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Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training
AIS-II (Pay)
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Subject: Adherence to various provisions of IAS (Pay) Rules and IAS Cadre Rules – reg.

Reference: **(i) No. 20011/1/2005-AIS-II dated 14.05.2007**
(ii) No. 20011/2/2008-AIS-II dated 25.03.2008
(iii) No. 20011/2/2008-AIS-II dated 19.06.2008
(iv) No. 11030/16/2007-AIS-IIdated 01.12.2014
(v) No. 11030/4/2012-AIS-II dated 20.01.2015
(vi) No. 11030/9/2019-AIS-II dated 03.03.2020

Instructions have been issued from time to time to ensure uniformity in service conditions among Indian Administrative Service (IAS) officers across the cadres and also, to bring in enabling provisions for management of cadre in a rational and efficient way. Various provisions contained in the IAS (Cadre) Rules, IAS (Pay) Rules and Promotion Guidelines are integral part of such measures and they are to be followed by all the State Cadres. However, often it comes to the notice of this Department that certain provisions of IAS (Cadre) Rules, IAS (Pay) Rules and Promotion Guidelines are not being adhered to by the respective State Governments / UTs. Non-observance of such Rules / clarifications is leading to differential treatment to the Members of Service across different cadres, which in turn create legal implications.

2. In order to bring clarity to the existing instructions and enable uniform implementation, an effort has been made to review, consolidate and reiterate the following instructions / guidelines issued so far on these matters at one place:

a) Creation of posts in Deputation Reserve,
b) Creation of temporary posts at Apex Scale under Rule 4(2) of IAS Cadre Rules,
c) Utilization of ex-cadre posts at Apex Scale,
d) Occupancy of cadre posts by a non-cadre officer,
e) Concurrence to the availability of vacancies before promotion.

3. In order to avoid any undue challenge to the management of cadre and to maintain uniformity in service, the following issues are being highlighted for attention of the State Governments / UTs:

i) Creation of posts in Deputation Reserve: The Government of India Instruction under Rule 4(1.6) of IAS (Cadre) Rules, 1954 states that "The Deputation Reserve

is intended to provide a cushion to the State Government for its temporary and unforeseen demands for manning such ex-cadre posts which are required temporarily for short periods and which do not qualify for inclusion in the IAS cadre".

Para 9.3 of Government of India decisions under Rule 4 of IAS (Cadre) Rules, 1954 further provides that "There is restriction on the powers of the State Government for the creation of such posts and the number of such posts is not to exceed the number shown against deputation reserve in the Cadre." However, a few State Governments are creating posts in Deputation Reserve (ex-cadre posts) overriding the extant rules.

ii) Creation of posts at Apex Scale: The Rule 4(2) of IAS (Cadre) Rules, 1954 provides that "State Government concerned may add for a period not exceeding two year (and with the approval of the Central Government for further period not exceeding three years) to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts". The provision indicates that the temporary posts created may be restricted to one or two posts only. This provision, however, cannot be used for creating a post in the Apex Scale. Many State Governments have been using the second proviso to Rule 4(2) of IAS (Cadre) Rules, 1954 for creation of additional ex-cadre posts without adhering to the aforementioned.

iii) Utilization of ex-cadre posts in Apex Scale: Rule 12(7) of IAS (Pay) Rules, 2016 states that "At no time the number of members of the Service appointed to hold posts, other than cadre posts referred to in sub-rule (1) and sub-rule (4), which carry pay of Rs. 225000/ - per mensem and which are reckoned against the State Deputation Reserve, shall except with the prior approval of the Central Government, exceed the number of cadre posts at that level of pay in a State cadre or, as the case may be, in a Joint Cadre". However, some State Cadres are violating the rule pertaining to utilization of ex-cadre posts at Apex level as well as in other grades of IAS.

iv) Occupancy of cadre posts by a non-cadre officer: The rule position mentioned under proviso 9(1) of IAS (Cadre) Rules, 1954 provides that "A cadre post in a State shall not be filled by a person who is not a cadre officer except in the following case; namely:-

(a) if there is no suitable cadre officer available for filling the vacancy:

Provided that when a suitable cadre officer becomes available, the person who is not a cadre officer, shall be replaced by the cadre officer;

Provided further that if it is proposed to continue the person who is not a cadre officer beyond a period of three months, the State Government shall obtain the prior approval of the Central

Government for such continuance;

(b) if the vacancy is not likely to last for more than three months:

Provided that if the vacancy is likely to exceed a period of three months, the State Government shall obtain the prior approval of the Central Government for continuing the person who is not a cadre officer beyond the period of three months."

In addition to the above, provisos 9(2) & 9(3) of IAS (Cadre) Rules, 1954 also provide for certain principles and conditions for filling a cadre post by a person who is not a cadre officer.

The State Governments have posted non-cadre officers to cadre posts without following due procedure as envisaged in IAS (Cadre) Rules, 1954.

v) Seeking prior concurrence to the availability of vacancies before promotion:

The provisions contained in Rule 3(2)(ii) of IAS (Pay) Rules, 2016 stipulate that:

"*Appointment of a member of the Service in the Level of Selection Grade and above shall be subject to availability of vacancies in these grades and for this purpose, it shall be mandatory upon the State Cadres or the Joint Cadre Authorities, as the case may be, to seek prior concurrence of the Central Government on the number of available vacancies in each grade and any appointments made without obtaining the prior concurrence of Government of India shall be liable for cancellation."*

Irrespective of the explicit provisions available in the Rule 3(2)(ii) of IAS (Pay) Rules, it has been observed that:

- many State Governments routinely appoint officers on promotion to higher grades without adhering to these provisions.
- Some of the State Governments seek concurrence only in respect of certain grades.
- there have been instances wherein State Governments seek concurrence after actually promoting officers to the higher scales.
- States have been providing insufficient inputs which poses difficulty in processing the proposals.
- A few States do not provide response to the queries of this Department and thus, the decision on their proposals get delayed.

Instances have also come to the notice of the Government of India wherein the State Governments while keeping the cadre posts in abeyance, have created

temporary posts. Further, the State Governments have also accorded promotions to the officers in various grades from a date prior to the issue of the promotion orders.

Therefore, in adherence to the provisions stated above, the State Governments are required to keep the following aspects in mind:

A. Seek concurrence of the Central Government for availability of vacancies before granting promotion to the posts in Selection Grade and above of IAS. For the purpose, the proposals seeking concurrence of Central Government are to be sent at least three months prior to the promotions proposed along with details of (i) vacancies in cadre and ex-cadre posts at different levels in the Cadre, in prescribed proforma; (ii) Name of the officers who are to be considered for promotion against such vacancies with their allotment year in IAS; and (iii) Status of mandatory training.

B. As per paragraph 24 of the 'Guidelines regarding promotion to various grades in the IAS dated 28.03.2000: 'whenever promotions are vacancy based, while computing the available vacancies for filling up the same by promoting officers placed in the panel, care should be taken to ensure that the total ex-cadre posts created in various grades for purpose do not exceed in sum the permissible quota of State Deputation Reserves indicated in the respective Cadre Schedule'.

C. In terms of the IAS Promotion Guidelines, promotions to the grades of Selection Grade and above in the IAS are vacancy based.

D. As per paragraph 3 of the IAS Promotion Guidelines- 'vacancies to be taken into account should be the clear vacancies arising in a grade due to death, retirement, resignations, promotions and deputation. As regards vacancies arising due to deputation, only those cases of deputation for periods exceeding one year should be taken into account, taking due note of the number of deputationists likely to return the cadre. Purely short-term vacancies arising as a result of the officers proceeding on leave, training or on deputation for a short-term period or as a result of overutilization of the sanctioned State Deputation Reserve not approved by the Central Government, should not be taken into account for the purpose of preparation of a panel.

E. The DoPT conveys its concurrence on the basis of the detail of vacancy position received from the State Cadres. Hence, the onus of the correctness of the details and the existence of vacancies lies with the concerned State/joint Cadre authorities and any concurrence obtained on the basis of incomplete or incorrect information would be ab-initio void and the promotion would be liable for cancellation. These conditions hold true even if the promotions are given in exercise of the powers given to the State/Joint cadre authorities under rule 3(2) of IAS (Pay) Rules.

F. In order to enforce the provisions of Rule 3(2) (ii) and (iii) of the IAS (Pay) Rules,

regarding the requirement of prior concurrence of the Central Government to the availability of vacancies at the level of Selection Grade and above effectively, all the State/Joint Cadre Authorities may clearly indicate in the last para of the appointment order the details of the communication from this Department conveying concurrence of the Central Government to the availability of vacancies at the level of the Selection Grade and above against which such appointments have been made. In case it has been treated as 'deemed concurrence' by the State Government under Rule 3(2) (iii) of IAS (Pay) Rules, the reference no. and the date of receipt in this Department of the proposal from the State Government for concurrence of vacancies and reminder, if any, should be reflected in the appointment / promotion order. It is clarified that if a query has been asked by this Department or further information has been sought, the date of receipt in this Department of the final and complete information sent by the State Government should be mentioned in the order.

vi) Mid-Career Training Programme: The Rule position contained in provisos below Rule 3(2) of IAS (Pay) Rules, 2016 provides for mandatory Mid-Career Training Programme (MCTP) for promotion to the Junior Administrative Grade (JAG) and the Super Time Scale. However, a few State cadres are promoting the officers to the higher scales or sending proposals for concurrence of vacancies for promotion of officers who have not undergone mandatory Mid-Career Training Programme.

vii) Qualifying service for promotion in various grades: State Governments are not adhering to the provisions contained in Note 1 of Rule 3 of IAS (Pay) Rules, 2016 read with IAS (Promotion) Guidelines while promoting the IAS officers to various grades. In certain cases, State Governments have promoted officers without completing their requisite length of service for granting promotion to the various grades.

4. The above listed practices are a departure from the prevailing Rules i.e. Pay Rules and Cadre rules and Guidelines. Accordingly, in view of the above-mentioned observations, it is advised that all the State Governments /UTs strictly comply with the IAS (Cadre) Rules, 1954, (Pay) Rule, 2016 and Promotion guidelines and instructions issued thereunder, by the Department of Personnel & Training, Government of India, from time to time. In case any action is to be taken in relaxation to these Rules / instructions, prior approval of the Central Government shall be obtained as the power to relax any of the provisions of these Rules rests with the Central Government.

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