds of leave does not exceed 1/11th of the period spent on duty.

If the government servant serves in a vacation department, earned leave will not be admissible but he may be granted, absolutely necessary leave on medical certificate to the extent of 1/22nd of the period spent on duty.

3. Where the contract is for more than one year but not more than five years, leave on medical certificate may be allowed in addition to earned leave in accordance with the provisions of Subsidiary Rule 157-A subject to a maximum of four months in all during the period of contract. In addition, extraordinary leave may be granted in special circumstances when no other leave is admissible subject to a total maximum limit of three months in respect of such leave.

If the government servant serves in a vacation department, earned leave will not be admissible.

4. Where the contract is for a longer term than five years or an original contract for five years or less is extended so as to make the total period of contract longer than five years, leave admissible to a permanent government servant under rule 81-B may be allowed subject to the restrictions that no leave on private affairs will be granted and that the leave on medical certificate will be limited to six months in all. In the case of extension of contract to a period longer than five years the government servants will be credited with the earned leave that would have been admissible had the contract been initially one of more than five years diminished by any earned leave already taken and leave on medical certificate if any already taken will count against the six months' limit prescribed above.

5. Where the contract is for an indefinite period, or an original contract for a definite period, is extended for an indefinite period, the leave terms for permanent government servants laid down in rule 81-B will be made applicable but the provisions of rule 87-A will not apply to them. In the latter case, i.e. when an original contract for a definite period is extended for an indefinite period, the government servant will be credited with the earned leave that would have been admissible had the contract been initially one for an indefinite period diminished by any earned leave already taken and leave on medical certificate, if any already taken, will count against the limit prescribed, in a clause 2(b) of rule 81-B.

6. In the case of government servants falling under paragraph 3 above, earned leave may be granted after the expiry of the contract only when it has been applied for during the period of the contract and refused owing to the exigencies of the public service. A government servant whose services are dispensed with on grounds of ill-health may be permitted to take all earned leave due to him before his service is terminated.

7. The leave salary during leave taken under the above paragraphs will be regulated as follows:

(i) A government servant on earned leave will be entitled to leave-salary equal to his average pay.

(ii) A government servant on leave on private affairs or on medical certificate will be entitled to leave-salary equal to half his average pay subject in either case to a maximum of Rs. 750.

NOTE—Average pay means the average monthly pay earned during the twelve complete months preceding the month in which the event occurs which necessitates the calculation of average pay.

(iii) A government servant on extraordinary leave will not be entitled to any leave-salary.

8. A government servant initially engaged on contract will become subject to the leave terms prescribed in this chapter for government servants recruited to service; or posts under the Government on or after January 1, 1936, in their entirety on his being taken into permanent employment after the expiry of his contract. In such a case the government servant will be credited with the earned leave that would have been admissible had his previous duty been duty as government servant in permanent employ diminished by any earned leave already taken, and leave on medical certificate, if any already taken will count against the limit prescribed in clause 2(b) of rule 81-B.

104. During their period of probation or apprenticeship, probationers and apprentices are entitled to leave as follows:

(a) if appointed under contract in the United Kingdom with a view to permanent service in India, or if appointed in the United Kingdom to posts created temporarily with the prospect, more or less definite, of becoming permanent:

(i) to such leave as is prescribed in their contracts, or, when no such prescription is made;

(ii) (1) when the period of probation is not less than three years, to the same leave which would be admissible if they held permanent posts; or

(2) when the period of probation is less than three years, to leave on average pay up to one-eleventh of the period spent on duty, to which may be added, on medical certificate, leave on half average pay; provided that the total leave granted under this clause shall not exceed three months reckoned in terms of leave on average pay; and

(b) If appointed otherwise, to such leave as is admissible under rules framed by the Governor on this behalf.

(For rules made by the Governor under rule 104, see Part III of this Volume, Chapter XVII).

CHAPTER XI—JOINING TIME

105. Joining time may be granted to a government servant to enable him—

(a) to join a new post to which he is appointed while on duty in his old post, or directly on relinquishing charge of that post; or

(b) to join a new post—

(i) on return from leave on average pay of not more than four months' duration, or

(ii) when he has not had sufficient notice of his appointment to the new post, on return from leave other than that specified in sub-clause (i); or

(c) to travel from the port of debarkation or, in the case of arrival by aircraft, from its first regular port in India, and organize his domestic establishment when he returns from leave out of India of more than four months' duration; or

(d) (i) to proceed from a specified station to join a post in a place in a remote locality which is not easy of access;

(ii) to proceed on relinquishing charge of a post in a place in a remote locality which is not easy of access to a specified station.

Exception—In the case of government servants recruited on or after January 1, 1936, the term "leave on average pay of not more than four months duration" in clause (b)(i) of this rule shall be taken to mean "earned leave not exceeding one hundred and twenty days" and the term "four months" in clause (c) shall be taken to mean "90 or 60 days as the case may be."

Audit instructions regarding rule 105

1. If a government servant is authorised to make over charge of an office elsewhere than at its headquarters, any joining time to which he may be entitled shall be reckoned from the place at which he actually makes over charge.

2. The intention of sub-clause (i) clause (b) of this rule is that joining time should be allowed to those government servants who are granted privilege leave or leave on average pay for not more than four months, or those who are granted privilege leave up to a maximum of six months under the special war concession, and who are transferred to a new station on the termination of such leave.

3. If vacation is combined with leave, joining time should be regulated under clause (b)(i) of this rule if the total period of vacation and leave on average pay with which vacation may be combined is of not more than four months' duration and under clause (c) if otherwise.

4. In the case of a government servant who is appointed while on leave (whether spent in India or out of India) on average pay of not more than four month's duration to a post other than that from which he took leave, the full joining time calculated under Subsidiary Rule 174 in Part III is admissible, irrespective of the date on which the orders of transfer were received by the government servant concerned. Should the government servant join his new appointment before the expiry of such leave plus the joining time admissible, the period short taken should be considered as leave not enjoyed and a corresponding portion of the leave sanctioned should be cancelled.

If, in any case, the government servant desires not to avail himself of the full joining time admissible, the periods of leave and joining time should be adjusted with reference to such option.

5. Joining time under clause (c) of this rule is reckoned from the date of debarkation at an Indian port. Colombo is not regarded as an Indian port for this purpose.

6. Joining time under Fundamental Rule 105(c) is admissible to government servant for organizing his domestic establishment even if he does not make any journey from the port of debarkation.

7. The time reasonably required for the journeys between the place of training and the station to which a government servant is posted immediately before and after the period of training should be treated as part of that period. This ruling is not intended to apply to probationers holding 'training posts' which they may be considered as taking with them on transfer. Such probationers are not entitled to joining time when transferred.

Orders of the Governor under rule 105

1. A government servant of the Central or another State Government who is appointed to a post under the Uttar Pradesh Government while on duty in his old post but who joins his new post after termination of his employment under the Central or another State Government, as the case may be, by resignation or otherwise should be allowed no joining time, or joining time pay, except when the employment of a particular servant is in the wider public interest.

2. In the case of Government servants appointed under the Uttar Pradesh Government on the results of a competitive examination which is open both to government servants and others or as a result of selection after interview—

(a) joining time should ordinarily be permitted for all government servants serving under the Uttar Pradesh Government and for government servants of the Central and other State Governments who hold permanent posts in a substantive capacity, and

(b) no joining time pay should be granted except when the government servant holds a permanent post under Government (including the Central and other State Governments) in a substantive capacity.

Orders of the Governor regarding rules 105(a)

1. Provincial Medical officers who attend a post-graduate course at the King George's Medical College, Lucknow, or any other course of training are not entitled to full joining time for journeys either to join the post-graduate course or at its end, but can, according to audit instruction no. 7 regarding this rule, be allowed only the period actually required for journeys (without days for preparation) and that period should be treated as part of their training period. The Governor has,

however, decided that if an officer is posted at the end of his training to a station other than the one from which he came to attend the training, he will be entitled to full joining time for joining that station.

2. Nurses who join the higher courses in nursing at the School of Nursing Administration, Delhi, are not entitled to full joining time both when joining the course and at its end, but can, according to instruction no. 7 regarding this rule, be allowed only the period actually required for journeys (without days for preparation) and that period should be treated as part of their training period. If, however, a nurse, at the end of the training has to join duties at a station other than the one from which she came to attend the training, she will be entitled to full joining time for joining that station.

106. The joining time admissible in each of the cases mentioned in rule 105 shall be regulated by such rules as may be prescribed by the Governor with due regard to the time required for actual transit and for the organization of domestic establishment.

(For rules made by the Governor under rule 106, see Part III of this Volume, Chapter XVIII).

107. A government servant on joining time shall be regarded as on duty and shall be entitled to be paid as follows:

(a) If on joining time under clause (a) of rule 105, he is entitled to the pay which he would have drawn if he had not been transferred or the pay which he will draw on taking charge of his new post, whichever is less.

(b) If on joining time under clause (b) or (c) of rule 105, he is entitled—

(i) when returning from extraordinary leave, other than extraordinary leave not exceeding fourteen days granted in continuation of other leave, to no payments at all;

(ii) when returning from leave of any other kind, to the leave-salary which he last drew on leave at the rate prescribed for the payment of leave-salary in India.

(c) If on joining time under clause (d) of rule 105, he is entitled to pay as though he were on duty in his post.

Exception—A ministerial servant on transfer is not entitled to be paid while on joining time unless his transfer is made in the public interests.

Orders of the Governor regarding rule 107

(1) Under a mutual arrangement between the Central Government and the various State Governments, the transit pay and allowances, while he is joining and leaving the new service, of a government servant whose services are lent by one Government to another are charged to the borrowing Government. In the case of a government servant in a joint cadre serving two Governments his transit pay and allowances on transfer from one office to another are debited to the office to which he is proceeding. (See rule 1, Appendix 3-B, Account Code-1940 edition).

(2) In the case of government servants appointed under the Uttar Pradesh Government on the result of a competitive examination which is open both to government servants and others or as a result of selection after interview no joining time pay should be granted except when the government servant holds a permanent post under Government (including the Central and other State Governments) in a substantive capacity.

(3) No extra pay (where the transfer involves the grant of extra pay) can be drawn in any case by a relieving government servant until the transfer is complete but as far as ordinary pay and allowances are concerned, an exception may be made to the general rule in all cases in which the charge to be transferred whether a division, a sub-division or other-charge consists of several scattered works which the relieving and the relieved government servants are required by the orders of a superior officer to inspect together before the transfer can be completed. The relieving government servant will be considered on duty if the period taken in carrying out these inspections is not considered by the Superintending Engineer to be excessive.

(A) While so taking over charge, the relieving government servant will draw—

(a) if he is transferred from a post which he held substantively, his presumptive pay in that post, or,

(b) if he is transferred from a post which he held in an officiating capacity, the officiating pay admissible in that post or the pay he would draw after the transfer is complete, whichever is less.

(B) The pay of a government servant, transferred to a post on return from leave, should during the period of taking over charge be regulated as follows:

(a) if he went on leave, while working in the post held by him substantively, the presumptive pay of that post; and,

(b) if he went on leave while working in a post in an officiating capacity, the officiating pay of that post or the pay which will be admissible to him in the new post, after taking over charge, whichever is less.

NOTE—The power vested in the Superintending Engineer has been delegated to all officers whether permanent or officiating incharge of canal divisions in respect of lower subordinates and members of the subordinate engineering service in the Irrigation Branch. In consequence of this delegation, charge certificate will in future be transmitted by the divisional officer direct to the Accountant General.

(4) In each case where the Head of the Department or the officer to whom the power is delegated, as the case may be, decides to treat the period of taking over charge of a relieving officer as 'duty', a declaration as in the pro forma given below should be issued.

DECLARATION

I _____,
_declare that (name) (designation)

Sri _____ and
Sri _____

(name and designation of the officer to be relieved) (name of the relieving officer)

_____ were engaged in joint inspection of several
scattered works (designation)

and/or stores during the period from _____ to _____ in
connection with handing over and taking over charge and I do not consider the
above period as excessive during which

Sri _____ shall be treated as on duty.

(name of the relieving officer)

Station _____ Name _____

Date _____ Designation _____
—

(5) In the case of government servants of the Jail Department who have to take over charge of jail stores and stocks, the relieving government servant will be allowed a period not exceeding three days in taking over the charge, provided the period taken in taking over charge is not regarded by the Inspector General of Prisons to be excessive. The period so spent shall be treated as spent on duty and the pay of the relieving government servant while, so taking over charge will be regulated in accordance with para (3) above.

(6) In the case of Store-keepers and Assistant Store keepers in the Hydro-Electric Grid, who have to take over charge of stores and stocks, the relieving government servant will be treated as on duty until the transfer is completed, provided that the period spent in taking over charge is not regarded by the Head of the Department concerned to be excessive, and their pay will be regulated in accordance with para (3) above.

(7) In the case of Reserve Inspectors and Public Prosecutors of the Police Department and Quartermasters of the Provincial Armed Constabulary Battalions who have to take over the charge of stores and stocks, the relieving government servant will be allowed, at the discretion of the Superintendent of Police or the Head of Office, as the case may be, a period not exceeding three days for taking over the charge. This period will be treated as spent on duty and the pay of the relieving government servant while so taking over charge will be regulated by para (3) above.

(8) In the case of Treasury Officer who have to take over charge of cash, stamps, opium, etc., in a non-banking treasury the relieving officer may be allowed, at the discretion of the District Officers, a period not exceeding seven days for taking over charge. In the case of the Treasury Officers who have to take over charge of cash, stamps, opium, etc. in a Banking Treasury, the relieving officer may be allowed, at the discretion of the District Officers, a period not exceeding three days for taking over charge. In either case, the period taken in taking over charge shall be treated as spent on duty and the pay of the relieving officer shall be regulated in accordance with para (3) above.

(9) In the case of the Radio Maintenance Officers of the Uttar Pradesh Police Radio Section who have to take over charge of stores the relieving officer may be allowed, at the discretion of the head of office, a period not exceeding three days for taking over charge. The period so spent will be treated as on duty and the pay of the relieving officer will be regulated in accordance with para (3) above.

Orders of the Governor regarding clause (a) of rule 107

The words "if he had not been transferred" in this clause should be interpreted as if they read "if he had continued in the old post".

Orders of the Governor regarding clause (c) of rule 107

The words "in his post" occurring in this clause should be interpreted to mean "in his post in the remote locality" even in the case of a government servant on straight transfer.

108. A government servant who does not join his post within his joining time is entitled to no pay or leave-salary after the end of the joining time. Wilful absence from duty after the expiry of joining time may be treated as misbehaviour for the purpose of rule 15.

108-A. A person in employment other than Government service or on leave granted from such employment, if in the interests of the Government he is appointed to a post under the Government may, at the discretion of the Government, be treated as on joining time while he prepares for and makes the journey to join the post under the Government, and while he prepares for and makes the journey on reversion from the post under the Government to return to his original employment. During such joining time he shall receive pay equal to the pay, or in the case of joining time immediately following leave granted from the private employment, to the leave-salary paid to him by his private employer, prior to his appointment to government service, or pay equal to the pay of the post in government service, whichever is less.

CHAPTER XII—FOREIGN SERVICE

109. * * *

110. (a) No government servant may be transferred to foreign service against his will:

Provided that the provisions of this sub-rule shall not apply to the transfer of a government servant to the service of a body, incorporated or not, which is wholly or substantially owned or controlled by the Government.

(b) No government servant shall be transferred to foreign service out of India without the sanction of the Government.

(c) Except to the extent the power of sanctioning transfer to foreign service in India may be delegated to authorities subordinate to the Government, the transfer of a government servant to foreign service in India also requires the sanction of the Government.

111. A transfer to foreign service is not admissible unless—

(a) the duties to be performed after the transfer are Such as should, for public reasons be rendered by a government servant, and,

(b) the government servant transferred holds at the time of transfer, a post paid from the revenues of the State, or holds a lien on a permanent post, or would hold a lien on such a post had his lien not been suspended.

Orders of the Governor regarding rule 111

1. The transfer of a temporary government servant to foreign service is permissible under this rule.
2. The principles of this rule should be applied most rigorously to a proposal to lend the services of a government servant to a private undertaking. In general such a loan should be regarded as a very exceptional case requiring special justification.
3. The condition in this rule that a transfer to a foreign service is not admissible unless the duties to be performed after the transfer are such as should for public reasons be rendered by a government servant, means (a) that the duties must be such that their proper discharge is in the public interest, and (b) that such discharge requires or can be best secured by the deputation of a government servant. If the second condition is not fulfilled, there can be no public reasons which require that the duties must be rendered by a government servant, since, if these duties can be performed equally well by a person other than a government servant, public interests will not suffer if a transfer is not made. Where, for example, the duties to be performed under a foreign employer, are of a clerical nature, the second of the above conditions cannot possibly be fulfilled as competent clerks can easily be obtained in the open market. Nor is the second condition fulfilled by the mere fact that a public body or institution has asked for the services of a government servant. The public body or institution must also show that it cannot find a suitable employee except by obtaining the loan of a government servant.

112. If a government servant is transferred to foreign service while on leave, he ceases, from the date of such transfer, to be on leave and to draw leave-salary.

Orders of the Governor regarding rule 112

1. This rule does not apply to cases in which a government servant is permitted by the Government to accept foreign service while on leave preparatory to retirement and it is decided by the Government that the employment should be treated as private employment and that the government servant should not be placed on the usual foreign service terms.
2. (i) The concession of drawing leave-salary during leave preparatory to retirement in addition to pay from an Indian State should not be granted to government servants retiring before reaching the age of superannuation, if they take such leave after being offered, or having made arrangements for, employment in a State. In such cases they should be required either to retire or go on foreign service terms.

(ii) The concession of drawing leave-salary as well as pay from the Indian State is permissible when the leave is the leave last taken before or after reaching the age

of superannuation, except when the government servant is already in foreign service when he applies for such leave.

(iii) These orders, however, do not apply to a government servant who is already in foreign service when he applies for leave preparatory to retirement. The concession of treating foreign service as private employment should not be allowed to such a government servant. He should be treated as in foreign service so long as he continues on duty in the service of the same employer.

(iv) A government servant compelled under rule 56 (c) (3), to retire from active service after five year's tenure of his post (unless re-appointed) and who takes leave preparatory to retirement after having been offered or having made arrangements for employment in an Indian State may, even though he has not reached the age of superannuation, draw, leave-salary in addition to pay from the State provided the leave is the last leave taken before the date of such compulsory retirement.

113. (i) A government servant transferred to foreign service shall remain in the cadre or cadres in which he was included in a substantive or officiating capacity immediately before his transfer, and may be given such substantive or officiating promotion in those cadres as the authority competent to order promotion may decide. In giving promotion, such authority shall take into account—

(a) the nature of the work performed in foreign service, and

(b) the promotion given to juniors in the cadre in which the question of promotion arises.

(ii) Nothing in this rule shall prevent a member of a subordinate service from receiving such other promotion in government service as the authority who would have been competent to grant the promotion had he remained in government service may decide.

114. A government servant in foreign service will draw pay from the foreign employer from the date on which he relinquishes charge of his post in government service. Subject to any restrictions which the Governor may by general order impose, the amount of his pay, the amount of joining time admissible to him and his pay during such joining time will be fixed by the authority sanctioning the transfer in consultation with the foreign employer.

Orders of the Governor regarding rule 114

The amount of remuneration to be granted to a government servant transferred to foreign service in India, including an Indian State, will be regulated by the following orders:

1. When the transfer of a government servant to foreign service in India is sanctioned, the pay which he shall receive in such service must be precisely specified in the order sanctioning the transfer. If it is intended that he shall receive any remuneration, or enjoy any concession of pecuniary value in addition to his pay proper, the exact nature of such remuneration or concession must be similarly specified. No government servant will be permitted to receive any remuneration or enjoy any concession which is not so specified; and, if the order is silent as to any particular remuneration or concession, it must be assumed that the intention is that it shall not be enjoyed.

2. No order of transfer to foreign service shall be issued by a department of the Government without previous consultation with the Finance Department. It shall be open to that department to prescribe, by general or special order, cases in which its consent may be presumed to have been given.

3. The following two general principles must be observed in sanctioning the conditions of transfers:

(a) The terms granted to the government servant must not be such as to impose an unnecessarily heavy burden on the foreign employer.

(b) The terms granted must not be so greatly in excess of the remuneration which the government servant would receive in government service as to render foreign service appreciably more attractive than government service.

4. Provided that the two principles laid down in paragraph 3 above are observed, the following concessions may be granted by the foreign employer with the sanction of the Government. Such concessions must not be sanctioned as a matter of course, but in those cases only in which their grant is in accordance with local custom and the wishes of the foreign employer and is, in the opinion of the Government justified by the circumstances. The value of the concessions must be taken into account in determining an appropriate rate of pay for the government servant in foreign service:

(a) The payment of contributions towards leave-salary and pension under the ordinary rules regulating such contributions.

(b) The grant of travelling allowance under the ordinary travelling allowance rules of the Government or under rules of the foreign employer and of permanent travelling allowance, conveyance allowance and horse allowance.

(c) The use of tents, boats and transport on tour, provided that this is accompanied by a corresponding reduction in the amount of travelling allowances admissible.

(d) The grant of free residential accommodation, which may be furnished, in cases in which the Government consider this to be desirable, on such scale as may seem proper to the Government.

(c) The use of motors, carriages and animals.

5. The grant of any concession not specified in paragraph 4 above requires the special sanction of the Government.

5-A. A government servant transferred to foreign service is eligible for sterling overseas pay under the rules or terms applicable to him, and the grant of such pay should be settled in each case in consultation with the foreign employer. As it is impossible to express any part of the pay in foreign service in sterling, any increase given on account of sterling overseas pay with the consent of the foreign employer should be converted into rupees at the rate of exchange current on the date the government servant is transferred to foreign service. In certain cases the pay of a government servant in foreign service may be fixed as the pay he would receive from time to time in government service or the pay of a post in government service with or without an addition thereto in the form of a percentage of such pay and/or of a fixed sum. In such cases the foreign employer should be called on to pay the equivalent of sterling overseas pay according to the terms of the arrangement, though even in such cases, his concurrence should be obtained. The sterling pay will then be converted monthly to rupees at the current rate. There is, however, no objection to a foreign employer making his own arrangements, if he so desires, to disburse the overseas pay in sterling and the employee agrees to it, but for purposes of calculating contribution, the amount paid in sterling shall be converted to rupees at the "current rate of exchange."

NOTE—The expression "current rate of exchange" used above means the current rate as mentioned in the note below rule 51.

6. When a government servant of non-Asiatic domicile who is entitled to passage concessions is transferred to foreign service, the foreign employer is liable to pay a contribution to the Government at the rate of Rs. 30 per mensem on his behalf. The contribution will be payable throughout the government servant's service under the foreign employer, i.e. whether he is on duty or on leave.

6-A. The pay and allowances of a government servant transferred to foreign service shall ordinarily be regulated as follows by the authority competent to sanction the transfer who shall specify precisely the amount of pay and other concessions to be granted. Any departure from these orders requires the previous sanction of the Government. When a government servant in receipt of overseas pay is granted, on transfer to foreign service in India or on the occasion of extension of the period thereof, an increase over his substantive pay in the regular line and the increase is expressed as a percentage of substantive pay, the percentage should be

applied only to the basic pay drawn by the government servant in the regular line and not to his overseas pay, this decision applies equally to sterling and rupee overseas pay and to government servants of Asiatic and non-Asiatic domicile.

7. The pay of a government servant transferred to a post the duties of which are similar to those of the post which he held when transferred, should be fixed at a sum which does not exceed by more than 25 per cent, of his last substantive pay in the service of the Government, or if he is officiating in a grade or post from which he is unlikely to revert, 25 percent of his last pay. The special pay, personal pay or other emoluments classed as 'pay' under Fundamental Rule 9(21) (iii) should not be taken into account in regulating foreign service pay without the sanction of the Governor.

8. A government servant transferred to an unusually responsible or difficult post or to one the duties of which differ from those of his post under the Government, should receive pay specially fixed with reference to his status and pay in the service of the Government and the nature of the work for which he is transferred. The special pay, personal pay or other emoluments classed as 'pay' under Fundamental Rule 9(21)(iii) should not be taken into account in regulating foreign service pay without the sanction of the Governor.

9. Increases of pay will be regulated as follows:

(a) A government servant whose pay is fixed under paragraph 7 above and who belongs to a graded service or to a service in which pay is regulated by a time-scale, may, on the occasion of each substantive promotion on his departmental list or accrual of periodical increment, be granted an increase to that which such promotion or increment would have given in government service plus a sum not exceeding 20 per cent thereon. If such a government servant would have obtained, had he remained in the service of the Government, officiating promotion from which he would not have been likely to revert, his foreign service pay may be raised, with the consent of the foreign employer, to the amount of enhanced pay which he would have received in the service of the Government plus a sum not exceeding 20 per cent of such pay.

(b) In all other cases in which pay is fixed under paragraph 7 and in all cases in which it is fixed under paragraph 8, a revision of pay involving an increase will be allowed only in the following circumstances:

(1) If the pay is not on a time-scale basis, a revision of pay involving an increase shall not be allowed until a government servant has been in foreign service for three years. After that period and subsequently at intervals of not less than three years, an increase of not more than 20 percent of the pay existing at the time may be allowed, if the foreign employer proposes it and if the authority who sanctioned

the transfer, having regard to the nature of the government servant's duties, considers that such an increase is justified.

(2) If the pay is on an incremental or time-scale basis, no revision of the time-scale shall be allowed unless—

(i) there is a change in the nature of the duties or responsibilities of the post in foreign service, or

(ii) the maximum pay of the time-scale has been drawn for not less than three years.

10. The pay of deputy collectors, tahsildars, naib-tahsildars and kanungos who are transferred to foreign service for employment under the Court of Wards shall be regulated as follows:

(a) Deputy collectors inclusive of probationary deputy collectors and tahsildars, also naib-tahsildars, who are not selected candidates and have not passed the departmental examination.	Pay in the time-scale or grade pay which they would draw from time to time plus an addition of a fixed percentage not exceeding 25 per cent, on that pay to be decided in each case by the authority sanctioning the transfer.
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NOTE—A Deputy Collector deputed to the Court of Wards Department for appointment as special manager of the Balrampur Estate should be given an addition of 50 per cent on his pay as Deputy Collector.

(b) Naib-tahsildars who are both selected candidates and have passed the departmental examination.	Pay on a special scale of Rs. 175—10—205.
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(c) Kanungos	Grade pay plus an additional pay of Rs. 30.
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The above government servants may also be granted free residential accommodation on such scale as may seem proper to the transferring authority, or a house rent allowance, not exceeding 10 per cent of their pay under the Court of Wards in cases where the Court of Wards cannot provide for them suitable residential accommodation.

11. In the absence of specific mention to the contrary in the order sanctioning a transfer, the rate of pay to be drawn during joining time will be the rate of pay admissible in foreign service.

12. When a police officer who is entitled to an allowance for the maintenance of a uniform, horse and saddlery is placed on foreign service, the foreign employer is

liable to pay a monthly contribution calculated, as explained in the example given in the next sub-para on the basis of the rate of the allowance in force from time to time, for the entire period of such service. The contribution will be payable also during periods of leave.

In case of State Police Officers on deputation to the Government of India or to another State Government, it has been decided with the concurrence of the Government of India that the uniform, horse and saddlery allowance will be paid, on becoming due, by the State Government in the first instance but a proportionate charge will be made from the borrowing Government for the period the officer has served on deputation. For example, if the rate of uniform allowance for State Police Service Officers, be Rs. 900 payable every ten years, recovery in their case will be made at the rate of Rs. 90 per year or Rs. 7.50 paise per month in respect of uniform allowance. Such recoveries should be made from the borrowing Government in a lump sum once in a year in the month of March. When an officer on reversion from service under the borrowing Government proceeds on leave, recoveries should be made up to the date of his proceeding on leave and for the period of his joining time, if admissible.

The above procedure will also be applied in respect of the officers belonging to the Indian police service whose services are lent on deputation to the Government of India or to another State Government.

13. Specific terms in regard to travelling allowance to be allowed to government servants for journeys on transfer to foreign service and on reversion therefrom, should invariably be prescribed by sanctioning authorities in consultation and agreement with foreign employers.

115. (a) While a government servant is in foreign service contributions towards the cost of his pension must be paid to the revenues of the State on his behalf.

(b) If the foreign service is in India, contributions must be paid on account of the cost of leave-salary also.

(c) Contributions due under clauses (a) and (b) above shall be paid by the government servant himself, unless the foreign employer consents to pay them. They shall not be payable during leave taken while in foreign service.

(d) By special arrangement made under rule 123(b) contributions on account of leave-salary may be required in the case of foreign service out of India also, the contributions being paid by the foreign employer.

NOTE—Pensions, throughout this chapter, include contributions, if any, payable by the Government to a government servant's credit in a provident fund.

Orders of the Governor regarding rule 115

A government servant who is a subscriber to the Contributory Provident Fund (Uttar Pradesh) and who is transferred to foreign service shall pay monthly subscriptions calculated on the rate of pay drawn in foreign service. The foreign employer, or the government servant himself, according to the arrangement made under clause (c) of rule 115, shall pay, in addition, for the period of active foreign service, at such times as the Government may prescribe in each case, a contribution determined by the formula $x + xy$, where x equals the amount which would have been credited monthly to the subscriber's account in the Provident Fund had he not proceeded on foreign service, the rate of pay drawn by him, in foreign service being regarded as his "emoluments" for this purpose, and y equals for fraction which the amount recoverable as leave-salary contribution bears to pay drawn in foreign service. This procedure takes effect from April 1, 1941, and the contribution shall, unless otherwise settled in any particular case, be recovered monthly alongwith the subscription calculated on the rate of pay drawn in foreign service which the government servant has to pay as his own share.

116. The rate of contributions payable on account of pension and leave-salary shall be such as the Governor may by general order prescribe.

Orders of the Governor regarding rule 116

1. The following rates of contributions are leviable:

*Rates of monthly contribution for pensionary benefits payable during active foreign service in respect of —

Year of Service	Group 'A' Employees	Group 'B' Employees	Group 'C' Employees	Group 'D' Employees
1	2	3	4	5
0—1 Year	7% of the maximum monthly pay of the post in the officiating/substantive grade, as the case may be.	6 % of the maximum monthly pay of the post in the officiating/substantive grade, as the case may be.	5 % of the maximum monthly pay of the post in the officiating/substantive grade, as the case may be.	4 % of the maximum monthly pay of the post in the officiating/substantive grade, as the case may be.
1—2,,	7 % Ditto	6 % Ditto	6 % Ditto	4 % Ditto

*These rates are effective from 1-11-1982 vide O. M. No. 2 G—1—2700/X-534(10)-82, dated 15-12-1982.

1	2	3	4	5
2—3,,	8 % Ditto	7 % Ditto	6 % Ditto	5 % Ditto
3—4,,	8 % Ditto	7 % Ditto	7 % Ditto	5 % Ditto
4—5,,	9% Ditto	8% Ditto	7% Ditto	5% Ditto
5—6,,	10% Ditto	8% Ditto	7% Ditto	6% Ditto
6—7,,	10% Ditto	9% Ditto	8% Ditto	6% Ditto
7—8,,	11% Ditto	9% Ditto	8% Ditto	6% Ditto
8—9,,	11% Ditto	10% Ditto	9% Ditto	7% Ditto
9—10,,	12% Ditto	10% Ditto	9% Ditto	7% Ditto
10—11,,	12% Ditto	11% Ditto	10% Ditto	7% Ditto
11—12,,	13% Ditto	11% Ditto	10% Ditto	8% Ditto
12—13,,	14% Ditto	12% Ditto	10% Ditto	8% Ditto
13—14,,	14% Ditto	12% Ditto	11% Ditto	8% Ditto
14—15,,	15% Ditto	13% Ditto	11% Ditto	9% Ditto
15—16,,	15% Ditto	13% Ditto	12% Ditto	9% Ditto
16—17,,	16% Ditto	14% Ditto	12% Ditto	9% Ditto
17—18,,	16% Ditto	14% Ditto	13% Ditto	10% Ditto
18—19,,	17% Ditto	15% Ditto	13% Ditto	10% Ditto
19—20,,	17% Ditto	15% Ditto	13% Ditto	10% Ditto
20—21,,	18% Ditto	16% Ditto	14% Ditto	11% Ditto
21—22,,	19% Ditto	16% Ditto	14% Ditto	11% Ditto
22—23,,	19% Ditto	17% Ditto	15% Ditto	11% Ditto
23—24,,	20% Ditto	17% Ditto	15% Ditto	12% Ditto
24—25,,	20% Ditto	17% Ditto	16% Ditto	12% Ditto
25—26,,	21% Ditto	18% Ditto	16% Ditto	12% Ditto

26—27,,	21% Ditto	18% Ditto	16% Ditto	13% Ditto
1	2	3	4	5
27—28,,	22% Ditto	19% Ditto	17% Ditto	13% Ditto
28—29,,	23% Ditto	19% Ditto	17% Ditto	13% Ditto
29—30,,	23% Ditto	20% Ditto	18% Ditto	13% Ditto
Over 30 years	23% Ditto	20% Ditto	18% Ditto	14% Ditto

Rates of monthly contribution for leave-salary payable during active foreign service in respect of—

percentage of pay drawn in foreign service.

Members of Class I Provincial Services 15

Members of Class II Provincial and subordinate Services 12 ½

NOTE—(1) In the case of government servants recruited on or after January 1, 1936, the monthly contribution for leave-salary payable during active foreign service shall be at the rate of 11 per cent of pay drawn in foreign service with effect from June 1, 1939. This rate will be also be applicable to inferior government servants, whether recruited before or after January 1, 1936.

NOTE—(2) The leave-salary contribution in the case of a Member of the Provincial Civil Service drawing pay in the senior scale of the Indian Civil Service otherwise than as a permanent Magistrate and Collector shall be the same as for members of Class 1 Provincial Services, viz., 15 per cent.

2. The term "length of service" mentioned in order no. (1) above, means the total period running from the date from which service for pension commences or is likely to commence, including service counting for pension under Articles 370 and 371, Civil Service Regulations. In the case of government servants mentioned in Articles 403 and 404-A, Civil Service Regulations, the period which they may be entitled to add under those Articles to their service qualifying for superannuation pension, should be taken into account in reckoning "length of service" for determining the rates of foreign service contribution on account of pension.

NOTE—In the case of temporary service, the term "length of service" mentioned in order no. 1 above, means the entire continuous service of the government

servant concerned, including temporary service in a pensionable post or in a purely temporary establishment.

3. The term "active foreign service" used in the orders under this rule is intended to include the period of joining time which may be allowed to a government servant both on the occasion of his proceeding to and reverting from foreign service and accordingly contributions are leviable in respect of such periods.

Audit instructions regarding rule 116

General principles regarding recovery of contributions for leave-salary and pensions

1. When a government servant is transferred to foreign service, or when the period of foreign service of a government servant is extended, it should be stipulated that the contributions for pension and leave-salary or for pension alone, as the case may be will be recoverable at the rates in force from time to time in accordance with orders issued by the Governor under Fundamental Rule 116. Similarly, if the government servant is on a non-pensionable footing and subscribing to a contributory provident fund, and if he is allowed to retain this privilege while in foreign service, the order should specify the arrangement made with reference to the orders under rule 115 and state that it will be subject to amendment consequent upon any revision of these orders.

2. The leave-salary contribution for the period of joining time taken by a government servant in continuation of leave under clause (b) of Fundamental Rule 105, before reversion from foreign service should be calculated on the pay he was getting immediately before he proceeded on leave.

117. (a) The rates of pension contribution prescribed under rule 116 will be designed to secure to the government servant the pension that he would have earned by service under the Government if he had not been transferred to foreign service.

(b) The rates of contribution for leave-salary will be designed to secure to the government servant leave-salary on the scale and under the conditions applicable to him. In calculating the rate of leave-salary admissible, the pay drawn in foreign service, less, in the case of government servants paying their own contributions, such part of pay as may be paid as contribution, will count as pay for the purpose of rule 9(2).

Audit instructions regarding rule 117

Non-superior government servants transferred to foreign service before September 5, 1928, who retire, either directly at the end of their sanctioned term of foreign service or within three years of its conclusion are entitled, irrespective of the rate of pension contribution prescribed for them to a pension calculated wholly or partly, as the case may be, on the pay drawn by them in foreign service.

118. ***

FOREIGN SERVICE

(119—127)

119. The Governor may—

- (a) remit the contributions due in any specified case or class of cases, and
- (b) prescribe, by general rule or order, the rate of interest, if any, to be levied on overdue contributions.

(For rules made by the Governor under rule 119, see Part III of this Volume, Chapter XIX).

Orders of the Governor regarding rule 119(a)

In the following cases contributions on account of leave and pension have been remitted:—

- (a) Medical officers lent to charitable dispensaries or hospitals in the State.
- (b) Vaccinators, who were before November 27, 1906, enrolled as government servants, and are employed as assistant superintendents of vaccination under district boards.
- (c) Vaccinators, who were before November 27, 1906, enrolled as government servants, and are employed in cantonments or under municipalities and local boards.
- (d) Forest guards of the afforestation division when they are placed on foreign service to assist zamindars in the improvement of their waste lands.

120. A government servant in foreign service may not elect to withhold contributions and to forfeit the right to count as duty in government service the

time spent in foreign employ. The contribution paid on his behalf maintains his claim to pension, or to pension and leave-salary, as the case may be, in accordance with the rules of the service of which he is a member. Neither he nor the foreign employer has any right of property in a contribution paid, and no claim for refund shall be entertained.

121. A government servant transferred to foreign, service may not, without sanction of the Government, accept a pension or gratuity from his foreign employer in respect of such service.

122. A government servant in foreign service in India may not be granted leave otherwise than in accordance with the rules applicable to him in government service, and may not take leave or receive leave-salary from the Government unless he actually quits duty and goes on leave.

123. (a) A government servant in foreign service out of India may be granted leave by his employer on such conditions as the employer may determine. In any individual case the authority sanctioning the transfer may determine beforehand, in consultation with the employer, the conditions on which leave will be granted by the employer. The leave-salary in respect of leave granted by the employer will be paid by the employer, and the leave will not be debited against the government servant's leave account.

(b) In special circumstances the authority sanctioning a transfer to foreign service out of India may make an arrangement with the foreign employer, under which leave may be granted to the government servant in accordance with the rules applicable to him as a government servant, if the foreign employer pays to the Government leave contribution at the rate prescribed under rule 116.

NOTE—In reckoning a government servant's service for purposes of pension such leave will be subject to the restrictions contained in Articles 407 and 408 of the Civil Service Regulations.

Audit instruction regarding rule 123

1. For the purpose of the proviso to Fundamental Rule 87, the status of a government servant while on foreign service, i.e., gazetted or non-gazetted, should be determined with reference to the permanent post under Government on which he holds a lien or would hold a lien had his lien not been suspended or, if during his absence on foreign service he is given any promotion under Fundamental Rule 113, with reference to the post under Government to which he is so promoted.

2. In the case of such a government servant, the term 'his pay' occurring in item (i) of the proviso should be construed to mean what is prescribed under Fundamental Rule 117(b) for counting his pay for the purpose of Fundamental Rule 9(2), i.e.,

the pay drawn in foreign service at the time leave is taken less, in the case of a government servant paying his own contribution for leave-salary and pension, such part of the pay as may be paid as contribution.

3. The expression "the pay he would draw in the permanent post held substantively by him at the time of taking leave" occurring in the proviso should, in its application to a government servant on foreign service, be taken to mean the pay which he would draw in the permanent post under Government on which he holds a lien, or would hold a lien had his lien not been suspended, at the time of taking leave.

124. A government servant in foreign service, if appointed to officiate in a post under the Government, shall draw pay calculated on the pay of the post on which he holds a lien or would hold a lien had his lien not been suspended and that of the post in which he officiates. His pay in foreign service will not be taken into account in fixing his pay.

Audit instructions regarding rule 124

1. For the purpose of the proviso to Fundamental Rule 87 the status of a government servant while on foreign service, i.e., gazetted or non-gazetted, should be determined with reference to the permanent post under Government on which he holds a lien or would hold a lien had his lien not been suspended, or, if during his absence on foreign service he is given any promotion under Fundamental Rule 113, with reference to the post under Government to which he is so promoted.

2. In the case of such a government servant, the term "his pay" occurring in item (i) of the proviso should be construed to mean what is prescribed under Fundamental Rule 117 (b) for counting his pay for the purpose of Fundamental Rule 9(2) i.e., the pay drawn in foreign service at the time leave is taken less, in the case of a government servant paying his own contribution for leave-salary and pension, such part of the pay as may be paid as contribution.

3. The expression "the pay he would draw in the permanent post held substantively by him at the time of taking leave" occurring in the proviso should, in its application to a government servant on foreign service, be taken to mean the pay which he would draw in the permanent post under Government on which he holds a lien, or would hold a lien had his lien not been suspended, at the time of taking leave.

125. A government servant reverts from foreign service to government service on the date on which he takes charge of his post under the Government, provided that if he takes leave on the conclusion of foreign service before rejoining his post, his reversion shall take effect from such date as the Government may decide.

Orders of the Governor regarding rule 125

The date of reversion of a government servant who takes leave at the conclusion of foreign service before rejoining his post in government service should be fixed after taking into account the joining time which he takes at the end of his leave before actually taking charge of his post under Government. For example, if a government servant after foreign service up to April 30, 1939, proceeds on leave on average pay for three months from May 1, 1939, and on expiry of the leave, rejoins Government service on August 8, 1939 (forenoon), after taking seven days' joining time, then his date of reversion should be fixed as May 8, 1939 (forenoon).

126. When a government servant reverts from foreign service to government service his pay shall cease to be paid by the foreign employer and his contributions shall be discontinued with effect from the date of reversion.

127. When an addition is made to a regular establishment on the condition that its cost, or a definite portion of its cost, shall be recovered from the persons for whose benefit the additional establishment is created, recoveries shall be made under the following rules:

- (a) The amount to be recovered shall be the gross sanctioned cost of the service, or of the portion of the service, as the case may be, and shall not vary with the actual expenditure of any month.
- (b) The cost of the service shall include contributions at such rates as may be laid down under rule 116 and the contributions shall be calculated on the sanctioned rates of pay of the members of the establishment.
- (c) The Government may reduce the amount of recoveries or may entirely forego them.

Orders of the Governor regarding rule 127

The following procedure should be adopted in applying to cases falling under rule 127 the rates of contributions for pension and leave salary prescribed by the Governor under rule 116:

1. In the case of the provincial and the subordinate services, a fraction of the total maximum monthly pay all the sanctioned posts equal to the average of the percentages prescribed in columns 2, 3, 4 and 5, as the case may be, of the table, should be levied as contribution for pension. Recoveries on account of contribution for leave-salary should be made by levying the percentage prescribed on the total sanctioned cost, or, in the case of time-scale of pay, on the average cost of all the posts concerned.

2. Contributions for passages should be recovered at the rate of Rs. 30 per mensem in the case of government servants entitled to passage concessions who form additions to regular establishment under rule 127.

Contribution for passages should be levied during the whole period of service in the additional post except that it should not be charged during leave where—

(a) the leave taken is leave preparatory to retirement; or

(b) the government servant concerned will, on return from leave, be given different duties and not return to the additional post; or

(c) the substitute in the additional post, for the government servant on leave, is entitled to passage concessions and a contribution for passage is recovered on his behalf.

Audit instruction regarding rule 127

Principles for the calculation of contribution for leave-salary and pension—

The words "its cost" in line 2 of Fundamental Rule 127 refer to "an additional" in line 1 of that rule. The underlying intention of the rule is to recover the cost of the additional establishment sanctioned. Contributions for leave-salary and pension leviable under clause (b) of this rule should, therefore, be based on the rates of pay, old and/or revised, as the case may be, on which the establishment is actually sanctioned, irrespective of whether the person employed on the work for which it is sanctioned is an old or a new entrant.

CHAPTER XIII—SERVICE UNDER LOCAL FUNDS

128. Government servants paid from local funds which are administered by the Government are subject to the provisions of Chapters I to XI of these rules.

Audit instruction regarding rule 128

1. Employees of local funds administered by Government who are not paid from general revenues and are therefore not government servants are subject to the provisions of Chapters I to IX of the Fundamental Rules.

2. The expression "local funds which are administered by the government" means funds administered by bodies which by law or rule having the force of law come under the control of the Government in regard to proceedings generally and not

merely in regard to specific matters, such as the sanctioning of the budget or sanction to the creation or filling up of particular posts or the enactment of leave, pension or similar rules; in other words, it means funds over whose expenditure the Government retains complete and direct control.

129. The transfer of government servants to service under local funds which are not administered by the Government will be regulated by the rules in Chapter XII.

130. Persons transferred to services or posts under the Government from a local fund which is not administered by the Government will be treated as joining a first post under the Government, and their previous service will not count as duty performed. The Government may, however, allow previous service in such cases to count as duty performed on such terms as it thinks fit.

THE SCHEDULE

[See order 2 under rule 9(20)]

RULES MADE BY THE GOVERNOR TO REGULATE THE DETERMINATION OF DOMICILE

The domicile of a government servant shall, unless it be otherwise expressly provided in the rules regulating the conditions of his service, be determined in accordance with the following provisions:

1. A person can have only one domicile.

SCHEDULE

2. The domicile of origin of every person of legitimate birth is in the country in which, at the time of his birth, his father was domiciled, or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

3. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

4. The domicile of origin prevails until a new domicile has been acquired, and a new domicile continues until the former domicile has been resumed or another has been acquired.

5. (1) A person acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

(2) Any person may, if the law of any country so provides, and subject to any such provisions, acquire a domicile in that country by making, in accordance with the said provisions, a declaration of his desire to acquire such domicile.

Explanation 1—A person is not to be considered as having taken up his fixed habitation in a country merely by reason of his residing there in His Majesty's civil or military service or in the exercise of any profession or calling.

Explanation 2—A person does not acquire a new domicile in any country merely by reason of residing as part of the family or as a servant of any ambassador, consul, or other representative of the Government of another country.

6. The domicile of a minor follows the domicile of the parent from whom he derives his domicile of origin:

Provided that the domicile of a minor does not change with that of his parent if the minor is married or holds any office or employment in the service of His Majesty or has set up with the consent of the parent in any distinct business.

7. After marriage a woman acquires the domicile of her husband if she had not the same domicile before and her domicile during the marriage follows the domicile of her husband:

Provided that if the husband and wife are separated by the order of a competent court or if the husband is undergoing a sentence of transportation, the wife becomes capable of acquiring an independent domicile.

8. Save as otherwise provided above, a person cannot during minority acquire a new domicile.

9. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

10. Notwithstanding anything herein contained, a person who—

(a) was born and has been educated exclusively in Asia had not at the date with reference to which his domicile is to be determined resided out of Asia for a total period exceeding six months, or

(b) had before that date claimed and been deemed to be of Indian domicile for the purpose of his appointment to any office under the Government or of the conferment upon him by the Government of any scholarship, emoluments, or other privilege,

shall be deemed to have had his domicile in Asia on that date, unless in the case of a person to whom clause (a) applies and clause (b) does not apply it is proved to

the satisfaction of the appointing authority that he did not have his domicile in Asia on that date.

11. If any question arises as to the domicile of any officer at the time of his appointment, the decision thereon of the Governor shall be final.

Form of questionnaire to be used in determining the domicile

Question	Answers
1. State your birth-place date of birth and place or places, where you were educated.	
2. State paternal grandfather's birth-place.	
3. Where was your grandfather residing when your father attained his majority? If in Asia, state whether your grandfather had at that time taken up a fixed habitation in Asia or was resident there only in the exercise of a profession or calling.	
4. Where was your father educated and where was he residing (a) at your birth, and (b) when you attained your majority? If in Asia, state whether he had at those times taken up a fixed habitation in Asia or was resident there only in the exercise of a profession or calling.	
Question	Answers
5. Did your father during your minority spend any periods of leave outside Asia, purchase property outside Asia, or show in any other way an intention of making his fixed habitation outside Asia? Give full particulars.	
6. If your father retired from Government or other service or profession in Asia when you were a minor, did he continue to reside in Asia afterwards? How old were you at the date of his retirement?	
7. Give full particulars of any periods spent by you out of Asia prior to your appointment to a service or post under the Government in India.	
8. In what ways did you show an intention of taking up a fixed habitation outside Asia prior to your	

appointment to a service or post under the Government in India?

9. Have you ever claimed and been deemed to be a native of India for the purpose of your appointment to any office under the Government in India or for the conferment upon you by Government of any scholarship, emoluments or other privilege?

