The All India Customs Ministerial Employees' Federation has given notice vide their letter dated 09.06.2016 for observing indefinite strike from 11.07.2016.

2. Attention of the All India Customs Ministerial Employees' Federation is invited to Rule 7 of the Central Civil Services (Conduct) Rules, 1964 and the instructions issued thereunder in the matter of participation by Government servants in demonstrations/strikes. Relevant extracts from the Central Civil Services (Conduct) Rules, 1964 are enclosed for ready reference. A copy of O.M No.41016/1(S)/90-Estt(B) dated 01.05.1991 containing instructions issued by the Deptt. Of Personnel & Training regarding treatment of period of strike by Government servants, is also enclosed.

3. It is reiterated that action in instances of violation of discipline and conduct rules would be taken in accordance with the instructions on the subject.

This issues with the approval of Chairman, CBEC.

Sd/-
(B. Ginkhan Mang)
Under Secretary to the Government of India
Tel: 011 2616 2673.

The Secretary General
All India Customs Ministerial Employees' Federation,
15/1, Strand Road, Custom House,
Kolkata – 700 001.

Copy to:
1. All Chief Commissioners of Customs
2. DG, HRD, CBEC
3. Web Manager, Directorate General of Systems and Data Management for uploading the communication on the Board's website.

(B. Ginkhan Mang)
Under Secretary to the Government of India
Tel: 011 2616 2673.
Rule 7. Demonstration and strikes

No Government servant shall -

(i) engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign States, public order, decency or morality, or which involves contempt of court, defamation or incitement to an offence, or

(ii) resort to or in any way abet any form of strike or coercion or physical duress in connection with any matter pertaining to his service or the service of any other Government servant.

Government of India Decisions

(1) Restriction on Government servants who are office-bearers of service associations, in dealing in their official capacity with matters connected with those associations.

Reference this Ministry's Office Memorandum No. 24/23/57-Ests.(B), dated the 3rd March, 1959, (not reproduced), on the above subject and to say that a point has been raised whether after the promulgation of the Central Civil Services (Recognition of Service Associations) Rules, 1959, the convention that an officer who may be required to deal in a responsible capacity with representations from a service Association, should not be an office-bearer or a member of the Executive Committee of that Association, would continue to be observed. It has been decided that any Government servant who is an office-bearer or a member of the Executive Committee of a Service association should not himself deal in his official capacity with any representation or other matters connected with that Association.

[MHA OM No. 24/1/60-Estt. (B), dated 25.01.1960]

(2) "Strikes" – interpretation of what constitutes a strike under the conduct Rules

Rule 7 (ii) of the Central Civil Services (Conduct) Rules, 1964, provides that no Government servant shall resort to or in any way abet any form of strike in connection with any matter pertaining to his service or the service of any other Government servant. Instances have come to the notice of Government where employees resort to various methods of protests for redress of grievances, some of which are tantamount to strike. References have been received seeking clarification whether certain acts, are covered under the definition of 'strike' and if so, whether action can be taken against such employees for violation of the Conduct Rules. It is, therefore, clarified that 'strike' means refusal to work or stoppage or slowing down of work by a group of employees acting in combination, and includes –

(i) mass absention from work without permission (which is wrongly described as "mass casual leave");

(ii) refusal to work overtime where such overtime work is necessary in the public interest;

(iii) resort to practices or conduct which is likely to result in, or results in the cessation or substantial retardation of work in any organization. Such practices would include, what are called 'go-slow', 'sit-down', 'pen-down, stay-in', sympathetic' or any other similar strike; as also absence from work for participation in a Bandh or any similar movements.

Government servants who resort to action of the above kind violate rule 7 (ii) of the Central Civil Services (Conduct) Rules, 1964 and disciplinary action can be taken against them. It may be noted that the list of activities which are covered under the definition of strike as enumerated above is only illustrative and not exhaustive. It only clarifies the position in respect of practices which are often resorted to at present.

(3) Participation in “Gherao” by Central Government servants -

Instances have come to the notice of Government in which employees of certain Central Government offices staged which is called "Gherao", involving forcible confinement of public servants within office premises by surrounding their places of duty and have held demonstrations/meetings both within office premises during office hours and also outside the office premises beyond office hours, tending to forcible confinement of public servants within office premises. Such demonstrations/activities are prejudicial to public order and also involve criminal offences like wrongful restraint, wrongful confinement, criminal trespass or incitement to commit offences. They are also subversive of discipline and harmful to the public interest, and participation in them by Government servants and would constitute good and sufficient reason within the meaning of Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It has, therefore, been decided that a serious view should be taken of such acts of lawlessness and insubordination on the part of public servants.

The Central Government Departments are advised to take action on the following lines in such cases: -

(i) Disciplinary action should be taken against the prominent participants in the 'Gherao' for contravention of Rules 3 and 7 of the Central Civil Services (Conduct) Rules, 1964. In the charge-sheet to be served in pursuance of such disciplinary action, it should be specified to the extent that the facts justify, that demonstrations prejudicial to public order and involving criminal offences, namely, wrongful restraint, wrongful confinement, criminal trespass and incitement to such offences, have been held, that such conduct was subversive of discipline and harmful to the public interest; and that the conduct was wholly unbecoming of a Government servant.

(ii) Absence from work on account of participation in ‘Gherao’, should in all cases be treated as unauthorized absence involving break in service. The absence should not be regularized as leave of any kind.

(iii) Whenever there is a case of 'Gherao', wrongful restraint, wrongful confinement or criminal trespass or of any other cognizable offence, a written report should be made to the Officer-in-charge of the Police Station having jurisdiction, requesting him to register the offence and to take action under the law. The names of the offenders should be included in the written report. Copies of the report should be endorsed to the Police Commissioner/Superintendent of Police and the Home Secretary to the State Government concerned for necessary action according to law.

(iv) If, notwithstanding the mandatory provisions of the Criminal Procedure Code, Police takes no action on such a report, action should be taken promptly to file a complaint before the appropriate Magistrate in respect of the substantive offences under the Indian Penal Code or other law. In certain circumstances a petition could be filed before the High Court for issue of the appropriate writ, but this should be done after taking legal advice.

[OM No. 25/S.11/67-Ests.(A), dated the 13th April, 1967]

While taking action to file a complaint before the appropriate Magistrate, the assistance of the Officer of the Central Bureau of Investigation if any, available locally, may also be taken in drafting the complaints and deciding the manner, in which evidence should be collected and produced.


(4) Holding of meeting/demonstration by Government Servants within office premises is violative of Rule 7(l)

It has been noticed that when some demonstrations organized by political parties were held in or passed through the vicinity of Government offices, the Government employees working in these offices came out to witness the demonstration. In this process the Government employees sometimes got mixed up with the demonstrators and it became difficult to segregate the demonstrators from the Government employee. In order to avoid such situations in future, the Ministry of Finance etc., are requested to impress upon the employees working under them that it is desirable on such occasions that they stay inside their offices and keep away from the demonstrators or the crowd near the place of demonstration.

[D.P. &A.R. No. 25/6/73-Ests.(A), dated 09.03.1973]
OFFICE MEMORANDUM

Subject: Treatment of period of strike by Central Government employees.

Attention of the Ministry of Finance, etc. is invited to the Department of Personnel & Administrative Reforms. O.M.No.330/11/77-Estt(B) dated the 25th April, 1978 in which the Ministries/Departments were requested to ensure compliance of the following directions of the Cabinet, namely —

(i) all Ministries/Departments must observe the principle of 'no work - no pay' and this should not be circumvented in any way including by grant of leave for the period of a strike; and

(ii) on all important service matters which are likely to have repercussions on other services (e.g. action taken against Government employees participating in strikes), all Ministries/Departments, including the Ministry of Railways should, with a view to ensuring the maximum possible uniformity in the general approach, consult the Department of Personnel & Administrative Reforms (now Department of Personnel and Training) before taking/announcing any decision so that embarrassment to the Government in dealing with the generality of civil services is avoided.

2. Notwithstanding the above directions, the Department of Personnel and Training has been receiving several references from Central Government offices that in the case of employees who had participated in a strike, the period of absence may be treated as duty or leave instead of applying the principle of 'no work - no pay'. It has also come to notice that in some cases, Ministries/Departments had taken decisions on important service matters likely to have repercussions on other services without consulting this Department and in contravention of the said directions.

3. The principle of 'no work - no pay' is laid down in Article 17(1) which provides that any officer who is absent without leave shall not be entitled to any pay and allowances during the period of such absence. The principle was examined in depth by the Supreme Court and upheld in the Civil Appeal No.2531 of 1986 - Bank of India vs. T.S. Kelawala & Others (1985) (3) SLJ. Though the issue did not pertain directly to applicability of the principle to Government servants, the Court has applied the principle in all its facets and its observations are relevant. Some relevant extracts of the Supreme Court judgement delivered on 4th May, 1980 are as under:

"Where the contract, Standing Orders or the service rules/regulations are silent on the subject, the Management has the power to deduct wages for the absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed. Whether the deduction from wages will be pro rata for the period of absence only or will be for a longer period will depend upon the facts of each case such as whether there was any work to be done in the said period, whether the work was in fact done and whether it was accepted and acquiesced in, etc.

It is not enough that the employees attend the place of work. They must put in the work allotted to them. It is for the work and not for the mere attendance that the wages/salaries are paid.

It is clear that wages are payable only if the contract of employment is fulfilled and not otherwise. Hence, when the workers do not put in the allotted work or refuse to do it, they would not be entitled to the wages proportionately.

Whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. The liability to lose wages does not either make the strike illegal as a weapon or deprive the workers of it. When workers resort to it, they do so knowing full well its consequences. During the period of strike, the workers withhold their labour. Consequently, they cannot expect to be paid."

In the light of the above, the Cabinet has now reviewed the general policy in this regard and directed that all Ministries/Departments should observe the instructions contained in Department of Personnel & Administrative Reforms. M. of 25th April, 1978 (reproduced in para 1 of this O.M.) scrupulously.

Ministry of Finance etc. are accordingly requested to bring the directions of the Cabinet to the notice of all concerned for strict compliance in future.

(M.S. BALLI)
Deputy Secretary to the Government of India

1. All Ministries/Dept. of the Government of India.
2. Comptroller and Auditor General of India, New Delhi.
3. Supreme Court of India, New Delhi.
5. Lok Sabha, New Delhi.