THE GAZETTE OF INDIA

EXTRAORDINARY

Part II- Section 3, Sub-Section (i)

MINISTRY OF COMMUNICATIONS AND INFRMATION TECHNOLOGY
(Department of Information Technology)

NOTIFICATION

New Delhi, 17th March, 2003

G.S.R.220(E) - In exercise of the powers conferred by Clauses (p) & (q) of sub-section (2) of Section 87 of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby makes the following rules regulating the terms and conditions of the service of the Presiding Officer, namely: -

1. Short title and commencement: -

(a) These rules may be called the Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003.

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

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

(a) "Act" means the Information Technology Act, 2000 (21 of 2000);
(b) "Adjudicating Officer" means an adjudicating officer appointed under sub-section (1) of section 46, of the Act.
(c) "Proforma" means a proforma appended to these rules.
(d) Words and expressions used herein and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Eligibility for Adjudicating Officer: -

Whereas the purpose and intent of Section 46(3) of IT Act is that the Adjudicating Officer should be a person so qualified and experienced to take decisions with a view in relation to Information Technology aspects as well as in a position to determine the complaints keeping in view the legal or judicial mannerism on the principle of compensation of damages of IT Act.

A person shall not be qualified for appointment as Adjudicating Officer unless the person –

(a) Possesses a University graduate Bachelor degree or equivalent, recognized by Central Government / State Government for the purpose of recruitment to grade I Service in a Government Department through Union / State Public Service Commission;

(b) Possesses Information Technology experience in the areas of relevance to public interface with Central / State Government functioning and experience obtained though the in-service training imparting

competence to operate computer system to send and receive e-mails or other information through the computer network, exposure and awareness about the method of carrying information, data, sound, images or other electronic records through the medium of network including Internet.

(c) Possesses legal or judicial experience to discharge responsibilities connected with the role of Central / State Government in respect of making decisions or orders in relation to administration of laws as a District Magistrate, or Additional District Magistrate or Sub-Divisional Magistrate or an Executive Magistrate or in other administrative or quasi-judicial capacity for a cumulative period of 5 years;

(d) Is working and holding a post in Grade I in Government Department either in State Government/Union Territories to perform functional duty & discharge job responsibility in the field of Information Technology;

(e) Is an in-service officer not below the rank of Director to the Government of India or an equivalent officer of State Government.

4. Scope and Manner of holding inquiry: -

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(a) The Adjudicating Officers shall exercise jurisdiction in respect of the contraventions in relation to Chapter IX of IT Act 2000 and the matter or matters or places or area or areas in a State or Union Territory of the posting of the person.

(b) The complaint shall be made to the Adjudicating Officer of the State or Union Territory on the basis of location of Computer System, Computer Network as defined in sub-Section 2 of Section 75 of IT Act on a plain paper on the Proforma attached to these Rules together with the fee payable calculated on the basis of damages claimed by way of compensation.

(c) The Adjudicating Officer, shall issue a notice together with all the documents to all the necessary parties to the proceedings, fixing a date and time for further proceedings. The notice shall contain such particulars as far as may be as to the time and place of the alleged contravention, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed.

(d) On the date so fixed, the Adjudicating Officer shall explain to such person or persons to whom notice is issued about the contravention alleged to have been committed in relation to any of the provisions of the Act or of any rule, regulation, direction or order made there under.

(e) If the person in respect of whom notice is issued pleads guilty, the Adjudicating Officer shall record the plea, and may impose penalty or award such compensation as he thinks fit in accordance with the provisions of the Act, rules, regulations, order or directions made there under.

(f) Alternatively on the date fixed the person or persons against whom a matter is filed may show cause why an enquiry should not be held in the alleged contravention or that why the report alleging the contravention should be dismissed.

(g) The Adjudicating Officer on the basis of the report of the matter, investigation report (if any), other documents and on the basis of submissions shall form an opinion that there is sufficient cause for holding an enquiry or that the report into the matter should be dismissed and on that basis shall either by order dismiss the report of the matter, or shall determine to hear the matter.

(h) If any person or persons fails, neglects or refuses to appear, or present himself as required by sub-rule (d), before the Adjudicating Officer, the Adjudicating Officer shall proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.

(i) At any time or on receipt of a report of contravention from an aggrieved person, or by a Government agency or suo-moto, the Adjudicating Officer, may get the matter or the report investigated from an officer in the Office of Controller or CERT-IND or from the concerned Deputy Superintendent of Police, to ascertain more facts and whether prima facie there is a case for adjudicating on the matter or not.

(j) The Adjudicating Officer, shall fix a date and time for production of documents or evidence and for this purpose may also rely on electronic records or communications and as far as may be, shall use or make available the infrastructure for promoting on-line settlement of enquiry or disputes or for taking evidence including the services of an adjudicating officer and infrastructure in another State.

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(k) As far as possible, every application shall be heard and decided in four months and the whole matter in six months.

(l) Adjudicating Officer, when convinced that the scope of the case extends to the

Offence(s) (under Chapter XI of IT Act) instead of Contravention, needing appropriate punishment instead of mere financial penalty, should transfer the case to the Magistrate having jurisdiction to try the case, through Presiding Officer.

5. Order of the Adjudicating Officer: -

(a) If, upon consideration of the evidence produced before the Adjudicating Officer and other records and submissions, the Adjudicating Officer is satisfied that the person has become liable to pay damages by way of compensation or to pay penalty under any of the provisions of the Act or rules, regulations, directions or orders, the Adjudicating Officer may, by order in writing, order payment of damages by way of compensation or impose such penalty, as deemed fit.

(b)While adjudging the quantum of compensation or penalty, the Adjudicating Officer shall have due regard to the following factors, namely:

(i) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the default;

(ii) the amount of loss caused to any person as a result of the default;

(iii) the repetitive nature of the default.

6. Copy of the Order: - Adjudicating Officers shall deliver a certified copy of the order to the Complainant & Respondent.

7. Service of notices and orders: -A notice or an order issued under these rules shall be served on the person in any of the following manners, that is to say: -

(a) by delivering or tendering it to that person or the person's authorized agent in an electronic form provided that there is sufficient evidence of actual delivery of the electronic record to the concerned person; or

(b) by sending it to the person by registered post with acknowledgement due to the address of his place of residence or the last known place of residence or business place;

(a) if it cannot be served under clause (a) or (b) above then by affixing it, in the presence of two witnesses, on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain.

8. Fee: -

Every complaint of a matter to the Adjudicating Officer shall be accompanied by fee, payable by a bank draft drawn in favour of "Adjudicating Officer Information Technology Act" at the place of functioning of Adjudicating Officer in the States or Union Territories, calculated on the basis of the damages claimed by way of compensation from the contraveners on the rates provided below.

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Table of Fee

(i)	**Damages by way of compensation**	**Fee**
(a)	Upto Rs.10,000	10% ad valorem rounded of to nearest next hundred
(b)	From 10001 to Rs.50000	Rs. 1000 plus 5% of the amount exceeding Rs.10,000 rounded of to nearest next hundred
(c)	From Rs.50001 to Rs.100000	Rs. 3000/- plus 4%of the amount exceeding Rs. 50,000 rounded of to nearest next hundred
(d)	More than Rs. 100000	Rs.5000/- plus 2% of the amount exceeding Rs. 100,000 rounded of to nearest next hundred
(II)	**Fee for every application**	**Rs. 50/-**

9. Duplicity Avoided: - When an adjudication into a matter of contravention is pending before an Adjudicating Officer, same matter shall not be pursued before any court or Tribunal or Authority in any proceeding whatsoever and if there is already filed a report in relation to the same matter, the proceedings before such other court, Tribunal or Authority shall be deemed to be withdrawn.

10. Frivolous complaints: - If a person files a frivolous report of the matter, the adjudicating officer in his discretion may order the complainant, to make good the cost of the persons against whom the complaint was filed and to pay a damage of not exceeding

Rupees Twenty Five Thousand and the adjudicating officer may also order payment of a fine up to an amount not exceeding Rupees Ten Thousand only.

11. Compounding of Contraventions: -

(a) A person, against whom a report of contravention of the Act, Rules or Regulations, directions or orders or conditions has been filed before an Adjudicating Officer, may make an application for compounding the contravention during the adjudicating proceedings to the concerned adjudicating officer.

Provided that an application for compounding may be filed even before the contravention is reported, in which case the contravener himself shall state the contravention undertaken or committed and the likely loss to various parties and the amount of compensatory damages tendered by the contravener.

(b) The applicant desirous of compounding the contravention shall deposit the sum determined by the officer compounding the contravention into the office of Adjudicating Officer.

Provided that sum determined as compounding fee shall not exceed the maximum amount of penalty, which may be imposed under this Act for the contraventions so compounded.

12. Certifying Authorities and other Governmental Agencies to Assist

All the licensed or recognized Certifying Authorities, the Controller and other officers agencies established under the Act and other government agencies like CERT-IND shall promptly assist the Adjudicating Officers in any proceedings filed or pending before the Adjudicating Officers.

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APPENDIX

PROFORMA FOR COMPLAINT TO ADJUDICATING OFFICER UNDER INFORMATION TECHNOLOGY ACT - 2000

I 1. Name of the Complainant

2. E-mail address

3. Telephone No.

4. Address for correspondence

5. Digital Signature Certificate, if any

II 1. Name of the Respondent

2. E-mail address

3. Telephone No.

4. Address for correspondence

5. Digital Signature Certificate, if any

III Damages claimed

Fee deposited

Demand Draft No._____dated _____Branch_____

IV Complaint under Section/Rule/Direction/Order etc.

V Time of Contravention

VI Place of Contravention

VII Cause of action

VIII Brief facts of the case

(Signature of the Complainant)

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