

# **ASSAM JUDICIAL SERVICE RULES, 1967**

## **1. Short title and commencement.**

- (1) These rules may be called the Assam Judicial Service Rules, 1967.
- (2) They shall have effect from the “1st day of March, 1969”.

## **COMMENTS**

The date of commencement, i.e., “1<sup>st</sup> day of March, 1969” has been substituted vide Notification No. LJJ 62/68/133, dated 22/4/1991.

These rules were made by the Governor in exercise of the powers conferred by the provision to Art. 309 read with Art. 134 of the Constitution, in consultation with the High Court, to regulate the conditions of persons appointed to the Assam Judicial Service. Under Art.309 (provision) power has been given to the Governor of the State to make such rules until provision in that behalf is made or under an Act of the appropriate Legislature under this Article and then the rules so made shall have effect subject to the provisions of any such act. Article 234 deals with recruitment of the person other than the district Judges to the Judicial Service. In *State of Assam v. Ronga Mohammad* [AIR 1967 SC 1987], it

was held, in connection with the Judicious meaning of the expression “in consultation with the High Court” that such consultation is mandatory and not directory and if what High Court has to say is received with ill-grace or rejected out of hand, consultation loses all its meaning and becomes mockery and hence the opinion of the High Court is entitled to the highest regard. Their Lordship followed the decision in another case [*Chanra Mohan v. State of Uttar Pradesh*, AIR 1966 SC 1987] in which it was held that consultation with the High Court is essential. Similar view was taken by the Supreme Court in the cases reported in AIR 1967 SC 1599 (Rajasthan) which reversed the decision reported in AIR 1966 Raj 26 (*Jogindra Nath v. Union of India*); AIR 1975 SC 511; AIR 1975 SC 613 (cited and explained) [*High Court of Punjab v. The State of Haryana*]; AIR 1975 SC 1922 [*A Podurangam v. State of Andhra Pradesh*]; AIR 1970 SC 370 [*Chandramouleswar v. The Patna High Court*]; and distinguished in *State of Orissa v. Sudhansu Sekhar Misra* [AIR 1968 SC 647].

## **2. Definitions.**

In these rules, unless there is anything repugnant to the subject or context-

- (a) **“Chief Justice”** means the Chief Justice of the High Court of Assam and Nagaland;
- (b) **“Constitution”** means the Constitution of India;

- (c) **“Commission”** means the Assam Public Service Commission;
- (d) **“Existing members o the Service”** means the officers who have been holding the posts under the Assam Judicial Service (Senior) Rules, 1952 or the Assam Judicial Service (Junior) Rules, 1954, as the case may be, and those Magistrates who have been appointed to work as Judicial Magistrates under the Scheme of the separation of Judiciary from the Executive as notified under Art. 137 of the Constitution by Government Notification No. AAA 52/61/219, dated the 8<sup>th</sup> January, 1964;
- (e) **“Government”** means the State Government of Assam;
- (f) **“High Court”** means the High Court of Assam and Nagaland;
- (g) **“Judicial Magistrate”** means the Magistrate empowered to exercise jurisdiction according to the Scheme notified under Government Notification No. AAA 52/61/219 dated the 8<sup>th</sup> January, 1964 under Art. 237 of the Constitution;
- (h) **“Members of the Service”** means the officers appointed or deemed to have been appointed under the provisions of these rules;

(i) **“Service”** means the Assam Judicial Service;

(j) **“Year”** means the calendar year.

**3. Constitution of the Assam Judicial Service.**

There shall be constituted a service to be known as the Assam Judicial Service consisting of the grades of the officers as shown in Schedule ‘A’ appended to these rules.

**4. Cadre.**

(1) The strength of the service and each kind of posts therein shall be as determined by the Governor in consultation with the High Court from time to time.

(2) On the commencement of these rules, the strength of the service and the kind of posts therein shall be as given in Schedule ‘A’ appended these rules.

(3) The Governor may, except in the case of the posts of registrar, Deputy Registrar and Assistant Registrar of the High Court from time to time, leave unfilled to held in abeyance any post in the cadre or may increase the cadre by the creation of additional, permanent or temporary posts as may be found necessary, in consultation with the High Court.

## **5. Recruitment.**

- (1) The Chief Justice shall fill up the post of registrar and Assistant Registrar by virtue of Art .229 (1) of the Constitution ordinarily from Grade I, Grade II and Grade III respectively, of the service.
- (2) Notwithstanding anything in these rules, the conditions of service of the persons appointed to the post of Assistant Registrar may be filled up by promotion from amongst the ministerial staff of the High Court by the Chief Justice.
- (3) Notwithstanding anything in these rules, the conditions of service of the persons appointed to the post of Registrar, Deputy Registrar and Assistant Registrar , shall be regulated by the rules that may e made under Art. 229 (2) of the Constitution.
- (4) Recruitment to the other posts of the service after the commencement of these rules shall be made by the following methods:
  - (a) (i) Appointment to the post of Grade I shall be made by the Governor either by promotion from Grade II in consultation with the High Court or by direct

recruitment from the bar on the recommendation of the High Court

Provided that no more than one-third of the posts may be filled up direct recruitment.

(ii) Appointment to the post of Selection Grade District and Sessions Judge shall be made by the High Court by promotion from Grade I of the Service.

(b) (i) Appointment to the post of Chief Judicial Magistrates and Additional Chief Judicial Magistrates in Grade II shall be made by the High Court by promotion from Grade III and appointment to the post of Additional District and Sessions Judge in the said Grade shall be made by the Governor by promotion from Grade III in consultation with the High Court.

Provided that one-third of the posts shall be reserved to be filled up by direct recruitment:

(ii) Appointment of special Judge under S.3 of the Prevention of the Corruption Act, (Central Act No. 49 of 1988) shall be made by the State Government in consultation with the High Court, from amongst the

members of the service, who is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge.

(iii) Appointment of the Presiding Officers of the Industrial Tribunal and the Labour Courts shall be made by the State Government in consultation with the High Court from amongst the members of the service having requisite qualifications as prescribed in the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947);

(c) Appointment to the posts in Grade III of the service shall be made by the Governor on the recommendation of the High Court on the basis of selection from amongst the members of the Bar by the High Court.

## **COMMENTS**

Proviso to sub-R. (4) (a) has been substituted *vide* Notification No. LLJ. 569/73/91, dated the 13th June, 1982.

Sub-clause (ii) of sub-R. (4) (a) has been substituted *vide* Notification No. LLJ. 569/73/47, dated the 4<sup>th</sup> January, 1982.

Clause (b) (i) of sub-R. (4) (a) has been substituted vide Notification No.LJJ. 569/73/98, dated the 27<sup>th</sup> March, 1982.

The words “and Additional Chief Judicial Magistrate” in Cl. (b) (i) of sub-R. (4) (a) has been substituted vide Notification No.JDJ 264/94/62, dated the 9th November, 1995.

Clause (ii) of sub-R has been substituted vide Notification No. JDJ. 264/94/62, dated the 9th November, 1995.

Clause (iii) of sub-R has been substituted vide Notification No. JDJ . 264/94/62, dated the 9th November, 1995.

Clause (c ) sub-R. (4) has been substituted *ibid*

Under the Assam Judicial Service (Senior) Rules, an appointment was given by the Governor to the Deputy Registrar as an Additional District Judge and then as District Judge, such as actions being challenged in *Kuseswar Saikia v. State of Assam* [AIR 1909 A and N 128],. Their Lordships held that such rule is violative of the Constitution and being void. Present R. 5 has been constructed accordingly.

In the case of *Dwaraka Nath Roy v. Babar Ali* [AIR 1970 A and N 316], the appointment of Additional District Magistrate was held to be valid under R. 5 (4) (b) .

.....



- 5-A.** (1) Of the vacancies to be filled up in Grade III of the service, there shall be a reservation for candidates belonging to Schedule Castes, Schedule Tribes (Plains) and Schedule Tribes (Hills) not exceeding seven percent and five percent respectively.
- (2) If sufficient number of suitable candidates belonging to the Schedule Castes, Schedule Tribes (Plains) and Schedule Tribes (Hills) are not available for filling up the posts reserved for them, these shall be filled up from among other candidates; and an equivalent number of the additional vacancies shall be reserved for the candidates belonging to Schedule Castes, Schedule Tribes (Plains) and Schedule Tribes (Hills) for the next recruitment.
- (3) The reservation quota of the candidates belonging to Schedule Castes, Schedule Tribes (Plains) and Schedule Tribes (Hills) would be carried forward till the quota is filled up, subject, however, to the condition that in no calendar year shall the normal reserved vacancies and 'carried forward' reserved vacancies taken together would exceed 50 percent of the total number vacancies.

## **COMMENTS**

**Rule 5-A.** This rule was inserted vide Notification No. LJJ. 569/73/47, date 21—1-1977, to come into force with immediate effect.

.....

### **6. Qualifications for recruitment to the service in Grades I and III.**

(1) Appointments to the posts of grade I and Grade II by promotion from the next Grade below shall be made on the ground of merit and ability; seniority being considered only when merit and ability are approximately equal.

(2) A candidate fro direct recruitment from the Bar to the post of Grade I and Grade II shall satisfy the following conditions, besides general conditions laid down under R.8:

(i) shall not have completed 45 years of age on the 1st day of January of the year of recruitment;

(ii) shall be a practicing advocate of the High Court or of the District Court and should have no practiced for a period if not less than 7 years.

**7. Qualification for recruitment to the service in Grade III.**

A candidate for recruitment to the post in Grade III shall satisfy the following conditions laid down under R.8:

- (i) he must be a graduate in law of any recognised University or Barrister -at -law;
- (ii) he must have practiced at least three years at the Bar;
- (iii) the age of the candidate for selection shall not be less than 25 years and more than 36 years on the 1st January of the year in which and advertisement for selection in made.

**COMMENTS**

Rule 7 was substituted *vide* Notification No,. JDJ. 264/94/62, dated the 9<sup>th</sup> November, 1995 and published in the Assam Gazette, Extraordinary No. 254 dated the 22<sup>nd</sup> December, 1995 at pages 1805-1807.

.....

**8. General qualification.**

Every member of the service shall satisfy the following general conditions:

- (i) shall be citizen of Indian Union;
- (ii) shall be of good character;
- (iii) shall be of sound health and active habits and free from any bodily defect or infirmity which render him unfit for such appointment;
- (iv) shall not have more than one wife living unless exempted by the Government on special grounds.

**Probation, confirmation, etc.**

**9. Probation and confirmation.**

All appointments other than appointment to Temporary post under rules shall be on probation for a period of one year from the date of appointment to such post.

Provided that service rendered in a temporary or an officiating capacity may be taken into account in computing the period of probation.

Provided further that the Chief Justice in case of the registrar, Deputy Registrar or Assistant Registrar and the Governor, in consultation with the High Court, in case of other members may relax or extend the period of probation. On completion of the period of probation prescribed above, the members of the service shall be confirmed in their respective posts.

**10. Pay.**

- (1) The time scale of pay admissible to the members of each class of service in different Grades shall be such as shown in column (3) of Schedule 'A' appended to these rules.
- (2) The Registrar, Deputy Registrar and Assistant Registrar shall be entitled to a special pay as may have been laid in the Assam and Nagaland High Court Services (Appointment, Conditions of Service and Conduct) Rules, 1967.
- (3) The sub-divisional Magistrate (Judicial) of Grade III of the service shall, in addition to the Grade pay, be entitled to a special pay of Rs. 200 per month.

**11. Absorption of existing members.**

The existing members of the service shall be absorbed in the respective posts they may be holding on the commencement of these rules:

Provided that in case of Judicial Magistrates only those who are law graduates and had first class magisterial powers under the code of Criminal Procedure for a continuous period of five years immediately before the commencement of these rules will be eligible for absorption;

Provided further that any member having a lien in any other service under the Government shall not be so absorbed unless he exercises an option to come this service and option once exercised shall be final.

**12. Seniority.**

- 1) The seniority inter se of the members of Grade I and II of the service shall be determined by the Governor in consultation with the high Court.
- (2) The relative seniority of the members in Grade III of the service shall be determined according to the order of merit in the lists prepared under Cl.4 of Schedule 'B' appended to these rules, if the members join their appointments within 15 days of the date receipt of the order of appointment.

(3) Notwithstanding anything contained in the foregoing provisions of this rule, while determining the seniority of a member who has opted to come under proviso to R. 11 of these rules, his entire period of service as a First Class Magistrate shall be counted as his seniority;

Provided that in case of a member who was confirmed in his previous post prior to his option, his seniority may be determined on the merit of the case from the date of such confirmation, if the same falls earlier to the date determined under this sub-rule, otherwise his seniority will be as determined above.

## **COMMENTS**

Rule 12. Sub-rule (3) was substituted vide the Assam Judicial Service (Amendment) Rules, 1970.

.....

## **Power**

### **13. Conferment of power.**

- (1) The Governor may, in consultation with the High Court confer upon any Additional District Magistrate (Judicial) all or any of the powers conferrable under the Code of Criminal Procedure on district Magistrate.
- (2) The Assistant District Judge shall not ordinarily be required to work as Additional District Magistrate (Judicial).
- (3) The Governor may, in consultation with the High Court, confer upon any Munsiff all or any of the powers conferrable under the Code of Criminal Procedure on a Magistrate power under S. 37 of the said Code or any power under the Act
- (4) The High Court may require any Munsiff invested with the powers as mentioned in sub-R. (3) to try criminal cases and the Additional District Magistrate (Judicial) may make over cases to such Munsiff subject to the Criminal Procedure Code;
- (5) The Judicial Magistrate shall also be directed to act as Munsiff by the Governor on the recommendation of the High Court.



- (6) The Judicial Magistrate shall ordinarily exercise powers and functions within the frame work of the scheme as given in Schedule 'C' appended to these rules.

**14. Leave, pension etc.**

Except as provided in these rules, pay, allowances, pension, leave and other conditions of service of the members of the service shall be regulated by Assam Civil Service (Discipline and Appeal) Rules, 1961, Fundamental Rules, the Assam Subsidiary Rules, the Assam Pension Manual and other relevant rules in force in the State:

Provided that notwithstanding anything contained in R. 53 of the Assam Services (Pension) Rules, 1969 or any other rules-

- (a) the members of the service initially recruited to Grade III of the service having not less than 10 years of actual qualifying service shall be entitles to add to their service qualifying for superannuation pension, the actual period, not exceeding 5 years, by which the age at initial recruitment exceeds 25 years,
- (b) the members of the service directly recruited from the Bar to Grade I or Grade II of the service having not less than 10 years of the actual

qualifying service be entitled to add to the qualifying service for superannuation pension, the actual period not exceeding 10 years by which the age at initial recruitment exceeds 25 years.

## **COMMENTS**

The proviso was inserted vide Notification No. LLJ 62/68/110 dated 1-3-1990, published in the Assam Gazette, Part II-A, dated 27<sup>th</sup> June, 1990, page 490.

.....

### **15. Repeal and savings.**

- (1) The Assam Judicial Service (Senior) Rules, 1952 and the Assam Judicial Service (Junior) Rules 1954 are hereby repealed.
- (2) Notwithstanding such repeal any appointment made, order issued, action taken or anything whatsoever done under the rules so repealed shall be deemed to have been made, issued, taken or done under the corresponding provisions of these rules.

## SCHEDULE 'A'

Name of the service or post (1)	Exiting scale (2)	Revised scale (3)	Remarks  (4)
<b>Grade I</b> District and Sessions Judge	ASSAM SERVICE	JUDICIAL	Direct recruitment from Bar to Grade I should be continued
	1200-60- 1380-EB- 60-1500	1400-60- 1640- EB-65- 1900	
<b>Grade II</b> Addl. District Magistrate (Judicial)	1000-50- 1150- EB-50- 1300	1200-55- 1365- EB-60- 1725	
Asstt. District and Sessions Judge	1000-50- 1150- EB-50- 1300	1200-55- 1365- EB-60- 1725	
<b>Grade III</b>			
Munsiff	350-30- 500- EB- 30-650- EB-35- 1000	525-35- 700- EB- 40-1100- EB-45- 1325	
Judicial Magistrate	350-30- 500- EB-	525-35- 700- EB-	

	30-650- EB-35- 1000	40-1100- EB-45- 1325	
Sub-divisional Magistrate (judicial)	350-30- 500- EB- 30-650- EB-35- 1000 plus a spl. Pay of rs. 200 p.m	525-35- 700- EB- 40-1100- EB-45- 1325 plus a spl. Pay of rs. 200 p.m	

## **SCHEDULE B**

Deleted by notification no. JDJ 264/94/62, dated 9-11-95. A.G. Ext. No. 254, dated 22-12-95, pages 1805-1807.

.....