

Assam Magistrate Service Code
Amendment 1985, 1990

THE ASSAM LEGAL SERVICE RULES, 1962¹
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SCHEDULES

PART I

General

1. Short title and commencement.—(1) These rules may be called the Assam Legal Service Rules, 1962.

(2) They shall come into effect from the date of publication.

2. Definitions.—In these rules unless there is anything repugnant to the subject or the context :—

(i) "Advocate or Pleader" means an Advocate or Pleader enrolled under the Indian Bar Council Act, 1926 or the Legal Practitioners Act,

1. Notification No. LJJ 102/61/17, dated the 29th October, 1962.

1879, respectively and includes a person who is qualified to be enrolled as an Advocate under the Advocate's Act, 1961 ;

- (ii) "Existing members of the Service" means those who are holding the post of Legal Remembrancer, Draftsman, Deputy Legal Remembrancer and Law Assistant to Legal Remembrancer to the Government of Assam ;
- (iii) "Service" means the Assam Legal Service ;
- (iv) "Judicial Officer" means an Officer holding a post in the Assam Judicial Service, Senior or Junior ;
- (v) "Members of the Service" means Officers appointed to the Assam Legal Service from the date of publication of these rules ;
- (vi) "Schedule" means a Schedule appended to these rules.

3. Constitution of the Assam Legal Service.—There shall be constituted a Service to be known as the Assam Legal Service consisting of :

- (a) persons appointed to the Service at the commencement of these rules under 6 ; and
- (b) persons recruited to the Service after such commencement under Rule 7.

PART II

Cadre

4. Strength of Service.—(1) The strength of the Service and of each kind of post therein shall be determined by the Governor from time to time.

(2) The strength of the Service and each kind of post therein shall be as given in Schedule I.

Note.—Substituted vide Notification No. LJJ 284/74/8, dated 19-11-1976 and published in the Assam Gazette Part II-A, dated 9-3-1977 at page 922.

(3) The Governor may from time to time leave unfilled or hold in abeyance any post in the cadre or may increase as the cadre by the creation of additional, permanent or temporary posts as may be found necessary.

PART III

Recruitment, Probation and Confirmation, etc.

5. Recruitment.—Every post in the cadre shall be filled up by appointment thereto of :—

- (a) A member of the Service in the appropriate grade, or
- (b) any other person eligible for recruitment to the Service in the appropriate grade.

6. Absorption of existing members.—The existing members of the Service shall be deemed to have been appointed substantively in their respective posts in the Assam Legal Service from the date of publication of these rules :

Provided that any member having a lien in any other Service under the Government shall not be so absorbed unless he exercises an option to be so absorbed, and option once exercised shall be final,

7. Selection of Candidates.—(1) In the case of selecting persons for appointment to the Service directly, the Governor shall make selection from qualified legal practitioners or judicial officers taking into consideration the person's legal qualifications, tact, general intelligence, integrity and previous experience, if any :

Provided that in the case of appointment of a person to the service from amongst the Judicial Officers, no such appointment shall be made without consulting the Assam High Court. (now Gauhati High Court).

(2) It shall not be necessary for the Governor to consult the Public Service Commission for filling up the posts in Grade I and Grade II of the Service, but appointments to Grade III and Grade IV of the Service shall always be in consultation with the Public Service Commission.

8. Qualification for appointment.—Any person appointed directly to a post in the service must be qualified in the following manner :—

(1) In relation to recruitment to Grade I of the Service, an Advocate of a High Court who has practised as such for at least 10 years or a Judicial Officer qualified to be appointed as a High Court Judge.

(2) In relation to recruitment to Grade II of the Service, an Advocate of a High Court who has practised as such for at least 7 years or a Judicial Officer qualified to be appointed as a District Judge.

(3) In relation to recruitment to Grade III of the Service, an Advocate of a High Court or a Pleader of a District Court who has practised as such for at least 5 years or a Judicial Officer of at least 5 years' standing ; and

(4) In relation to recruitment to Grade IV of the service an Advocate of a High Court or a Pleader of a District Court who has practised as such for at least 3 years or a Judicial Officer of at least 3 years' standing or a Chief Translator in the erstwhile Law Department or present Legislative Department having at least 3 years experience in either of the departments and holding a law graduate degree [for a Language Officer in the erstwhile Law Department or present Legislative Department having at least five years experience in either of the departments and holding a Law Degree of a recognised University ;]

(5) For direct recruitment in Grades I and II of the Service a candidate shall not be more than 45 years of age on the first January of the year of advertisement excluding the age concession given to candidates belonging to Scheduled Castes and Scheduled Tribes.

(6) For direct recruitment in Grades III and IV of the Service a candidate shall not be more than 35 years of age on the first January of the year of advertisement excluding the age concession given to candidates belonging to Scheduled Castes and Scheduled Tribes.]

9. Promotion.—Notwithstanding anything contained in Rule 8 above, a member of the Service shall be eligible for promotion from a lower grade to

1. Added by Notification No. L JJ 184/74/Pt./9, dated 6th June, 1983 and published in the Assam Gazette, Part-IIA, dated 22nd June, 1983 at page 803.

the next higher grade, whether in a substantive or officiating capacity, and in the case of such promotion the qualifications laid down for the direct recruitment shall not be applicable :

Provided that for promotion from Grade II to Grade I from Grade III to Grade II and from Grade IV to Grade III of the Service, the incumbent must have had put in service at least for a period of 3 years in the Grade immediately below the one to which he has to be considered for promotion :

Note.—The words for a period of 3 years” have been substituted in place of “for a period of 3 years, 5 years and five years respectively” by the Notification No. LJJ. 284/74/PT/5, dated 16-11-1977 and published in the Assam Gazette Part II-A, dated 11-1-1978.

Provided further that the Governor in appropriate cases may relax the period of service hereinbefore prescribed.

10. Seniority.—Seniority of members in the Service will depend on the date of appointment in the case of persons confirmed in the service but members of the service in a higher grade shall be senior to those in a lower grade irrespective of the date of substantive appointment to the post.

SYNOPSIS

1. Reduction in rank—Losing some places in seniority list—If not reduction in rank. 2. Seniority rules are liable to alteration.

1. *Reduction in rank—Losing some places in seniority list—If not reduction in rank.*—Since Article 311 makes no distinction between permanent and temporary posts, its protection must be held to extend to all Government servants holding permanent or temporary posts or officiating in any of them, but that protection is limited to the imposition of three major penalties contemplated by the service rules, *viz.*, dismissal, or removal or reduction in rank.

Even an officiating Government servant may be reverted to his original rank by way of punishment.

One test for determining whether the termination of service was by way of punishment or otherwise is to ascertain whether under the Service Rules but for such termination, the servant has the right to hold the post.

When a person, officiating in a post is reverted for unsatisfactory work, it cannot be said that reversion would amount to a reduction in rank. The Government has a right to consider the suitability of the person to hold the position to which he had been appointed to officiate and it is entitled for that purpose to make inquiries about his suitability. Losing some places in the seniority list is not tantamount to reduction in rank.¹

2. *Seniority rules are liable to alteration.*—It is settled law that the service conditions pertaining to seniority are liable to alteration by subsequent changes that may be introduced in the rules and except to the extent of protecting promotions that have already been earned under the previous rules, the revised

1. The Divisional Personnel Officer, Southern Railway v. S. Raghavendrachar, AIR 1966 SC 1529 at 1531, 1532, 1533 and 1534 : (1966) 2 SCJ 535.

rules will operate to govern the seniority and future promotion prospects of all the persons in the concerned service.¹

11. Probation and confirmation.—(1) A members of the Service appointed to a permanent post shall be placed on probation for a period of one year from the date of appointment to such post provided that the service rendered in an officiating or temporary capacity may be taken into account in computing the period of probation :

Provided further that the Governor may in any suitable case relax or extend the period of probation.

(2) A probationer may be confirmed at the end of the period of probation.

(3) A probationer shall be liable to discharge from the Service at any time without assigning any reason.

PART IV

Pay

12. Pay.—(1) The Scale of pay admissible to the members of each class of Service in the different Grade is shown in column (2) of Schedule II :

Provided that any existing member of the service shall continue to draw in the said relevant scale of pay at the rate which he would have drawn but for the introduction of these rules as well as increments therein on dates on which they would have been admissible in the old scale.

(2) The members of the Service in different grades as shown in column (1) of Schedule II holding the post of Secretary, Joint Secretary, Deputy Secretary and Under Secretary respectively of the Government of Assam shall also be entitled to Special Pay as shown in column (3) of the Schedule.

Note.—Substituted vide Notification No. LJJ. 284/74/8, dated 19-11-1976 and published in the Assam Gazette Part II-A, dated 9-3-1977 at page 922.

13. Leave Pension, etc.—Except as provided in these rules, pay, allowance, pension, leave and other conditions of service shall be regulated by the Civil Services (Classification, Control and Appeal) Rules, Fundamental Rules, Assam Subsidiary Rules, Assam Pension Manual and other relevant rules for the time being in force.

COMMENT

Reasonable opportunity to show cause against reduction in the amount of pension and gratuity.—Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provisions, the principle of natural justice *audi alteram partem* applies.

With the proliferation of administrative decisions in the welfare State, it is now further recognised by courts both in England and in this country, that where a body or authority is characteristically administrative, the principle of natural justice is also liable to be invoked if the decision of that body or

1. W. G. J. Kumar v. Union of India, (1982) 1 SLJ 452; (1982) 1 SAR 715.

authority affects individual rights or interests, and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard.¹

14. Other conditions of service.—The conditions of service of members in respect of matters for which no provision is made in these rules shall be the same as are for the time being applicable to other officers of the Government of Assam of corresponding status.

15. Power of Relaxation.—For the purpose of removing any difficulty in the implementation of these rules, it will be within the discretion of the Governor to relax to any of these rules to resolve the said difficulty.

[SCHEDULE I

Judicial Department

Grade I.—Legal Remembrancer and Secretary to the Government of Assam.	1
Grade II.—Joint Legal Remembrancer and Joint Secretary to the Government of Assam.	1
Grade III.—Deputy Legal Remembrancer and Deputy Secretary to the Government of Assam.	1
Grade IV.—Law Assistant to the Legal Remembrancer and Under Secretary to the Government of Assam.	1

Legislative Department

Grade I.—Secretary to the Government of Assam.	1
Grade II.—Senior Legislative Counsel and Joint Secretary to the Government of Assam.	1
Grade III.—Deputy Secretary to the Government of Assam.	1
Grade IV.—Junior Legislative Counsel and Under Secretary to the Government of Assam.	1

SCHEDULE II

(1)	(2)	(3)
Grade I	Rs. 2200-75-2800 p. m.	Special Pay as is paid to other Secretaries, Joint Secretaries, Deputy Secretaries and Under Secretaries to the Government of Assam].
Grade II	Rs. 2000-75-(EB)-75-2600/- p. m.	
Grade III	Rs. 1725-60-2025-(EB)-70-2375/- p. m.	
Grade IV	Rs. 875-40-1075-(EB)-40-1275(EB)-45-1500-50-1850/- p. m.	

1. *State of Punjab v. K. R. Erry and Sobhag Rai Mehta*, AIR 1973 SC 834 at 839.

2. Subs. by Noti. No. BJJ. 284/74/PT./16, dated 15-11-1985.