

**FORMER SECRETARY OF STATE SERVICE OFFICERS
(CONDITIONS OF SERVICE) ACT, 1972**

59 of 1972

[21st September, 1972]

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SCHEDULE 2 :- I.P. Members of the Indian Police Service

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STATEMENTS OF OBJECTS AND REASONS Art.12 of the Constitution of India empowers Parliament to vary or revoke, whether prospectively or retrospectively, the conditions of service, as respects remuneration, leave and pension and the rights 'as respects disciplinary matters of former Secretary of State Service

Officers who continue to serve under the Government of India, or of a State and the conditions of service as regards pension of former Secretary of State Service Officers who ceased to be in service at any time before the commencement of the Constitution (28th Amendment) Act, 1972. Some of these conditions of service are more favourable than those admissible to other Government servants and these have been continued in view of the guarantee's contained in Art.314 of the Constitution of India as originally enacted. Consequent on the omission of Art.314 of the Constitution of India, it is now necessary to bring the conditions of service of the aforesaid officers on par with those of other officers of corresponding services- and expressly to make the provisions as to premature retirement applicable to the aforesaid officers retrospectively. However in respect of certain aspects relating to remuneration and pension, it is proposed to continue the existing terms since, Government do not, as a matter of policy, favour adverse changes in the conditions of service of Government servants as respects pay and pension during their service. 2. To set at rest doubts in the matter and to avoid unnecessary litigation, it is proposed to make it clear that no former Secretary of State Service Officer shall be entitled or be deemed ever to have been 'entitled to claim pension in or in terms of sterling or that his pension shall be paid outside India. 3.- The Bill seeks to give effect to these objects. Gaz. of India, 30-K-1972, Pt. II, S.2, Ext., p. 979. AMENDING ACT 24 OF 1975 The Former Secretary of State Service Officers (Conditions of Service) Act, 1972 (59 of 1972) was passed with a view to bringing the conditions of service of the former Secretary of State Service Officers on par with those of the officers of corresponding services and expressly to make provisions as to premature retirement applicable to the officers retrospectively. Since then in the light of the Third Pay Commission's Report certain changes in the matter of retirement and retirement benefits have been effected, vis-a-vis, the officers of the Indian Administrative, Indian Police or other comparable Central Services thereby conferring on them more advantageous terms in the matter of retirement and retirement benefits. As the possibility of similar inequitable situations arising in future also cannot be ruled out and as the intention underlying the principal Act is not to place any class of former Secretary of State Service officers in a less favourite position than officers of a comparable class, it seems appropriate to empower the Central Government to make suitable provisions for removing such inequities as and when they arise.-Gaz. of India,

21-12-1974, Pt. II-S. 2, Ext., p.1237.

1. Short title and commencement :-

(1) This Act may be called The Foffner Secretary of State Service Officers (Conditions of Service) Act, 1972.

(2) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

1. 1-10-1972 was notified as such - see Gaz. of Ind., 1972, Pt. II. S. 3 (i), Ext., p. 1139.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(a) "appointed day" means the date on which this Act comes into force,

(b) "former Secretary of State Service officer" means a person referred to in sub-clause (a) or sub-clause (b) of clause (1) of Art.312A of the Constitution of india ;

(c) "I.C.S. member of the Indian Admininstrative Service" means a person who was appointed to the Civil Service of the Crown in India known as the Indian Civil Service and who on the appointed day is a member of the Indian Administrative Service;

(d) "1. P. member of the Indian Police Service"- means a person who was appointed to the Police Service of the Crown 'in India .known as the Indian Police and who on the appointed day is a member of the Indian Police Service;

(e) "pension" has the meaning assigned to it in clause (17) of Art.366 of the Constitution of india .

3. Conditions of service of I.C.S. members of the Indian Administrative Service :-

Subject to the other provisions of this Act, on and from the appointed day,-

(a) the conditions of service as respects,- ,

(i) remuneration,

(ii) leave, and

(iii) pension;

(b) the rights as respects disciplinary matters; and

(c) the conditions of service and the rights as respects all other matters, of the I.C.S. members of the Indian Administrative Service shall be the same as those of the other members of that Service and accordingly and subject as aforesaid, the provisions of All Services Act, 1951 and the rules and regulations made or deemed to have been made thereunder, as in force from time to time, shall apply to and in relation to the I.C.S. members of the Indian Administrative Service as they apply to and in relation to the other members of that Service.

4. Conditions of Service of I.P. members of the Indian Police Service :-

Subject to the other provisions of this Act, on and from the appointed day,¹

(a) the conditions of service as respects,-

(i) remuneration,

(ii) leave, and

(iii) pension;

(b) the rights as respects disciplinary matters; and

(c) the conditions of service and the rights as respects all other matters, of the I.C.S. members of the Indian Administrative Service shall be the same as those- of the other members of that Service and accordingly and subject as aforesaid, the provisions of the All Services Act, 1951 and the rules and regulations made or deemed to have been made thereunder, as in force from time to time, shall apply to and in relation to the I.C.S. members of the Indian Police Service as they apply to and in relation to the other members of that Service.

1. i.e. 1-10-1972.

5. Pay of I.C.S. members of Indian Administrative Service and I.P. members of Indian Police Service :-

Notwithstanding anything contained in section 3 or section 4, an I.C.S. member of the Indian Administrative Service or an I.P. member of the Indian Police Service as the case may be, holding a post specified in the Schedule or a post declared by the Central Government to be equivalent to such post shall, for so long as he

holds that post, be entitled to draw pay as indicated against the post in the Schedule.

6. Retirement of I.C.S. members of Indian Administrative Service and I.P. Members of Indian Police Service :-

Notwithstanding anything contained in section 3 or section 4 ,-

(a)an I.C.S. member of the Indian Administrative Service, unless his service has been extended before the appointed day in accordance with the rules and regulations then applicable or is extended on or after that day in accordance with the rules and regulations applicable to the other members of the Indian Administrative Service, shall retire compulsorily,-

(i) where he attains the age of fifty-eight years before the expiry of six months from the appointed day, on the date of expiry of the said period of six months or on the date on which he shall retire compulsorily in accordance with the rules applicable to him immediately before the appointed day whichever date is earlier;

(ii) in any other case, on his attaining the age of fifty-eight years;

(b)the Central Government shall have and shall be deemed always to have had the power to require an I.C.S. member of the Indian Administrative Service or an I.P. member of the Indian Police Service, in consultation with the Government of the State on whose cadre he is borne and after giving to such member at least three months' previous notice in writing to retire in public interest from service on the date on which such member completes thirty years of qualifying service or attains, fifty years of age or on any date thereafter to be specified in the notice:

(c)an I.C.S. member of the Indian Administrative Service or an I.P. member of the Indian Police Service may, after giving at least three months' previous notice in writing to the Government of the State on whose cadre he is borne, retire from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice: Provided that no member under suspension shall retire from service except with the specific approval of the Government of the State on whose cadre he is borne. Explanation.- For the purposes of clause (b) and clause (c), "qualifying service" means service qualifying for purposes of pension.

7. Pension of I.C.S. members of Indian Administrative

Service :-

Notwithstanding anything contained in section 3 ,-

(a)an I.C.S. member of the Indian Administrative Service shall be subject to the provisions of section 8 and subject to the same provision in regard to the right of the Central Government to withdraw the whole or any part of pension or to order recovery of pension and the same conditions for grant of retirement benefits, as are applicable for the time being in the case of other members of the Indian Administrative Service, be entitled on his retirement from service in accordance with the provisions of section 6 , to receive by way of annuity rupees thirteen thousand three hundred and thirty-three and one-third;

(b) no death-cum-retirement gratuity benefits shall be available to or in respect of an I.C.S. member of the Indian Administrative Service unless such member has exercised his option for such benefits before the appointed day in accordance with ' the orders of the Central Government in that behalf and the benefits' admissible to or in relation to an I.C.S. member of the Service who so exercised his option shall be subject to the conditions specified in the said orders and to the same conditions for grant of retirement benefits as are applicable for the time being in the case of other members of the Indian Administrative Service;

(c)no family pension benefit shall be admissible in relation to an I.C.S. member of the Indian Administrative Service unless such member exercised his option in respect of such benefits before the appointed day in accordance with the orders of the Central Government in that behalf and the benefits admissible in relation 'to an I.C.S. member of the service who so exercised his option shall be subject to the conditions specified in the said orders;

(d)the Provident Fund account of an I.C.S. member of the Indian Administrative Service shall be credited, on his retirement or previous death, with the same amount, if any, as would have been credited by way of contribution in accordance with the rules in force immediately before the appointed day.

8. Pension payable to former Secretary of State Service officers in Indian currency only :-

(1) No former Secretary of State Service officer shall be entitled, or be deemed ever to have been entitled, to claim,-

(a) pension in sterling; or

(b) that his pension shall be paid outside India; or

(c) where his pension was expressed in sterling or a fixed sterling minimum was applicable in respect of the pension payable to him, that his pension shall be computed in the rupee equivalent of the amount fixed in sterling at a rate of exchange exceeding the rate of rupees thirteen and one-third to the pound sterling, ¹[Provided that in relation to every former Secretary of State Service officer who, having been in service on the 1st day of February, 1921, and domiciled in India on that date, is entitled immediately before the appointed day to claim his pension computed in the rupee equivalent of the amount fixed in sterling at a rate of exchange of rupees fifteen to a pound sterling, clause (c) shall have effect as if for the words "thirteen and one-third", the word "fifteen" were substituted. Provided further that every former Secretary of State Service Officer whose pension was expressed in sterling or in respect of whose pension a fixed sterling minimum was applicable, and who, immediately before the appointed day, is a foreigner having taken up permanent residence outside India, shall, so long as he continues to be a foreigner permanently residing outside India, be allowed to convert the annuity of rupees thirteen thousand three hundred and thirty-three and one-third or the annuity actually payable to him in rupees, whichever is less, into pound sterling at the rate of rupees thirteen and one-third to a pound sterling, and the annuity so converted into pound sterling shall, be paid outside India.

Explanation 1.-- Nothing contained in the foregoing proviso shall be deemed to entitle any former Secretary of State Service officer claim conversion of amounts representing the annuity or the commuted value thereto, already drawn in rupees before the commencement of the Former Secretary of State Service Officers (Conditions of Service) Amendment Act, 1975, into pound sterling.

Explanation 2.- In this sub-section, the expression "foreigner" means a person who is not a citizen of India. (2) Notwithstanding any judgment, decree or order of any Court, every former Secretary of State Service Officer ² [(not being an officer to whom the first proviso or second proviso to sub-section (1) applies)] who has been paid the rupee equivalent of his the case may be, the pound sterling equivalent or as pension by calculating such pension

with reference to a rate of exchange exceeding the rate of exchange rupees thirteen and one-third to the pound sterling shall refund to the Central Government or, as the case may be, the State Government, the sum by which the amount paid to him exceeds the amount which would have been payable to him if the calculation had been made at the rate of exchange of rupees thirteen and one-third to the pound sterling and the Central Government or the State Government may set off, in such manner as it may deem fit, the amount required to be so refunded to it by any such officer against any sum (including pension) which is or which may become due from that Government to such officer. (3) For the removal of doubts, it is hereby declared that the provisions of sub-sections (1) and (2) shall apply to a former Secretary of State Service officer who is holding or has held the office of the Chief Justice or other Judge of (the Supreme Court or a High Court, the Comptroller and Auditor General of India, the Chairman or other member of the Union or a State Public Service Commission or the Chief Election commissioner as they apply to other former Secretary of State Officers.

OBJECTS AND REASONS Section 8 of the principal Act relating to pensions payable to former Secretary of State Service officers has been found to result in undue hardship in the case of two numerically small categories of officers. It appears there are a few officers, now in the age group about 75-93 who were in service on the 1st day February, 1951 and who could claim pension computed in the rupee equivalent of the amount fixed in sterling at a rate of exchange of Rupees 15 to a pound sterling. By virtue of the provisions of section 8, these officers would be able to claim pension only at the lower rate of Rs. 13-1/3 to the pound sterling and also be liable to refund the difference between the pensions paid to them in the past and the amount which would have been payable to them if the calculation had been made at the rate of exchange of Rs. 13-1/3 to the pound sterling. The intention underlying section 8 was never to reduce the amount of pension. In the second place, there are a few foreigners who have taken up permanent residence outside India prior to the commencement of the principal Act and it would be causing a hardship to them if pension is not paid to them in sterling, particularly when several of their colleagues who chose not to continue to serve in country at the time of Independence enjoy the privilege of drawing their pensions in sterling. It has thus become necessary to amend section 8 of the principal Act to remove the hardships caused thereby in the case of the aforementioned categories of officers.-
0a7.. 'of India. 21-12-1974, Pi. II-S. 2, Extra.. p. 1237.

1. Provisos and Explanations inserted and deemed always to have been so by Act 24 of 1975. S. 2 (a).

2. Brackets, words and figure inserted and deemed always 10 have been so by Acl. 24 of 1975, S. 2 (b).

9. Power of Central Government to adapt certain rules, regulation and orders :-

(1) For the purpose of bringing the provisions of any rules and regulations made or deemed to have been made under the All India Services Act, 1951 or any rules, regulations or orders including any other instrument having the force of law) applicable immediately before the appointed day to or in relation to former Secretary of State Service officers into accord with the provisions of this Act, the Central Government may, before the expiry of two years from the appointed day, or by order published in the Official Gazette, make such adaptations and modifications of such rules, regulations or orders whether by way of repeal or amendment, as may be necessary.

(2) The provisions of sub-section (1) shall be in addition to and not in derogation of any power under any other law to amend or repeal the rules, regulations and orders referred to in that sub-section.

10. Power to construe rules, regulations and orders :-

Notwithstanding that no provision or insufficient provision has been made under section 9 for the adaptation of any rule, regulation or order referred to in that section, any court, tribunal or authority, required or empowered to enforce such rule, regulation or order may construe it with such modifications as may be necessary to bring it into accord with the provisions of this Act.

10A. Power of Central Government to make orders in certain cases to ensure parity :-

(1) If the Central Government is satisfied that the conditions of service as respects any matter applicable to, or in relation to any class or category of former Secretary of State Service officers under Section 6 , Section 7 or Section 8 or as respects any benefits by way of compensation for the increase in cost of living or any other reason, have become less favourable than those applicable to or in relation to any corresponding class or category of other officers of the Indian Administrative Service or the Indian Police Service or, as the case may be, any comparable service, it may, notwithstanding anything contained in those sections, by general or special order and subject to such conditions and restrictions (including conditions as to refund, adjustment or recovery), as may be specified therein,

make such provisions as it may deem fit for securing, so far as may be, parity in such cases.

(2) Any order under sub-section (1) may be made so as to have retrospective effect.

(3) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the order or both Houses agree that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order].

11. Power to remove difficulties :-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by general or special order published in the Official Gazette, for the purpose of removing the difficulty, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient: Provided that no such order shall be made under this sub-section after the expiry of three years from the appointed day.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

12. Act to have overriding effect :-

The provisions of this Act or of any order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law other than this Act or in any rule, regulation or order or other instrument having effect by virtue of any law other than this Act.

13. Saving of orders in respect of disciplinary matters :-

Any order in respect of disciplinary matters in relation to any I.C.S. member of the Indian Administrative Service or any I.P. member of the Indian Police Service in force immediately before the appointed day shall continue in force as from the appointed day : Provided that nothing in this section shall derogate from the powers of the

competent authority to vary or rescind such order.

SCHEDULE 2

I.P. Members of the Indian Police Service