

Unit IV

J&K Public Services Guarantee Act, 2001

Introduction:

The index of development of any country is perceived to be standardized upliftment of 80-90% of its masses. The international documents as well as the recent United Nations conventions have stressed equally on the civil and political rights, which form the basic human rights of the common man, as well as upon the economic, social and cultural rights, which casts a corresponding duty on the governments to provide those rights to the people. That initiative was followed by right based legislation in the countries worldwide, particularly in the third world countries. In India, the right to service law is the most recent of that sort of legislation. On the same lines the government of J&K also enacted the law to provide right to services to the peoples under Jammu and Kashmir Public Service Guarantee Act, 2011 (PSGA) which came into effect from August 2011 is also a pioneering step towards expediting the delivery of services to the people of the State and to fight the menace of corruption. However, it becomes relevant to know the historical aspect of right to service and its important definitions. In this chapter you will be able to understand the important definitions of Act like Service, State, designated officer and eligible person and the scope of the Act.

Definitions: Some of the important definitions of the Act are as follows:

(a) Service:

Recently, many Indian states have enacted their respective Public Service Guarantee Acts, also known as the Right to Service Act, as a key administrative reform initiative. These Public Service Guarantee Acts build on the idea of the Citizen Charter - while Citizen Charters define the quality of public services, these Acts take it a step further by making a citizens' right to public service within the stipulated time legally binding, failing which the concerned officials can be penalized. The public service can be defined as a service which common citizen is supposed to get from government. In the Right to Service, the term "service" has been defined as any service notified by the state government under the respective law. The term "right to service" denotes the right of a citizen to obtain the service under the stipulated time frame under the law. Section 2 (g) of the J&k Public Service Guarantee Act define service as "service" means any service notified under section 4 .

(b) Designated officer:

Designated officer means an officer notified as such for providing the service under sub-section (2) of section 4. The government may for different areas and for different services

designate officers. These designated officers were responsible for providing services to eligible persons. For instance consumer affairs and public distribution department if the eligible person made application for ration card the designated officer is Tehsil Supply officer, CAPD in rural area and assistant Director in Urban area.

(c) Eligible Person:

Eligible Person means person who is eligible for any notified service. Under section 5 (2) of the Act, any eligible person can file application with the designated officer for providing the notified service within the stipulated time. The designated officer shall within the specified time limit as provided in SRO 224 of 2011, either provide the service or reject the application with reasons to be recorded for the same. Eligible person according to Section 2 (c) means person who is eligible for any notified service. In this section every eligible person in the State shall have a right to public service. The right include right to access to the public service within a specified time limit and that too to receive in a transparent manner. The eligible person can also demand performance of duties and hold the concerned officer accountable if the service rendered them is defective; he can seek compensation for deficient service.

(d) State:

State means the State of Jammu and Kashmir. Section 11 of the Constitution of Jammu & Kashmir, unless the context otherwise requires, the State includes the government and the Legislature of the State and all local or other authorities within the territory of the State or under the control of the Government of the State.

Unless the context otherwise requires, 'the State' will include not only the Executive and Legislative organs of the State, but also include local bodies (such as Municipal authorities) as well as 'other authorities' which include the 'instrumentalities or agencies of the State, or bodies or institutions which discharges Public functions of a governmental character.

Scope of J&K Public Service Act 2011

The Jammu and Kashmir Public Services Guarantee Act was passed by the State Legislature on 9th April 2011 and it provides for the delivery of public services to the people of the State within the specified time limit and for matters connected therewith and incidental thereto. The aim is of the Act empowering general public to enforce upon the administration their right of receiving prompt delivery of public services on various fronts of day-to-day life importance. This would also reduce the chances of corruption to a greater extent and make administration more responsive. The Act will nurture good governance in the State. The Act provides for to public service to every eligible person within the specified time limit in a

transparent manner. An eligible person can demand performance of duties and functions in accordance with the Act. He is empowered under the Act to hold the concerned designated officer accountable for any service deficiency. He is also empowered to seek compensation with respect to non-providing of service or deficiency in service. Under the PSGA the officers are held responsible not only for delay in delivery of notified service but it is also made clear in the act that any officer who is responsible for providing a service should also ensure that there is no defect in the service provided to the citizen. Some important departments that are presently covered under the J&K PSGA 2011 are Police, Revenue, Power Development Department, Public Health Engineering, irrigation and Flood Control Department, Consumer Affairs and Public Distribution, Transport Department, Housing and Urban Development, Municipalities, Medical and Health.

Objectives of the Act:

1. It aims at reducing corruption among the government officials.
2. It aims at increasing transparency and public accountability.
3. It aims at empowering general public to enforce upon the administration their right of receiving prompt delivery of public services on various fronts of day-to-day life importance.
4. It reduces the gap between Administration and People
5. It would nurture good governance in the State.
6. It would help streamline delivery of public services and reduce corruption in lower levels of administration.
7. It strengthens the democracy at grass-root level.
8. It ensures responsiveness of the administration towards the people.
9. It would curb red-tapism.

Section 3: Right to public services:

The Act provides certain rights to every eligible person to public service under Section 3(1), section reads as: Subject to provisions of the Act, every eligible person in the State shall have a right to public services.

(2) The right referred to in sub-section (1) shall include the right to:

- (a) have access to the public service ;
- (b) receive public service within the specified time limit ;
- (c) receive public service in a transparent manner ;
- (d) demand performance of duties and functions in accordance with the Act ;
- (e) hold the concerned designated officer accountable for any service deficiency ; and
- (g) seek compensation with respect to non-providing of service or deficiency in service.

Section 4: Notification of Public Service and time limit:

Under this Act the government may specify the service to be a public service and appoint or designate officers who shall be responsible for providing the public service. Section 4 (1) says, The Government may, from time to time, specify the services to be the public services for purposes of the Act and shall specify the time limit within which such services shall be provided to the eligible persons: -

(2) For providing services specified under sub-section (1), the Government may for different areas and for different services designate officers shall be responsible for providing each of such services to the eligible persons.

As per section 4 sub section 2 of J&K PSG Act 2011 the Government may for different areas and different services designate officers who will be responsible for providing each of such service to the eligible persons. This means that there will be officers designated in various offices across nook and corner of the state who will be responsible to provide the public services to the people. For example for getting a ration card the eligible person must apply before concerned Tehsil Supply Officer (TSO) in rural areas and Assistant Director in urban areas of the Consumer Affairs & Public Distribution department (CAPD). The designated officer (DO) is bound to provide the public service within specified time which varies from fifteen days to months for various services.

Section 5: Providing of public service within specified time limit:

It shall be obligatory on the designated officer to provide public services to the eligible person within the time specified in sub-section (1) of section 4.

(2) The specified time limit shall start from the date when an application is submitted by the eligible person for providing of notified service to the designated officer or to a person subordinate to him authorized to receive the application.

(3) All applications received under sub-section (2) by the designated officer or the authorized person shall be duly acknowledged specifying the number, date and time of receipt of such application.

(4) On receipt of application under sub-section (3), the designated officer shall within the specified time limit either provide service or reject the application:

Provided that in case of rejection of application, the designated officer shall record reasons therefore and intimates the same to the applicant. This section provides the limitation period for the disposal of the application. The time period shall start to run from the date when eligible person files an application to the designated officer. The designated officer is under a

duty to provide specified number, date and time of receipt on the application. The designated officer shall provide either service or reject the application within the specified time if he rejects the application he has to record the reason and also to intimate the applicant. Under section 5 (2) of the Act, any eligible person can file application with the designated officer for providing the notified service within the stipulated time. The designated officer shall within the specified time limit as provided in SRO 224 of 2011, either provide the service or reject the application with reasons to be recorded for the same.

Section 6: First Appeal:

The Act has provided the provision of first appeal if the eligible is aggrieved from the order of designated officer or the designated officer has provided deficient service.

Section 6 deals with first Appeal , Any person, whose application has been rejected under Sub-section (4) of section 5. Or who does not receive the public service within the specified time limit, or where the service received by him is deficient in any manner, may prefer to file an appeal to such officer as may be notified by the government to be the first appellate authority, within 30 days from the date of such rejection or expiry of the time limit or receipt of deficient service, as the case may be:

Provide that the first appellate authority may admit an appeal after the expiry of the period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Section 6 (1) the first appellate authority shall dispose of the appeal referred under sub-section (1) within a period of 45 days from the date of presentation of appeal.

Section 6(3) the first appellate authority may direct the designated officer to provide the public service within such time as it may specify or to remove the deficiency in the service provided to the appellant or pass such other orders, including rejection of the appeal, as it may deem fit:

Provide that before passing any order under sub-section (3) the appellate authority shall provide an opportunity of being heard to the appellant as well as the designated officer.

Under section 6 (1) of the Act, any person whose application has been rejected by the designated officer or who does not receive the public service within the specified time limit or where the service received is deficient in any manner can file an appeal to the first appellate authority as notified in SRO 224 of 2011 within 30 days from the date of such rejection or expiry of the time limit or receipt of deficient service. The first appellate authority shall dispose of the appeal within 45 days and may direct the designated officer to provide the public service

within such time as it may specify or to remove the deficiency in the service provided or reject the appeal, as he may deem fit.

Section 7: Second Appeal:

The Act has also provided the provision of second appeal if the appellant has not satisfied with the order of the first appellate Authority. Section 7 provides that any person aggrieved by the order passed by first appellate authority under section 6, may prefer an appeal to the second appellate authority within 60 days from the date on which the order appealed against has been passed.

Provided that the second appellate authority may admit an appeal after the expiry of the period of 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Section 7 (2) the second appellate authority may, within forty five days from the date of presentation of appeal, pass an order directing the designated officer to provide the public service within such time as it may specify or to remove the deficiency in the service provided to the appellant or may pass such orders including the rejection of appeal, as it may deem fit.

Even the appellate authorities are made accountable and the onus is fixed on them to decide the appeals in a time bound manner otherwise like the designated officers (the officers who are responsible to provide service) the appellate authorities can also attract penalties between Rs 250 to Rs 5000 and the citizens who has suffered any loss due to delay in receiving in any service or defect in service, he may also seek compensation from the officers.

For delay in receiving any service the citizen can claim out of the amount which is being imposed as fine on the officer and for the deficiency in service a fixed amount of Rs 2,000 can be claimed by the citizen before the appellate authority for the defect. E.g., *If a person residing in some rural areas wants to get a new ration card he has to submit an application with the Tehsil Supply officer of the CAPD department and it shall be the responsibility of the TSO to either give new ration to the person within 30 days or reject his application and inform in writing that why the ration card cannot be provided. If the TSO fails to provide the ration card within 30 days or if he provides ration card but there is some defect in the card like, name of the family members, address or any other defect then the citizen who has applied for the ration card can make a 1st appeal to the Deputy Director of the concerned department with the request to either provide the ration card within stipulated period of time and demanding penalty against the TSO and also demand compensation from the amount of the penalty if imposed on the TSO.*

Under Section 7 (1) of the Act any person aggrieved by the order passed by the first appellate authority may file an appeal to the second appellate authority, as notified in SRO 224 of 2011

within sixty days from the date of the order passed by the first appellate authority. The second appellate authority may within 45 days dispose of the appeal directing the designated officer to provide the public service within such time as he may specify or to remove the deficiency in the service provided or reject the appeal, as he may deem fit. Where the second appellate authority is of the opinion that the designated officer has failed to provide service to the eligible person or has caused delay in providing the service or has provided a service which is deficient in any manner, he/she shall impose a fine of 250/- for each day of such delay or 5000/- whichever is less, in case of non providing of service or delay in providing service and ` 2000/- in case of deficiency in service.

Section 8: Designation of appellate authorities:

For the purpose of filing first appeal and Second appeal the government may designate officers as appellate authorities. Section 8 provides that government may by notification in the government Gazette, designate officers who shall be first appellate authorities and second appellate authorities in respect of each public service. In this section the power to appoint the designated officer lies on the State government. For instance state has notified that first appellate Authority for Transport Department is Deputy Commissioner concerned and second appellate Authority Transport Commissioner J&K.

The Act has provided that where the eligible person is not satisfied by the service provided to him he can prefer first appeal against the decision of the order of designated officer. For example in the Power Development Department, the domestic electricity connections with load of 10 KV, 20 KV and 30 KV have been identified as public services and the designate officer are Assistant Engineer (Electrical), the time frame fixed is 30 days, the first appellate authority will be Executive Engineer, and the second appellate authority will be Superintending Engineer. For 20 KV load Executive Engineer is the designated officer, 35 days is the time frame fixed and Superintending Engineer and Chief Engineer (Electrical) will be first and second appellate authorities. For 30 KV load Superintending Engineer is the designated officer, 40 days the time frame and the Chief Engineer (Electrical) and Development Commissioner Power are the first and second appellate authorities. For the electric connection domestic all loads above 30 KV, Chief Engineer (Electrical) will be the designated officer, the time frame is 45 days and the first and the second appellate authorities are Development Commissioner, Power, and Divisional Commissioner concerned. Similarly, electric connections commercial, from 5 to 200 KVA/HP have been identified as public services under the Act.

Section 9: The powers of Appellate Authority:

The appellate authorities shall, while deciding an appeal under the act, have the same powers as are vested in Civil Court. Section 9 deals with the powers of appellate authorities it reads as, the appellate authority shall while deciding an appeal under the act, have the same powers as are vested in Civil Court while trying a suit under the Code of Civil Procedure, in respect of the following matters, namely:

- (a) Requiring the production and inspection of documents;
- (b) issuing summons for hearing to the designated officer and appellant; and
- (c) Any other matter which may be prescribe

The expression 'suit of civil nature' will cover private right and obligations of a civil nature. Political and religious questions are not covered by that expression. A suit in which the principle question related to caste or religion is not a suit of a civil nature. But if principle question in the suit is of a civil nature (right to property or to an office) and adjudication incidentally involves the determination relating to a caste question or to a religious rights and ceremonies, it does not cease to be a suit of a civil nature and the jurisdiction of a civil court is not barred. The court has jurisdiction to adjudicate upon those Questions also in order to decide the principle question which is of civil nature.¹

¹ Production of Documents: Rule 1-2 Order 13 of C.P.C. Rule 1 Order 13 requires the parties to produce the documentary evidence at or before the settlement of issues. The object underlying this provision is to secure a fair trial of cases, to obviate the chance for the parties to adduce forged or manufactured evidence and produce their documents before the court at earliest opportunity. Rule 2 provides that documents which should have been produced at an earlier stage not be received at subsequent stage of the proceedings, unless the court is satisfied that there is good cause for non-production of such documents at an earlier stage. The object of the rule, however, is not to penalize the parties but merely to prevent belated production of documents so that it may not work injustice to the other side. This power clearly clothes the courts with discretion to allow production of documents if it is satisfied that good cause of action is shown. The explanation of delay is not as rigorous as one required under Section 5 of the limitation Act. Where the documents were not in possession of the party and they were produced after obtaining certified copies from Revenue Authorities, refusal of production was held to be unjustified. The court has power to receive any document at a later stage if the genuineness of a document is beyond doubt and it is relevant or material to decide the real issues in controversy. No document whether public or private which are above suspicion should be excluded if they are necessary for the just decision of a case. The discretion must be exercised judicially and considering the facts and circumstances of each case. The rule must be liberally construed so as to advance the cause of justice.

Inspection of Documents: Rule 15- 18: Rule 15 – 18 deals with inspection of documents. For the purpose of inspection, documents may be divided into two classes.

- (i) Documents referred to in the pleadings or affidavits of parties; and
- (ii) Other documents in possession or power of the party but not referred to in the pleadings of the parties.

As regard the class of documents, a party to a suit is entitled to inspection. And without intervention of the court every party may give notice in the prescribed form to the other party in whose pleadings they are referred to, to produce such documents for his inspection. The party to whom such notice is given, should within 10 days from the receipt of such notice, give notice to the party claiming such inspection stating the time and place at which the documents may be inspected and stating his objections, if any, to the production of any of the documents. If he fails to do so, the court may make an order of inspection.

As regards the second class of documents, the party desiring the inspection can only proceed by way of an application to the court along with an affidavit satisfying the court that the document is relevant to the case

Issue and service of Summons: sectin27-29; order 5. Meaning of summons: When the plaintiff files a suit the defendant has to be informed that the suit has been filed against him, and he is required to appear in the court to defend it. The intimation which is sent to be defendant by the court is technically known as summon, though the said expression has not been defined in the code. According to the dictionary

Section 10: Penalty for non- compliance of orders:

Penalty for non- compliance of orders is provided under Section 10 provides penalty to the designated officer who does not comply with the orders of first appellate authority or with the orders of second appellate authority. Section 10(1) provides if the designated officer does not comply with the orders or directions given to him under sub-section (3) of section 6 or sub-section (2) of section 7 the person aggrieved may file an application before the second appellate authority and second appellate authority shall direct the designated officer to show cause, within specified time, for not complying, with the aforementioned orders or directions. Section 10 (2) After considering the cause, if any, shown by the designated officer and if no cause is shown within the time specified in sub-section (1) the second appellate authority, may if it is of the opinion that the designated officer has not complied with the orders or direction without reasonable cause, impose a fine on such designated officer which shall not be less than Rupees 500 but may extend upto Rupees 5000.

Section 11: Penalty for not providing the service:

Where second appellate authority is of the opinion that the designated officer has failed to provide service to the eligible person or has caused delay in providing the service or has provided a service which is deficient in any manner, it may impose a fine on such designated officer.

(i) of Rupees 250 for each day of such delay or Rupees 5000, whichever is less, in case of non- providing of service or delay in providing service; and

meaning, a summons is a document issued from the office of the court of justice, calling upon the person to whom it is directed to attend before a judge or officer of the court for a certain purpose.

Summon to defendant , Order 5 deals with summons to a defendant while Order 16 deals with summons to witnesses. When a suit has been duly filed by presentation of a plaint, the court must issue summons to defendants calling upon him to appear on a day specified therein and answer the claim of the plaintiff. No summon. However, will be issued by the court if at the time of presentation of a plaint, the defendant is present and admits the plaintiff's claim.

Every summon shall be signed by the judge or such officer appointed by him and shall be sealed with a seal of the court, and must be accompanied by a plaint or if so permitted, by a concise statement thereof. A defendant to whom a summon has been issued, may appear (1) in person; or (2) by a pleader duly instructed and able to answer all material questions relating to the suit; (3) by a pleader accompanied by some person able to answer all such questions. The court, however, may order the defendant or plaintiff to appear in person. The summons must contain a direction whether the date fixed is for settlement of issues only or final disposal of the suit. In the latter case, the defendant should be directed to produce his witnesses. The court must give sufficient time to the defendant to enable him to appear and answer the claim of the plaintiff on the day fixed. The summons should also contain an order to the defendant to produce all documents in his possession or power upon which he intends to rely on in support of his case. The code prescribes three principle modes of serving a summons to a defendants ;

- (a) person or direct service : rule 10-16, and 18
- (b) substituted service ;Rules 17, 19-20
- (c) service by post; Rule 19 - A .

(ii) of Rupees 2000, in case of deficiency in service;

Provided that before imposing such fine the designated officer shall be given a reasonable opportunity of being heard.

Section 12: Penalty for not deciding the appeal within specified time:

Where the second appellate authority is of the opinion that the first appellate authority has failed to decide the appeal within the time specified in sub section (2) of section 6 without any sufficient and reasonable cause, it may impose a fine on first appellate authority, which shall not be less than Rupees 500 and not more than Rupees 5000.

Provided that before imposing such fine the first appellate authority shall be given a reasonable opportunity of being heard.²

Remedies:

Under the Act the appellant, the designated officer and first Appellate authority have remedies available under section 13 to 16. Section 13 and 14 deals with the remedies available to the appellant and section 15 and 16 remedies are available to the designated officer or first appellant authority.

Compensation: Section 13:

On imposition of fine under section 11 or section 12, the second appellate authority may, by order, direct that such portion of the fine imposed under the said section shall be awarded to the appellant, as compensation, as it may deem fit.

Provided that the amount of such compensation awarded shall not exceed the amount of fine imposed under the said section.

Under section 13 a fine is imposed on the designated officer who has not provided the service or has provided the deficient service and if the first appellate authority has failed to decide the appeal within a specified time the second appellate authority may by order direct that a portion of fine shall be awarded to the appellant as compensation.

Under section 14 even a disciplinary action may be recommended against them. Section 14 reads as: In addition to imposition of fine under sections 10, 11 or 12, the second appellate authority, if it is satisfied that the designated officer or the first appellate authority, as the case may be, has failed to discharge the duties assigned to him under the Act without sufficient and reasonable cause, may recommend disciplinary action against him under the service rules applicable to him.

² There is a general consensus that the Act is punishment-centric, but in reality it is motivation-oriented in order to facilitate attitudinal change and to offer sustained reforms. This section encouraged for bringing about transparency, accountability and efficiency in public services.

Under Section 15 if designated officer or first appellate authority is aggrieved by the order of second appellate authority may make application for revision to the Special Tribunal within 60 days from the date of passing of the order of imposition of fine or against the disciplinary action. Section 15 reads as if designated officer first appellate authority is aggrieved by any order of second appellate authority in respect of imposition of fine under the Act, he or it may make an application for revision to the Special Tribunal³ within a period of 60 days from the date of passing of such order, which shall dispose of the application according to such procedure as may be prescribed.

Under Section 16: it gives protection to a designated officer or first appellate authority of action taken in good faith section 16 reads as no suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under the Act or any rule made there under.

FOLLOWING SERVICES ARE THE SERVICES INCLUDED IN THE PUBLIC SERVICE GUARANTEE ACT 2011 ARE:

1. In Consumer Affairs and Public Distribution Department the services include:

- (a) Ration Card
- (b) Issue of surrender certificate/duplicate Ration Cards.
- (c) Inclusion of a new born child in the Ration Card

2. In Power Development Department the service include :

- (a) Electricity connection domestic with load 10KW,
- (b) Electricity connection domestic 20 KW
- (c) Electricity connection domestic with all loads, etc etc

3. In Public health Engineering, Irrigation and Flood Control Department the services included:

- (a) Sanction for domestic water connection.
- (b) Actual domestic water connection supply.

4 In Revenue Department the services include:

³ Under section 6(1) of J&K the special tribunal Act, 1988 deals with the powers and functions of the tribunal. The powers and functions of tribunal may be exercised;

(a) by the bench consisting of the chairman and all the members of the tribunal; or

(b) by a bench consisting of two members constituted by the Chairman ; or

(c) by the Chairman or by any other member of the Tribunal authorized by the chairman in this behalf.

(2) If at any stage of the hearing of any case it appears to the chairman or the member as referred in clause (c) or to the bench as referred to in clause (b) of the sub-section (1) that the case involves a substantial question of law of general importance and the said question needs to be decided by the full bench of the tribunal, the case may be transferred by the Chairman or, as the case may be, referred to him by the member or the bench as referred to above for transfer to the full bench of the tribunal.

(3) Where the powers and functions of the tribunal are exercised by a bench consisting of two members and the members are divided in opinion on any point or points, such point or points shall be referred to a bench consisting of the Chairman and all the members of the tribunal.

Power to make rules: Section 9 of the J&K Special Tribunal Act Says that the government may, by notification in the government Gazette, make the rules for carrying out the purpose of this Act.

Under the Jammu and Kashmir Public Services Guarantee Act the Special tribunal is entrusted with the revision power. The decision of the tribunal shall be final.

- (a) State subject Certificate
- (b) Reserved Category certificate
- (c) Income Certificate, etc etc.

5 In Transport Department the services include:

- (a) Learner Driving Licence
- (b) Driving Licence
- (c) Registration of Vehicle

6 In Housing and Urban Development Department the services includes:

- (a) Birth and death certificate
- (b) NOC for construction of house from Srinagar Development Authority
- (c) NOC for construction of house from Jammu Development Authority, etc etc.

FORMS:

Form 1 FORM OF ACKNOWLEDGEMENT

Name of the Designated Officer and Office Address.	
Name and address of the applicant	
Date of receiving application in the officer	
Name of the service for which the application is given	
Particulars of the documents which are essential for receiving service, but are not enclosed with the application.	
Last date of the stipulated time limit.	

Place:

Date :

Signature of Recipient

Name & Designation with seal

Note : in case of not receiving all the documents with the application, the last date of the stipulated time limit shall not be specified.

Form 2

Name , Designation and Office of the designated officer						
S. no	Notified service	Documents to be annexed with the application	Stipulated time limit for the services	Designation & address of the first appellate officer	Stipulated time limit for the disposal of first appellate	Designation & address of the second appellate authority

Form 3

FORM OF REGISTER TO BE MAINTAINED IN THE OFFICE OF DESIGNATED OFFICER

Name of the Office of the designated officer						
Month						
Year						
S no	Name and address of applicant	Service for which the application is given	Last Date of the stipulated time limit	Application allowed/disallowed	Date and details of the order passed	
(1)	(2)	(3)	(4)	(5)	(6)	

Form 4

FORM OF REGISTER TO BE MAINTAINED IN THE OFFICE OF FIRST APPELLATE AUTHORITY

Name of the Office of the First Appellate Officer						
S.No.	Name and address of appellant	Date of filing first appeal	Designation of the Designated Officer (Along with the name of officer) against whose decision the appeal is filed	Last date of the stipulated time limit	Date and detail of order in appeal	
(1)	(2)	(3)	(4)	(5)	(6)	

Form 5

FORM OF REGISTER TO BE MAINTAINED IN THE OFFICE OF SECOND APPELLATE AUTHORITY

Name of the Office of the second Appellate Authority									
s.	Nam	Dat	Design	Date	Details of	Date of	Follow up	Deta	

S.No.	Name & address of appellant	Date of filing second appeal	Name of the First Appeal Officer (along with the names of office) against whose decision the second appeal is filed	Amount of penalty	Disposal of second appeal a) dismissal... ... b)penalty c)recommendation of departmental enquiry d)payment of compensation	Amount of compensation	Action regarding recommendation of Departmental enquiry	Date of order of revision
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Form 6
(See rule 17)

FORM OF REGISTER TO BE MAINTAINED IN THE OFFICE OF REVISIONAL AUTHORITY

Name of the Office of the Revisional Authority					
S.No.	Name, designation & address of the Person in revision	Details of order against which the revision is made	Details of proof of depositing penalty	Details of order of revision	Remarks

Legislation and Rules

THE JAMMU & KASHMIR GOVERNMENT GAZETTE

PART III

GOVERNMENT OF JAMMU AND KASHMIR CIVIL SECRETARIAT-DEPARTMENT OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS

Jammu, the 13th April, 2011.

The following Act as passed by the Jammu and Kashmir State Legislature received the assent of the Governor on 9th April, 2011 and is hereby published for general information :-

THE JAMMU AND KASHMIR PUBLIC SERVICES GUARANTEE ACT, 2011. (Act No. ix of 2011).

[9th April, 2011.]

An Act to provide for the delivery of public services to the people of the State within the specified time limit and for matters connected therewith and incidental thereto.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixty-second Year of the Republic of India as follows :-

I. Short title and commencement.-(1) This Act may be called the Jammu and Kashmir Public Services Guarantee Act, 2011.

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

2. Definition.-In this Act, unless the context otherwise requires,-

(a) "Act" means the Jammu and Kashmir Public Services Guarantee Act, 2011;

(b) "designated officer" means an officer notified as such for providing the service under sub-section (2) of section 4 ;

(c) "eligible person" means person who is eligible for any notified service ;

(d) "first appellate authority" means an officer who is designated as such under section 8 ;

(e) "Government" means the Government of Jammu and Kashmir ;

(f) "prescribed" means prescribed by the rules made under this Act ;

(g) "service" means any service notified under section 4 ;

(h) "second appellate authority" means an officer who is designated as such under section 8 ;

(i) "specified time limit" means the time limit within which the designated officer is required to provide service as specified under sub-section (1) of section 4 ;

(j) "Special Tribunal" means Special Tribunal constituted under the Jammu and Kashmir Special Tribunal Act, 1988 ;

(k) "State" means the State of Jammu and Kashmir.

3. Right to public services (I) Subject to provisions of the Act, every eligible person in the State shall have a right to public services.

(2) The right referred to in sub-section (I) shall include the right to-

(a) have access to the public service ;

(b) receive public service within the specified time limit ;

(c) receive public service in a transparent manner ;

(d) demand performance of duties and functions in accordance with the Act ;

(e) hold the concerned designated officer accountable for any service deficiency ; and

(g) seek compensation with respect to non-providing of service or deficiency in service.

4. Notification of public services and time limit.(1) The Government may, from time to time, specify the services to be the public services for purposes of the Act and shall specify the time limit within which such services shall be provided to the eligible persons. -

(2) For providing services specified under sub-section (1), the Government may for different areas and for different services designate officer shall be responsible for providing each of such services to the eligible persons.

5. Providing of public service within specified time limit.-(1)

It shall be obligatory on the designated officer to provide public services to the eligible person within the time specified in sub-section (1) of section 4.

(2) The specified time limit shall start from the date when an application is submitted by the eligible person for providing of notified service to the designated officer or to a person subordinate to him authorized to receive the application.

(3) All applications received under sub-section (2) by the designated officer or the authorized person shall be duly acknowledged specifying the number, date and time of receipt of such application.

(4) On receipt of application under sub-section (3), the designated officer shall within the specified time limit either provide service or reject the application :

Provided that in case of rejection of application, the designated officer shall record reasons therefore and intimate the same to the applicant.

6. First Appeal:-(1) Any person, whose application has been rejected under sub-section (4) of section 5, or who does not receive the public service within the specified time limit, or where the service received by him is deficient in any manner, may prefer to file an appeal to such officer as may be notified by the Government to be the first appellate authority, within thirty days from the date of such rejection or expiry of the time limit or receipt of deficient service, as the case may be :

Provided that the first appellate authority may admit an appeal after the expiry of the period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The first appellate authority shall dispose of the appeal preferred under sub-section (1) within a period of forty-five days from the date of presentation of appeal.

(3) The first appellate authority may direct the designated officer to provide the public service within the such time as it may specify or to remove the deficiency in the service provided to the appellant or pass such other order, including rejection of the appeal, as it may deem fit :

Provided that before passing any order under sub-section (3), the appellate authority shall provide an opportunity of being heard to the appellant as well as the designated officer.

7. Second appeal.--(I) Any person aggrieved by the order passed by first appellate authority under section 6, may prefer an appeal to the second appellate authority within 60 days from the date on which the order appealed against has been passed :

Provided that the second appellate authority may admit an appeal after the expiry of the period of 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The second appellate authority may, within forty-five days from the date of presentation of appeal, pass an order directing the designated officer to provide the public service within such time as it may specify or to remove the deficiency in the service provided to the appellant or may pass such other order including the rejection of appeal, as it may deem fit.

8. Designation of appellate authorities.-The Government may by notification in the Government Gazette, designate officers who shall be first appellate authorities and second appellate authorities in respect of each public service.

9. Powers of appellate authorities.-The appellate authorities shall, while deciding an appeal under the Act, have the same powers as are vested in Civil Court while trying a suit under the Code of Civil Procedure, in respect of the following matters, namely :-

- (a) requiring the production and inspection of documents ;
- (b) issuing summons for hearing to the designated officer and appellant ; and
- (c) any other matter which may be prescribed.

10. Penalty for non-compliance of orders.--(1) If the designated officer does not comply with the orders or directions given to him under sub-section (3) of section 6 or sub-section (2) of section 7 the person aggrieved may file an application before the second appellate authority and the second appellate authority shall direct the designated officer to show cause, within specified time, for not complying, with 'the aforementioned orders or directions'.

(2) After considering the cause, if any, shown by the designated officer and if no cause is shown within the time specified in sub-section (1) , the second appellate authority, may, if it is of the opinion that the designated officer has not complied with the orders or directions without reasonable cause, impose a fine on such designated officer which shall not be less than Rupees 500 but may extend up to Rupees 5000.

11. Penalty for not providing the service.-Where second appellate authority is of the opinion that the designated officer has failed to provide service to the eligible person or has caused delay in providing the service or has provided a service which is deficient in any manner, it may impose a fine on such designated officer,-

- (i) of Rupees 250 for each day of such delay or Rupees 5000, whichever is less, in case of non-providing of service or delay in providing services ; and
- (ii) of Rupees 2000, in case of deficiency in service : Provided that before imposing such fine, the designated officer 'shall be given a reasonable opportunity of being heard.

12. Penalty for not deciding the appeal within specified time.-Where the second appellate authority is of the opinion that the first appellate authority has failed to decide the appeal within the time specified in sub-section (2) of section 6 without any sufficient and reasonable cause, it may impose a fine on first appellate authority, which shall not be less than Rupees 500 and not more than Rupees 5000 :

Provided that before imposing such fine the first appellate authority shall be given a reasonable opportunity of being heard.

13. Compensation.--On imposition of fine under section 11 or section 12, the second appellate authority may, by order, direct that such portion of the fine imposed under the said section shall be awarded to the appellant, as compensation, as it may deem fit :

Provided that the amount of such compensation awarded shall not exceed the amount of fine imposed under the said section.

14. Disciplinary action.-In addition to imposition of fine under sections 10, 11 or 12, the second appellate authority, if it is satisfied that the designated officer or the first appellate authority, as the case may be, has failed to discharge the duties assigned to him under the Act without sufficient and reasonable cause, may recommend disciplinary action against him under the service rules applicable to him.

15. Revision.-If designated officer or first appellate authority is aggrieved by any order of second appellate authority in respect of imposition of fine under the Act, he or it may make an application for revision to the Special Tribunal within a period of 60 days from the date of passing of such order, which shall dispose of the application according to such procedure as may be prescribed.

16. Protection of action taken in good faith.-No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under the Act or any rule made thereunder.

17. Power to make rules.-The Government may, by notification in the Government gazette, make rules to carry out the provisions of the Act.

18. Power to remove difficulties.-If any difficulty arises in giving effect to the provisions of the Act, the Government may by order, not inconsistent with the provisions of the Act, remove the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of the Act.

(Sd.) ACHAL

Deputy Legal Remembrancer,
Department of Law, Justice and
Parliamentary Affairs.

GOVERNMENT OF JAMMU AND KASHMIR GENERAL ADMINISTRATION DEPARTMENT

(Administration Section) Civil Secretariat, Jammu/Srinagar

N O T I F I C A T I O N Srinagar, the 21st of July, 2011

SRO 223: In exercise of the powers conferred by section 17 of the

Jammu and Kashmir Public Services Guarantee Act, 2011 (Act No. IX of 2011), the Government hereby makes the following rules, namely:

1. Short title and commencement.- (1) These rules may be called the Jammu and Kashmir Public Services Guarantee Rules, 2011.

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

2. Definitions: (1) In these rules, unless the context otherwise requires -

a. "Act" means the Jammu and Kashmir Public Services Guarantee Act, 2011 (Act No. IX of 2011);

- b) "Form" means the Form appended to these rules;
- c) "Government" means the Government of Jammu and Kashmir;
- d) "Section" means the section of the Act.

(2) The words and expressions used in these rules but not defined shall have the same meaning as assigned to them respectively in the Act.

3. Authorization by Designated Officer for receiving the application,- The designated officer may, by order, authorize any of his subordinate officer or employee to receive the application and to issue the acknowledgement thereof.

4. Issuing of acknowledgement to the applicant.- The designated officer or any official authorized under rule 3 shall give acknowledgement to the applicant in Form - 1 and in case any necessary documents have not been annexed with the application, the same shall be clearly mentioned on the acknowledgement and in such acknowledgement stipulated time limit shall not be mentioned:

Provided that if all necessary documents are annexed with the application and the application is complete in all respects, then the stipulated time limit shall be mentioned in the acknowledgement;

Provided further that in the event any service is denied or delayed, the designated officer shall communicate to the person eligible and or applying for the service:

- (i) the reason for such denial or delay,
- (ii) the period within which an appeal against such denial be preferred and;
- (iii) the particulars, including all available contact information of the competent appellate authority under the provisions of the Act.

5. Public holidays not included in the stipulated time limit.- In computing the stipulated time limit in providing the services, the public holidays shall not be included.

6. Display of information on the notice board.-(1) The designated officer shall, for the convenience of general public, cause to display all relevant information related to services on the notice board installed at a conspicuous place of the office for public knowledge and also on the public domain and the necessary documents to be attached with an application for obtaining notified services shall also be displayed .

(2) In the event of non-display of such information in the public domain, the competent authority shall initiate appropriate action against the designated officer.

7. Exemption of payment of Fees- No fees shall be payable along with an application, appeal or revision, as the case may be.

8. Contents of application for Appeal and Revision.- The following information shall be included in an application for appeal or revision, as the case may be, filed to the first appellate authority, second appellate authority or the revisional authority, namely :-

- (i) name and address of the applicant or person filing first appeal, second appeal or revision;
- (ii) the name and address of the designated officer, first appellate authority or second appellate authority, as the case may be, against whose decision the appeal or revision is filed;
- (iii) particulars of the order against which the appeal or revision lies;
- (iv) if the appeal is against the refusal of acknowledgement of the application by the designated officer, then the date of application, refusal of information, and the name and address of the designated officer, to whom the application was presented;

- (v) the grounds for appeal or revision;
- (vi) the relief sought, and
- (vii) any other relevant information which is necessary for the disposal of appeal or revision.

9. Documents to be annexed with appeal or revision.- The following documents shall be annexed with every application for appeal or revision, namely:-

- (i) self-attested copy of the order against which the appeal or revision is made;
- (ii) the copies of the documents, if any, mentioned in the application for appeal or revision;
- (iii) the index of the documents annexed with the application for appeal or revision; and
- (iv) the proof of depositing penalty, in case of application for revision.

10. Procedure for deciding appeal or revision.- In deciding the application for appeal or revision the appellate or revisional authority :-

- (i) shall inspect the relevant documents, public documents or copies thereof;
- (ii) authorize any officer to conduct appropriate inquiry, if required; and
- (iii) may hear designated officer, first appellate authority or the second appellate authority, as the case may be.

11. Service of notice of hearing.- The notice of hearing of application for appeal or revision shall be served in any one or more of the following manners; namely :-

- (i) by the party itself;
- (ii) by hand delivery (dasti) through process server;
- (iii) by the registered post with due acknowledgement; or
- (iv) through the department.

12. Hearing of appeal or revision.-

- (1) In every case, the appellant or the person at revision shall be intimated with the date of hearing, at least seven clear days prior to such date of hearing.
- (2) The appellant or the person at revision, as the case may be, may present in person in the hearing of application for appeal or revision, or may opt not to be present in the hearing.
- (3) If the appellate authority or revisional authority is satisfied that the circumstances exist due to which the appellant or the person at revision is prevented to be present at the hearing, then before taking the final decision an opportunity of hearing shall be given to the appellant or the person at revision.
- (4) If any party remains absent after due service of notice of the fixed date of hearing, then appeal or revision, as the case may be, shall be disposed in his absence or dismissed due to non-appearance/ non prosecution.

13. Order in appeal or revision.- (1) The order of appeal or revision shall be pronounced in open proceedings and shall be in writing by the first appellate authority, second appellate authority or revisional authority, as the case may be.

(2) The copy of order passed in first appeal or second appeal, as the case may be, shall be given to the appellant, designated officer and first appellate authority, free of cost and ordinarily on the date of pronouncement of the order.

(3) In case of imposition of penalty, the appellate authority or the revisional authority, as the case may be, shall endorse a copy of order to the competent authority with instructions to deduct the amount from the salary/honorarium/remuneration of the designated officer appellate authority;-

4 In the case of recommendation for the departmental enquiry against the designated officer or the appellate authority, as the case may be, the provisional authority shall send the order passed against him /her to the

concerned competent authority.

(5) Where the revisional authority, after hearing the revision, amends the order of the appellate authority, then he/she shall send a copy of the order to the appellate authority and the competent authority.

14. Recovery of penalty: (1) On receiving the order of imposition of penalty under sub-rule (4) of rule 13, the competent authority shall direct the drawing and disbursing officer to recover the amount of penalty from the next salary of the designated officer or first appellate officer, as the case may be, and deposit it under the concerned head and send a copy of challan to the concerned appellate authority. (2) In case any amendments are made in the order of appellate authority during revision, the concerned authority shall cause to ensure that such orders are implemented.

15. Payment of compensation.-In the case of order of payment of compensation to the applicant under section 13, the second appellate authority shall order to make payment within thirty days:

Provided that whenever revision is filed against the order of second appellate Authority, the period of thirty days for payment of compensation shall be reckoned from the date of passing of order by the revisional authority.

16. Maintenance of record of disposed cases under the Act.- The designated officer, first appellate authority, second appellate authority and revisional authority shall maintain the record of the cases in Form 3,4,5 & 6 respectively.

17. Monitoring and inspection.- (1) The Government may issue the directions from time to time for effective implementation of the provisions of the Act, superintendence of the cases filed under the Act and for the inspection of the offices of the first appellate authority, second appellate authority, revisional authority and drawing and disbursing officers.

(2) The State Government may after every six months review services notified under the Act and may include or exclude any service, for the purposes of the Act.

(3) The Government shall introduce a system for centralized monitoring of the timely delivery of notified services, including service delivery through use of Information and Communication Technologies, and for monitoring various provisions of the Act.

18. Interpretation:- If any question of interpretation of these rules arise, the decision of the Government in General Administration Department, in consultation with Department of Law, Justice & Parliamentary Affairs shall be final.

By order of the Government of Jammu and Kashmir.

Sd/-

(Mohammad Sayeed Khan) IAS

Commissioner 1 Secretary to Government

General Administration Department

dated: 21.07.2011