

118. THE PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY (PROCEDURE FOR INQUIRY BY ADJUDICATING OFFICER) REGULATIONS, 2015

Pension Fund Regulatory and Development Authority (Procedure for Inquiry by Adjudicating Officer) Regulation, 2015, Noti. No. PFRDA/12/RGL/139/1, dated January 6, 2015, published in the Gazette of India, Extra., Part III, Section 4, dated 7th January, 2015, pp. 5-8, No. 11.—In exercise of the powers conferred by sub-section (1) of Section 52 read with clause (q) of sub-section (2) thereof and Section 30 of the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013), the Pension Fund Regulatory and Development Authority hereby makes the following regulations, namely—

1. Short title and commencement.—(1) These regulations may be called the Pension Fund Regulatory and Development Authority (Procedure for inquiry by Adjudicating Officer) Regulations, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

The regulation aims to provide for a transparent mechanism of conducting an inquiry, prior to imposition of penalty, as provided under Section 28 of the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).

2. Definitions.—(1) In these regulations, unless the context otherwise requires,—

- (a) "Act" means the Pension Fund Regulatory and Development Authority Act, 2013. (23 of 2013);
- (b) "adjudicating officer" means the officer appointed by the Authority as adjudicating officer under sub-section (1) of Section 30 of the Act;
- (c) "designated member" means a member of the Authority, who is designated as in charge of investigation and surveillance;
- (d) "inquiry" means the inquiry referred in Section 30 of the Act;
- (e) "person" shall include any natural or juristic person or intermediary under the National Pension system or any other pension scheme, governed by the provisions of the Act;
- (f) "presenting officer" means a professional or an officer of the Authority appointed by the Chairperson to present a case on behalf of the Authority before the adjudicating officer or the member.

(2) Words and expressions used and not defined in these regulations but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. Appointment of adjudicating officer for holding inquiry.—Whenever the Authority is of the opinion that there are grounds for holding an inquiry, adjudging and recommending penalty under Section 28 of the

Act, it may appoint any of its officers not below the rank of Chief General Manager to be an adjudicating officer for holding an inquiry for the said purpose.

4. Issuance of notice and holding of inquiry proceedings.—(1) In holding an inquiry for the purpose of adjudging under Section 28 of the Act as to whether any person has contravened any of the provisions of that section, the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) as to why an inquiry should not be held against him.

(2) Every notice under sub-regulation (1) to any such person shall indicate the nature of offence or contravention alleged to have been committed by him.

(3) The Adjudicating Officer may issue notice to any other party or person whose presence may in his opinion be required for an effective adjudication in the inquiry.

(4) If after considering the cause, if any, shown by such person, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his authorised representative.

(5) On the date fixed, the adjudicating officer shall explain to the person proceeded against or his authorised representative, the contravention or offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(6) The adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872 (11 of 1872) :

Provided that, notice referred to in sub-regulation (4), and the personal hearing referred to in sub-regulations (4), (5), and (6) may, at the request of the person concerned, be waived.

(7) While holding an inquiry under this regulation, the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer may be useful for or relevant to the subject matter of the inquiry.

(8) If any person fails, neglects or refuses to appear, as required by sub-regulation (4), before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

(9) A direction for inquiry to the adjudicating officer by the Authority, and issuance of notice of in proceedings pursuant thereto to any person, shall be deemed to be the commencement of an inquiry under Section 30 of the Act.

5. Place of inquiry.—(1) The adjudicating officer shall hold the inquiry proceedings at the head office of the Authority or other offices of the Authority in India :

Provided that, the adjudicating officer may also hold the inquiry proceedings at more than one of other offices of the Authority as may be deemed to be expedient and convenient for conducting such inquiry.

(2) The proceedings before the member shall be held at the head office of the Authority or such other place as may be decided by the member.

6. Manner of issuance of notice or documents for inquiry under Section 30 of the Act.—(1) Every notice or other document required to be served on or delivered to any person, under these regulations, may be served personally or sent by registered post with acknowledgment due; or by speed post or by courier service at the address of his place of residence or his last known place of residing or the place where he carried on, or last carried on, business or personally works or last worked for gain.

(2) Additionally, this may also be sent through facsimile, transmission or by electronic mail. The facsimile transmission shall contain a cover page giving details of the sender, the subject, date of transmission, and the recipient's name and telephone number.

(3) Where the service of notice is not possible under the above referred modes and where the addressee cannot be found or is not traceable, the service may be effected by any of the means specified under Rule 20 of Order V of the Code of Civil Procedure, 1908 (5 of 1908).

7. Right of legal representation.—The aggrieved persons may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the adjudicating officer or the member. The Authority may appoint a presenting officer or any other suitable professional mentioning in this regulation, to present its case.

8. Proceedings before adjudicating officer not to be open to public.—Except where the adjudicating officer may so direct, for reasons to be recorded, the inquiry proceedings shall not be open to public. In taking the decision to open the proceedings to public, the adjudicating officer may take into account all or any of the following matters, namely—

- (a) whether disclosure to public does not cause significant harm to a party;
- (b) degree of inhibition or encouragement in providing information in public;
- (c) efficient and proper conduct of proceeding;
- (d) resources of the Authority.

9. Filing of written arguments.—The adjudicating officer may direct the parties to file written note of arguments or submissions in the matter within such time as may be specified by the adjudicating officer.

10. Submission of report by adjudicating officer.—(1) The adjudicating officer shall after hearing the person and the presenting officer

or upon examining any person at his discretion or after considering any expert opinion on the subject-matter, if so required, and upon consideration of the documents and evidences submitted by the parties, submit his inquiry report to the designated member together with his recommendations on imposition of the penalty on the delinquent person in accordance with the provisions of Section 30 of the Act.

(2) While recommending the quantum of penalty under Section 28 of the Act, the adjudicating officer shall have due regard to the following factors, namely—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to a subscriber or group of subscribers; and
- (c) the repetitive nature of any default.

(3) Every inquiry report of the adjudicating officer along with the recommendation made under sub-regulation (1) shall specify the provisions of the Act in respect of which default has taken place and shall contain brief reasons for such recommendation.

(4) Every inquiry report and recommendation shall be dated and signed by the adjudicating officer.

(5) The report along with the recommendation of imposition of penalty shall be submitted to the designated member within twenty-one days of the conclusion of the final hearing by the adjudicating officer.

(6) The adjudicating officer shall hold the inquiry proceedings expeditiously and shall conclude the proceedings before him preferably within a period of ninety days from the initiation of inquiry proceedings excepting where designated member has directed to submit a supplementary report.

11. Procedure for imposition of penalty.—(1) The inquiry report along with supplementary report, if any, and the recommendation for imposition of penalty, if any, of the adjudicating office shall be placed before the designated member, who shall forward it to any other member for his consideration and passing the order of imposition of penalty in accordance with sub-section (3) of Section 30 of the Act preferably within twenty-one days of the receipt of such inquiry report and recommendation from the designated member.

(2) No order imposing the penalty shall be passed by the member, without giving an opportunity of hearing to the affected person along with a copy of the inquiry report. Where the affected person fails to appear before the member, the order imposing penalty may be passed *ex parte*.

(3) The member may pass an order imposing the penalty as he may deem fit having regard to the provisions of sub-section (2) of Section 30 of the Act :

Provided that, the member may pass any other order confirming, varying or modifying the findings in the inquiry report or the recommendations made

by the adjudicating officer or may recommend to the Authority for a fresh inquiry in the matter, for reasons to be recorded in such order :

Provided further that, the member shall not review any facts or evidence, forming part of the inquiry report submitted by the adjudicating officer, except where the member finds that the adjudicating officer has failed to appreciate any relevant facts or evidence placed before him while formulating the inquiry report.

12. Communication of the inquiry report and order imposing penalty.—(1) An officer of the Authority authorized by it, shall communicate by registered post or by other modes of dispatch as specified in sub-regulation (1) of Regulation 6, a certified copy of the inquiry report of the adjudicating officer together with the order passed by the member, within fifteen days of passing of such order by the member. The report and the order or its excerpts may be displayed on the website of the Authority or the Authority may cause publication of the same in the media if it so desires in the interest of public, but shall have regard to the business secrets of the persons concerned and may direct deletion of such portions of the orders or decisions from the display on the website or publication thereof in the media, as it deems fit.

(2) Further, certified copies of the inquiry report and the order thereon shall be made available to the parties upon payment of such fees as may be specified.

13. Provision for appeal.—Any appeal against the inquiry report of the adjudicating officer and the order imposing penalty passed by the member may be made in accordance with Section 36 of the Act.

14. Power of adjudicating officer to call for information.—(1) The adjudicating officer may, at any time before submitting his inquiry report in a proceeding, require any of the parties or any other person whom the adjudicating officer considers appropriate, to produce such documents or other material objects as may be deemed necessary for the purpose of adjudication.

(2) The adjudicating officer may direct the summoning of the witnesses, discovery and production of any document or other material objects producible in evidence, requisition of any public record from any office, examination by an officer of the Authority the books, accounts or other documents or information in the custody or control of any person, which the adjudicating officer considers relevant for the purpose.

(3) The adjudicating officer, may at any time, summon and enforce the attendance of any person and examine him, or cause him to be examined on oath.

(4) The adjudicating officer may also issue commissions for examination of witnesses or documents where, deemed necessary.

(5) All the powers exercised by the adjudicating officer, under these regulations may without prejudice to any other powers of the Authority or the member, as the case may be, may also be exercised by such member, in the proceedings before him.

15. Powers to determine procedure in certain circumstances.—

In a situation not provided for in these regulations, the Authority may, for reasons to be recorded in writing, determine the procedure in a particular case.

16. Language of the inquiry proceedings.—The language used in the inquiry proceedings shall be English, excepting in some special cases where the aggrieved party or witnesses, or any person connected with the inquiry proceedings shall be permitted to address in Hindi.

17. Computation of time.—(1) Where a period of time dates from a given day, any act or event specified by or allowed under these regulations to be done, the time for doing the same shall be reckoned exclusive of the said day, or of the day of the act or event, from which the time runs.

(2) Where the time specified by or allowed under these regulations for doing an act or taking a proceeding expires on a day on which the office of the Authority is closed, the act may be done or the proceeding may be taken on the first day following the day on which that office is closed.

18. Effect of non-compliance.—Failure to comply with any requirement of these regulations shall not invalidate any proceeding, merely by reason of such failure, unless the designated member is of the view that such failure has resulted in the miscarriage of justice.
