

सभी पत्र सचिव, भारत सरकार,
पत्तन, पोत परिवहन और जलमार्ग मंत्रालय, को उनके
नाम पर नहीं बल्कि पद के पते पर भेजे जाने चाहिए।
All communications should be addressed to the
Secretary to the Government of India, Ministry
of Ports, Shipping and Waterways by title NOT
by name.

भारत सरकार
Government of India
पत्तन, पोत परिवहन और जलमार्ग मंत्रालय
Ministry of Ports, Shipping and Waterways
परिवहन भवन/Transport Bhawan
1, संसद मार्ग /1, Parliament Street
नई दिल्ली /110001-New Delhi-110001

F.No.L-11020/1/2022-MG-Part (1)

Date: 24.11.2023

NOTE TO PUBLIC/STAKE HOLDER

Subject: - Draft Merchant Shipping (Form and Manner of Appeal) Rules 2023 under section 436A of the Merchant Shipping Act, 1958- Regarding.

Sir/Madam,

Stakeholders/Public are hereby requested to furnish their comments/suggestions if any to the draft Merchant Shipping (Form and Manner of Appeal) Rules 2023 (attached herewith). The draft Rules have been framed under section 436A of Merchant Shipping Act, 1958, which has been recently inserted therein by way of Sl. No. 14 of the Schedule to Jan Vishwas (Amendment of Provisions) Act, 2023.

2. It is requested that stakeholders/public may furnish their comments/suggestions to the draft rules within 30 days from the above mentioned date at the email address given hereunder:

somg-ship@nic.in

Under Secretary to the Government of India

MINISTRY OF PORTS, SHIPPING AND WATERWAYS NOTIFICATION

New Delhi, the _____, 2023

G.S.R. _____. —In exercise of the powers conferred by section 436A of the Merchant Shipping Act, 1958 (44 of 1958), the Central Government hereby makes the following rules, namely:

1. Short title and commencement. - (1) These rules may be called the "Merchant Shipping (Form and Manner of Appeal) Rules, 2023."

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

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

(a) "Act" means the Merchant Shipping Act, 1958 (44 of 1958);

(b) "appellant" means whoever prefers an appeal under sub-section (3) of Section 436 of the Act;

(c) "Appellate Authority" means the Director-General of Shipping appointed under section 7 of the Act;

(d) "form" means the Form annexed to these rules;

(e) "penalty" means the penalty prescribed in Section 436 of the Act.

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

3. Period of Limitation of Appeal. — (1) Whoever aggrieved by an order of the Principal Officer under sub-section (3) of Section 436 of the Act, may, within a period of thirty days from the date of receipt of such order, prefer an appeal before the Appellate Authority:

Provided that the Appellate Authority may admit any appeal after the expiry of the period aforesaid, if the appellant satisfies the Appellate Authority that he had sufficient cause for not preferring the appeal in time:

Provided further that no appeal may be admitted after a period of one hundred and eighty days from the date of the receipt of such Order.

4. Form and Content of Appeal. — (1) An application to the Appellate Authority under sub-section (3) of Section 436 of the Act shall be made in the manner specified in the Form.

(2) An application made in sub-rule (1) shall be accompanied by a copy of the order appealed against.

(3) Every appellant shall ensure that an application made in sub-rule (1) fulfils the following particulars, namely: —

(a) the application contains all material statements, arguments and grounds relied on by the appellant;

(b) the application contains no disrespectful or improper language;

(c) The appeal shall clearly state the grounds on which it is made, including any errors of fact or legal or administrative process, proportionality of the penalty, any new admissible information, changed circumstances, conflict of interest or breach of constitutional right.

(d) the application contains specific prayers;

(e) the application is complete in itself.

5. Consideration of the Appeal. — (1) In the case of any application made under sub-rule (1) of rule 4, the Appellate Authority shall consider the following matters, namely: —

(a) whether the procedure laid down in these rules has been complied with, and, if not, whether such non-compliance has resulted in the violation of any provision of the Act or these rules or the Constitution of India or in the failure of justice;

(b) whether the penalty imposed in the order of the Principal Officer under sub-section (3) of Section 436 of the Act is proportionate or not;

(c) whether all the circumstances of the case have been considered to pass such orders as it may deem just and equitable.

(d) Whether the appeal has been preferred in accordance with item (c) of sub rule 3 of rule 4.

(e) Disposal of appeal shall be in accordance with this sub-rule.

(2) No application made under sub-rule (1) of rule 4 shall be disposed without giving the appellant a reasonable opportunity of being heard.

(2) The Appellate Authority shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made thereunder, shall have powers to regulate its own procedure, including the places at which it shall conduct its business for the purpose of considering any appeal preferred under this rule.

(5) An application made under sub-rule (1) of rule 4 shall be disposed of as expeditiously as possible and the disposal of such application shall not exceed a period of six months from the date of filing such application.

6. Powers of the Appellate Authority. — (1) Notwithstanding anything contained in any other law for the time being in force while exercising powers under this rule, the Appellate Authority, while deciding any application made under sub-rule (1) of rule 4, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of

1908), in respect of the following matters, namely: —

- (a) the discovery and production of books or any documents, at such place and such time as may be specified by the Appellate Authority and examining them on oath;
- (b) inspection of any books, registers and other documents of any person;
- (c) issuing commissions for the examination of witnesses or documents;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document, from any office and production of such documents;
- (e) receiving evidence on affidavits;
- (f) dismissing an application for default or deciding it, *ex parte*;
- (g) setting aside any order of dismissal of any application for default or any order passed by it, *ex parte*;
- (h) granting interim relief;
- (i) reviewing its decision; and
- (j) any other matter as the Appellate Authority may deem fit.

(2) Every proceeding before the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and Appellate Authority shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

7. Orders passed by the Appellate Authority. —Subject to rule 4, the Appellate Authority may—

- (a) confirm or modify or set aside or reverse the order appealed against under sub-section (3) of Section 436 of the Act;
- (b) confirm or reduce or enhance or set aside the penalty imposed by the order or impose any penalty where no penalty has been imposed:

Provided that no order imposing an enhanced penalty shall exceed the amount of penalty prescribed in sub-section (2) of Section 436:

Provided further that no order imposing an enhanced penalty shall be made unless the appellant has been given a reasonable opportunity of making a representation against such enhanced penalty and reasons for such enhancement have been recorded in writing;

- (c) pass such orders for penalising any frivolous appeals as a deterrence to the abuse of any administrative or legal procedures:

provided any penalty imposed shall not exceed amount of maximum penalty prescribed in

sub-section (2) of Section 436; or,

(d) pass such orders as it may deem fit in the circumstances of the case.

8. Effect of Orders passed by the Appellate Authority. — (1) Subject to the provisions of sub-rule (1) of rule 6, every order passed by the Appellate Authority under rule 5 shall be final.

(2) Every order passed by the Appellate Authority under rule 5 shall, as soon as practicable, be submitted to the Central Government.

9. Fee. — Every application under sub-rule (1) of rule 4 shall be made along with fees payable as specified in the following table: —

Sr. No.	Amount of Penalty prescribed under Section under sub-rule (2) of rule 436 of the Act	Fees payable for application under sub-rule (1) of rule 4
1.	2.	3.
1.	Penalty which may extend to fifty thousand rupees	3,000/- rupees
2.	Penalty which may extend to one lakh rupees	5,000/- rupees
3.	Penalty which may extend to two lakh rupees	10,000/- rupees
4.	Penalty which may extend to five lakh rupees or more	20,000/- rupees

10. Award of costs in the proceedings. — (1) Whenever the Appellate Authority deems fit, it may award cost for meeting the legal expenses of the respondent or defaulting party.

(2) The Appellate Authority may, where it determines that there has been an abuse of process under these rules, impose exemplary costs on the defaulting party.

FORM

APPLICATION TO THE APPELLATE AUTHORITY

(See sub-rule (1) of rule 4)

1. Details of the Appellant:

1.1. Name of the Appellant:

1.2. Designation of the Appellant:

1.3. Address of the Appellant:

1.4. Telephone/Mobile No. of the Appellant:

1.5. Email Id. of the Appellant:

1.6. Name, Address, Telephone/Mobile No. & Email Id. of the Legal

Representative of the Appellant:

2. Details of the Order appealed against under sub-section (3) of Section 436 of the Merchant Shipping Act, 1958:

2.1. Date:

2.2. Number:

2.3. Name of Principal officer:

2.4. Address of Mercantile Marine Department:

2.5. Section of the Merchant Shipping Act, 1958 to which the Offence has reference:

2.6. Penalty imposed by the Principal Officer:

3. Details of Appeal:

3.1. Statement of Facts: *(Provide a concise statement of facts in a chronological order and with paragraph numbers containing an elaboration of issues, including the question of law arising in the appeal. Each paragraph should deal with, as far as possible a separate issue.)*

3.2. Description of Grievance: *(Provide a concise description of grievance elaborating issues with the order of the Principal Officer under sub-section (3) of Section 436 of the Merchant Shipping Act, 1958)*

3.3. Grounds for Appeal: *(Provide a clear ground of the appeal and concise description of the appeal and the relevant legal provisions, if any, relied upon. See para 4(3)(c))*

3.4. Evidence: *(Provide evidence for the justification/grounds for appeal and in case of more than one evidence, an indexed chronological list thereof.)*

3.5. Prayer: *(Clearly stipulate the reliefs sought)*

3.6. Particulars of fees payable under rule 9:

Place:

Date:

(Signature of Appellant)

[F.No. _____]

_____, Jt. Secy.