

No.12/2/67-Estt(D)  
Government of India  
Ministry of Home Affairs

.....

New Delhi-1, dated the 21 March, 1968,  
1st Chaitra 1889

OFFICE MEMORANDUM

Subject:- Erroneous Confirmation of Government servants - Procedure  
for cancellation - Instructions regarding.

.....

The undersigned is directed to say that, it has been decided, in supersession of the instructions contained in this Ministry's M.No.32/5/54-Ests(A) dated 24th November, 1954 on the above subject that the following procedure should be followed while cancelling orders relating to confirmation of Government servants which are later on found to be erroneous:-

- 1) Confirmation can be cancelled if the order of confirmation was clearly contrary to the statutory Rules, and there is no power or discretion to relax the Rules.
- 2) if the order of confirmation was made when there was no substantive vacancy and the confirming authority had no power to create the post in which the officer was confirmed.
- 3) if the order of confirmation was made in error, e.g., naming wrong person - mistake in identity.

Orders of confirmation in the abovementioned cases are void ab initio and the officer does not acquire any right to hold the post in which the order purported to confirm him. Provisions of article 311(2) of the Constitution are not, therefore, attracted and the procedure of "show cause notice" is not required to be followed before cancelling the order of confirmation.

2. If the order of confirmation was made in contravention of executive or administrative instructions, it cannot be set aside. Cancellation of confirmation in such cases would amount to reduction in rank without any fault on the part of the officer confirmed.

3. These instructions take effect from the date of issue.

4. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions are issued in consultation with the Comptroller and Auditor General of India.

Sd/- (Smt.) R.M. Shroff  
Deputy Secretary to the Govt. of India.

To

All Ministries of the Govt. of India etc. etc.

L.K.1  
7.8.1972.